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ARKANSAS AND THE 3P PARADIGM: WHAT THE ARKANSAS GENERAL ASSEMBLY SHOULD DO TO BETTER PROTECT VICTIMS OF SEX TRAFFICKING, PROSECUTE SEX TRAFFICKING OFFENDERS, AND PREVENT SEX TRAFFICKING FROM OCCURRING WITHIN THE STATE

I. INTRODUCTION

In October of 2019, a lawsuit was filed on behalf of a Jane Doe victim against a Little Rock, Arkansas hotel alleging that the fourth floor of the hotel was the host to a sex trafficking operation.¹ The victim alleged that throughout the summer of 2014, she was brought to the hotel and kept against her will while being forced to perform sexual acts and have sex with ten to twelve individuals per day.² She was repeatedly beaten and choked by her trafficker and often screamed for help but never received any assistance from the hotel staff.³ The Jane Doe victim claimed that in every room on the fourth floor of the hotel, located just off of Interstate 30 in Arkansas's capital city, both adult and minor females suffered the same heinous abuse that she herself endured.⁴

In 2019, the National Human Trafficking Hotline received 220 contacts, including phone calls, texts, and other types of web communications, regarding human trafficking cases in Arkansas.⁵ That year, the hotline received eighty-six reports of human trafficking cases in the state.⁶ However, in 2019 federal prosecutors in Arkansas only charged two new criminal human trafficking cases, and there were only five active human trafficking cases in the state's federal courts.⁷ Arkansas's federal courts achieved two human trafficking convictions in 2019 and only one human trafficking conviction in 2018.⁸ At the state level, prosecutors filed eleven new human trafficking cases

1. Clara Turnage, *Little Rock Hotel Ignored Sex Trafficking, Suit Says*, ARKANSAS DEMOCRAT-GAZETTE (Oct. 6, 2019), <https://www.arkansasonline.com/news/2019/oct/06/suit-says-lr-hotel-ignored-sex-traffick/>.

2. Complaint at ¶ 22–23, *Jane Doe v. Seven Stars Hotel Group, Inc.* (2019) (No. 60CV-19-6741).

3. *Id.* at ¶ 24.

4. *Id.* at ¶ 25.

5. *Arkansas*, THE NAT'L HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/state/arkansas> (last visited Feb. 13, 2021).

6. *Id.*

7. Kyleigh Feehs & Alyssa Currier, *2019 Federal Human Trafficking Report: Arkansas State Summary*, THE HUMAN TRAFFICKING INST. (2020), <https://www.traffickinginstitute.org/wp-content/uploads/2020/08/Arkansas-2019-State-Summary.pdf>.

8. Marine Glisovic, *Human Trafficking Cases Increase in Arkansas, But Not Convictions*, KATV NEWS (Aug. 28 2020), <https://katv.com/news/local/human-trafficking-08-28-2020>; see also Feehs & Currier, *supra* note 7 (describing Arkansas as ranking 35th in the United States for the number of federal human trafficking convictions, 32nd in the United States for

between 2018 and 2019, but there was only one human trafficking conviction during that period.⁹

These statistics and the filing of the lawsuit against the Little Rock hotel support the conclusion that sex trafficking is happening in Arkansas. The number of human trafficking cases reported in Arkansas to the National Human Trafficking Hotline continues to rise.¹⁰ Societal movements, such as the Me Too Movement,¹¹ coupled with well-publicized scandals and conspiracies, like the recent Wayfair debacle,¹² on social media have garnered a greater awareness of human trafficking among the American public. However, the laws of the state of Arkansas do not reflect this rise in prevalence and awareness.

In 2000, the United Nations adopted the Palermo Protocol.¹³ The Protocol laid out the 3P paradigm for human trafficking: prevent, punish, and

the number of active criminal human trafficking cases, and 22nd in the United States for the number of new criminal human trafficking cases filed).

9. Glisovic, *supra* note 8.

10. *Id.*; see also THE NAT'L HUMAN TRAFFICKING HOTLINE, *supra* note 5 (showing that the number of human trafficking cases reported in Arkansas to the National Human Trafficking Hotline nearly doubled from 2017 to 2019).

11. *History and Inception*, THE ME TOO MOVEMENT, <https://metoomvmt.org/get-to-know-us/history-inception/> (last visited Mar. 4, 2021); *Understanding the Me Too Movement: A Sexual Harassment Awareness Guide*, MARYVILLE UNIV., <https://online.maryville.edu/blog/understanding-the-me-too-movement-a-sexual-harassment-awareness-guide/> (last visited Mar. 4, 2021) (describing the Me Too Movement as an organization founded in 2006 by Tarana Burke. The movement gained popularity on social media when posts using the hashtag “#metoo” began surfacing on Twitter and Instagram in 2017. The hashtag and movement’s popularity in 2017 stemmed from the allegations of famous actresses against Harvey Weinstein, a famous Hollywood producer, that he had sexually harassed them and other women for years. The phrase “Me Too” became a rallying cry for men and women all over the world to share their stories of sexual assault on social media.).

12. Matthew Brown, *Fact Check: Home Goods Retailer Wayfair is Not Involved in Child Sex Trafficking*, USA TODAY (July 23, 2020), <https://www.usatoday.com/story/news/factcheck/2020/07/22/fact-check-wayfair-not-involved-child-sex-trafficking/5460739002/>; *Fact Check: No Evidence Linking Wayfair to Human Trafficking Operation*, REUTERS (updated July 23, 2020), <https://www.reuters.com/article/uk-factcheck-wayfair-human-trafficking/fact-check-no-evidence-linking-wayfair-to-human-trafficking-operation-idUSKCN24E2M2> (reporting that the Wayfair conspiracy began in July 2020 when a Reddit thread accused Wayfair of allowing third parties to traffic children through its website. The thread, and later social media posts, claimed Wayfair allowed outrageously expensive products to be sold on its site to disguise that children were actually being purchased and delivered for the high price instead. Wayfair, a website that allows third-party vendors to sell home goods and other products through its site, denied the allegations, which were later debunked for lack of evidence.). The social media outcry that followed the allegations brought a new light to the real problem of sex trafficking in the United States and internationally. *Id.*

13. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 343, <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

protect.¹⁴ Later codified into law by the United States in the Trafficking Victims Protection Act as “prosecution, protection, and prevention,” the 3P paradigm has become the framework for legislation and other efforts to battle sex trafficking.¹⁵ All three of the “Ps” in the paradigm are critically important to fighting sex trafficking, and the success of each one relies on the others.¹⁶ The concern of this Note is the inadequacy of current Arkansas law to bolster the prosecution, prevention, and protection efforts of the 3P paradigm that are essential to battling sex trafficking within the state.

Because Arkansas law does not sufficiently protect victims of sex trafficking, prosecute sex traffickers, and prevent sex trafficking from occurring within the state, this Note argues that the Arkansas General Assembly should (1) protect victims by adopting a vacatur law for nonviolent offenses committed by victims while they were being trafficked, (2) prevent sex trafficking from occurring by enacting legislation that will specifically target websites and Internet communications that facilitate sex trafficking practices within the state, and (3) punish sex traffickers more effectively by amending Arkansas law to abolish the statute of limitations for sex trafficking prosecutions and extend the civil statute of limitations for sex trafficking cases.

Section II of this Note will define sex trafficking and outline the development of federal law and Arkansas law regarding human trafficking.¹⁷ Section III analyzes the vacatur laws of other states that have adopted them and discusses how a vacatur law would benefit victims within Arkansas.¹⁸ Section IV examines the parameters of a law that targets websites and Internet communications that facilitate sex trafficking practices and how this law would affect the sex trafficking market while addressing First Amendment concerns.¹⁹ Section V will explore the implications of statutes of limitations on sex trafficking cases and argue for its abolition in the criminal context and its extension in the civil context in Arkansas.²⁰

II. DEFINING SEX TRAFFICKING

The United Nations defines human trafficking as:

... the recruitment, transportation, transfer, harbouring or receipt of persons, by the means of the threat or use of force or other forms of coercion,

14. *Id.*

15. Office to Monitor and Combat Trafficking in Persons, *3Ps: Prosecution, Protection, and Prevention*, THE U.S. DEP'T OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention/> (last visited Mar. 4, 2021).

16. *Id.*

17. *Infra* Section II.

18. *Infra* Section III.

19. *Infra* Section IV.

20. *Infra* Section V.

of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, 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.²¹

There are two types of human trafficking: sex trafficking and labor trafficking, otherwise known as forced labor.²² This Note does not discuss labor trafficking²³ and will use the terms “human trafficking” and “sex trafficking” interchangeably.

Recognizing the problem of human trafficking has led to great strides in both federal and state legislation to combat sex trafficking. But the fight is not over. Sex trafficking continues to be a prevalent issue throughout the United States and poses a grave danger to men, women, and children across the country. This Note describes the legislative efforts of both Congress and the Arkansas General Assembly in battling sex trafficking while pointing out the shortcomings of these efforts and identifying ways to combat the problem of human trafficking, starting at home in Arkansas.

A. Federal Sex Trafficking Law

In 2000, Congress enacted the Trafficking Victims Protection Act (TVPA), which became the United States’ first law to address specifically the issue of human trafficking.²⁴ The TVPA was reauthorized in 2003, which created a civil pathway for victims by establishing a right to pursue civil litigation against their traffickers.²⁵ The civil provision was amended during the

21. United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, United Nations 1, 16 (2012), https://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf (internal quotations omitted).

22. *Id.* at 18.

23. *Prosecuting Human Traffickers*, THE NAT’L CONFERENCE OF STATE LEGISLATORS (Sept. 20, 2018), <https://www.ncsl.org/research/civil-and-criminal-justice/prosecuting-human-traffickers.aspx> (defining labor trafficking or forced labor as, “[t]he recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, though the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery”).

24. Turnage, *supra* note 1.

25. Alexandra F. Levy, *Federal Human Trafficking Civil Litigation: 15 Years of the Private Right of Action*, THE HUMAN TRAFFICKING LEGAL CENTER, 1, 7–9 (Dec. 2018), <https://www.htlegalcenter.org/wp-content/uploads/Federal-Human-Trafficking-Civil-Litigation-1.pdf>; 18 U.S.C. § 1595 (2018).

2008 reauthorization of the TVPA to allow victims to file lawsuits against third parties that economically benefited from human trafficking practices.²⁶

In the federal criminal justice system, there is no vacatur law.²⁷ A “vacatur law” is a law that allows victims to vacate, or set aside, their criminal convictions for nonviolent offenses if the offenses occurred while the victim was being trafficked or if the offenses are directly related to the trafficking.²⁸ Several states, such as New York and Maryland, have enacted vacatur laws.²⁹ These states have taken a variety of approaches in their respective vacatur laws. Some states allow prosecutors to dismiss or nolle pros victims’ charges before they are even adjudicated, while others have enacted special procedures to expunge or vacate victims’ convictions.³⁰ Under federal law, however, victims are left with only two options to clear their record: a special expungement process or a presidential pardon.³¹

Another area of federal law related to sex trafficking is the regulation of internet intermediaries. In 1996, Congress enacted the Communications Decency Act (CDA).³² The Act provides websites with immunity from criminal and civil liability for illegal content posted by third parties.³³ Section 230 of the CDA extends this immunity to internet intermediaries.³⁴ Internet intermediaries are websites that act as hosts for content posted by users on their sites.³⁵

In 2017, President Trump signed into law the Fight Online Sex Trafficking Act (FOSTA) and the Stop Enabling Sex Traffickers Act (SESTA) package.³⁶ This package encompassed three major protections for victims.³⁷ First, the package amended the CDA to create an exception to the immunity provided to websites in order to target intermediaries that facilitate sex trafficking

26. Levy, *supra* note 25, at 7–9; 18 U.S.C. § 1595.

27. Lori Waichman, *Vacating Criminal Convictions for Victims of Human Trafficking: Weighing Opportunities for Expansion With a State Interest in Finality*, 1 INT’L COMP. POL’Y & ETHICS L. REV. 473, 482 (2018).

28. Jessica Emerson & Alison Aminzadeh, *Left Behind: How the Absence of a Federal Vacatur Law Disadvantages Survivors of Human Trafficking*, 16 U. MD. L.J. RACE, RELIG. GENDER & CLASS 239, 242 (2016).

29. *Id.* at 251.

30. *Id.* at 252.

31. *Id.* at 251–52, 254.

32. Abby R. Perer, *Policing the Virtual Red Light District: A Legislative Solution to the Problems of Internet Prostitution and Sex Trafficking*, 77 BROOK. L. REV. 823, 823–24 (2012).

33. *Id.* at 824.

34. Catherine R. Gellis, *2013 State of the Law Regarding Internet Intermediary Liability for User-Generated Content*, 69 BUS. LAW. 209, 209 (Nov. 2013).

35. *Id.*

36. *By Signing the Allow States and Victims to Fight Online Sex Trafficking Act, President Donald J. Trump Provides Invaluable Tools Needed to Fight the Scourge of Sex Trafficking*, THE WHITE HOUSE (Apr. 2018), <https://www.whitehouse.gov/briefings-statements/signing-allow-states-victims-fight-online-sex-trafficking-act-president-donald-j-trump-provides-invaluable-tools-needed-fight-scourge-sex-trafficking/>; 18 U.S.C. § 2421A (2018).

37. THE WHITE HOUSE, *supra* note 36.

practices.³⁸ Second, victims can now seek legal recourse against these websites in the civil court system.³⁹ Finally, the package enabled the states to fight human trafficking within their own borders by providing them a way to take action against both individuals and businesses who facilitate sex trafficking practices.⁴⁰

Both federal and state legislation establish the foundation for the protection of victims, the prosecution of offenders, and the prevention of sex trafficking in the United States.⁴¹ However, it is not logistically possible for the federal government to tackle every human trafficking case throughout the country.⁴² Congress did not codify the 3P paradigm into the TVPA for solely the federal government to follow.⁴³ It did so to provide guidance on how state legislatures should combat human trafficking through their legislative responses as well.⁴⁴ Thus, it falls on the state legislatures to assist the federal government in achieving the goals of the 3P paradigm.⁴⁵

Furthermore, state legislatures are better equipped to tailor sex trafficking laws to their own citizens' needs and circumstances. State legislatures are the bodies tasked with enacting policies and procedures for battling sex trafficking by protecting victims and prosecuting offenders within each legislature's state.⁴⁶ State legislators are the ones on the frontlines of the fight against human trafficking because they can readily identify and implement effective policies at the state level.⁴⁷

Almost every state has enacted some form of legislation that criminalizes human trafficking.⁴⁸ Generally, these state statutes define the crime of human trafficking and impose some type of punishment on those who commit the acts proscribed by the statute.⁴⁹ However, it is not enough to simply criminalize human trafficking. State legislatures must enact further legislation to

38. *Id.*; see also 18 U.S.C. § 2421A.

39. THE WHITE HOUSE, *supra* note 36; see also 18 U.S.C. § 2421A.

40. THE WHITE HOUSE, *supra* note 36; see also 18 U.S.C. § 2421A.

41. *Shining Light: Understanding Human Trafficking Legislation*, THE YOUTH COLLABORATORY (Sept. 30, 2019), <https://www.youthcollaboratory.org/resource/understanding-human-trafficking-legislation>.

42. *Id.*

43. *A Look Back: Building a Human Trafficking Legal Framework*, POLARIS PROJECT (2014) [hereinafter *A Look Back*], <https://polarisproject.org/wp-content/uploads/2019/09/2014-Look-Back.pdf>.

44. *See id.*

45. *See id.*

46. THE NAT'L CONFERENCE OF STATE LEGISLATORS, *supra* note 23.

47. *Id.*

48. *2013 Analysis of State Human Trafficking Laws*, POLARIS PROJECT (Aug. 2013), <https://polarisproject.org/wp-content/uploads/2019/09/2013-State-Ratings-Analysis.pdf>. As of 2013, every state but Colorado and Pennsylvania had enacted laws criminalizing sex trafficking. *Id.* at 6.

49. *See id.* at 4–5.

protect victims, prosecute offenders, and prevent sex trafficking from occurring on their own soil.⁵⁰

B. Arkansas Sex Trafficking Law

In 2005, Arkansas enacted the state's first statute aimed at human trafficking.⁵¹ That statute was repealed in 2013 and replaced with the Arkansas Human Trafficking Act (AHTA).⁵² This Act enabled the Department of Human Services to develop a statewide protocol to help victims receive necessary benefits and services.⁵³ In 2016, the AHTA was amended to create a civil cause of action that enabled victims to sue their traffickers in civil court.⁵⁴ In 2019, the Arkansas General Assembly passed § 12-19-101, which authorized the Attorney General to create the State Task Force for the Prevention of Human Trafficking.⁵⁵

Arkansas's criminal justice system classifies human trafficking as a Class A felony.⁵⁶ Human trafficking of a minor is a Class Y felony.⁵⁷ Arkansas expressly holds a business and an organization criminally liable for sex trafficking practices that occur on the business or organization's property or if the business or organization economically benefits from human trafficking practices.⁵⁸ The Arkansas criminal justice system provides no immunity for victims of sex trafficking, instead providing only a special affirmative defense and special petition to seal process.⁵⁹

Individual states play a significant role in the battle against human trafficking.⁶⁰ State laws establish the infrastructure by which the 3P paradigm is carried out at the most basic level.⁶¹ In 2012, the Polaris Project, in its annual report, classified Arkansas as a Tier 4 state.⁶² Tier 4 states are states that have

50. See generally THE NAT'L CONFERENCE OF STATE LEGISLATORS, *supra* note 23; THE YOUTH COLLABORATORY, *supra* note 41; *A Look Back*, *supra* note 43.

51. Mary Ward, Note, *Arkansas's Human Trafficking Laws: Steps in the Right Direction Or a False Sense of Accomplishment?*, 37 U. ARK. LITTLE ROCK L. REV. 133, 141 (2014).

52. ARK. CODE ANN. § 5-18-101 et. seq. (2013).

53. *Id.*

54. See *id.* § 5-18-105.

55. *Id.* § 12-19-101 (2019).

56. *Id.* § 5-18-103 (2013).

57. *Id.*

58. ARK. CODE ANN. § 5-18-105. So far, there are no Arkansas state court cases or Arkansas federal district court cases that have applied this law.

59. Ward, *supra* note 51, at 149.

60. *A Look Back*, *supra* note 43.

61. See *Report Cards on Child & Youth Sex Trafficking*, SHARED HOPE INT'L 6 (2019), https://sharedhope.org/wp-content/uploads/2020/11/SHI_2020_Advanced-Legislative-Framework-Report_FINAL.pdf.

62. *How Does Your State Rate On Human Trafficking Laws in 2012?*, POLARIS PROJECT (July 2012), <https://polarisproject.org/wp-content/uploads/2019/09/2012-State-Ratings.pdf>.

made “minimal effort” in enacting any kind of human trafficking legislation.⁶³ By 2013, however, the Polaris Project had ranked Arkansas as the “most improved” state of the year and classified Arkansas as a Tier 1 state.⁶⁴ A Tier 1 state is described as a state that has passed “significant” legislation against human trafficking.⁶⁵

Even Tier 1 states, though, are tasked with continuing to build their framework of legislation to battle human trafficking.⁶⁶ By 2019, Arkansas received an “F” rating from the Polaris Project for its criminal record relief for victims of human trafficking.⁶⁷ The Arkansas legislature has made great strides in its legislative response to sex trafficking since 2012, but it cannot stop there.⁶⁸ It is up to the Arkansas General Assembly, as the state’s frontline fighter in establishing the legal framework necessary to battle human trafficking, to strive to meet the goals of the 3P paradigm.⁶⁹ This Note proposes that the Arkansas General Assembly enact a vacatur law to better protect victims, prevent further sex trafficking from occurring in Arkansas by passing legislation holding Internet intermediaries liable for the trafficking practices enabled through their webpages, and effectively prosecute offenders by amending Arkansas’s criminal and civil statutes of limitations. The Arkansas legislature, not Congress, is the body best equipped to fight sex trafficking that is happening in our own backyards.

III. VACATUR LAWS

Victims of sex trafficking are often prosecuted for criminal conduct they were forced to engage in while being trafficked.⁷⁰ A recent survey conducted by the National Survivor Network found that 90.8% of the victims surveyed had been arrested while being trafficked.⁷¹ Over forty percent of these victims

63. *Id.*

64. *2013 State Ratings on Human Trafficking Laws*, POLARIS PROJECT (2013), <https://polarisproject.org/wp-content/uploads/2019/09/2013-State-Ratings.pdf>.

65. *Id.*

66. *Id.*

67. *Criminal Record Relief for Trafficking Survivors: Arkansas*, POLARIS PROJECT (2019), <https://polarisproject.org/wp-content/uploads/2019/10/2019-CriminalRecordRelief-Arkansas.pdf>.

68. *See generally 2013 Analysis of State Human Trafficking Laws*, *supra* note 48; *A Look Back*, *supra* note 43.

69. *See generally* THE NAT’L CONFERENCE OF STATE LEGISLATORS, *supra* note 23; THE YOUTH COLLABORATORY, *supra* note 41; *A Look Back*, *supra* note 43; SHARED HOPE INT’L, *supra* note 61.

70. *See* Emerson & Aminzadeh, *supra* note 28, at 250.

71. *National Survivor Network Members Survey: Impact of Criminal Arrest on Survivors of Human Trafficking*, NAT’L SURVIVOR NETWORK (Aug. 2016), <https://nationalsurvivornetwork.org/wp-content/uploads/2019/08/NSNVacate-Survey-2018.pdf>.

indicated they had been arrested more than nine times.⁷² Prostitution,⁷³ theft, possession of a weapon, loitering, disorderly conduct, using or distributing drugs, using false identification, and even human trafficking offenses are common types of crimes that sex trafficking victims commit, and are later convicted of, while being trafficked.⁷⁴ A vacatur law allows victims to “petition the courts to remove trafficking-related convictions from their records.”⁷⁵ Under a vacatur law, a conviction essentially becomes legally invalid when vacated.⁷⁶ By vacating a conviction, a court reverses the conviction and acknowledges that the conviction was done in error.⁷⁷

This Section examines the concept of vacatur laws, arguing that Arkansas must adopt a vacatur law to help fulfill the protection component of the 3P paradigm. Part A describes the vacatur laws and similar legislation adopted by various states throughout the country. Part B argues why Arkansas must adopt a vacatur law. Finally, Part C outlines certain aspects that should and should not be included within Arkansas’s vacatur law.

A. Vacatur Laws Across the United States

The TVPA provides that victims of sex trafficking “should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked.”⁷⁸ Along those same lines, the TVPA also states that the United States should encourage other nations to treat human trafficking as a serious offense and work together to eliminate human trafficking and “protect[] rather than punish[] the victims of such offenses.”⁷⁹

The United Nations condemns human trafficking as a violation of fundamental human rights.⁸⁰ Under the International Covenant on Civil and

72. *Id.*

73. Cynthia Soohoo, *Criminalization of Trafficking Victims*, INT’L WOMEN’S HUM. RTS. CLINIC, CITY UNIV. OF N. Y. L. SCH. 1, 3 (2015), <https://www.law.cuny.edu/wp-content/uploads/page-assets/academics/clinics/hrgj/publications/Criminalization-of-Trafficking-Victims.pdf> (stating that prostitution is illegal in all fifty states, except Nevada in certain circumstances).

74. *Post-Conviction Relief for Human Trafficking Victims Convicted of Crimes Coerced By A Trafficker*, HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE (Aug. 2015), http://www.htcourts.org/wp-content/uploads/150904_PostConviction_Relief_forHTvictims_v05.pdf.

75. Emerson & Aminzadeh, *supra* note 28, at 242.

76. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

77. *Human Trafficking Issues Brief: Vacating Convictions*, POLARIS PROJECT (2015), <https://polarisproject.org/wp-content/uploads/2019/09/2015-Vacating-Convictions-Issue-Brief.pdf>.

78. 22 U.S.C. § 7101(b)(19) (2000).

79. *Id.* § 7101(b)(24).

80. See United Nations Office on Drugs and Crime, *supra* note 21, at 16.

Political Rights, to which the United States is a signatory, the United States must refrain from criminalizing victims of human trafficking.⁸¹ To fulfill its obligations under the treaty, the United States must not violate sex trafficking victims' fundamental human rights through its law enforcement policies.⁸² The United States is required to ensure that accessible remedies, such as vacatur laws, are available to victims whose rights are improperly violated through prosecutions and convictions.⁸³ The United Nations has even condemned the United States for arresting, prosecuting, and convicting both child and adult victims of human trafficking.⁸⁴

Nevertheless, the United States continues each year to indict and convict victims of sex trafficking for federal crimes,⁸⁵ with no federal vacatur law to help these victims clear their records.⁸⁶ Under federal criminal law, victims can have their federal criminal records expunged.⁸⁷ However, the few statutes Congress has passed to facilitate expungement of federal convictions are incredibly narrow and unhelpful for those convicted of trafficking-related crimes.⁸⁸ The most accessible avenue for victims to clear their records is through a presidential pardon, which itself is virtually unattainable.⁸⁹

In response, many states across the country have enacted their own vacatur laws. New York was the first state to enact such a law in 2010.⁹⁰ New York's vacatur law allows victims of sex trafficking to petition the courts to vacate state court convictions for prostitution and loitering resulting from being trafficked.⁹¹ Within three years after the law was enacted, thirty-two victims of sex trafficking had successfully vacated almost a collective 300 prostitution convictions.⁹² Although New York's enactment of its vacatur law was monumental, the law is not without its limitations.⁹³ Victims may only petition the courts to vacate convictions for loitering and prostitution, and victims bear the burden of proving they were a trafficking victim under New York

81. See United Nations International Covenant on Civil and Political Rights, arts. 8–9, Dec. 16, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171.

82. Suzannah Phillips, *Clearing the Slate: Seeking Effective Remedies for Criminalized Trafficking Victims*, THE CITY UNIV. OF N. Y. SCH. OF L. 1, 3 (2013).

83. *Id.* at 3–4.

84. Soohoo, *supra* note 73, at 2.

85. There are no published statistics to date regarding the number of victims who have petitioned to have their convictions vacated or who have successfully had their records cleared because convictions disappear once vacated. See Waichman, *supra* note 27, at 490.

86. Emerson & Aminzadeh, *supra* note 28, at 251.

87. *Id.*

88. *Id.*

89. *Id.* at 254.

90. *Id.* at 250.

91. N.Y. CRIM. PROC. LAW § 440.10 (2010).

92. Phillips, *supra* note 82, at 26.

93. Waichman, *supra* note 27, at 483.

law.⁹⁴ New York's vacatur law also gives courts great discretion, providing that courts may vacate convictions if they so choose.⁹⁵

Other states' vacatur laws, however, address these concerns. For example, New Jersey's vacatur law allows victims to petition the court to vacate "prostitution and other related offenses."⁹⁶ The New Jersey vacatur law requires no official documentation in order to show that the victim's criminal conduct occurred while he or she was being trafficked.⁹⁷ New Jersey places a statute of limitations on a victim's vacatur petition, but the statute of limitations is flexible, providing that the petition must be filed "within a reasonable period of time after the person has ceased to be a victim of human trafficking or has sought services for [victimization]."⁹⁸

Connecticut also adopted a vacatur law in the wake of New York's enactment.⁹⁹ Although Connecticut narrows a court's discretion by providing that the court shall grant the victim's petition, it places the burden of proof on the victim to show both that he or she was actually trafficked and that the criminal conduct was a product of the trafficking by force or coercion.¹⁰⁰

Maryland's vacatur law places other restrictions on victims seeking to vacate their convictions.¹⁰¹ Maryland does not require the victim to present official documentary evidence of trafficking.¹⁰² However, the law mandates a statute of limitations on a victim's petition, places the burden of proof on the victim to prove trafficking and force or coercion, like Connecticut's law, and requires that the prosecutor consent to the victim's petition prior to filing.¹⁰³

Since the passage of New York's law, over thirty states have also enacted vacatur laws.¹⁰⁴ As evidenced by some of the statutes examined above, states have configured their laws in varying ways. Some strike a balance between the interests of the state and victims' interests, while others seem to favor one side or the other.¹⁰⁵ The Arkansas General Assembly should examine the different approaches taken by the more than thirty states that have vacatur laws in place to determine a sound approach to protecting victims and assisting them in reintegrating into society.¹⁰⁶

94. N.Y. CRIM. PROC. LAW § 440.10.

95. *Id.*

96. N.J. REV. STAT. § 2C:44-1.1 (2013).

97. *Id.*

98. *Id.*

99. Waichman, *supra* note 27, at 485.

100. CONN. GEN. STAT. § 54-95c (2012) (amended 2021).

101. Waichman, *supra* note 27, at 485.

102. M.D. CODE ANN. CRIM. PROC. § 8-302 (2020).

103. *Id.*

104. Emerson & Aminzadeh, *supra* note 28, at 251.

105. *See generally supra* notes 90–102.

106. *See generally* Phillips, *supra* note 82, at 23; Waichman, *supra* note 27, at 483–86; *Human Trafficking Issues Brief: Vacating Convictions*, *supra* note 77.

B. Why Arkansas Needs a Vacatur Law

Victims of sex trafficking often first come into contact with law enforcement when they are arrested and convicted for crimes they committed while being trafficked.¹⁰⁷ Although some of these offenses are misdemeanors, others are felonies and can carry harsh punishments, including incarceration and sex offender registration.¹⁰⁸ Furthermore, a criminal record inhibits victims in ways that might be less apparent.¹⁰⁹ The National Survivor Network survey discovered 72.7% of victims indicated that their criminal records acted as a barrier towards seeking employment, while 57.6% stated their convictions were a barrier towards obtaining housing.¹¹⁰

One collateral burden on victims with criminal convictions is the inability to find employment.¹¹¹ Approximately eighty percent of all employers in the United States conduct criminal background checks,¹¹² and many hire only those without a criminal record.¹¹³ Not only do background checks often preclude victims from obtaining employment, but they also deter victims from applying for jobs out of fear of having to explain their convictions and experiences.¹¹⁴ Criminal records further inhibit employment in fields that require licensure and other training since licensing boards and admissions personnel typically require clear records.¹¹⁵

Individuals with certain criminal convictions are precluded from receiving many federal and state services, such as welfare benefits and food stamps.¹¹⁶ Convictions of crimes such as drug offenses prevent victims from receiving federal student loans for educational opportunities.¹¹⁷ These victims also do not have access to healthcare, either through their lack of employment or their lack of access to government programs because of their criminal

107. *The Importance of Criminal Record Relief for Human Trafficking Survivors*, POLARIS PROJECT (Mar. 20, 2019), <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/>.

108. *Id.* (describing crimes of which sex trafficking victims are commonly convicted, including prostitution, drug possession, drug dealing, possession of a weapon, and identity theft).

109. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74; NATIONAL SURVIVOR NETWORK, *supra* note 71; Susan Coppedge, *Stop Criminalizing the Victims*, CNN (Mar. 17, 2016), <https://www.cnn.com/2016/03/17/opinions/coppedge-freedom-project-new-lives/index.html>.

110. NATIONAL SURVIVOR NETWORK, *supra* note 71.

111. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

112. Coppedge, *supra* note 109.

113. *See* Emerson & Aminzadeh, *supra* note 28, at 241.

114. Phillips, *supra* note 82, at 23.

115. *Id.*

116. *Id.*

117. *Id.*

records.¹¹⁸ Similarly, a criminal record can restrict a victim's housing options and his or her ability to secure proper housing.¹¹⁹ Criminal convictions are also taken into consideration when people apply for subsidized or public housing.¹²⁰

In a legal context, criminal records are used against individuals in family court proceedings for actions such as child custody, child support, and divorce proceedings.¹²¹ Immigrant victims face unique collateral consequences when convicted of crimes related to their victimization. A criminal conviction or even a juvenile delinquency disposition may affect a victim's eligibility for different types of immigration relief and affect his or her immigration status.¹²² These convictions can lead to delays in acquiring citizenship or even deportation.¹²³ A vacatur law could ameliorate or even prevent such consequences for immigrant victims.¹²⁴

One of the most troubling consequences of victims' criminal records is their inability to access jails and prisons in order to help sex trafficking victims who are incarcerated or work with survivors of sex trafficking in other ways.¹²⁵ These consequences become even more burdensome when a victim must register as a sex offender as part of his or her punishment.¹²⁶ The challenges victims face in obtaining gainful employment and safe housing may even drive them back into sex work, and possibly result in their being trafficked again, in order to survive.¹²⁷

For example, in 2007 Shamere McKenzie was indicted in federal court for violations of the Mann Act.¹²⁸ The Mann Act prohibits the transportation of individuals through interstate commerce for prostitution or any other criminal sex act.¹²⁹ Shamere, however, was not a pimp.¹³⁰ Her story began much like other sex trafficking victims: she became involved with a man she trusted and was later forced into conduct she did not want to commit.¹³¹ Shamere started exotic dancing at a strip club in 2005 at the encouragement of Corey

118. *Id.* at 22.

119. Emerson & Aminzadeh, *supra* note 28, at 241.

120. Phillips, *supra* note 82, at 23.

121. *Id.* at 24.

122. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

123. *Id.*

124. *Id.*

125. NATIONAL SURVIVOR NETWORK, *supra* note 71.

126. *See generally* Emerson & Aminzadeh, *supra* note 28, at 240–41; Phillips, *supra* note 82, at 16; HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

127. Phillips, *supra* note 82, at 16.

128. Emerson & Aminzadeh, *supra* note 28, at 240.

129. *See generally* 18 U.S.C. § 2421A.

130. Emerson & Aminzadeh, *supra* note 28, at 239.

131. *Id.*

Davis, the man she began seeing a few weeks prior.¹³² For the next eighteen months, Davis physically, sexually, and psychologically abused Shamere, forcing her to engage in sex acts against her will.¹³³ Not only was Shamere being victimized herself, but Davis also demanded that Shamere maintain control over the other women Davis pimped out across state lines, including transporting the women, collecting and maintaining the money made from the enterprise and enforcing Davis's rules against the others.¹³⁴

Shamere became what is referred to in the sex industry as a "bottom girl."¹³⁵ "Bottom girls" are typically a pimp's most trusted prostitute who runs the behind-the-scenes of the operation.¹³⁶ They facilitate the enterprise and act as a controlling presence over the other women within the operation.¹³⁷ These "bottom girls" are sometimes also charged with recruiting other women into the pimp's ring.¹³⁸ Many of these women perform these duties not because they want to but because they fear for their lives.¹³⁹ "Bottom girls" may seem to be running the entire operation, but that does not make them any less a victim of psychological manipulation and physical abuse than other victims.¹⁴⁰ Davis often threatened Shamere with death or her family's death if she did not cooperate, beating her and or psychologically manipulating her if she protested.¹⁴¹

Despite what Shamere told investigators after she finally managed to escape from Davis, she was indicted and charged with violations of the Mann Act for the conduct she was forced to commit.¹⁴² To avoid incarceration, Shamere pled guilty and was ordered to register as a sex offender even though she performed no criminal sex acts.¹⁴³ Even though "bottom girl" victims are controlled by their pimp just as much as the other victims, they are still prosecuted for their conduct.¹⁴⁴ One prosecutor argued that although a defendant was a victim herself and very young when she was first trafficked, because

132. *Id.*

133. *Id.* at 240.

134. *Id.*

135. *Id.*

136. *Legal Debate Focuses on Prosecution of 'Bottoms' In Sex Trafficking of Minors*, NEW HAVEN REGISTER (updated July 24, 2017) [hereinafter *Prosecution of Bottoms*], <https://www.nhregister.com/connecticut/article/Legal-debate-focuses-on-prosecution-of-11336052.php>.

137. Emerson & Aminzadeh, *supra* note 28, at 240.

138. *Id.*

139. *Id.*

140. *Prosecution of Bottoms*, *supra* note 136.

141. Emerson & Aminzadeh, *supra* note 28, at 240.

142. *Id.*

143. *Id.*

144. *Prosecution of Bottoms*, *supra* note 136.

she had still helped traffic minors, she should be held as equally responsible as her pimp.¹⁴⁵

Cases like Shamere's are reality for victims of sex trafficking across the nation.¹⁴⁶ These victims need services, not prosecution. Instead of helping victims rehabilitate and reintegrate into society, states punish them for the conduct they were forced to commit while being trafficked.¹⁴⁷ Although the root of the issue is the actual indictments, prosecutions, and convictions themselves, one step towards righting this wrong and protecting victims of sex trafficking is enacting vacatur laws.

Vacatur laws help victims reintegrate into society by empowering them to overcome the burdens of being trafficked and equipping them with the tools they need for greater autonomy over their own lives.¹⁴⁸ Because criminal records are a significant hurdle towards recovery, clearing those records is critical to a victim's success at restarting his or her own life.¹⁴⁹ Vacatur laws not only allow victims to seek gainful employment and safe housing, but they also permit access to essential services and benefits. Criminal records can take a harsh psychological toll on victims as well.¹⁵⁰ As one victim put it, "I always felt like a criminal. I never felt like a victim at all. Victims don't do time in jail, they work on the healing process. I was a criminal because I spent time in jail."¹⁵¹ Vacatur laws are just a step in that healing process, but they are an essential piece of a victim's journey towards rehabilitation and reintegration into society.

C. What the Arkansas Vacatur Law Should Look Like

The American Bar Association (ABA) in 2013 called upon state legislators to create laws that would allow victims to have convictions for prostitution and other nonviolent offenses removed from their records.¹⁵² To allow victims to reintegrate into society and create a new life after being trafficked, the Arkansas General Assembly must adopt a way for victims to vacate their convictions for offenses they were forced to commit while being trafficked.

If Congress were to pass a federal vacatur law, the law would apply only to federal convictions.¹⁵³ It would be difficult, if not constitutionally impermissible, for Congress to expand the TVPA to include a vacatur provision

145. *Id.*

146. Emerson & Aminzadeh, *supra* note 28, at 241.

147. *Id.*

148. Phillips, *supra* note 82, at 26–27.

149. *Id.*

150. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

151. Phillips, *supra* note 82, at 25.

152. *Human Trafficking Issues Brief: Vacating Convictions*, *supra* note 77.

153. Waichman, *supra* note 27, at 482.

applicable to state criminal convictions because criminal law decisions are typically left to the states.¹⁵⁴ Therefore, vacatur laws are a state issue, and it is up to state legislatures, including Arkansas's, to provide this relief to victims.¹⁵⁵

Arkansas's vacatur law would have to provide the "right to vacate, and a process of doing so."¹⁵⁶ Furthermore, it is imperative that the law not impose burdensome hurdles for victims to overcome but instead afford them the "broadest possible relief."¹⁵⁷ In its report, the International Women's Human Rights Clinic at the City University of New York suggested vacatur laws include the following elements to ensure that the laws are broad enough to protect victims fully:

Define victim of trafficking broadly; Provide for vacatur of a range of criminal convictions that stem from the trafficking situation; Not impose unreasonable proof requirements; Not impose additional conditions on relief; Not impose unreasonable time limitations on relief; Protect confidentiality of victims who seek relief; Allow for the broadest form of relief possible under the law; Provide for judicial discretion to expand relief; and Include adequate resources to ensure implementation and availability of the remedy.¹⁵⁸

Congress and The Uniform Law Commission have published two different model state statutes for vacatur laws or similar provisions. The first is a statute created by the Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA).¹⁵⁹ Although not labeled as a vacatur law, the model statute attempts to protect minor victims of sex trafficking by prohibiting either charging or prosecuting victims under eighteen with prostitution.¹⁶⁰ The model statute provides that instead of being prosecuted, these victims should be referred to service providers.¹⁶¹ However, Congress has not enacted this model statute, nor has any state adopted such language in its code.¹⁶² The statute also has the shortcoming of protecting only minor victims,¹⁶³ which, although noble, covers only a portion of sex trafficking victims.

After the ABA passed its resolution in 2013 calling for state legislatures to enact vacatur laws, the Uniform Law Commission passed its Uniform Act

154. *Id.*

155. *Id.*

156. *Id.* at 483.

157. Phillips, *supra* note 82, at 30.

158. *Id.*

159. Soohoo, *supra* note 73, at 4.

160. *Id.* at 31–32.

161. *Id.*

162. *Id.*

163. *Id.*

on the Prevention of and Remedies for Human Trafficking.¹⁶⁴ Section 17 of the Uniform Act contains a model vacatur and expungement statute.¹⁶⁵ Subsection (a) of Section 17 allows for persons convicted of prostitution and other nonviolent offenses to petition a court to vacate the conviction.¹⁶⁶ A court may vacate if it finds that the conduct was a “direct result of being a victim.”¹⁶⁷ Subsection (b) requires no official documentation of the trafficking, but the existence of official documentation creates a presumption of victimization.¹⁶⁸ Albeit simple, this model is an effective and broad way of ensuring that victims get the post-conviction relief they deserve.

Considering the factors and the published model statutes described above, the Arkansas General Assembly should enact a vacatur law that is broad enough to encompass the necessary protections for victims. Arkansas’s law should avoid focusing solely on prostitution and instead include other crimes that victims may be convicted of in the course of being trafficked. For example, Florida’s vacatur law allows the expungement of convictions for any offense a victim commits while being trafficked.¹⁶⁹ Arkansas should not require documentary evidence of trafficking, similar to Maryland’s vacatur law, because this requirement might pose a significant burden on victims in light of the difficulty and discomfort of procuring evidence of victimization.¹⁷⁰ Many states have expungement statutes in place.¹⁷¹ However, expungement merely removes the charge from the victim’s record while the conviction remains.¹⁷² Arkansas, therefore, should not only provide expungement but instead allow victims to vacate their convictions completely.

Vacatur laws are essential to victims who have been convicted of sex-trafficking-related crimes.¹⁷³ The availability of such a remedy empowers victims by enabling them to reintegrate into society while breaking down walls of societal shame and stigma.¹⁷⁴ The New York legislature acknowledged this idea when passing its own vacatur law, stating that “even after [victims] escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve.”¹⁷⁵ The 3P paradigm calls for better protection of sex

164. *Human Trafficking Issues Brief: Vacating Convictions*, *supra* note 77, at 2.

165. UNIFORM ACT ON THE PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING § 17 (UNIF. L. COMM’N 2013).

166. *Id.* § 17(a).

167. *Id.*

168. *Id.* § 17(b).

169. Coppedge, *supra* note 109.

170. HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, *supra* note 74.

171. *Human Trafficking Issues Brief: Vacating Convictions*, *supra* note 77.

172. *Id.*

173. Emerson & Aminzadeh, *supra* note 28, at 242.

174. *Id.* at 251.

175. *Id.* at 250–51.

trafficking victims.¹⁷⁶ The Arkansas General Assembly can better protect victims within the state by passing a vacatur law to provide victims with a second chance at life they so badly need.

IV. FIGHTING ONLINE SEX TRAFFICKING

In the modern era, the Internet is a part of everyday life. Although the advancement of technology has brought with it important developments in a variety of fields, it has also led to significant growth in the sex trafficking industry. To demonstrate this phenomenon, this Section examines the role of internet intermediaries in facilitating human trafficking and discusses what Arkansas can do to prevent sex trafficking through the Internet from occurring within the state. Part A describes the Communications Decency Act and its subsequent changes and developments. Part B argues for the enactment of similar legislation in Arkansas. Part C outlines what this legislation would entail and how it would help prevent sex trafficking from occurring in Arkansas. Finally, Part D addresses the First Amendment issues surrounding such legislation, detailing the case law dealing with such issues.

A. Internet Intermediary Immunity

The Communications Decency Act of 1996 (CDA) provides websites with immunity from both criminal and civil liability for illegal content posted on to them by third parties.¹⁷⁷ Section 230 of the Act, specifically, provides immunity to internet intermediaries.¹⁷⁸ Internet intermediaries are websites that act as hosts for content their users post.¹⁷⁹ Examples of this type of intermediary include Craigslist.com, Classifiedads.com, Backpage.com, Webcosmo.com, and GoDaddy.com.¹⁸⁰

Section 230 of the CDA states that “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹⁸¹ The immunity from liability provided to internet intermediaries by Section 230 covers both content posted directly on the website and content that links other content on another intermediary so long as a third party posted the content.¹⁸² Even if the intermediary exercises some editorial control over the content its users

176. Office to Monitor and Combat Trafficking in Persons, *supra* note 15.

177. Perer, *supra* note 32, at 823–24.

178. Gellis, *supra* note 34, at 209.

179. *Id.*

180. Perer, *supra* note 32, at 830.

181. 47 U.S.C. § 230(c)(1) (2018).

182. Gellis, *supra* note 34, at 209–10.

publish, the immunity provided by Section 230 still applies.¹⁸³ Courts agree that plaintiffs may not pursue claims against intermediaries under this Section, including websites that host advertisements, posted by third parties, that sell sex.¹⁸⁴ Therefore, under this Section, an intermediary who maintains a forum for sexual solicitation, whether the solicitation is by consenting adults or not, is precluded from both criminal and civil liability even if it monitors the advertisements third party users post.¹⁸⁵

Furthermore, Section 230 preempts states from passing legislation that would provide victims with a right of action against internet intermediaries.¹⁸⁶ Nevertheless, some states, through both their judicial and legislative bodies, have disregarded this preemption.¹⁸⁷ For instance, in *GoDaddy.com v. Toups*, the plaintiffs challenged a Texas law under Section 230 of the CDA.¹⁸⁸ The Texas Penal Code imposed liability on intermediaries who “engaged in the publication of obscenity and child pornography.”¹⁸⁹ Although the Court of Appeals of Texas dismissed the plaintiff’s claims as “inconsistent” with Section 230,¹⁹⁰ this case is evidence of the states’ reactions concerning the lack of redressability of victims towards intermediaries.

Congress did attempt to create some protection for victims of sex crimes in the passage of the CDA.¹⁹¹ Subsections (a) and (d) of Section 223 of the Act made it a crime to knowingly distribute “obscene, indecent, or patently offensive material to minors below the age of eighteen.”¹⁹² Although these subsections prevented only this type of material from being transmitted to minors, they at least limited, in part, the amount of obscene material that might involve victims of sex trafficking from circulating the Internet.¹⁹³ However, the Supreme Court struck down subsections (a) and (d) as unconstitutional in *Reno v. American Civil Liberties Union*.¹⁹⁴

The federal courts have reviewed the CDA’s immunity provision as it applies to websites that allow unlawful sex solicitation advertisements to be

183. *Id.* at 210.

184. Perer, *supra* note 32, at 824; *See also* *Doe v. Friendfinder Network, Inc.*, 540 F. Supp.2d 288, 294–95 (D.N.H. 2008).

185. Perer, *supra* note 32, at 832.

186. Gellis, *supra* note 34, at 211.

187. *Id.*

188. *GoDaddy.com v. Toups*, 429 S.W.3d 752, 753 (Tex. Ct. App. 2014).

189. *Id.*

190. *Id.* at 758.

191. Perer, *supra* note 32, at 830–31.

192. *Id.* at 831.

193. *Id.*

194. *Reno v. American Civil Liberties Union*, 521 U.S. 844, 879 (1997) (holding subsections (a) and (d) of the CDA were facially overbroad and thus abridged the freedom of speech as protected by the First Amendment. The Court reasoned that the government’s interest in protecting children from sexually explicit material on the Internet did not justify the overbreadth of the provisions).

posted by third party users.¹⁹⁵ For example, in *Doe v. Backpage.com*, the First Circuit Court of Appeals held that the plaintiff's claims that Backpage "facilitated illegal [sex trafficking] conduct through its posting rules necessarily treat[ed] the website as a publisher or speaker of content provided by third parties and, thus, [we]re precluded by section 230(c)(1)."¹⁹⁶ The court did, however, recognize the potential for holding websites liable for the unlawful sex solicitation content posted on their webpages, although the content would have to be particularly egregious such as the trafficking of minors.¹⁹⁷

In 2017, President Trump signed into law the Allow States and Victims to Fight Online Sex Trafficking Act and the Stop Enabling Sex Traffickers Act (FOSTA-SESTA) package.¹⁹⁸ The law amended the CDA to create an exception to Section 230, which allows for both civil and criminal action to be taken against websites that enable sex trafficking crimes.¹⁹⁹ Internet intermediaries who benefit from, facilitate, or knowingly assist sex trafficking practices can now be held liable.²⁰⁰ Victims may seek recourse from intermediaries who facilitate sex trafficking by enabling third-party users to solicit sex.²⁰¹ Victims must bring claims against intermediaries under 18 U.S.C. § 1595, which provides a right of action for conduct that violates federal sex trafficking laws.²⁰² To be held liable under this statute, the defendant must have either participated in sex trafficking or assisted, supported, or facilitated sex trafficking.²⁰³ There is also a knowledge requirement for liability under 18 U.S.C. § 1595.²⁰⁴ However, the FOSTA-SESTA package did not remove the "Good Samaritan" exemption from liability from Section 230.²⁰⁵ This exemption allows an intermediary to escape liability when it can demonstrate that it made a good-faith effort in screening for and preventing sex trafficking practices on its website.²⁰⁶

Under this statute, states also may take action against intermediaries who violate federal sex trafficking laws.²⁰⁷ The amendment allows states to

195. John Cotton Richmond, *Federal Human Trafficking Review: An Analysis & Recommendations From the 2016 Legal Developments*, 52 WAKE FORREST L. REV. 293, 348 (2017).

196. *Doe v. Backpage.com*, 817 F.3d 12, 22 (1st Cir. 2016).

197. *Id.* at 21; *see also* Richmond, *supra* note 195.

198. THE WHITE HOUSE, *supra* note 36; 18 U.S.C. § 2421A.

199. 18 U.S.C. § 2421A.

200. *Id.*

201. *Id.*

202. Brief for Equality Now et al. as Amici Curiae Supporting Appellees, *Woodhull Freedom Foundation v. United States*, 948 F.3d 363 (D.C. Cir. 2020) (No. 18-5298).

203. 18 U.S.C. § 1595; *see also* THE WHITE HOUSE, *supra* note 36.

204. 18 U.S.C. § 2421A.

205. Brief for Equality Now et al. as Amici Curiae Supporting Appellees, *supra* note 202, at 15.

206. *Id.*

207. THE WHITE HOUSE, *supra* note 36.

prosecute individuals in state court if their conduct violates 18 U.S.C. § 1591 or 18 U.S.C. § 2421A.²⁰⁸ Therefore, under the FOSTA-SESTA package, victims now may have recourse against internet intermediaries who allow sex trafficking to occur on their websites, both in federal and state courts.

B. Why Does Arkansas Need Such A Law?

The development of the Internet and technological advancement has made online sex solicitation easier than ever.²⁰⁹ The ease and anonymity of purchasing sex through the Internet have facilitated the growth of online sexual solicitation.²¹⁰ Internet sex solicitation is so pervasive that the Internet is often referred to as the “virtual red-light district.”²¹¹ Third parties routinely use internet intermediaries to sell sex and facilitate the trafficking of men, women, and children.²¹²

It is difficult, if not impossible, to determine which solicitations come from consenting adults and which advertisements are being published by pimps that are soliciting victims of sex trafficking and minors.²¹³ In 2012, Backpage.com alone accounted for seventy percent of sexual solicitation advertisements online and was declared by the National Association of Attorneys General as the “premier” website for human trafficking.²¹⁴ That year, Backpage.com grossed more than \$22 million in profits just from prostitution advertising.²¹⁵

The problem of online sex trafficking was thrust into the spotlight in 2010 when two women under the pseudonyms of “AK” and “MC” authored an open letter to Craig Newmark, founder of Craigslist.com.²¹⁶ The letter, entitled “Dear Craig”²¹⁷ took up a half-page advertisement slot in the Washington Post.²¹⁸ The two women recounted their horrific experiences of being

208. 18 U.S.C. § 2421A.

209. Perer, *supra* note 32, at 828.

210. *Id.*

211. *Id.* at 823.

212. *Id.* at 829.

213. *Id.* at 828.

214. Nicholas Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES (Mar. 17, 2012), <https://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html>.

215. *Id.*

216. Chris McGreal, *Craigslist is Hub for Child Prostitution, Allege Trafficked Women*, THE GUARDIAN (Aug. 8, 2010), <https://www.theguardian.com/technology/2010/aug/08/craigslist-underage-prostitution-allegations>.

217. *Dear Craig*, POLITICO, https://www.politico.com/pdf/PPM152_dear_craig.pdf. It should be noted that the original Washington Post advertisement could not be located.

218. David Wright et al., ‘Craigslist: Site for Sex Slaves’ Story Saves Girl’s Life, ABC NEWS (Aug. 10, 2010), <https://abcnews.go.com/WN/popular-website-craigslist-outlet-sex-trafficking-child-exploitation/story?id=11367581>.

sexually trafficked as minors.²¹⁹ AK detailed being taken to truck stops and motels by her pimp and sold for sex by the hour.²²⁰ MC recounted her experience of being trafficked around the country, including to Little Rock, while being forced to answer Craigslist advertisements for sex.²²¹ The link between these stories is that both women were trafficked as a result of solicitation on the online intermediary Craigslist.com.²²² In concluding the letter, the women urged, “Craig, we write this letter so you will know from our personal experiences how Craigslist makes horrific acts like this so easy to carry out, and the men who carry out, and men who arrange them very rich.”²²³

The “Dear Craig” letter is just an example of the pervasive and troubling nature of online sex trafficking. Even this letter, written ten years ago, touched on the problem of sex trafficking in the state of Arkansas. In response to the pleas of AK and MC, seventeen Attorneys General from various states, including then-Attorney General of Arkansas Dustin McDaniel, wrote their own letter to Craig Newmark as well as Jim Buckmaster, CEO of Craigslist.com.²²⁴ The letter called for Newmark and Buckmaster to remove the “Adult Services” part of Craigslist.com due to the uncontrolled amount of prostitution and sex trafficking advertisements within it.²²⁵ The piercing letter accused Craigslist.com of refusing to screen the advertisements posted in the “Adult Services” section of the website and stated that “[n]o amount of money” was worth the victimization of women and children who were trafficked through the site.²²⁶

Shortly after the Washington Post published the “Dear Craig” letter and the letter sent by the Attorneys General to Newmark and Buckmaster was made public, Craigslist.com suspended its “Adult Services” portion of its website.²²⁷ Today, the website no longer contains a specified “Adult Services” section, but that does not mean sexual solicitation advertisements no longer exist on the platform.²²⁸

219. *Id.*

220. *Id.*

221. McGreal, *supra* note 216.

222. Wright et al., *supra* note 218.

223. *Id.*

224. Letter from Attorneys General to Craig Newmark, CEO Craigslist, Inc. (Aug. 24, 2010), available at <https://themarginalized.files.wordpress.com/2010/08/craigslist-joint-letter-from-attorneys-general.pdf> (The Attorneys General who signed the letter respectively represented Arkansas, Connecticut, Idaho, Illinois, Iowa, Kansas, Maryland, Michigan, Mississippi, Missouri, New Hampshire, Ohio, Rhode Island, South Carolina, Tennessee, Texas, and Virginia.).

225. *Id.*

226. *Id.*

227. The CNN Wire Staff, *Adult Services Censored on Craigslist*, CNN (Sept. 5, 2010), <https://www.cnn.com/2010/CRIME/09/04/craigslist.censored/index.html>.

228. *See, e.g.*, <https://littlerock.craigslist.org/> (last visited Nov. 20, 2020) (showing that Craigslist.com no longer has an “Adult Services” or “Censored” tab explicitly on its website).

States must hold intermediaries accountable for the sexual solicitation that is allowed to run rampant throughout their web pages.²²⁹ Under the FOSTA-SESTA package, victims now have a federal right of action to hold these intermediaries liable for their complacency. However, this leaves no opportunity for recourse for victims in state courts unless the state passes similar legislation. As it stands now, law enforcement also has no recourse against intermediaries who may even have knowledge of sexual solicitation on their web pages but do nothing to prevent or remove it.²³⁰

C. What the State Law Would Look Like

Because of this lack of recourse in state courts for victims and law enforcement, the Arkansas General Assembly must adopt a law that would hold Internet intermediaries liable for their complacency toward and facilitation of the sex trafficking practices that occur through their webpages. The law should be narrowly tailored to carve out an exception for advertisements that facilitate the sale of sex, including prostitution and sex trafficking solicitations.²³¹

One way to structure a law to hold Internet intermediaries liable is through the torts doctrine of distributor liability.²³² Under this doctrine, an intermediary could be held liable for the content published on its webpage by third parties if it received notice of the unlawful postings and took no action to remove them.²³³ The idea is that by having knowledge of the illegal content and not taking steps to delete it, the intermediary becomes a distributor instead of merely a publisher of the content.²³⁴ Therefore, by knowingly distributing the postings, the intermediary would lose its publisher immunity under Section 230 of the CDA.²³⁵

The publisher liability doctrine is another way to structure a statute under state tort law to hold an intermediary liable for the content posted on its website. Publisher liability places responsibility for the content on the publisher as if he or she had been the speaker that created the content.²³⁶ This doctrine acknowledges a publisher's editorial control, theorizing that liability should attach to a publisher who has both the knowledge and opportunity to screen

229. Perer, *supra* note 32, at 825.

230. *Id.* at 849.

231. *Id.* at 850.

232. *Id.* at 849.

233. *Id.*

234. *Id.* at 850.

235. Perer, *supra* note 32, at 849.

236. David S. Ardia, *Free Speech Savior or Shield for Scoundrels: An Empirical Study of Intermediary Immunity Under Section 230 of the Communications Decency Act*, 43 LOY. L.A. L. REV. 373, 397 (2010).

the content it publishes.²³⁷ Whether the publisher credits the original speaker of the content and whether the publisher actually has editorial control over the content it publishes are both irrelevant to the application of liability.²³⁸ Applied to an internet intermediary, perhaps a law fashioned under this doctrine could attach liability to the intermediary regardless of whether or not it actually exercised editorial control or not. The mere fact that it allowed the posting of the illegal content to its website would be a sufficient showing by the plaintiff of potential liability.

Nonetheless, attempts to fashion these laws have faced unfavorable constitutional challenges. Several states, including Washington, Tennessee, and New Jersey, have enacted laws criminalizing sexual solicitation advertising.²³⁹ Despite these states' legislative efforts, the courts have struck down these statutes as preempted by the CDA and the First Amendment of the Constitution.²⁴⁰ However, with the passage of the FOSTA-SESTA package in 2017 authorizing states to take action against internet intermediaries who allow the facilitation of sex trafficking, a suit challenging a similar state law might have a different outcome.

D. First Amendment Concerns

Many cases adjudicated regarding immunity under the CDA have raised First Amendment concerns.²⁴¹ In *Doe v. Backpage.com*, for example, the First Circuit seemed to suggest that the "evils" facilitated by these intermediaries needed to be weighed against the First Amendment's protections.²⁴² The First Circuit pointed towards a legislative change, not a judicial decision, as the way to amend the CDA.²⁴³

The Supreme Court has acknowledged First Amendment protections for distributors of content in its decisions, noting that the First Amendment applies just as much to the distribution of speech as it does to the publication of speech.²⁴⁴ In *Smith v. California*, the Court, noting the implication of censorship on intermediaries, declared that a state's censorship of a bookseller for carrying obscene material was an inhibition of the freedom of expression.²⁴⁵ Similarly, in *Bantam Books, Inc. v. Sullivan* the Court held that the First Amendment's freedom of press applied equally to the distribution of books

237. *Id.*

238. *Id.*

239. Richmond, *supra* note 195, at 349.

240. *Id.*

241. *Id.* at 355.

242. *Doe v. Backpage.com*, 817 F.3d 12, 29 (1st Cir. 2016).

243. *Id.*

244. Ardia, *supra* note 236, at 401.

245. *Smith v. California*, 361 U.S. 147, 150–52 (1959).

as it did the publication of them.²⁴⁶ The Court's decision in *New York Times v. Sullivan* brought the Court's previous determinations in both *Smith* and *Bantam* together to explicitly apply the First Amendment to intermediaries.²⁴⁷ Justice Brennan, writing for the Court, posited that the censorship of intermediaries would restrict the First Amendment in its reach.²⁴⁸

In conclusion, to meet the goal of preventing sex trafficking from occurring under the 3P paradigm, the Arkansas General Assembly must enact a law that will hold internet intermediaries liable for the sex trafficking advertisements posted to their webpages by third parties. The FOSTA-SESTA package successfully rid intermediaries of a narrow portion of their immunity under the CDA and gave the green light to state legislatures to do the same within their own states.²⁴⁹ The pervasiveness of the Internet sex trafficking industry contributes significantly to the number of sex trafficking cases and victims within the state.²⁵⁰ Legislation holding internet intermediaries responsible for content posted on their websites is crucial to both preventing sex trafficking from happening throughout Arkansas and destroying the virtual red-light district.

V. ABOLISHING THE STATUTE OF LIMITATIONS FOR SEX TRAFFICKING OFFENSES

The third and final piece of the 3P paradigm is prosecution, or punishment.²⁵¹ The following Section argues that for sex trafficking cases, the Arkansas statute of limitations for criminal prosecutions must be abolished and the civil statute of limitations period must be extended. This Section explains that in order to meet the punishment prong of the 3Ps, the state must give victims the chance to have their day in court. Part A of this Section outlines the current civil and criminal statutes of limitations governing human trafficking offenses in Arkansas. Part B advocates for abolishing the criminal statute of limitations for sex trafficking prosecutions and extending the civil statute of limitations period for sex trafficking actions.

246. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 71–72 (1963).

247. *New York Times Co. v. Sullivan*, 376 U.S. 254, 265–66 (1964).

248. *Id.* at 266.

249. 18 U.S.C. § 2421A.

250. Perer, *supra* note 32, at 828.

251. Office to Monitor and Combat Trafficking in Persons, *supra* note 15.

A. Current Arkansas Law

Criminal statutes of limitations limit the amount of time the prosecution has to charge an individual with a particular crime.²⁵² These laws vary from state to state and impose different limitations on distinct offenses.²⁵³ State legislatures create state statutes of limitations.²⁵⁴ They are procedural laws state legislatures may amend as long as the changes do not deprive an individual of his or her rights under the Due Process Clause of the Fourteenth Amendment.²⁵⁵

The Arkansas statute of limitations for Class Y and Class A felonies runs for six years after the offense occurred.²⁵⁶ Rape is a Class Y felony under Arkansas law.²⁵⁷ However, an exception for rape allows the state to prosecute a rape at any time if there is DNA evidence that could potentially convict the defendant.²⁵⁸ Prosecutions for the offense of sexual assault in the first degree, a Class A felony, can be commenced at any time.²⁵⁹ Arkansas eliminates the statute of limitations for sex crimes committed against children, including rape, sexual assault, transportation for prohibited sex conduct, and production of child pornography.²⁶⁰

Under Arkansas law, human trafficking is a Class A felony.²⁶¹ If the victim is a minor, however, the offense is classified as a Class Y felony.²⁶² However, unlike the offenses of rape of a minor and sexual assault in the first degree, Arkansas law does not provide an extended statute of limitations for sex trafficking prosecutions, requiring the six-year statute of limitations to apply to human trafficking offenses committed against both adults and minors.²⁶³ There are also no tolling provisions for criminal prosecutions of sex trafficking offenses under Arkansas state law.²⁶⁴

For civil actions in Arkansas, the statute of limitations for bringing most civil lawsuits runs for three years after the incident occurred.²⁶⁵ The civil statute of limitations does not start running for human trafficking cases, however,

252. *State by State Guide on Statutes of Limitations*, RAINN (Mar. 2020), <https://www.rainn.org/state-state-guide-statutes-limitations>.

253. *Id.*

254. *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 311–12 (1945).

255. *Id.* at 315–16.

256. ARK. CODE ANN. § 5-1-109(b)(1)(A) (2019).

257. *Id.* § 5-14-103(c)(1) (2017).

258. *Id.* § 5-1-109(b)(1)(B).

259. *Id.* § 5-1-109(a)(1)(F).

260. *Id.* §§ 5-1-109(a)(1)(D),(F),(G),(J),(L).

261. *Id.* § 5-18-103 (2014).

262. ARK. CODE ANN. § 5-18-103.

263. Ward, *supra* note 51, at 150.

264. *Id.* at 151.

265. ARK. CODE ANN. § 16-56-105 (2010).

until the victim “discovers that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.”²⁶⁶ If the victim was a minor when he or she was trafficked, the civil statute of limitations does not begin to run until he or she reaches the age of eighteen.²⁶⁷ Arkansas law also provides tolling provisions for the civil statute of limitations for human trafficking offenses for circumstances such as disability, fraud, duress, intimidation, threats, and manipulation.²⁶⁸

B. What Should Change

Recently, experts labeled Ohio as the state with the worst statute of limitations for sex crimes in the United States.²⁶⁹ Ohio’s criminal statute of limitations places a 20-to-25-year limit on prosecutions for rape.²⁷⁰ The state’s civil statute of limitations allows minor victims to bring suits against their abuser up to the age of thirty.²⁷¹

Ohio might have been dubbed as having the worst statutes of limitations for sex crimes in the nation, but Arkansas’s laws are not that different. Arkansas law maintains a six-year statute of limitations for criminal prosecutions of both rape and sex trafficking unless the victim is a minor.²⁷² The statute of limitations for child victims’ civil lawsuits is only up to twenty-one years of age unless another tolling provision applies.²⁷³ If Ohio maintains its status as the state with the worst statutes of limitations, then Arkansas is not far ahead. The Arkansas General Assembly should abolish the criminal statute of limitations for sex trafficking prosecutions and extend the civil statute of limitations to allow victims more time to bring their lawsuits to court.²⁷⁴ Extension of the civil statute of limitations should also apply retroactively to ensure that

266. *Id.* § 16-118-109(f)(1) (2013).

267. *Id.* § 16-118-109(f)(2).

268. *Id.* §§ 16-118-109(f)(3)–(5).

269. Danae King, *Ohio’s Statute of Limitations for Sex Crimes Among Worst in Nation, Experts Say*, THE COLUMBUS DISPATCH (May 26, 2019), <https://www.dispatch.com/news/20190526/ohios-statute-of-limitations-for-sex-crimes-among-worst-in-nation-experts-say>.

270. *Id.*

271. *Id.*

272. ARK. CODE ANN. § 5-1-109(b)(1)(A).

273. *See id.* § 16-118-109(f)(2).

274. *See* Howard Sheppard, *House Bill Abolishing Statute of Limitations for Child Sexual Abuse Cases Headed to Senate*, FOX 43 NEWS (Apr. 12, 2016), <https://www.fox43.com/article/news/local/contests/house-bill-abolishing-statute-of-limitations-for-child-sexual-abuse-cases-headed-to-senate/521-fb109baa-0698-4c04-ae16-afcbc4623a73>.

victims have their day in court even if they were victimized before the change in law.²⁷⁵

The Arkansas General Assembly could take various approaches towards abolishing the criminal statute of limitations for sex trafficking prosecutions and extending the civil statute of limitations for sex trafficking lawsuits. One approach the Arkansas General Assembly could adopt is window legislation.²⁷⁶ Window legislation creates a period of time, usually one year, to allow victims to bring forward reports of sex crimes that occurred a long time ago, well outside the current statute of limitations.²⁷⁷ These window provisions essentially revive an expired statute of limitations period for a civil case, allowing a victim to bring his or her suit to court.²⁷⁸ The Supreme Court of the United States has held that this type of retroactive legislation is constitutional.²⁷⁹ To constitutionally be retroactively applied, the window statute must clearly state that it will be retroactively applied, and it must not violate any other protection provided by the United States Constitution.²⁸⁰

Ultimately, the plaintiff bears a heavy burden of proof in bringing his or her case under window legislation.²⁸¹ For example, in 2019, New York adopted the Child Victims Act (CVA), which not only expanded the state's criminal and civil statutes of limitations for child sex abuse and sex trafficking offenses, but also created a one-year window for sex trafficking victims of any age to have their day in court.²⁸² Before enacting the CVA, New York's statutes of limitations for child sex crimes were some of the most restrictive in the United States.²⁸³ The CVA extended the amount of time prosecutors could seek an indictment for child sex crimes by five years, from when the victim reached the age of twenty-three to the age of twenty-eight.²⁸⁴ For civil actions, the CVA increased the length of time an individual could file a

275. *See id.*

276. *See King, supra note 269.*

277. *See id.*

278. *See Emma Hetherington et al., Civil Statutes of Limitation for Child Sexual Abuse and Domestic Minor Sex Trafficking: A National Survey and Suggestions for Reforms in the State of Georgia*, UNIV. OF GEORGIA SCH. OF L. WILBANKS CHILD ENDANGERMENT AND SEXUAL EXPLOITATION CLINIC, 1, 5 (Jan. 1, 2020).

279. *Id.* at 25. *See generally* Landgraf v. USI Film Prods., 511 U.S. 244 (1993); Chase Sec. Corp. v. Donaldson, 325 U.S. 304 (1945).

280. Landgraf, 511 U.S. at 280.

281. Hetherington et al., *supra* note 278, at 5.

282. Emanuella Grinberg, *New York Just Changed Its Statute of Limitations. Here's How It Could Help Jeffrey Epstein's Accusers*, CNN (July 8, 2019), <https://www.cnn.com/2019/07/08/us/new-york-child-victims-act/index.html>.

283. *Id.*

284. *What Is the Child Victims Act?*, N.Y. CITY BAR (Feb. 2019), <https://www.nycbar.org/get-legal-help/article/personal-injury-and-accidents/new-york-child-victims-act/>.

lawsuit from only one to five years after the victim turned eighteen to any time before the individual turned fifty-five years old.²⁸⁵

The CVA also created a window of time for victims of child sex crimes to file a civil claim, no matter how long ago the incident occurred.²⁸⁶ The one-year window applied retroactively and virtually repealed, for that year, the statute of limitations on civil lawsuits involving child sex abuse claims, including sex trafficking claims.²⁸⁷ This window legislation was essential for many victims, including some of Jeffrey Epstein's victims whose time to bring charges against him had run out under the old New York statute of limitations.²⁸⁸

Jeffrey Epstein was a hedge fund manager who lived in Manhattan, New York.²⁸⁹ In July of 2019, federal prosecutors in New York filed an indictment against Epstein, charging him with sex trafficking minors between 2002 and 2005.²⁹⁰ The indictment alleged that Epstein ran a sex trafficking operation between his New York and Florida homes, trafficking many young girls to be used for criminal sex acts.²⁹¹ Epstein was alleged to have had sex with these young girls and involve them in inappropriate behaviors such as naked messages, masturbation, sexual touching, and child pornography.²⁹² These victims were occasionally paid for their participation in these acts and for recruiting other young girls to engage in the sex trafficking operation.²⁹³

New York's adoption of the one-year window for victims to bring suits against their abusers through the CVA opened the door for some of Epstein's victims to actually have their day in court.²⁹⁴ Because the CVA's newly expanded statutes of limitations were not retroactive, but the window legislation was, victims had the opportunity to seek some recourse against Epstein for the heinous acts he committed against them while they were children.²⁹⁵

Critics of window legislation argue that these provisions overwhelm courts by opening the floodgates of litigation.²⁹⁶ However, New York's recent

285. *Id.*

286. *Id.*

287. Daniel Avery, *NY Law Lifts Statute of Limitations on Child Sex Abuse Claims: 'Justice Has Been Denied for Too Many Years,'* NEWSWEEK (Aug. 13, 2019), <https://www.newsweek.com/child-victims-act-new-york-hoylman-1454036>.

288. Grinberg, *supra* note 282.

289. Ali Watkins, *Jeffrey Epstein Is Indicted on Sex Charges as Discovery of Nude Photos Is Disclosed,* N.Y. TIMES (July 8, 2019), <https://www.nytimes.com/2019/07/08/nyregion/jeffrey-epstein-charges.html>. Jeffrey Epstein also maintained a residence in Florida, where he had been previously indicted on sex trafficking charges in 2005. *Id.*

290. *Id.*

291. *Id.*

292. *Id.*

293. *Id.*

294. Grinberg, *supra* note 282.

295. *Id.*

296. Hetherington et al., *supra* note 278, at 5.

enactment of its window provision through the CVA increased the number of state civil suits filed by only 0.097% for the year.²⁹⁷

If the Arkansas General Assembly does not abolish its criminal statute of limitations for sex trafficking offenses, it should at least enact tolling provisions specific to sex trafficking for criminal prosecutions. Tolling provisions are statutes that allow the statute of limitations clock to start later, based on some specific circumstances.²⁹⁸ These provisions provide victims with more time to report what has happened to them.²⁹⁹ One example of a sex trafficking-specific tolling provision would be not beginning to run the statute of limitations until the victim escapes his or her trafficking situation.³⁰⁰ Another tolling provision that could be enacted is not starting the time clock until a minor sex trafficking victim turns eighteen.³⁰¹ If circumstances that are the result of the trafficking situation, such as psychological trauma or a language barrier, cause the victim not to realize he or she is being trafficked, then a delayed discovery tolling provision could push the start time of the statute of limitations until the victim realizes he or she has been trafficked.³⁰²

However, tolling provisions are not the best solution for victims. Tolling provisions extend the amount of time available to a victim only if certain conditions are met.³⁰³ These provisions still prevent victims from having their day in court if they do not meet those conditions or do not meet them in time.³⁰⁴ As one author put it, “Few people turn 18 and suddenly come to terms with a traumatic event . . . and thus many victims never really have a chance to prove their case in court.”³⁰⁵ Tolling provisions also do nothing to take the burden off of the victim to prove that he or she has met the burden for tolling the statute of limitations or that he or she has not waited until the statute of limitations has expired.³⁰⁶

Some could argue that even if a victim’s report falls outside of the statute of limitations for a criminal case, he or she might still have access to justice through the civil courts.³⁰⁷ Nevertheless, this civil remedy also has its flaws. Arkansas’s civil statute of limitations runs for only three years after the

297. *Id.*

298. Symone Shinton, *Pedophiles Don’t Retire: Why the Statute of Limitations on Sex Crimes Against Children Must Be Abolished*, 92 CHI. KENT L. REV. 317, 327 (2017).

299. *Id.*

300. *See* Ward, *supra* note 51, at 152.

301. *See id.* at 151–52.

302. *Id.* at 150.

303. Shinton, *supra* note 298, at 327.

304. *Id.* at 329.

305. Maxwell S. Kennerly, *The Unique Federal Sexual Abuse Claim in the Kevin Clash (Elmo’s Voice) Lawsuit*, LITIG. & TRIAL (Nov. 21, 2012), <https://www.litigationandtrial.com/2012/11/articles/the-law/federal-claim-sexual-abuse-kevin-clash/>.

306. Shinton, *supra* note 298, at 329.

307. *See id.*

incident occurred.³⁰⁸ For trafficking cases, there are special civil tolling provisions,³⁰⁹ but even these provisions may not provide adequate time for victims to file their suits. Furthermore, civil litigation is not equivalent to criminal punishment.³¹⁰ Civil cases do little to prevent further sex trafficking from occurring as criminal prosecutions do.³¹¹ Civil litigation may provide some kind of restitution to a victim, but he or she might never see that compensation while his or her trafficker remains on the streets.³¹²

To more effectively prosecute and punish sex traffickers, the Arkansas General Assembly must abolish the criminal statute of limitations, or at the very least, enact window legislation or tolling provisions to give prosecutors more time to bring victims' cases to court. A procedural mechanism like a statute of limitations does nothing to deter sex trafficking.³¹³ As Pennsylvania State Representative Joseph Petrarca recently stated, “[a]bolishing the criminal statute of limitations will send a message to abusers that they no longer can be free from prosecution simply because the statute of limitations expired on their crime before they could be brought to justice.”³¹⁴

The legislature must also extend the civil statute of limitations and apply such laws retroactively to ensure victims have access to the justice they deserve. Victims may take time to come forward and report their victimization. Psychological trauma may cause an individual to delay reporting, or the victim may not even realize that he or she has been trafficked.³¹⁵ Whatever the reason for a delay in reporting, those responsible for trafficking must be held accountable and brought to justice. Traffickers must be punished for the trafficking offenses they commit so victims receive the justice they deserve.³¹⁶

VI. CONCLUSION

In 2000, Congress passed the Trafficking Victims Protection Act, the first piece of legislation in the United States to address the pervasive human trafficking problem in the country.³¹⁷ Through that statute, the federal

308. ARK. CODE ANN. § 16-56-105.

309. See generally *id.* at § 16-11-109(f)(1)–(5).

310. Shinton, *supra* note 298, at 329.

311. *Id.*

312. See *id.* at 331.

313. See *id.*

314. Sheppard, *supra* note 274.

315. See Dan Petrella, *Illinois Eliminates Statute of Limitations on Major Sex Crimes*, THE CHICAGO TRIB. (July 26, 2019), <https://www.chicagotribune.com/politics/ct-sexual-assault-statute-of-limitations-20190726-pe7hwzphovf2vvnvtfoddhmlby-story.html>.

316. See Shinton, *supra* note 298A, at 334.

317. 22 U.S.C. § 7101; see also Office to Monitor and Combat Trafficking in Persons, *supra* note 15.

government codified the three P paradigm: protect, prevent, and prosecute.³¹⁸ Over the last twenty years, the federal government has enacted various other laws to further solidify and expand the 3P paradigm. It is time for the Arkansas General Assembly to do the same. Although Arkansas has made great strides from its complete desert of human trafficking legislation in 2013, it is time for the state to take the next steps in protecting victims, punishing perpetrators, and preventing human trafficking from continuing in Arkansas. By passing a vacatur law, the state can protect victims by helping them reintegrate into society and gain a chance at beginning a new life. The Arkansas General Assembly can better prevent sex trafficking from occurring within the state by targeting intermediaries that help facilitate trafficking through their web pages. Finally, the effectuation of punishment for the heinous crime of sex trafficking will be better served by abolishing the statute of limitations for sex trafficking prosecutions and extending the civil statute of limitations period for sex trafficking actions. The epidemic of sex trafficking will not go away on its own, and it is the responsibility of Arkansas's legislative body to use its power to end sex trafficking.

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318. See Office to Monitor and Combat Trafficking in Persons, *supra* note 15.

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