INTRODUCTION

By the time Jane was 17 years old, she had been arrested and convicted of loitering for the purpose of prostitution three times.¹ She had run away from home at the age of 13 and entered into a series of violent, coercive relationships with men who prostituted her for their own profit. By the time she was 17 she was working for “D.B.,” a man who used physical abuse, psychological manipulation, and degradation to control her.² The first time she was arrested, she told the police her real age of 17, but after that, to be safe, D.B. gave Jane fake identification with an adult age and instructed her not to acknowledge his existence if arrested again. During her next two arrests she told police that she was 18 or 19. Following these three arrests in quick succession, D.B. left town and prostituted Jane in Washington, D.C., Florida, and Virginia. While in Washington, D.C., Jane was gang raped and assaulted, but D.B. refused to allow her to go to the hospital for fear that she would be discovered as a prostitute. When Jane wanted to return to New York to see her family, D.B. forced her to have his name tattooed on her arm “so that even if she left, everyone would know [that] she belonged to him.”³

The abuse and sexual exploitation Jane suffered is a story that is far too common in the United States. The scourge of sex trafficking, particularly of domestic minors, remains largely under the radar. As a crime, sex trafficking poses unique problems for law enforcement agencies, who, to the extent that they even look,⁴ struggle to identify victims and traffickers.⁵ In the United States today,

¹ These and the proceeding facts are taken from People v. Doe, 935 N.Y.S.2d 481 (N.Y. Sup. Ct. 2011). In Doe, the defendant, Jane, was convicted under New York Penal Law section 240.37 (McKinney 2006) for “loitering for the purpose of engaging in a prostitution offense,” but her convictions were vacated on appeal because she was a trafficking victim. Id.
³ Doe, 935 N.Y.S.2d at 482–83; see also NAT’L REPORT ON DMST, supra note 2, at 24 (describing pimps/traffickers’ “process” for gaining control of victims through “psychological manipulation, intimidation, gang rape and sodomy, beatings or deprivation of food and sleep, cutting off from family, friends, and other sources of support . . . .”).
⁴ See, e.g., NEW YORK STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING,
women and girls\textsuperscript{6} are being forced into prostitution. Their bodies are marketed on the Internet as they endure sexual abuse, violence, and degradation. Despite the increased efforts of many states and the federal government, too many victims are still suffering without aid and too many traffickers are operating with impunity. With this background in mind, the Utah Legislature recently amended its sexual solicitation statute.\textsuperscript{7} The bill was introduced not only as a way to help law enforcement more easily arrest would-be prostitutes on solicitation charges but also to help get minor prostitutes off the streets.

This Note provides a critique of the amendments to Utah’s sexual solicitation statute, arguing that they represent both bad policy and bad law. This Note argues that not only are the sexual solicitation amendments unconstitutional, but they are a departure from established anti-trafficking goals and a step backward in the fight to end sex trafficking, particularly the sex trafficking of children. Part I of this Note provides background information on prostitution and sex trafficking and details Utah’s historical and current approach to these crimes. Part II analyzes Utah’s amended sexual solicitation statute and argues that it is unconstitutionally overbroad and void for vagueness.\textsuperscript{8} This Note argues further that the statute represents poor public policy because it is counterproductive to the fight against sex trafficking and will only exacerbate the problems that it was created to solve. Finally, Part III addresses useful approaches taken by other jurisdictions, including the Federal Trafficking Victims Protection Act (TVPA) and other state legislative efforts to address these problems. This comparison suggests that Utah should implement legal reforms that focus on two key areas: 1) identifying and helping victims, and 2) identifying and punishing traffickers and buyers. This Note concludes that Utah should implement simple reforms and follow the examples of states at the forefront of this fight, for example Washington, New York, and Texas.

\textsuperscript{6} While males may also be victims of sex trafficking, evidence suggests that the majority of victims are female. See Domestic Minor Sex Trafficking, FLORIDA COUNCIL AGAINST SEXUAL VIOLENCE, http://www.fcasv.org/child-sexual-abuse/domestic-minor-sex-trafficking/#_ftn2 (last visited Aug. 7, 2012).

\textsuperscript{7} UTAH CODE ANN. § 76-10-1313 (West 2011).

\textsuperscript{8} The United States District Court for the District of Utah recently struck down a portion of the statute as unconstitutionally vague, and the case is pending on appeal to the Tenth Circuit Court of Appeals. See Bushco v. Shurtleff, No. 2:11-CV-416, 2012 WL 1340517 (D. Utah Apr. 18, 2012), \textit{appeal docketed}, No. 12-4083 (10th Cir. May 15, 2012).
by enacting comprehensive reforms aimed at eliminating sex trafficking, punishing traffickers, and providing aid to victims.

I. BACKGROUND

A. Prostitution & Sex-Trafficking

Prostitution is commonly understood as the process by which sexual acts are exchanged for money or other things of value (like drugs). Traditionally and most commonly, prostitution involves male buyers and female sellers, but it is sometimes male buyers and male sellers.

Historically, prostitution was a fairly simple crime: It was “the practice of a female offering her body to indiscriminate sexual intercourse with men,” for “gain.” Prostitution is casually referred to as the “world’s oldest profession,” and popular songs have long been littered with references to the immoral life of the prostitute. Outdated attitudes about prostitutes and the nature of prostitution still inform contemporary laws and policy. While there are certainly women and men who enter sex work as a choice, many if not most are brought in and kept in the industry through violence, coercion, and marginalization. Reflecting society’s fraught and conflicting attitudes toward sexuality and prostitution, today’s feminist thinkers have competing theories about the nature of sex work: One group argues that the sale of sexual services is a type of labor like any other and that women should be allowed to make the choice to engage in such labor. These activists advocate for legalizing and regulating prostitution. Others favor absolute

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9 See BLACK’S LAW DICTIONARY 1342 (9th ed. 2009).
10 Salt Lake City v. Allred, 430 P.2d 371, 372 (Utah 1967); see also State v. Ruhl, 8 Clarke 447, 454 (Iowa 1859) (prostitution means “the common lewdness of a woman, for gain”).
11 See, e.g., Dan Bilefsky, World’s Oldest Profession, Too, Feels Crisis, N.Y. TIMES, Dec. 8, 2008, http://www.nytimes.com/2008/12/08/world/europe/08iht-sex.4.18500177.html?pagewanted=all (last visited Aug. 8, 2012); THE POLICE, ROXANNE (A&M Records 1978) (“Roxanne, you don’t have to wear that dress tonight, walk the streets for money, you don’t care if it’s wrong or if it’s right.”).
13 Melynda H. Barnhart, Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation, 16 WM. & MARY J. WOMEN & L. 83, 88 (2009); see also Catharine A. MacKinnon, Trafficking, Prostitution, and Inequality, 46 HARV. C.R.-C.L. L. REV. 271, 272–73, 272 n.2 (2011) (distinguishing the two camps and providing extensive, chronological list of “influential exponents of various facets of” the “sex work” view).
14 Barnhart, supra note 13, at 88.
criminalization because they view prostitution as inherently exploitative and consider all prostitution to be a form of sex trafficking and mistreatment of women by men. However, few would deny the existence of unambiguous victims of sex trafficking—women forced into the sex industry and kept in it through a combination of physical abuse, sexual abuse, emotional manipulation, drug addiction, isolation, marginalization, and fear. Everyone can agree that the coerced sexual exploitation of women and children is unconscionable and must be eliminated. A practical legal approach can avoid difficult questions about female agency and the nature and moral status of sex work, instead focusing on eliminating sex trafficking, and the combination of coercion, violence, exploitation, and child abuse that fuels the market for sexual services.

Commercial sex is intimately linked with organized crime, domestic violence, rape, assault, sexually transmitted diseases, and drug use. There is a tragic link between prostitution and child abuse: A majority of prostitutes enter the industry when they are between twelve and fourteen years old. Victims of sex trafficking are largely women: From 2008 to 2010, in 94% of confirmed sex trafficking incidents the victims were women. Furthermore, the trafficker was male in 81% of those incidents.

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15 Id. at 88–89; see also Lindsay Strauss, Adult Domestic Trafficking and the William Wilberforce Trafficking Victims Protection Reauthorization Act, 19 CORNELL J. L. & PUB. POL’Y 495, 498 (2010) (“Feminists are sharply divided over whether prostitution is an expression of sexuality or an institution of sexual dominance and power.”); MacKinnon, supra note 13, at 272.


17 Michelle Crawford Rickert, Through The Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level, 4 LIBERTY U. L. REV. 211, 237 (2011) (“Human trafficking is second only to drug trafficking as the most profitable organized crime business”).

18 Id. at 232, 234.


21 Id. at 1.
Many sex workers have substance abuse and mental health problems, and most experienced sexual and physical abuse from an early age.\(^{22}\) One city’s social services department found that over 60% of teen prostitutes stated that they had been raped as children.\(^{23}\) Other studies have found that 85% of prostitutes reported a history of incest, 90% a history of physical abuse, and 98% a history of emotional abuse.\(^{24}\) Psychologically manipulative, physically abusive sex-traffickers (or “pimps”) target, groom, and then exert control over girls and women in order to profit from their victimization.\(^{25}\)

Many factors increase the risk that children will become victims of sexual exploitation, including prior sexual or physical abuse, drug use, running away from home, and being kicked out of their homes.\(^{26}\) Indeed, one of the greatest risk factors is homelessness. Some research shows that up to 70% of street youth have engaged in prostitution.\(^{27}\) The vast majority of children in prostitution have a history of previous abuse.\(^{28}\) Anywhere from 71% to 95% of exploited children previously experienced sexual and physical abuse.\(^{29}\) Additionally, prostitution enforcement is gendered—prostitution laws are mostly enforced against women: In 2010, 69% of all people arrested in the United States for prostitution (buying or selling) were female, while only 31% were male.\(^{30}\)


\(^{24}\) Farley, *Sex for Sale*, supra note 19, at 113.

\(^{25}\) Nat’l Report on DMST, supra note 2, at 6–7; 24; see also Melissa Farley, Julie Bindel & Jacqueline M. Golding, *Men Who Buy Sex: Who They Buy and What They Know* 15 (2009), available at http://www.eaves4women.co.uk/Documents/Recent%20Reports/Men%20Who%20Buy%20Sex.pdf (“A majority of women who sell sex have pimps who may be called by other names, such as friend or husband. Nonetheless they function as pimps.”).

\(^{26}\) Estes & Weiner, supra note 22, at 6–8; Birckhead, supra note 15, at 1060–61; Potterat, supra note 21, at 339.

\(^{27}\) Estes & Weiner, supra note 22, at 28.

\(^{28}\) MacKinnon, supra note 13, at 279–80.

\(^{29}\) Nat’l Report on DMST, supra note 2, at 31–32; see also MacKinnon, supra note 13, at 279–80.

It is undisputed that American children are being forcibly sold for sex in cities around the United States, including Salt Lake City. In Utah, in 2009, twenty-four minors were arrested for “prostitution or commercialized vice,” while in 2010, sixteen of those arrested were confirmed minors. A visit to Backpage.com indicates the presence of prostitution in Utah. Many of the women are clearly underage (and thus victims by statutory definition) or are there as a result of coercion and abuse. Many of the advertisements state that the women are “new in town” or “just visiting,” and some of the telephone numbers listed on the advertisements during a recent search had area codes from places like Baltimore, New Mexico, and California. Indeed, Backpage.com has been widely criticized as a “hub” for sex trafficking, particularly of minors.

A traditional punitive attitude of moral disapproval aimed at prostitutes of all ages conflicts with the victim-centered approach needed to combat the crime of sex trafficking and help its exploited victims. Labeling and processing a victim as a


34 See BACKPAGE.COM, (click “escorts”), http://saltlakecity.backpage.com/FemaleEscorts/ (a recent visit turned up an ad for an “18”-year-old female, and it stated that “we travel everywhere up and down the Wasatch front” while assuring customers that “all [our girls] get regular STD testing”) (last visited Mar. 8, 2012); see also Nicholas Kristof, Where Pimps Peddle Their Goods, N.Y. TIMES, Mar. 17, 2012, at SR1, available at http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html (“[T]here is plenty of evidence that under-age girls are marketed on Backpage. Arrests in such cases have been reported in at least 22 states.”).

35 BACKPAGE.COM, supra note 34 (search conducted Mar. 8, 2012). See also SALT LAKE CITY ASSESSMENT, supra note 31, at 20 (describing Salt Lake City as a “hot spot” on the “western prostitution circuit,” a series of large western cities like Phoenix, Denver, and San Diego, that are regular stops for sex traffickers).


37 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, 440 (2009); see also Strauss, supra note 15, at 504 (“the denigration of prostitutes has allowed law enforcement and society to turn a blind eye to the coercion and violence often connected with prostitution.”).
criminal fails on multiple levels: It does little to deter those who would purchase sex from children; it further traumatizes the victim; it is a waste of police resources; and it fails to provide real help to the victims. On a fundamental level, “[t]he arrest of a child sex trafficking victim for prostitution is the arrest of a victim for the crime committed against the child.” Furthermore, although there is much focus on the problem of child sexual exploitation—perhaps because it is much easier to see children as victims—it is important to recognize that adults, too, are victims of sex trafficking. Notwithstanding that many adults were forced into sex work as children, there are many cases where adult women are exploited and trafficked through domestic violence or other tactics of abuse and control. The link between prostitution and sex trafficking blurs the line between criminal and victim. Trafficked children all too soon become adults and subject to even greater punishment and marginalization. As Catharine MacKinnon writes, “[t]hose children for whom nothing was done who managed not to die yet are most of today’s prostituted women.”

Police most frequently encounter trafficking victims via “vice” squads, charged with the enforcement and investigation of prostitution and related crimes. Sex trafficking presents complex problems for law enforcement: “The lack of established identification methods causes victimized youth to be identified as juvenile delinquents” and “[t]he criminal aspects . . . as well as the psychological ramifications for the victim, create a situation that is hard to deal with adequately for law enforcement.”

B. Utah’s Changing Approach to Prostitution and Sex Trafficking

Prostitution has been a crime in Utah since before it became a state. However, the related crime of “sexual solicitation” was first codified in 1993.

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38 See NAT’L REPORT ON DMST, supra note 2, at 60–61.
39 Id. at 60.
40 See, e.g., People v. G.M., 922 N.Y.S.2d 761, 762 (N.Y. Crim. Ct. 2011) (Defendant victim met D.S. while visiting the United States from the Dominican Republic. The two got married and “soon thereafter the relationship took a turn for the worse as D.S. began to physically abuse the defendant.” He raped, beat, and imprisoned her, “tracked” her every move, and forced her to engage in prostitution.).
41 See generally Strauss, supra note 15.
42 See MacKinnon, supra note 13, at 306–07 (“Traffickers are incentivized to grab girls when they are most desirable to the market; then, with each day that passes, their exploitation is more blamed on them.”).
43 Id. at 298.
44 SALT LAKE CITY ASSESSMENT, supra note 31, at 20.
45 NAT’L REPORT ON DMST, supra note 2, at 50–51; see also TEXAS REPORT, supra note 5, at 8.
46 COMPILED LAWS OF THE TERRITORY OF UTAH ch. 8, § 166 (Utah 1876) (“every person who . . . willfully resides in [a house of ill fame], or resorts thereto for lewdness, is guilty of a misdemeanor.”).
Eight years after Congress first passed the Trafficking Victims Protection Act (TVPA), in 2008, the Utah Legislature passed its own anti-trafficking law, criminalizing trafficking in persons for labor or for sexual exploitation.\(^{48}\) Utah’s anti-trafficking law made it a felony offense to “recruit[\], harbor[\], transport[\], or obtain[\] a person through the use of force, fraud, or coercion” for “forced labor” or “forced sexual exploitation.”\(^{49}\) “Force, fraud, or coercion” is present if the trafficker: 1) threatens “serious harm to, or physical restraint against” the victim or a third person, 2) deprives the victim of any government-issued identification, 3) abuses or threatens abuse “of the law or legal process” against the victim or a third person, 4) uses the victim’s debt to force them to render personal services, or 5) creates a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not . . . continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.\(^{50}\)

Interestingly, Utah’s prostitution laws and anti-trafficking laws are not explicitly connected in any way. The word “trafficking” and any law pertaining to sex trafficking is fully isolated within the “kidnapping, trafficking, and smuggling” part of the Utah Criminal Code—trafficking is not mentioned at all in the “sexual offenses” part of the Utah Criminal Code which contains laws pertaining to prostitution and sexual abuse of children.\(^{51}\) In other words, the Utah Code does not reflect the intimate connection between trafficking and prostitution.\(^{52}\) Nor is there any provision in the Utah Code that discusses the status of a victim under the trafficking statute who is prosecuted as a criminal under the prostitution statutes.\(^{53}\)

In 2006, the Department of Justice selected Salt Lake City as one of 40 cities to receive a grant to create a human trafficking task force, and there was a great deal of local publicity surrounding the issue.\(^{54}\) Sadly, that momentum seems to

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\(^{47}\) 1993 Utah Laws ch. 178, § 8 (codified as amended at UTAH CODE ANN. § 76-10-1313 (West Supp. 2011)).

\(^{48}\) 2008 Utah Laws ch. 343 (codified at UTAH CODE ANN. § 76-5-308 (West 2011)) (“Human Trafficking”).

\(^{49}\) Human Trafficking Amendments, 2008 Utah Laws ch. 343 (codified at UTAH CODE ANN. § 76-5-308 (West 2011)).

\(^{50}\) UTAH CODE ANN. § 76-5-308 (1) (a)-(e) (West 2010).


\(^{53}\) Id.; compare other states’ approaches, discussed in section III, infra.

\(^{54}\) SALT LAKE CITY ASSESSMENT, supra note 31, at 8; see also Deborah Bulkeley, Task Force Targets Human Trafficking, DESERET NEWS, (Nov. 23, 2007, 12:10AM),
have waned. Though it appears that the Utah Human Trafficking Task Force remains in existence, it has never published a report and it is unclear how active the task force remains. Though the task force is supposedly administered by the U.S. Attorney’s Office for the District of Utah, there is no mention of the task force on the U.S. Attorney’s Office website among its other projects. Moreover, recently, severe, escalating threats forced the “lead” organization providing services to human trafficking victims in Utah to shut down—the organization cited its vulnerability to such threats and, implicitly, a lack of support from law enforcement. In 2007, Shared Hope International deemed Salt Lake City’s enthusiastic approach to addressing and ending child sex trafficking “progressive and sympathetic,” but in its most recent report evaluating and grading the efficacy of each state’s sex trafficking laws, the organization gave Utah an “F.” It was with this historical background that House Bill 121—“the sex solicitation amendments”—was introduced.

In early 2011, Representative Jennifer Seelig introduced a bill (H.B. 121) in the Utah House of Representatives that would amend Utah’s sexual solicitation statute. Previously, the crime of sexual solicitation was simple. A person was guilty of sexual solicitation if:

(a) he offers or agrees to commit any sexual activity with another person for a fee; [or]


(b) he pays or offers or agrees to pay another person to commit any sexual activity for a fee.60

The recent bill, which passed with almost no debate in both the Utah Senate and the Utah House of Representatives,61 changed the statute so that the original language remained, though now gender neutral, and added two key provisions, subsection (1)(c) and section (2). The entire statute now reads:

(1) A person is guilty of sexual solicitation when the person:
(a) offers or agrees to commit any sexual activity with another person for a fee;
(b) pays or offers or agrees to pay a fee to another person to commit any sexual activity; or
(c) with intent to engage in sexual activity for a fee or to pay another person to commit any sexual activity for a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:
   (i) exposure of a person’s genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;
   (ii) masturbation;
   (iii) touching of a person’s genitals, the buttocks, the anus, the pubic area, or the female breast; or
   (iv) any act of lewdness.

(2) An intent to engage in sexual activity for a fee may be inferred from a person’s engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.62

Representative Seelig explained her bill as a needed tool for police to combat so-called “proving techniques.”63 Prostitutes (naturally this term includes prostituted children and trafficking victims) were purportedly using the techniques detailed in the statute as a way to determine whether a potential client was a police officer. Before actually offering or agreeing to have sex for a fee, the “prostitute” would first request that the person prove they weren’t a cop by doing something a police officer would supposedly not be willing to do, such as masturbating, exposing the genitals, or touching the prostitute’s genitals. The proving techniques

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60 1993 Utah Laws ch. 179, § 8 (codified as amended at UTAH CODE ANN. § 76-10-1313). The masculine pronoun is used exclusively here, suggesting that the crime was aimed at men.
62 2011 Utah Laws ch. 32, § 1 (codified at UTAH CODE ANN. § 76-10-1313) Section (3), the penalty for a violation of this section, is omitted.
hampered officers by placing them in the difficult situation of either submitting to the proving technique in pursuit of an arrest or abandoning the operation. Representative Seelig recognized that the prostitutes in these scenarios are often underage. She pointed out that if an officer is asked to commit certain acts by a prostitute, and he complies in order to get the sexual solicitation arrest, and if the “prostitute” is in fact a minor, the officer may have just committed the crime of sexual abuse of a child.

Representative Seelig talked passionately about the need to protect police from health risks, criminal conduct, and morally compromising situations. Representative Seelig also mentioned, for good measure, that she believed the new version of the law would help combat sex trafficking by getting girls into the system “for protection.” Thus, the bill was primarily created as a way to expand law enforcement’s ability to arrest minors and adults for the crime of sexual solicitation by eliminating the need for police to submit to these “proving techniques” before they could make a solicitation arrest.

II. ANALYSIS: UTAH’S AMENDED SEXUAL SOLICITATION STATUTE IS BOTH UNCONSTITUTIONAL AND POOR POLICY

Unfortunately, in their zeal to protect police officers and allow for the arrest of more prostitutes, the Utah Legislature created a law that is constitutionally unsound and represents a poor policy decision. First, the amended sexual solicitation statute is unconstitutionally overbroad because it infringes on a substantial amount of conduct protected by the First Amendment. Second, the statute is unconstitutionally vague because it fails to give citizens adequate notice of what is criminal conduct, and it allows for arbitrary enforcement. Finally, the amendments are bad public policy.

A. Overbreadth

Utah’s amended section 76-10-1313 is bad law because it violates the First Amendment. The United States Constitution unequivocally protects the right to exchange information and ideas, regardless of their social worth. The “bedrock” principle that underlies the First Amendment is that Americans have the right to
participate in the free trade of ideas.\textsuperscript{72} The First Amendment’s purpose is to “protect Americans in their beliefs, their thoughts, their emotions and their sensations.”\textsuperscript{73} For this reason it protects written and spoken words as well as symbolic or expressive conduct, even if society or the government finds the idea itself “offensive or disagreeable.”\textsuperscript{74} A statute is overbroad if it criminalizes conduct that may not be punished under the First and Fourteenth Amendments.\textsuperscript{75}

Although the First Amendment provides ample protection for free expression and expressive conduct, there are recognized exceptions for obscenity,\textsuperscript{76} fighting words,\textsuperscript{77} and offers to engage in illegal activity.\textsuperscript{78} The United States Supreme Court has said that speech that is “integral to criminal conduct” has little to no social value.\textsuperscript{79} This includes speech that constitutes fighting words, threats, fraud, and “solicitation.”\textsuperscript{80} In the case of a criminal solicitation, the speech—asking another to commit a crime—is the punishable act.\textsuperscript{81} As the Court has stated, “[s]olicitation is an inchoate crime; the crime is complete once the words are spoken with the requisite intent.”\textsuperscript{82} However, for First Amendment purposes, there is a crucial distinction between actual “proposal[s] to engage in illegal activity” and the mere “abstract advocacy of illegality,” or general communication of an idea.\textsuperscript{83} Such general communication or abstract advocacy cannot be prohibited

\textsuperscript{72} Virginia v. Black, 538 U.S. 343, 358 (2003) (internal citations omitted). See also Lamont v. Postmaster General, 381 U.S. 301, 308 (1965) (Brennan, J., dissenting) (“The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyers.”).

\textsuperscript{73} Stanley, 394 U.S. at 564; see also Black, 538 U.S. at 358.

\textsuperscript{74} Black, 538 U.S. at 358.


\textsuperscript{76} See generally Roth v. United States, 354 U.S. 476, 481 (1957).

\textsuperscript{77} See generally Chaplinsky v. New Hampshire, 315 U.S. 568, 572 (1942) (fighting words are words “which by their very utterance . . . tend to incite an immediate breach of the peace”).

\textsuperscript{78} United States v. Williams, 553 U.S. 285, 297 (2008) (upholding federal anti-child pornography statute that prohibited “promot[ing] . . . or solicit[ing] . . . any material or purported material in a manner that reflects the belief . . . that the material . . . is or contains . . . an obscene visual depiction of a minor”).

\textsuperscript{79} Id. at 298 (“[O]ffers to give or receive what it is unlawful to possess have no social value and thus, like obscenity, enjoy no First Amendment protection.”).

\textsuperscript{80} United States v. Stevens, 130 S.Ct. 1577, 1584, 176 L.Ed.2d 435 (2010).

\textsuperscript{81} Williams, 553 U.S. at 298.

\textsuperscript{82} United States v. White, 610 F.3d 956, 960 (7th Cir. 2010), reh’g denied, Aug. 6, 2010.

\textsuperscript{83} Id. at 298–99; see also Brandenburg v. Ohio, 395 U.S. 444, 456 (1969) (Douglas, J., concurring) (“The line between what is permissible and not subject to control and what may be made impermissible and subject to regulation is the line between ideas and overt acts.”).
under the First Amendment.\footnote{\textit{Brandenburg}}, 395 U.S. at 447–48 (“the constitutional guarantees of free speech . . . do not permit a State to forbid or proscribe advocacy of . . . law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”).


\footnote{\textit{Id.}}

\footnote{\textit{Id. at 376}.}

\footnote{\textit{Id.}}

\footnote{\textit{Id. at 377}.}

\footnote{\textit{Id.}}

\footnote{\textit{Id.}}

\footnote{\textit{Id.}}
Amendment because it falls within a traditional exception—solicitation.\textsuperscript{94} Furthermore, the regulation and criminalization of prostitution falls within the traditional police power of the State and the State has an important interest in prohibiting prostitution.\textsuperscript{95} Laws against prostitution are enacted in order to protect public health and safety—a permissible exercise of state police power and a goal unrelated to the suppression of expression.\textsuperscript{96} Because the statute is not aimed at the suppression of expression, is within the power of the state, and is related to an important government interest, it satisfies the first three \textit{O'Brien} factors.

However, Utah’s amended statute nevertheless fails under the \textit{O'Brien} test because it would incidentally prohibit a substantial amount of protected public expression. It is well established that “in evaluating the free speech rights of adults . . . sexual expression which is indecent but not obscene is protected by the First Amendment,” (to say nothing of garden-variety expression, which is unquestionably protected).\textsuperscript{97} As in \textit{Ashcroft v. Free Speech Coalition}, the Utah Legislature may have intended to prohibit “illegal conduct, but [the] restriction goes well beyond that interest by restricting the speech available to law-abiding adults.”\textsuperscript{98}

Under the language of Utah Code section 76-10-1313(2), the State impermissibly threatens and chills this sort of sexual expression. For example, the statute authorizes a police officer to infer that a licensed semi-nude dancer who exposes her buttocks while dancing in a thong has the intent to engage in sexual activity for a fee and she could be arrested on that basis alone. It is easy to think of further examples that fall within the purview of the statute—teenagers going to second base behind the stadium, or gay partygoers indicating their amorous feelings by discreetly brushing pelvises. Ballet dancers engaged in a romantic \textit{pas de deux} could be subject to arrest if a particularly philistine police officer interprets their artistic touching as evidence of the intent to engage in sexual activity for a fee. Doctors, dancers, massage therapists, those who engage in public displays of affection—all could be subject to arrest and prosecution under this law, because the law requires only 1) certain types of touching, and 2) the officer’s inference, “under the totality of the circumstances,” that such touching indicates that the individuals intend to engage in sexual activity for a fee.\textsuperscript{99}

\textsuperscript{94} United States v. White, 610 F.3d 956, 960 (7th Cir. 2010), \textit{reh’g denied}, Aug. 6, 2010.
\textsuperscript{95} \textit{L’Hote v. City of New Orleans}, 177 U.S. 587, 596 (1900) (“[O]ne of the difficult social problems of the day is what shall be done in respect to those vocations which minister to and feed upon human weaknesses, appetites, and passions. The management of these vocations comes directly within the scope of what is known as the police power. They affect directly the public health and morals.”).
\textsuperscript{96} \textit{City of Erie v. Pap’s A.M.}, 529 U.S. 277, 298 (2000); \textit{L’Hote}, 177 U.S. at 596; \textit{Fantasy Ranch Inc. v. City of Arlington}, Tex., 459 F.3d 546, 554 (5th Cir. 2006).
\textsuperscript{98} \textit{Id.} at 252–53.
\textsuperscript{99} \textit{UTAH CODE ANN.} § 76-10-1313 (“(1) . . . (c) with intent to engage in sexual activity for a fee . . . engages in . . . any of the following acts . . . (iii) touching of a person’s
The amendments thus fail the O’Brien test. Utah’s law goes too far and sweeps up conduct that lies squarely within a protected realm of communicative conduct. This restriction is to a degree far greater than necessary to serve Utah’s interest in protecting the health and morals of the public by prohibiting sexual solicitation, and the statute is thus unconstitutionally overbroad.

B. Vagueness

It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large.\(^{100}\)

The amended sexual solicitation statute threatens the chilling and suppression of First Amendment liberties by being overbroad and vague.\(^{101}\) Under the Fourteenth Amendment’s Due Process Clause, “no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.”\(^ {102}\) This means that the language of a criminal statute must be “sufficiently explicit”\(^ {103}\) so that a person of ordinary intelligence is able to understand what conduct is prohibited.\(^ {104}\) Furthermore, a statute may be unconstitutionally vague if it allows for discriminatory or arbitrary enforcement.\(^ {105}\) Such vague laws unfairly “increase the arsenal of the police” by giving them the power to cast a wide net and make arbitrary choices about whom to prosecute.\(^ {106}\) A statute must contain adequate guidelines so as to avoid “allow[ing] policemen, prosecutors, and juries to pursue their personal predilections” via “a standardless sweep.”\(^ {107}\)

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\(^{100}\) Papachristou v. Jacksonville, 405 U.S. 156, 165 (1972) (citing United States v. Reese, 92 U.S. 214, 221 (1875)).

\(^{101}\) See Kolender v. Lawson, 461 U.S. 352, 358 n.8 (1983) (because vagueness and overbreadth are “logically related and similar doctrines,” there will often be overlap between the two analyses).


\(^{104}\) Connally, 269 U.S. at 391 (a statute cannot be “so vague that men of common intelligence must necessarily guess at its meaning”); Lawson, 461 U.S. at 357; Goguen, 415 U.S. at 574.

\(^{105}\) Lawson, 461 U.S. at 357–58.

\(^{106}\) Papachristou, 405 U.S. at 165.

\(^{107}\) Goguen, 415 U.S. at 575.
may be struck down as constitutionally defective, “standards of permissible statutory vagueness are strict in the area of free expression.” 108

A criminal law may be improperly vague “for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement.” 109 A statute need not be vague in all of its possible applications to be invalid; rather, it may be void for vagueness if it is shown that the statute will substantially infringe on constitutionally protected conduct as a result of arbitrary or discriminatory enforcement. 110

The amended sexual solicitation statute allows for and encourages arbitrary enforcement. Insofar as the conduct (touching, for example) listed in section 76-10-1313(1)(c) is communicative, the statute, namely 76-10-1313(2), encourages the “arbitrary suppress[ion] [of] First Amendment liberties.” 111 The statute is written so expansively that it would allow an officer to arrest a person for engaging in any expressive conduct that falls within the enumerated list contained in section 76-10-1313(1)(c). Indeed, though the statute contains specific examples it also includes the catchall “any act of lewdness”—which could reasonably be understood to include verbal acts, leering and lascivious glances, or gestures. 112 For example, a patron at a strip club who pats a performer’s posterior to indicate appreciation or thanks would have committed conduct that falls under (c)(iii): “touching of a person’s buttocks or pubic area.” Such an act is communicative and innocuous, and thus cannot legitimately be made criminal. Under section 76-10-1313(2), an officer would have full subjective discretion to decide whether the circumstances justify the inference that the act shows either person’s intent to engage in sexual activity for a fee. 113 Thus, with essentially no standard, the officer could arrest these individuals for the crime of sexual solicitation based simply upon a communicative touch. Unlike the child pornography statute upheld in United States v. Williams

110 Colautti v. Franklin, 439 U.S. 379, 391 (1979) (it is “especially true” that a statute is void for vagueness “where the uncertainty induced by the statute threatens to inhibit the exercise of constitutionally protected rights”); Lawson, 461 U.S. at 358 n.8.
112 See, e.g., Utah ex rel. A.T., 2001 UT 82, ¶ 10, 34 P.3d 228 (holding that defendant’s gesture of grabbing his crotch over the clothes and shaking it “up and down” at a woman qualified as an “any other act of lewdness” under Utah Code section 76-9-702).
113 As provided in Utah Code section 76-10-1313(2), “An intent to engage in sexual activity for a fee may be inferred from . . . any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.” (emphasis added).
of sexual solicitation. This is because the criminal conduct referenced in Utah Code section 76-10-1313 “tie[s] criminal culpability to ... wholly subjective judgments without statutory definitions, narrowing context, or settled legal meanings.” Under section 76-1-1313(2) a person may be criminally culpable based simply on whether he or she commits a certain act, legal in itself, which under an officer’s unchecked subjective judgment authorizes him to infer the intent to engage in sexual activity for a fee. Accordingly, because it is vaguely written and encourages arbitrary enforcement, Utah’s sexual solicitation statute is void for vagueness and must be revised.

C. Poor Policy

Contrary to Representative Seelig’s stated purpose of eliminating prostitution and getting prostituted children off the streets, the new statute cannot help in achieving these goals. Even if the constitutional infirmity of Utah Code section 76-10-1313 is remedied, the amended statute is poor policy because its primary purpose and effect is to enable police to more easily arrest victims. The amended sexual solicitation statute, contrary to its purported goal, does nothing to help minor victims of sex trafficking. Neither does it enable better identification and punishment of traffickers. To the degree that it will be used to target buyers, the statute, a class B misdemeanor, does very little to deter demand, particularly given that the amendments were explicitly explained as a tool making it easier to arrest the prostitutes, not the johns. To the extent that the law is applied to victims, it will provide them no help beyond a night in jail, instead re-traumatizing and alienating them.

Utah’s sex trafficking laws are seriously inadequate, and the new sexual solicitation statute only makes a bad situation worse. Tragically, the ruthless criminals who supply the sex market by abusing and exploiting vulnerable girls, and the buyers who keep them in business, continue to be virtually free to operate in the state of Utah. By increasing law enforcement tools to target and catch traffickers and buyers, Utah can take steps to eliminate and deter the demand side.

115 Id.
116 The United States District Court for the District of Utah recently held Utah Code section 76-10-1313(2) unconstitutionally vague and struck it from the statute. The case has been cross-appealed to the Tenth Circuit Court of Appeals. Bushco v. Shurtleff, No. 2:11-CV-416 *2, 2012 WL 1340517 (D. Utah Apr. 18, 2012), appeal docketed, No. 12-4083 (10th Cir. May 15, 2012) (“the language ‘under the totality of the existing circumstances’ renders the statute open to personal interpretation by a police officer, which will inevitably result in ‘arbitrary and discriminatory enforcement.’”) (citation omitted).
117 See Representative Seelig Statements, supra note 59.
118 NAT'L REPORT ON DMST, supra note 2, at 60–61 (“a victim’s arrest confirms the trafficker’s threats and reaffirms her perception of law enforcement as the enemy”); see also Sima Kotecha, U.S. Law Enforcement “Failing” on Child Prostitution, BBC RADIO NEWSBEAT (Aug. 9, 2010), http://www.bbc.co.uk/newsbeat/10896771.
of the sex market, while by increasing victim protections, Utah can first and foremost provide help to the vulnerable and exploited girls and women who suffer at the hands of those who degrade and abuse them, but can also secure a crucial tool for effective prosecution of traffickers—the cooperation and testimony of the victims.

III. PROGRESSIVE APPROACHES TO COMBATING SEX TRAFFICKING

In our understanding of human trafficking, we are today about where we were with the problem of domestic violence about 40 years ago—low levels of awareness, low levels of law enforcement response, almost no services for victims.

— Rob McKenna, Washington State Attorney General, President of the National Association of Attorneys General

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA). This act “explicitly call[ed] for the United States to give priority to the prosecution of trafficking offenses and to ‘protect[] rather than punish[] the victims of such offenses.’” Despite the promise of the new law, however, enforcement has been difficult and disappointingly few federal convictions have been achieved. This is partly because it is local law enforcement that most frequently interacts with both traffickers and victims of trafficking. Unfortunately, many of the victims only come in contact with law enforcement when they are taken in as criminals and punished for prostitution. This means that the job of confronting sex traffickers and helping their victims falls largely to state and local governments.

As a result of increased awareness and a growing international anti-trafficking movement, almost every state has passed a law that, at the bare minimum, criminalizes human trafficking. Some jurisdictions have gone further and have

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122 Heiges, supra note 16, at 439 (stating that discrepancy between current enforcement models means that “federal anti-trafficking goals may continue to go unrealized.”).

123 Rickert, supra note 17, at 246–47.

124 SALT LAKE CITY ASSESSMENT, supra note 31, at 20.

125 Heiges, supra note 17, at 440–41.

created more comprehensive laws that target sex trafficking and the sex trafficking of children, and aim to eliminate demand, increase punishment for traffickers, and provide aid to victims.\textsuperscript{127}

Authorities on sex trafficking agree that criminal sanctions against trafficked persons are not an effective solution.\textsuperscript{128} The imposition of criminal penalties upon victims only further victimizes such persons and usually does not succeed in getting them off the street in the long term, nor do they punish the true criminal—the trafficker.\textsuperscript{129} Experts on the elimination of sex trafficking call for “victim-centered, demand-targeted” approaches to addressing sex trafficking.\textsuperscript{130}

Commercial sex, like other markets, is driven by demand.\textsuperscript{131} The demand for young victims contributes to the trafficking of minors into the sex trade. Experts have noted that there are three types of buyer when it comes to sex with minor prostitutes: situational, preferential, and opportunistic.\textsuperscript{132} The opportunistic buyer is simply unconcerned about the trafficked or exploited minor status of the person he buys sex from.\textsuperscript{133} The situational buyer takes advantage of the fact that patronizing prostitutes is a tolerated\textsuperscript{134} and minimally criminal\textsuperscript{135} behavior and minors are widely available, while the preferential buyer specifically seeks out sexual experiences with minors.\textsuperscript{136} Effective laws will deter situational and opportunistic buyers and will punish preferential buyers and trafficker-suppliers.

Along with increasing criminal provisions targeting buyers and traffickers in an effort to attack the demand side of sex-trafficking, state legislators must also enact laws that first identify and then provide help to victims. Since the Utah Health and Human Rights Project (UHHRP) was forced to stop providing services to human trafficking victims in 2011 due to severe and increasing threats, it is not clear what resources remain for Utah victims.\textsuperscript{137} The UHHRP was one of the original recipients of the 2006 Department of Justice grant—a “core” agency that


\textsuperscript{128} See generally Birckhead, supra note 16; SALT LAKE CITY ASSESSMENT, supra note 31; MacKinnon, supra note 13.

\textsuperscript{129} Birckhead, supra note 16, at 1086–87; MacKinnon, supra note 13, at 307.

\textsuperscript{130} Heiges, supra note 37, at 459; see also Birckhead, supra note 16, at 1071–73; SALT LAKE CITY ASSESSMENT, supra note 31; MacKinnon, supra note 13, at 307; Linda Smith & Samantha Healy Vardaman, The Problem of Demand in Combating Sex Trafficking, 81 INT’L REV. PENAL L. 607 (2010).

\textsuperscript{131} See generally Smith & Vardaman, supra note 130.

\textsuperscript{132} Id. at 609.

\textsuperscript{133} Id.

\textsuperscript{134} Id. at 608 (“marketplaces of commercial sexual exploitation require some level of tolerance within the community in order to exist”).

\textsuperscript{135} Id. at 617 (“even when buyers are arrested for the crime of commercial sex abuse of a minor . . . many of these laws are weak, providing little deterrent”).

\textsuperscript{136} Id. at 609.

\textsuperscript{137} See O’Donoghue, supra note 57.
was at the forefront of the initiative along with the Salt Lake City Police Department.\textsuperscript{138} The decision by the UHHRP to discontinue providing services to victims is a devastating blow and it is not clear who, if anyone, is filling this vacancy.

Shared Hope International identifies four key policy areas in the fight against sex trafficking: 1) eliminating demand, 2) prosecuting traffickers, 3) identifying victims, and 4) providing victims with protection and necessary rehabilitation services.\textsuperscript{139} The best state laws contain provisions that address all of the key policy areas: They attack demand, enable prosecution and harsh punishment of traffickers (including the ability to identify victims and gain their help in prosecuting the traffickers), and they provide for victim assistance.

Twenty states have enacted laws that create state task forces to address sex trafficking.\textsuperscript{140} These task forces are generally created in order to “evaluate various programs available to victims of trafficking and various criminal statutes addressing human trafficking” and then report back to the legislature.\textsuperscript{141} California’s task force was also given the project of developing appropriate training for law enforcement related to trafficking.\textsuperscript{142} Such task forces are extremely valuable to help a state develop findings which aid its legislature in enacting new laws, fostering interagency collaboration, and highlighting problem areas, to better help states in their efforts to end the sexual exploitation of women and children.\textsuperscript{143}

Though Utah was given some federal funding to create a task force many years ago, the state legislature has not created a task force, and the Utah Attorney General has no current projects addressing sex trafficking. Utah should create a

\begin{footnotes}
\item[^138] SALT LAKE CITY ASSESSMENT, \textit{supra} note 31, at 8.
\item[^139] STATE REPORT CARDS, \textit{supra} note 58, at 9. \textit{See also} Mackinnon, \textit{supra} note 13, at 307 (“any adequate law or policy to promote the human rights of prostituted people has three parts: decriminalizing and supporting people in prostitution, criminalizing their buyers strongly, and effectively criminalizing third-party profiteers.”); \textit{Fact Sheet on State Anti-Trafficking Laws, supra} note 126, at 1 (stating that the goal is to make “trafficking a state felony offense with appropriately harsh punishments for traffickers and protections for the women and girls who have been trafficked.”).
\item[^141] 2005 Cal. Legis. Serv. Ch. 239 (S.B. 180) (West); \textit{see also} WASH. REV. CODE ANN. § 7.68.350 “Washington State task force against the trafficking of persons,” (West 2011) (requiring the task force to, \textit{inter alia}, “[m]easure and evaluate the progress of the state in trafficking prevention activities,” “[i]dentify available federal, state, and local programs that provide services to victims of trafficking” and report findings to the legislature).
\item[^142] CAL. PENAL CODE § 13519.14 (West 2012) (“Course or courses of instruction for training of law enforcement officers in the handling of human trafficking complaints; guidelines”).
\item[^143] \textit{See generally} NEW YORK TASK FORCE, \textit{supra} note 4; TEXAS REPORT, \textit{supra} note 5.
\end{footnotes}
task force as soon as possible, particularly given that most sources indicate that sex trafficking is being perpetrated essentially unchecked in Utah, and one of the only organizations in Utah that was helping victims was forced to stop. As the House debate on the sexual solicitation amendments clearly indicated, law enforcement in Utah is struggling to identify victims and is still treating these prostituted children as criminals, to say nothing of waging effective prosecutions of traffickers and buyers. A state-funded task force is essential to bring Utah in line with anti-trafficking goals, and to jumpstart Utah’s efforts to protect the vulnerable women and children who are being sexually exploited in this state.

A number of states have enacted various kinds of laws that aim to protect and help victims of trafficking. Some of the ways that states have attempted to help victims include: providing a right to sue for civil damages, allowing victims to move to vacate any convictions suffered as a result of the victim’s status as a trafficked person, and providing funding and guidelines for victim services.

A more basic way to protect victims and fight sex trafficking is to follow other states’ examples and insert a provision into the prostitution and sexual solicitation statutes that creates an affirmative defense when the defendant was a victim of trafficking at the time. Utah’s prostitution and sexual solicitation statutes contain no provision exempting trafficked persons, or even minors, from their purview. Amending Utah’s prostitution and sexual solicitation statutes to exempt victims is perhaps one of the easiest ways that the Utah Legislature could indicate that it is serious about ending sex trafficking, and will not tolerate punishing victims as if they are criminals. Furthermore, Utah should follow New York and take steps to aid victims by creating a process whereby victims may vacate their convictions. Such a rule would help with prosecutions as well, for as in

144 See O’Donoghue, supra note 57.
146 See, e.g., VT. STAT. ANN. tit. 13 § 2662 (West 2011); 735 ILL. COMP. STAT. ANN. 5 / 13-225 (West 2011).
147 See, e.g., N.Y. CRIM. PROC. LAW § 440.10(i) (McKinney 2011).
148 See, e.g., WASH. REV. CODE ANN. § 7.68.360 (West 2011) (calling for the development of “guidelines providing for the social service needs of victims of trafficking of humans, including housing, health care, and employment.”).
149 See, e.g., CONN. GEN. STAT. ANN. § 53a-82(b), (c) (West 2011) (“(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the actor was coerced into committing such offense by another person in violation of [Connecticut’s anti-trafficking statute]”; 2011 Tex. Sess. Law Serv. (West) ch. 515, H.B. 2014 (codified at TEX. PENAL CODE ANN. § 43.02 (d) (West 2011)) (“It is a defense to prosecution under this section that the actor engaged in the conduct that constitutes the offense because the actor was the victim of conduct that constitutes an offense under Section 20A.02 [Trafficking of Persons]”); see also Birckhead, supra note 16, at 1070–74 (describing various state laws that immunize children from prosecution under prostitution statutes).
New York v. Doe, the victim would provide the state with information about her trafficker in the process of moving to vacate her prostitution offenses.\(^{150}\)

CONCLUSION

After finally escaping from her trafficker, Jane got a job in the food industry and enrolled in classes to become a medical assistant.\(^{151}\) She then voluntarily provided information to New York law enforcement “regarding D.B. and other aspects of prostitution.”\(^{152}\) Jane successfully moved to vacate her convictions under a New York law that provides that a court may vacate a prostitution conviction if the defendant’s “participation in the offense was a result of having been a victim of sex trafficking.”\(^{153}\) This outcome shows the positive effects of progressive reforms to state laws.

Sex trafficking is a crime that is devastating to individuals and communities, and it is occurring nearly unchecked and unrecognized in the state of Utah, which is a hub for the sale of sexually exploited women and children who suffer unimaginable horrors of physical and sexual violence, degradation, objectification, drug addiction, and psychological trauma. Utah is lagging behind other states in taking aggressive steps to combat this problem, one that crosses national and international borders and thrives on the Internet.

The Utah Legislature should affirm its commitment to standing up for sexually victimized women and children in Utah by first ceasing to victimize them further via criminal laws. The first step in this direction will be to repeal the unconstitutional and misguided 2011 sexual solicitation amendments. Utah lawmakers should then set about introducing reformed laws that comport with established anti-trafficking goals and best practices: First by providing for victim identification, outreach, and aid, and second by vigorously targeting the demand side of the equation by increasing efforts to find and punish traffickers and buyers. The Utah Legislature can start with two concrete, simple steps: Creating a state task force and amending the criminal code to make all minors and other victims of trafficking exempt from prosecution for prostitution-related offenses. These actions will help Utah become a leader in the fight to end sex trafficking in the United States.

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\(^{150}\) People v. Doe, 935 N.Y.S.2d 481, 483 (N.Y. Sup. Ct. 2011); Rickert, supra note 17, at 293 (“prosecutions are more successful when the trafficking victim feels safe and secure”).

\(^{151}\) Doe, 935 N.Y.S.2d at 483.

\(^{152}\) Id.

\(^{153}\) N.Y. PENAL LAW § 440.10 (1)(i) (McKinney 2010).