EXPLOITATION OF VULNERABLE PERSONS: A COMPARATIVE STATUTORY LEGAL ANALYSIS OF HUMAN TRAFFICKING AND CHILD PORNOGRAPHY LAWS IN ARIZONA, COLORADO, WASHINGTON, AND TEXAS

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Abstract

This paper is a detailed analysis of criminal statutes in 4 U.S. states: Arizona, Colorado, Washington, and Texas. The types of statutes analyzed are each state’s laws that affect human trafficking, sex trafficking, child pornography, and child prostitution. The analysis looks at statutory language which includes differences in sentencing lengths, the imposition of fines, mistake of age defense, car impounding, training for law enforcement or prosecutors, victim services and prostitution prevention and intervention accounts, elements of “force, fraud, and coercion” present, the mens rea component “knowingly” present, states that outlaw distribution of child pornography, as well as possession, criminalizing intentional internet viewing of child pornography, criminalization of offenders causing a child to engage in or be part of child pornography or a live performance including sexual conduct, and increased sentence length for forced labor victims under 18 years of age.
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Introduction

In fighting the war on human trafficking, it is essential that prosecutors be equipped to effectively handle legal proceedings of pimps and traffickers. States have multiple statutes under which they can charge an offender. Due to these statutes, the states have the ability to take many different approaches to dealing with problems of child prostitution, sex trafficking, labor trafficking, and child pornography.

Federal Law also addresses these issues with legislation known as the Trafficking Victims Protection Act of 2000 or the “TVPA,” but that law only applies to federal crimes leaving state law to be applied to state crimes. State law is the most commonly used in prosecution of these crimes, so before beginning an analysis of comparative state statutes, I will introduce some generally consistent cross-state themes from Arizona, Colorado, Washington, and Texas. While the Trafficking Victims Protection Act of 2000 is referenced for general term definitions, the federal law is not being analyzed.

Arizona, Colorado, Washington, and Texas are being analyzed for their different perspectives on trafficking. Arizona takes a broad legislative approach. By having statutes that leave room for very different cases, they seek to ensure that their statutory language does not leave an offenders out of prosecution. Washington takes the exact opposite approach because their laws are very specific. For example, their child pornography laws have varying degrees depending on the type of sexual conduct that is displayed. They are also at the forefront of promoting legislation to combat human trafficking and child pornography. They passed 2 bills in April of 2010 which added legislation for training law enforcement, impounding Johns cars, victim diversion.
programs, and increased penalties and fines for offenders. Texas was used as a point of comparison for Arizona because they are both Mexican Border States and deal with many of the same immigration problems. Colorado is an interesting western state because within the state they have arguably the most conservative and the most liberal counties in the nation. El Paso County is very conservative and home to the organization focus on the family and the Air Force Academy. Boulder County is extremely liberal and home to University of Colorado-Boulder, one of the most liberal universities in the country. Based on the different approaches and mentalities in each of these states, an analysis of their laws will give a broad and diverse picture of approaches to fighting human trafficking and child pornography.

Themes that will be looked at across these 4 states in the areas of sex trafficking, child prostitution, child pornography, and labor trafficking include:

- Differences in sentencing lengths
- The imposition of fines
- Mistake of Age defense
- Car impounding
- Training for law enforcement or prosecutors
- Victim services and Prostitution Prevention and Intervention Accounts
- Elements of “force, fraud, and coercion” present in statutory language
- The mens rea component “knowingly” present in statutory language
- States that outlaw distribution of child pornography, as well as possession
- Statutes criminalizing intentional internet viewing of child pornography
Criminalization of offenders causing a child to engage in or be part of child pornography or a live performance including sexual conduct

Increased sentence length for forced labor victims under 18 years of age

It is necessary to begin with definitions of some relevant terms prior to the analysis section. The bullet points above will be discussed in the conclusion of this analysis.

Definitions

Pimp versus a John

A “pimp” is referred to as the person encouraging, forcing, coercing, enticing, profiting, or otherwise benefiting from another person prostituting themselves.¹ A “john” is the person soliciting or attempting to solicit a prostitute.² Though a john may engage in sexual acts, they do not benefit financially from the exploitation of the victim.

Sex Trafficking versus Child Prostitution

Sex trafficking is best defined by the Trafficking Victims Protection Act of 2000 (“TVPA”) as “a person knowingly recruits, entices, harbors, transports, provides or obtains a person for the purpose of a commercial sex act.”³ Many state sex trafficking laws make this more detailed and add the elements of force, fraud, and coercion. The TVPA adds force, fraud, and coercion as elements for a harsher sentence.⁴ Sex Trafficking can involve people of any age, gender, race, or ethnic background. However, Child Prostitution is used to refer to a person under the age of eighteen engaging in

⁴ Id.
prostitution. A minor engaging in prostitution may have their pimp prosecuted under either a sex trafficking or child prostitution statute, depending on which has harsher sentences and benefits the victim more in the jurisdiction in which the crime took place.

**Labor Trafficking**

A person knowingly recruiting, enticing, harboring, transporting, providing or obtaining a person for the purpose of a forced labor or involuntary servitude engaged in labor trafficking. This may include agricultural work, manufacturing, house cleaning, child care, etc. Any industry can have persons who have been forced to work for little or no pay.

**Coercion**

Coercion generally includes abusing or threatening to abuse the law or the legal system; knowingly destroying, concealing, removing, confiscating, possessing or withholding another person's actual or purported passport or other immigration document, government issued identification document, government record or personal property; Extortion; Causing or threatening to cause financial harm to any person; or Facilitating or controlling another person's access to a controlled substance. It can also be as simple as pressuring, threatening, or intimidating a person into doing something.

**Sex Trafficking and Child Prostitution Statutes**

The following section is a detailed analysis of all the applicable statutes in the area of sex trafficking and child prostitution from Arizona, Colorado, Washington, and Texas.

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5 This is based on my experience working in the Maricopa County Attorney’s Office Sex Crimes Unit.
6 Id.
Arizona

Arizona has four statutes that could be used for state prosecutions of offenders or pimps behind sex trafficking and child prostitution: ARS §13-3212: Child Prostitution, ARS §13-1307: Sex Trafficking, ARS §13-3552: Commercial Sexual Exploitation of a Minor, and ARS §13-3209: Pandering.

The Child Prostitution statute is broken into two parts: liability for pimps and liability for johns. Under the first part of the statute applicable to pimps it is unlawful for “a person to commit child prostitution by knowingly: (1) Causing any minor to engage in prostitution; (2) Using any minor for the purposes of prostitution; (3) Permitting a minor who is under the person’s custody or control to engage in prostitution; (4) Receiving any benefit for or on account of procuring or placing a minor in any place or in the charge or custody of any person for the purpose of prostitution; (5) Receiving any benefit pursuant to an agreement to participate in the proceeds of prostitution of a minor; (6) Financing, managing, supervising, controlling or owning, either alone or in association with others, prostitution activity involving a minor; or? (7) Transporting or financing the transportation of any minor with the intent that the minor engage in prostitution.” The second part of the statute which applies to Johns says, “A person who is at least eighteen yrs old commits child prostitution by knowingly (1) Engaging in prostitution with a minor under fifteen years old; (2) Engaging in prostitution with a minor who the person knows is fifteen, sixteen, seventeen years old (3) Engaging in prostitution with a minor who fifteen, sixteen, seventeen years old.”

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A person who violates this statute is guilty of a class 2 felony.\textsuperscript{11} A class 2 felony for this crime, as outlined in the statute, has a sentence of 7-21 years for a first offense, 14-28 years for a second offense, and 21-35 years for a third or greater offense.\textsuperscript{12} If the victim is under 15 years old, then the offender is subject to an even harsher sentence of 13-27 years because it is considered a dangerous crime against children.\textsuperscript{13} If an offender violates part 3 of the second part of the statute (engaging in prostitution with a minor who is fifteen, sixteen, seventeen years old) then it becomes a class 6 felony, which carries a sentence of 0.5-1.5 year’s imprisonment.\textsuperscript{14}

Next, under the Sex Trafficking statute, “It is unlawful for a person to knowingly traffic another person who is eighteen years of age or older with either of the following: The intent to cause OR the knowledge that the other person will engage in any prostitution or sexually explicit performance by deception, force or coercion (need citation). It is unlawful for a person to traffic another person who is under eighteen years of age with either of the following: The intent to cause or the knowledge that the other person will engage in any prostitution or sexually explicit performance.”\textsuperscript{15}

Violation of this statute is a class 2 felony carrying a first offense sentence of 4-10 years imprisonment.\textsuperscript{16} If the victim is under 15, then it is subject to a harsher sentence because it is a dangerous crime against children as stated under the child prostitution statute above.\textsuperscript{17}

\textsuperscript{11} Id.
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{16} Id.
\textsuperscript{17} Id.
Third, the Commercial Exploitation of a Minor statute includes that “it is unlawful to: knowingly use, employ, persuade, entice, induce or coerce a minor to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct; knowingly use, employ, persuade, entice, induce or coerce a minor to expose the genitals or anus or the areola or nipple of the female breast for financial or commercial gain; permit a minor under the person’s custody or control to engage in or assist others to engage in exploitive exhibition or other sexual conduct for the purpose of producing any visual depiction or live act depicting such conduct; and transport or finance the transportation of any minor through or across this state with the intent that the minor engage in prostitution, exploitive exhibition or other sexual conduct for the purpose of producing a visual depiction or live act depicting such conduct.”

Violation of this statute is a class 2 felony, and if the victim is under 15 then it will carry a harsher sentence consistent with the sentencing in the above sex trafficking statute.

Lastly, the Pandering statute indicates that it is unlawful to “Place any person in the charge or custody of any other person for purposes of prostitution, place any person in a house of prostitution with the intent that such person lead a life of prostitution, compel, induce or encourage any person to reside with that person, or with any other person, for the purpose of prostitution, or compel, induce or encourage any person to lead a life of

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19 Id.
prostitution.” Violation of this statute is a class 5 felony, which has a first offense sentence of .75-2 year’s imprisonment.

If a minor is involved in prostitution, prosecutors in Arizona will nearly always choose to prosecute the offender under the Child Prostitution statute because it carries much harsher penalties then the Sex Trafficking or Commercial Exploitation of a Minor statutes. The Commercial Sexual Exploitation of Minor statute would likely only be used to prosecute people who knowingly use, employ, persuade, entice, induce, or coerce a minor to be part of child pornography or live sexual acts.

If the victim is over eighteen, then prosecutors can choose to charge the offender under the Sex Trafficking or Pandering statute. To prosecute under the Sex Trafficking statute, the offender must have used deception, force, or coercion to procure the victim. If the victim willingly consented to entering a life of prostitution, then prosecutors can still charge the offender with pandering if he or she enticed, persuaded, obtained, or encouraged the victim or financially benefited either directly or indirectly from the prostitution.

Despite this, many offenders will end up with little or no jail time for solely committing pandering because the sentence is so mild. This comes about simply because the pimp “persuaded” a vulnerable person instead of “coerced” them, even though in both of those instances the victim will still keep none of the earnings and be completely dependent on her pimp. Penalties for pandering need to be increased so that victims aren’t categorizing based on what we determine their “worth” to be for their poor decisions with which men to associate.

21 Id.
22 This is based on my experience working in the Maricopa County Attorney’s Office Sex Crimes Unit
Colorado

In Colorado, there are five statutes that pertain to sex trafficking and child prostitution. The four statutes applicable to child prostitution are CRS §18-3-502: Trafficking in Children, CRS §18-7-403: Pandering of a Child, CRS §18-7-405: Pimping of a Child, and §18-7-402: Soliciting for Child Prostitution CRS §18-3-501. Trafficking in Adults is the appropriate statute for adult sex trafficking.

To begin, the Trafficking in Children statute includes that, “A person who sells, exchanges, barters, or leases a child and receives any money or other consideration or thing of value for the child as a result of such transaction, or receives a child as a result of a transaction, is guilty.” 23 Violation of this statute is a class 2 felony and has a sentence of 8-24 years imprisonment with 5 years mandatory probation. 24

Next, under the Pandering of a Child statute, it is unlawful for “any person to do any of the following for money or other thing of value: Induce a person by menacing or criminal intimidation to commit child prostitution, or knowingly arrange or offer to arrange a situation in which a person may practice child prostitution.” 25 Violation of this statute is a class 2 felony if the person induced a child into prostitution by menacing or criminal intimidation, otherwise it is a class 3 felony. 26 A class 2 felony has a sentence of 8-24 years imprisonment with 5 years mandatory probation, and a class 3 felony has a sentence of 4-12 years imprisonment with 5 years mandatory probation. 27

Thirdly, the Pimping a Child statute maintains that “any person who knowingly lives on or is supported or maintained in whole or in part by money or other thing of

24 Id.
26 Id.
27 Id.
value earned, received, procured, or realized by a child through prostitution is guilty.”\textsuperscript{28}

Violation of this statute is a class 3 penalty, which has a sentence of 4-12 years imprisonment with 5 years mandatory probation.\textsuperscript{29}

Lastly, under the Soliciting for Child Prostitution statute, it is illegal “for a person to solicit another for the purpose of prostitution of a child or by a child, to arrange or offer to arrange a meeting of persons for the purpose of prostitution of a child or by a child, or to direct another to a place knowing such direction is for the purpose of prostitution of a child or by a child.”\textsuperscript{30} Violation of this statute is a class 3 penalty as well, which carries a sentence of 4-12 years imprisonment with 5 years mandatory probation.\textsuperscript{31}

\textbf{Defendants may not raise as a defense that he did not know the child’s age or he reasonable believed the child to be 18 years of age or older in regard to the statutes Pandering a Child, Pimping a Child, or Soliciting for Child Prostitution.}\textsuperscript{32}

Trafficking in adults is the statute pertaining to victims over the age of 18. It states that it is unlawful for “a person to sell, exchange, barter, or lease an adult and receive any money or other consideration or thing of value for the adult as a result of such transaction, or receive an adult as a result of a transaction.”\textsuperscript{33} Violation of this statute is a class 3 felony with a sentence of 4-12 years imprisonment with 5 years mandatory probation, unless the adult who has been trafficked is illegally present in the

\textsuperscript{28} Colo. Rev. Stat. § 18-7-405 (Lexis 2011).
\textsuperscript{29} Id.
\textsuperscript{30} Colo. Rev. Stat. § 18-7-402 (Lexis 2011).
\textsuperscript{31} Id.
\textsuperscript{32} Id.
U.S.\textsuperscript{34} If that is the case then it is a class 2 felony with a sentence of 8-24 years imprisonment with 5 years mandatory probation.\textsuperscript{35}

Violation of the Trafficking in Children and the first part of the Pandering of a Child statute are class 2 felonies, while the second part of the Pandering of a Child statute, as well as, the Pimping of a child and Soliciting for Child Prostitution statutes are class 3 felonies. Clearly, a prosecutor’s intention would be to charge the offender with a class 2 felony versus a class 3 felony. “A person who sells, exchanges, barters, or leases a child and receives any money or other consideration or thing of value for the child as a result of such transaction, or receives a child as a result of a transaction,” along with any person who threatens or uses criminal intimidation to put a child into prostitution is guilty of a class 2 felony. But if a person only arranges the child prostitution, lives off the wages of a child prostitute, or solicits child prostitution, then it is only a class 3 felony. As if living off the wages without using criminal intimidation is so commendable that it deserves a lesser sentence.

If an offender traffics an adult then it is only a class 3 felony. Typically, states view child trafficking as more severe than adult trafficking, however, humanity knows no age, and the law should back this up through harsher sentences for pimps and traffickers. Colorado needs to tighten up its loopholes and send a message with its sentencing that if a person traffics, pimps, or solicits a child involved in prostitution then it is a class 2 felony. The offender’s mind set or how he treats his child victim should no longer be a loophole in the law allowing him or her to receive a lesser sentence.

\textsuperscript{34} Id.
\textsuperscript{35} Id.
Washington

There are six statutes in Washington that can be used to prosecute either pimps or johns: RCW §9A.88.070 and §9A.88.080 Promoting Prostitution in the first and second degrees, RCW §9.68A.100 Commercial Sexual Abuse of a Minor, RCW §9.68A.101 Promoting Commercial Sexual Abuse of a Minor, and RCW §9A.40.100 Trafficking in the first and second degrees.

First, under the Promoting Prostitution in the first degree statute, it is illegal to “knowingly advance prostitution by compelling a person by threat or force to engage in prostitution or profit from prostitution which results from such threat or force.”\(^{36}\) According to the Washington State Legislature, “a person "advances prostitution" if, acting other than as a prostitute or as a customer thereof, he causes or aids a person to commit or engage in prostitution, procures or solicits customers for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid, or facilitate an act or enterprise of prostitution.”\(^{37}\) The language of the definition of “advancing prostitution” makes it clear that this statute applies only to pimps or traffickers, not to johns. \(^{38}\) Violation of this statute is a class B felony and has a sentence of up to 10 years imprisonment or a fine of up to $20,000 dollars, or both.\(^{39}\)

For Promoting Prostitution in the second degree, a person is guilty if they knowingly advance prostitution or profit from prostitution.\(^{39}\) The difference between Promoting Prostitution in the first and second degrees is that to violate the first degree

\(^{37}\) Id.
\(^{38}\) Id.
there must be compulsion by threat or force.\textsuperscript{40} Violation of the second degree is a class C felony with a maximum sentence of 5 years or a fine of $10,000 dollars, or both.\textsuperscript{41}

\textbf{Furthermore}, the Commercial Sexual Abuse of a Minor statute maintains that “A person is guilty if: He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her; He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.”\textsuperscript{42} Violation of this statute is a class B felony with a sentence of up to 10 years imprisonment or a fine of up to $20,000 dollars, or both.\textsuperscript{43} In addition, the arresting officer may impound the person's vehicle if it was used in the commission of the crime and the person arrested is the owner of the car or it is a rental car.\textsuperscript{44} If a person is found “not guilty” at trial, they are entitled to a full refund to towing and the fine they paid.\textsuperscript{45} The fine is $2,500 dollars plus the towing expenses. All fines are deposited into a prostitution prevention and intervention account.\textsuperscript{46} This statute applies \textit{exclusively} to Johns.

Next, under the Promoting Commercial Sexual Abuse of a Minor statute, it is unlawful to “knowingly advance commercial sexual abuse of a minor or profit from a minor engaged in sexual conduct.”\textsuperscript{47} Violation of this statute is a class A felony with a

\begin{enumerate}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\item \textit{Id.}
\end{enumerate}
maximum sentence of life in prison or a fine of up to $50,000 dollars, or both.\footnote{Id.} This statute applies to traffickers and pimps.

A person cannot be charged with both Commercial Sexual Abuse of a Minor and Promoting Commercial Sexual Abuse of a Minor. The arresting officer may again impound the offender’s car and charge the offender a $2,500 dollar fine plus towing expenses, to be deposited into a prostitution prevention and intervention account.\footnote{Id.} It is not a defense that the defendant did not know the victim's age.\footnote{Id.} However, it is a defense that at the time of the offense, the defendant made a reasonable bona fide attempt to ascertain the true age by requiring product of a driver's license, birth certificate, etc., and did not rely solely on oral allegations.\footnote{Id.} The standard to be met is by a preponderance of the evidence.\footnote{Id.}

Lastly, a person is guilty of Trafficking in the first degree when a person “recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor or involuntary servitude, or that person benefits financially or receives anything of value from participation in the venture and it included kidnapping or attempted kidnapping, a sexual motivation, or resulted in a death.”\footnote{Wash. Rev. Code § 9A.40.100 (2011).} Violation of this statute is a “class A” felony and has a maximum sentence of life in prison or a fine of up to $50,000 dollars, or both.\footnote{Id.}

A person is guilty of Trafficking in the second degree when a person “recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or

\footnotesize{\begin{itemize}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item \footnote{Id.}
\item Id.
\end{itemize}}
fraud, or coercion will be used to cause the person to engage in forced labor or involuntary servitude, or that person benefits financially or receives anything of value from participation in the venture.”\textsuperscript{55} Violation of this statute is also a “class A” felony.\textsuperscript{56}

It is unclear why the Washington State Legislature broke the Trafficking statute into two degrees since they both carry the same sentence. This is another example of redundancy in these statutes. The Legislature should make the Trafficking in the second degree it’s entire Trafficking statute and keep it a “class A” felony regardless of whether kidnapping, sexual motivations, or death occurred. Trafficking of any type for any reason or motivation should be treated equally as harsh under the law in every state.

If a person is over 18 years old when they start prostituting, then a prosecutor could use Promoting Prostitution in the first or second degree or the Trafficking statute to prosecute the pimp or trafficker. Charging an offender with a “class A” felony versus a “class B” or “C” felony will depend on the victim’s mindset. The prosecutor will need to argue that there was force, fraud, and coercion involved, which is the language of the Promoting Prostitution in the first degree statute. That will automatically make it, at the very least, a “class B” felony once those elements are established. If the prosecutor can establish that, then it seems a logical connection that the victim was engaged in involuntary servitude, which is the language of the Trafficking statute, since they were either being forced, coerced, or deceived into it. Once that connection is made, it would become a “class A” felony. If the victim was willingly engaging in prostitution, then the pimp can only be charged under Promoting Prostitution in the second degree, and therefore only charged with a “class C” felony.

\textsuperscript{55} Id. \\
\textsuperscript{56} Id.
If a minor is involved in prostitution then the pimp or trafficker will be charged under the Promoting Commercial Sexual Abuse of a Minor statute, which is automatically a “class A” felony. If a person buys sex from a minor, they are charged under the Commercial Sexual Abuse of a Minor statute which is a “class B” felony. In April of 2010, Washington passed new legislation under SB 6476 and HB 2424 which tightened up loopholes in the law and increased fines and sentences for offenders. In addition, SB 6476 started a Prostitution Prevention and Intervention Account to fund programs offering mental health/substance abuse counseling, parenting skills, housing relief, education, and vocational training that help victims of child prostitution. It identifies a minor in the charge of commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor as a victim of a criminal act for the purpose of the right to benefits (money) even if the person is also charged with prostitution. It outlines that a juvenile who is picked up for their first offense of prostitution or prostitution loitering shall be diverted (into a social services rehabilitation program or safe house). If it is not the first offense, it still shall be diverted if the county in which the offense is alleged to have been committed has a comprehensive program that provides safe housing, on site case management, mental health services, education and employment training delivered on site, and referrals to off site specialized services. This keeps victims of child prostitution from being placed in a jail, a juvenile detention facility, or sent back to a pimp.

59 Id.
60 Id.
In Texas, there are 2 statutes pertaining to this area: Sec. §20A.02: Trafficking of Persons and Sec. §43.05: Compelling Prostitution. Under the Trafficking of Persons statute it is illegal to “knowingly traffic another person with the intent or knowledge that the trafficked person will engage in forced labor or services, or benefit from participating in a venture that involves an activity described by the first sentence, including receiving labor or services that the person knows are forced labor or services.”\textsuperscript{61} Violation of this statute is a 2\textsuperscript{nd} degree felony with a sentence of 2-20 years and a fine of up to $10,000 dollars.\textsuperscript{62} However, if the victim is under eighteen years of age \textit{regardless of whether the actor knows the age of the child at the time the actor commits the offense}, or the commission of the offense results in the death of the person who is trafficked, then it is a 1st degree felony with a sentence of 5-99 years imprisonment.\textsuperscript{63} Also, an offender can be charged with this statute in conjunction with any other crime.\textsuperscript{64}

The Compelling Prostitution statute outlines that it is unlawful to “knowingly cause another by force, threat, or fraud to commit prostitution; or cause by any means a child younger than eighteen years old to commit prostitution, regardless of whether the actor knows the age of the child at the time the actor commits the offense.”\textsuperscript{65} Violation of this statute is a 2\textsuperscript{nd} degree felony with a sentence of 2-20 years imprisonment and a fine of up to $10,000 dollars.\textsuperscript{66}

\textsuperscript{62} Id.
\textsuperscript{63} Id.
\textsuperscript{64} Id.
\textsuperscript{65} Tex. Penal Code Ann. § 43.05 (2011).
\textsuperscript{66} Id.
Texas has the laws in place to protect children less than eighteen years of age without allowing for the defense of mistake of age. Unfortunately, their sentence minimums and maximums constitute such a wide range that it leaves a large amount of discretion up to the judge. A trafficker or pimp may only get 2 years in prison if the judge, in his or her discretion, decides this, and even if the victim is a minor the offender could receive the minimum of 5 years imprisonment. With such a large loophole in the law between 5 years and 99 years for a conviction of a 1st degree felony, it leaves much room for criminals to manipulate the law. While the statutes holding a sentence of a 1st degree or 2nd degree felony sound good to the layman, it appears the sentencing minimum leaves the statute without any teeth.

The Texas legislature has introduced a new bill, SB 24, which as of April 4, 2011 had passed through both the State House of Representatives and the State Senate. This bill is now on the Governor’s desk and is likely to pass as law soon since the Governor is a supporter of fighting human trafficking. SB 24 amends Sec. 20A.01. Definitions and Sec. 20A.02. Trafficking of Persons.

Sec. 20A.01. Definitions, will be changed to read “forced labor or services means labor or services, that are performed or provided by another person and obtained through an actor’s use of force, fraud, and coercion.”67 This removes the qualifying list that is currently in the definition section. This section says that “forced labor or services means forced labor or services that cause or threaten to cause bodily injury, restraining or threatening to restrain a person, knowingly destroying, concealing, or removing from that person government records, identifying information, or personal property, threatening to abuse the law, threatening to report that person to immigration officials, or exerting

financial control over the person.” Currently, to fall under forced labor or services, the crime must meet one of the items from that list. This amendment removes the list and says that if force, fraud, or coercion are used in any capacity then it is forced labor or services. Not only will this make prosecution much easier, but it will protect more forced labor victims whose pattern of abuse does not explicitly fall within that last.

Sec. 20A.02. Trafficking of Persons, will be amended to maintain that “a person is guilty if the person knowingly traffics another person with the intent that the trafficking person engage in forced labor or services, receives a benefit from participating in a venture that involves an activity described by the first sentence, including receiving labor or services that the person knows are forced labor or services, or traffics another person and through force, fraud, or coercion, causes the trafficked person to engage in conduct such as Prostitution, Promotion of Prostitution, Aggravated Promotion of Prostitution, or Compelling Prostitution, receives a benefit from participating in those ventures or engages in sexual conduct with a person trafficked, traffics a child with the intent that the trafficked child engage in forced labor or services, receives a benefit from participating in a venture that involves an activity that uses a child’s forced labor or services, traffics a child and by any means causes the trafficked child to engage in, or become the victim of, conduct such as Continuous Sexual Abuse of a Child, Indecency with a Child, Sexual Assault, Aggravated Sexual Assault, Prostitution, Promotion of Prostitution, Aggravated Promotion of Prostitution, Compelling Prostitution, Sexual Performance by a Child, Employment Harmful to Child, or Possession or Promotion of Child Pornography, or receives a benefit from participating in a venture that involves one of those activities or

68 Id.
engages in sexual conduct with a child trafficked for one of the previously listed purposes."  

It is clear that Sec. 20A.02 has many additions to its statutory language. This new amendment not only removes the mens rea component of knowledge that you are committing this crime, but it explicitly prohibits trafficking a person for sexual exploitation or forced labor whether the victim is an adult or child. This statute will also penalize employers from benefiting from forced labor and Johns from receiving sex acts from a victim.

Sec. 20A.02 goes on to increase the penalty for certain crimes under this section to a first degree felony and removes the following language from the statute: “this constitutes an offense under this section and the person who is trafficking is a child younger than 18 yrs of age.”  

Now that portion will read, “the conduct constitutes an offense under this section, regardless of whether the actor knows the age of the child at the time the actor commits the offense.” This takes out any defense argument about lack of knowledge that the victim was under 18 years of age.

Trafficking a child, receiving a benefit from being engaged in a venture that benefits from forced labor or sex services of a trafficked child or engaging in sexual conduct with a trafficked child would be increased to a first degree felony in Texas, with a sentence of 5-99 years imprisonment.

69 Id.
70 Id.
71 Id.
72 Id.
SB 24 includes a section allowing for a victim, parent or guardian or the victim, or the prosecuting attorney acting on behalf of the victim to file an order of protection against an offender.\(^{73}\)

**Child Pornography Statutes**

**Arizona**

In Arizona, the only statute pertaining to child pornography is ARS §13-3553:

Sexual Exploitation of a Minor. The statute maintains that it is illegal to “knowingly record, film, photograph, develop or duplicate any visual depiction with a minor engaged in exploitive exhibition or sexual conduct; or Distribute, transport, exhibit, receive, sell, purchase, electronically transmit, possess or exchange any visual depiction of exploitive exhibition or sexual conduct.”\(^{74}\) Violation of this statute is a class 2 felony with a sentence of 4-10 years imprisonment unless the minor is under 15 years old, then the offender is subject to a harsher sentence of 13-27 years presumably because it is considered a dangerous crime against children.\(^{75}\)

Each picture that violates this statute is constituted as a separate offense.\(^{76}\) Therefore, if an offender has 15 photographs on a computer, CD, or flash drive that violates the statute then he or she would be charged with 15 counts of Sexual Exploitation of a Minor. This has broad statutory language and severe sentencing, which puts Arizona at the forefront of child pornography laws and makes them an ideal model for other states.


\(^{74}\) Id.

\(^{75}\) Id.

\(^{76}\) Id.
Colorado

Colorado’s statute pertaining to child prostitution is CRS §18-6-403, Sexual Exploitation of a Child. The statutory language establishes that “a person commits sexual exploitation of a child if a person knowingly: (a) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the making of any sexually exploitative material; or (b) Prepares, arranges for, publishes, including but not limited to publishing through digital or electronic means, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, or distributes, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or (b.5) Possesses or controls any sexually exploitative material for any purpose; or (c) Possesses with the intent to deal in, sell, or distribute, including but not limited to distributing through digital or electronic means, any sexually exploitative material; or (d) Causes, induces, entices, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing a performance.”

Violation of this statute is a class 3 felony which has a sentence of 4-12 years imprisonment with a mandatory 5 year probation period. Violation of (b.5), which is only possession of child pornography, is a class 6 felony with a sentence of 1-1.5 years with 1 year mandatory probation. If it is a second or subsequent offense; or the possession is of a video, video tape, or motion picture or more than twenty different items qualifying as sexually exploitative material then it is a class 4 felony with a sentence of 2-6 years and 3 years mandatory probation.

78 Id.
79 Id.
80 Id.
The problem with (b.5) of the statute, which is simple child pornography possession, is that a sentence of 1-1.5 years imprisonment will typically get pleaded down to less than a year jail time or worse, only probation time, to avoid going to trial.

**Washington**


Under the Sexual Exploitation of a Minor Statute, a person is guilty if the person “is part of the minor engaging in sexually explicit conduct knowing that such conduct will be photographed or part of a live performance.”\(^81\) Anyone who violates this statute is guilty of a class B felony which holds a sentence of a maximum 10 years imprisonment or a $20,000 dollar fine, or both.\(^82\)

Dealing in Depictions in the first degree establishes that a person is guilty if a person “knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, sells printed or visual matter that depicts a minor engaged in an act of sexually explicit conduct, or possesses with intent to do those things. Violations in the first degree include sexually explicit conduct of 1) sexual intercourse

\(^{82}\) Id.
(human-human or with animals), 2) penetration of vagina or rectum by any object, 3) masturbation, 4) sadomasochistic abuse, or 5) Defecation or urination for the purpose of sexual stimulation of the viewer.” Violation of this statute is a class B felony which holds a sentence of a maximum 10 years imprisonment or up to a $20,000 dollar fine, or both. Each depiction or image of visual or printed matter constitutes a separate chargeable offense.

Dealing in Depictions in the second degree is the same as Dealing in Depictions in the first degree except that the sexually explicit conduct includes 1) depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for purposes of sexual stimulation of the viewer or 2) touching of the person's clothed or unclothed genitals, pubic area, buttocks, or breast area for purpose of sexual stimulation of the viewer. The minor does not need to know that he or she is participating in the described conduct. Violation of this statute is a class C felony with a maximum sentence of 5 years imprisonment or a fine of $10,000 dollars, or both. Each depiction or image of visual or printed matter constitutes a separate chargeable offense.

The Sending, Bringing into the State Depictions in the first degree statute maintains that a person is guilty if he or she “knowingly sends or causes to be sent, brings or causes to be brought (can be the third party initiator). Sexually explicit conduct must include: 1) sexual intercourse (human-human or with animals), 2) penetration of vagina

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84 Id.
85 Id.
86 Id.
87 Id.
88 Id.
89 Id.
or rectum by any object, 3) masturbation, 4) sadomasochistic abuse, 5) Defecation or urination for the purpose of sexual stimulation of the viewer.”\(^9^0\) Violation of this statute is a class B felony which holds a sentence of a maximum 10 years imprisonment or up to a $20,000 dollar fine, or both.\(^9^1\) Each depiction or image of visual or printed matter constitutes a separate chargeable offense.\(^9^2\)

**Second degree** Sending, Bringing into the State Depictions has the same statutory language as the first degree except that it “includes sexually explicit conduct of 1) depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for purposes of sexual stimulation of the viewer, or 2) touching of the person's clothed or unclothed genitals, pubic area, buttocks, or breast area for purpose of sexual stimulation of the viewer. The minor does not need to know that he or she is participating in the described conduct.”\(^9^3\) Violation of this statute is a class C felony with a maximum sentence of 5 years imprisonment or a fine of $10,000 dollars, or both.\(^9^4\) Each depiction or image of visual or printed matter constitutes a separate chargeable offense.\(^9^5\)

Under the Possession of Depiction in the first degree statute, it is unlawful for a person to “knowingly possess a visual or printed matter depiction a minor engaged in sexually explicit conduct including: 1) sexual intercourse (human-human or with animals), 2) penetration of vagina or rectum by any object, 3) masturbation, 4) sadomasochistic abuse, 5) Defecation or urination for the purpose of sexual stimulation

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\(^9^1\) Id.
\(^9^2\) Id.
\(^9^3\) Id.
\(^9^4\) Id.
\(^9^5\) Id.
of the viewer.” Violation of this statute is a class B felony which holds a sentence of a maximum 10 years imprisonment or up to a $20,000 dollar fine, or both. Each depiction or image of visual or printed matter constitutes a separate chargeable offense.

The Possession of Depiction in the second degree has the same statutory language as the first degree except that it “includes sexually explicit conduct of 1) depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for purposes of sexual stimulation of the viewer, or 2) touching of the person's clothed or unclothed genitals, pubic area, buttocks, or breast area for purpose of sexual stimulation of the viewer. The minor does not need to know that he or she is participating in the described conduct.” Violation of this statute is a class C felony with a maximum sentence of 5 years imprisonment or a fine of $10,000 dollars, or both. Each depiction or image of visual or printed matter constitutes a separate chargeable offense.

Washington has very detailed legislation on child pornography that was recently amended in April of 2010 through HB 2424. The legislation has harsh penalties for offenders including that every photograph is a separate violation and count. For violations in the first degree, an offender is looking at up to 10 years in prison and for violations in the second degree an offender is looking at up to 5 years in prison. However, since there are no minimum sentence requirements, an offender could reasonably be sentenced to probation and no jail time if the prosecutor so chose.

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97 Id.
98 Id.
99 Id.
100 Id.
101 Id.
Washington should institute a sentence minimum in order to ensure that it will be more difficult for offenders to be pleaded down to probation or sentenced by a jury to little or no jail time per offense.

**Texas**

Texas has one statute under this section: Sec. § 43.26 Possession or Promotion of Child Pornography. That statute maintains that it is unlawful to “knowingly or intentionally possess visual material that visually depicts a child younger than eighteen years of age at the time the image of the child was made who is engaging in sexual conduct; and the person knows that the material depicts the child as described in the previous sentence. A person who possesses visual material that contains six or more identical visual depictions of a child is presumed to possess the material with the intent to promote the material.” Violation of this statute is a 3rd degree felony with a sentence of 2-10 years imprisonment and a fine of up to $10,000 dollars. If the defendant possessed 6 or more images than it is a 2nd degree felony with a sentence of 2-20 years imprisonment and a fine of up to $10,000 dollars.

This statute is well written because it encompasses both possession and promotion when the offender possesses 6 or more images. In spite of this, this Texas statute sounds like it is being harsh on offenders by imposing a 2nd or 3rd degree felony, but both a 2nd degree felony conviction and a 3rd degree felony conviction carry the same sentence minimum of 2 years. So if an offender possesses 6 or more images, he may still only be sentenced to 2 years imprisonment, which is how many years an offender who possessed only one photograph may be sentenced to. This leaves too much discretion to the judge.

\[\text{Comment [ESW1]: In general you seem to disfavor judicial discretion, which a lot of people like, it may be useful to note that this wide possible range leads to inconsistent sentencing.}\]

103 *Id.*
104 *Id.*
Labor Trafficking

Arizona

Arizona has 2 statutes pertaining to labor trafficking: ARS §13-1308: Trafficking of Persons for Forced Labor or Services and ARS §13-1306: Unlawfully Obtaining Labor or Services. The Trafficking of Persons for Forced Labor or Services statute maintains that it is illegal for a person to “knowingly traffic another person with the intent to or knowledge that the other person will be subject to forced labor or services. It is also illegal to knowingly benefit financially or receive anything of value, from participation in a venture that has engaged in an act in violation of sex trafficking or unlawfully obtaining labor or services.” Violation of this statute is a class 2 felony carrying a first offense sentence of 4-10 years imprisonment.

Under the Unlawfully Obtaining Labor or Services statute, it is unlawful to “knowingly obtain the labor or services of another by: causing or threatening to cause bodily injury to that person or another person, restraining or threatening to restrain that person or another person without lawful authority and against that persons' will, withholding that person's governmental records, identifying info or other personal property.” Violation of this statute is a class 4 felony with a sentence of 1.5-3 years imprisonment.

Since the language of the Trafficking of Persons for Forced Labor or Services statute indicates that part of the violation comes from benefiting financially or receiving anything of value from participation in a venture that has engaged in an act in violation of

106 Id.
108 Id.
sex trafficking or unlawfully obtaining labor or services, this statute will be charged in conjunction with the Unlawfully Obtaining Labor or Services statute or any of the sex trafficking or child prostitution statutes. It is unusual that the Unlawfully Obtaining Labor or Services statute would be charged alone since it is unlikely that a person would threaten, restrain, or withhold documentation of another person in order to force them into labor without financially benefiting in any way from the act, which is a violation of the Trafficking of Persons statute as well. Based on this analysis, it is unclear why the statutes remain separate and are not simply combined under the Trafficking of Persons statute which would carry a class 2 felony for all violations.

**Colorado**

Colorado has 3 statutes pertaining to violations of labor trafficking: CRS § 18-3-502 Trafficking in Children, CRS § 18-3-501. Trafficking in Adults, and CRS § 18-3-503 Coercion of Involuntary Servitude. The Trafficking in Child and Trafficking in Adults statutes were analyzed under Colorado’s sex trafficking and child prostitution section, but they also apply to cases of forced labor.

Again, the Trafficking in Children statute establishes that “A person who sells, exchanges, barters, or leases a child and receives any money or other consideration or thing of value for the child as a result of such transaction, or receives a child as a result of a transaction, is guilty.”\(^{109}\) Violation of this statute is a class 2 felony and has a sentence of 8-24 years imprisonment with 5 years mandatory probation.\(^{110}\)

Under the Trafficking in Adults statute, it is unlawful for “a person to sell, exchange, barter, or lease an adult and receive any money or other consideration or thing


\(^{110}\) Id.
of value for the adult as a result of such transaction, or receive an adult as a result of a transaction.” Violation of this statute is a class 3 felony with a sentence of 4-12 years imprisonment with 5 years mandatory probation, unless the adult who has been trafficked is illegally present in the U.S. If that is the case then it is a class 2 felony with a sentence of 8-24 years imprisonment with 5 years mandatory probation.

The Coercion of Involuntary Servitude statute maintains that it is illegal for “a person to coerce another person to perform labor or services by: Withholding or threatening to destroy documents relating to a person's immigration status; Threatening to notify law enforcement officials that a person is present in the United States in violation of federal immigration laws; Threatening serious harm or physical restraint against that person or another person; Means of a scheme, plan, or pattern intended to cause the person to believe that, if the person does not perform the labor or services, he or she or another person would suffer serious harm or physical restraint; or Abusing or threatening abuse of law or the legal process. A person may commit coercion of involuntary servitude regardless of whether the person provides compensation to the person who is coerced.” Violation of this statute is a class 6 felony with a sentence of 1-1.5 year’s imprisonment with a mandatory probation period of 1 year.

If a person violated the Coercion of Involuntary Servitude statute, it is unclear whether or not the offender would also be violating the Trafficking an Adult or Child statute. An offender could reasonably benefit financially or otherwise by violating the Coercion of Involuntary Servitude statute without selling, exchanging, bartering, or

112 Id.
113 Id.
114 Id.
leasing that person. However, even if that were true, a violator of the Coercion of Involuntary Servitude statute would likely be violating another statute such as kidnapping or unlawful restraint in order to keep the victim there against their will. If a prosecutor found that they were only violating the Coercion of Involuntary Servitude Statute though, he or she would be getting basically no time in prison. People caught with drugs receive more prison time than that. The state of Colorado should have harsher penalties for a person holding a victim against their will, threatening them, withholding their documentation, and extorting a vulnerable person into forced labor for their personal profit.

**Washington**

Washington has 2 statutes pertaining to labor trafficking, which also fall under the sex trafficking and child prostitution section: RCW §9A.40.100 Trafficking in the first and second degrees.

A person is guilty of Trafficking in the first degree when a person “recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor or involuntary servitude, or that person benefits financially or receives anything of value from participation in the venture and it included kidnapping or attempted kidnapping, a sexual motivation, or resulted in a death.” Violation of this statute is a class A felony and has a maximum sentence of life in prison or a fine of up to $50,000 dollars, or both.\footnote{Wash. Rev. Code § 9A.40.100 (2011).} \footnote{Id.}

\footnote{Wash. Rev. Code § 9A.40.100 (2011).}
\footnote{Id.}
A person is guilty of Trafficking in the second degree when a person “recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion will be used to cause the person to engage in forced labor or involuntary servitude, or that person benefits financially or receives anything of value from participation in the venture.”\textsuperscript{118} Violation of this statute is also a class A felony.\textsuperscript{119}

As stated in the Washington section of the sex trafficking and child prostitution analysis, it is unclear why the Legislature broke it into 2 statutes and should combine it into one. However, Washington has the trafficking statute that carries one of the harshest sentences in the United States.

\textbf{Texas}

The only statute under this section in Texas is Sec. §\textsuperscript{20A.02} Trafficking of Persons, which can also be applicable to sex trafficking or child prostitution crimes.

Under the Trafficking of Persons statute, it is illegal to “knowingly traffic another person with the intent or knowledge that the trafficked person will engage in forced labor or services, or benefit from participating in a venture that involves an activity described by the first sentence, including receiving labor or services that the person knows are forced labor or services.”\textsuperscript{120} Violation of this statute is a 2\textsuperscript{nd} degree felony with a sentence of 2-20 years and a fine of up to $10,000 dollars.\textsuperscript{121} However, if the victim is under eighteen years of age regardless of whether the actor knows the age of the child at the time the actor commits the offense, or the commission of the offense results in the death of the person who is trafficked, then it is a 1st degree felony with a sentence of 5- 99

\begin{footnotes}
\item[118] Id.
\item[119] Id.
\item[121] Id.
\end{footnotes}
years imprisonment. Also, an offender can be charged with this statute in conjunction with any other crime.

This statute has something that the other 3 states statutes don’t: a separate penalty and acknowledgment for forced labor victims under eighteen years old. Of course, this can pertain to victims of child prostitution as well, but the language also allows for it to apply to forced labor victims. This is important because many victims, especially migrants, may come to America and get trapped in a forced labor situation in manufacturing or agriculture at a young age. This statute allows for these victims to receive the same justice and the offenders to receive the same punishment as violators of child prostitution.

Conclusion

Child Prostitution and Sex Trafficking

Sentencing across these four states differs for the crimes of child prostitution and sex trafficking. In Arizona, violations of this section are all class 2 felonies except for the Pandering statute, which has a sentence of .75-2 years imprisonment. The Child Prostitution statute carries a sentence of 7-21 years imprisonment and 4-12 years imprisonment for violations of the Sex Trafficking and the Commercial Exploitation of a Minor statutes.

Colorado has sentences of 8-24 years for violations of the trafficking in children statute, and the possibility for 8-24 for Pandering a Child and Trafficking in Adults statutes. Otherwise, the sentence is 4-12 years imprisonment for basic violations of
Pandering a Child, Trafficking in Adults, Pimping of a Child, and Solicitation for Child Prostitution statutes.

The state of Washington categorizes all crimes in this section are either class A or class B felony, except for Promoting Prostitution in the second degree which is a class C felony with a maximum sentence of 5 years. It is a class A felony for Promoting Commercial Sexual Abuse of a Minor and Trafficking in the First and Second degree, which carries a maximum sentence of life imprisonment. It is a class B felony for Promoting Prostitution in first degree and Sexual Exploitation of a Minor, which has a maximum sentence of 10 years imprisonment.

In regards to Texas, Trafficking of Persons has a 2-20 year sentence unless the victim is less than 18 years of age or results in death of a trafficked person. The sentence then increases to 5-99 years imprisonment. Child Prostitution carries a sentence of 2-20 years imprisonment.

Only Washington and Texas include mandatory fines for offenders in addition to imprisonment.

Mistake of Age has become a common defense to child prostitution crimes. This means that the Defendant argues that he or she was unaware that the victim was under the age of 18 at the time of the crime. However, Washington, Colorado, and Texas have explicit statutory language prohibiting this defense from being made in prosecution of these crimes. Arizona does not have explicit statutory language outlawing this defense.

“Force, fraud, and coercion” are elements in human trafficking statutes that the judicial system uses to indicate that victims over the age of 18 were not consenting to prostitution. These elements increase the seriousness of the crime and the sentence that
follows. Statutes that include force, fraud, and coercion as elements of the crime of human trafficking, force prosecutors to prove that traffickers used one of these 3 elements was present in order to charge a trafficker under that statute. Without these 3 elements, it is much easier for prosecutors to charge traffickers because it lessens the burden on the prosecution. Washington, Texas, and Arizona all have statutes under this section including the elements of force, fraud, and coercion. The statutes that include this language are: Washington’s Promoting Prostitution in the first degree and Trafficking in the first degree, Texas’ Trafficking of Persons and Child Prostitution, and Arizona’s Sex Trafficking statute. Arizona’s Pandering statute only includes the elements to induce or encourage. Colorado’s Pandering of Children statute has the elements of using menacing or criminal intimidation, which may be similar to force, fraud, and coercion in certain situations.

The majority of statutes include mens rea components that force a prosecutor to prove an offender’s state of mind at trial. The mens rea component “knowingly” is found in many statutes addressing serious crimes. A prosecutor would have to prove that a trafficker or pimp “knowingly” committed the charged crime. The statutes including the term “knowingly” are: all of Arizona’s statutes in this section accept the Pandering statute, Colorado’s Pimping of a Child statute and the second part of the Pandering a Child statute, all of Washington’s statutes in this section, and all of Texas’ statutes in this section. If SB 24 passes in Texas, then their Trafficking in Persons statute will not have the knowingly component any longer.

Washington is the only state that has statutes which allow for police to impound the car of a person charged with Commercial Sexual Abuse of a Minor or Promoting
Commercial Sexual Abuse of a Minor. This statute allows for law enforcement to impound the car of either the pimp or the john. Washington is also the only state that has statutes establishing new victim services, which now has the presumption that a juvenile arrested for prostitution or prostitution loitering meets the criteria for certification as a victim of a severe form of trafficking in persons from the U.S. Code and victim of commercial sex abuse of a minor. Washington also went a step further and established a Prostitution Prevention and Intervention Account. This mandates that fines collected from persons charged under this section will go into the Prostitution Prevention and Intervention Account, in order to fund victim services for sexually exploited children.

None of these states have statutes mandating training for law enforcement or prosecutors. This may become problematic if due to lack of training, law enforcement and prosecutors do not know how to approach these cases. One example of a pitfall in lack of training can be that prosecutors and law enforcement are often not trained on how to forensically interview a victim in order to help them identify specific instances of prostitution, assault, etc. in order to do away with script memory. Script memory is when victims remember abuse in general terms, such as saying “I was abused everyday.” However, in order to prosecute an offender for specific charges, a victim needs to remember precise and specific instances, like “This person hit me on the head on this specific day or time.” This can become a difficulty during prosecution and lead to a prosecutor filing inaccurate or incomplete charges against a pimp or trafficker.

Child Pornography

Arizona’s Sexual Exploitation of a Minor statute has a sentence of 4-10 years imprisonment unless the victim is less than 15 years old, then the sentence increases to 13-27 years imprisonment.

Colorado’s Sexual Exploitation of a Child statute carries a sentence of 4-12 years, unless the offender has only possessed the pornographic material. Then the sentence is mitigated to 1-1.5 years imprisonment.

Texas’ Possession or Promotion of Child Pornography has a sentence of 2-10 years imprisonment, unless the offender is guilty of promoting child pornography. Then the sentence increases to 2-20 years imprisonment.

Washington differs from the previous states because it has many statutes to address the issue of child pornography. All violations of Washington child pornography statutes in the first degree and violations of the Sexual Exploitation of a Minor statute have a maximum sentence of 10 years imprisonment. All violations in the second degree have a maximum sentence of 5 years imprisonment.

Only Washington and Texas include mandatory fines for offenders charged with violating a child pornography statute.

Texas, Washington, Colorado, and Arizona all include the mens rea element of “knowingly” in their possession of child pornography statutes. Therefore, an offender would need to knowingly possess the child pornography. An accidental pop up that was immediately closed would not count as violating these laws.

Texas, Washington, Colorado, and Arizona all criminalize distribution of child pornography as well as mere possession. Colorado is the only state that makes proving
the intent to distribute easy. Under Colorado’s child pornography, if a person possesses 6 or more photographs, it is assumed that he or she had the intent to promote the material.

Intentionally viewing of child pornography over the internet is criminalized in a separate statute only by Washington. Causing a child to engage in or be part of Child Pornography or a live performance is criminalized by Colorado, Washington, and Arizona, but not by Texas.

**Labor Trafficking**

In Arizona, the Trafficking of Persons for Forced Labor or Servitude has a sentence of 4-10 years imprisonment, while violation of the Unlawfully Obtaining Labor or Services statute only has a sentence of 1.5-3 years imprisonment. Colorado has sentences of 8-24 years for trafficking children and also for trafficking adults, if the victim is illegally present in United States. Otherwise, violations of Trafficking in Adults has a sentence of 4-12 years imprisonment. The Coercion of Involuntary Servitude statute carries a sentence of 1-1.5 years imprisonment. Washington enforces a maximum sentence of life imprisonment for human trafficking. Texas’s statute has a sentence of 2-20 years imprisonment for human trafficking, unless the victim was less than 18 years of age or killed during the offense. Then the sentence length increases to 5-99 years imprisonment.

While Arizona and Texas are both on the Mexican Border, Arizona has very specific laws for dealing with forced labor without explicitly recognizing it as human trafficking. However, Texas not only has an all encompassing human trafficking statute that recognizes both labor and sex trafficking offenses under it, but it also seeks for increased penalties for victims under 18 years of age for labor trafficking, while Arizona
does not. Arizona needs a statute to explicitly recognize victims of forced labor as victims of human trafficking. They should also adopt Texas’ language for increased penalties for labor traffickers who exploit victims under the age of 18.

The elements of force, fraud, and coercion are present in the human trafficking statutes of Washington and Colorado. Arizona’s statute includes threats as an element, but does not explicitly use the language “force, fraud or coercion.” If SB 24 passes in Texas, then this language will be included in their human trafficking statute.

Increased sentencing specific for victims of labor trafficking that are less than 18 years of age at the time of the offense only appears in Texas’ human trafficking statute. It has been made clear that states use different language and sentence lengths to charge offenders. A pitfall of the lack of consistent statutory language and sentence lengths across state lines is that offenders flee to other jurisdictions with less harsh sentences. For example, pimps or traffickers who experience harsh penalties for committing crimes in Phoenix will travel to Los Angeles or elsewhere to continue committing crimes to escape Arizona’s harsh penalties and take advantage of other states more lenient sentences. A way to fight against this trend is for states to work together to establish more consistent and cohesive statutory language for the same crimes.

Legislation always leaves room for improvement, but states have been very proactive in these areas in recent years. Continuing to increase sentences, place stiffer sentence minimums in statutes, and work towards a more cohesive statutory language between states will better the nation and bring offenders to justice. Belva Lockwood, one
of the first female attorneys in the United States, once said “I know we can’t abolish prejudice through laws, but we can set up guidelines for our actions by legislation.”\textsuperscript{125}

\textsuperscript{125} Think Exist, http://thinkexist.com/quotes/belva_lockwood/ (last updated 2010).