

**FROM VICTIM TO DEFENDANT:  
ADVOCATING FOR CHILD RIGHTS OF CHILD  
SEX TRAFFICKING VICTIMS WHO COMMIT  
ANY CRIMINAL OFFENSE AS A RESULT OF  
THEIR VICTIMIZATION**

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## INTRODUCTION

Chrystul Kizer.<sup>1</sup> Cyntoia Brown.<sup>2</sup> Pieper Lewis.<sup>3</sup> Alexis Martin.<sup>4</sup> These names represent just a handful of survivors of child sex trafficking (CST) who committed violent felonies as a result of their victimization—leading to time behind bars.<sup>5</sup> Sex traffickers often coerce CST victims into committing or being indirectly involved in violent felonies, including kidnapping or robbery, knowing that penalties for children are typically less severe and that they are unlikely to seek help out of fear of punishment.<sup>6</sup> In acts of self-defense, these victims may also be forced to commit assault or homicide to escape their abuser’s control.<sup>7</sup>

Known as “children of the street,” CST victims often become rough and defiant, taking pride in their misdeeds.<sup>8</sup> An ideal victim is expected to respond to their victimization in socially acceptable ways,<sup>9</sup> perhaps by speaking with a therapist or reporting the incident to law enforcement, not

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1. See discussion *infra* Section I.D; YASMIN VAFA & REBECCA EPSTEIN, CRIMINALIZED SURVIVORS: TODAY’S ABUSE TO PRISON PIPELINE FOR GIRLS 11 (2023).

2. VAFA & EPSTEIN, *supra* note 1, at 11. At age sixteen, Cyntoia Brown was sentenced to fifty-one years to life for killing a man who paid to rape her, as the jury rejected her self-defense claim. *Id.* After serving fifteen years in prison, she was granted clemency by Tennessee Governor Bill Haslam and released. *Id.*

3. *Id.* At age fifteen, Pieper Lewis was forced by her twenty-eight-year-old trafficker to go home with a thirty-seven-year-old sex buyer who repeatedly drugged and raped her over three days. *Id.* She killed the rapist and faced a twenty-year prison sentence. *Id.* Lewis pled guilty to voluntary manslaughter and willful injury, receiving five years’ probation, 200 hours of community service, and an order to pay \$150,000 in restitution to the rapist’s estate. *Id.*

4. *Id.* at 11–12. At age fifteen, Alexis Martin helped plan a robbery as a means of escaping her thirty-six-year-old trafficker, but it took an unexpected turn and resulted in her trafficker being killed. *Id.* Although she was not present when shots were fired, Martin was charged with felony murder for her role in the robbery and sentenced to twenty-one years to life in adult prison, as her lawyer failed to raise safe harbor protections. *Id.* at 12; Jessica Contrera, *The State of Ohio vs. a Sex-Trafficked Teenager*, WASH. POST (June 1, 2021), <https://www.washingtonpost.com/dc-md-va/interactive/2021/child-sex-trafficking-alexis-martin-ohio/> [https://perma.cc/2E6W-MMS8]. Ohio Governor Mike DeWine later commuted her sentence, but it was revoked following a parole violation in 2021. VAFA & EPSTEIN, *supra* note 1, at 11–12. After renewed legal efforts, Martin was granted judicial release in August 2025, having served nearly twelve years in prison. Kim Bellware & Jessica Contrera, *Alexis Martin, Prominent Antitrafficking Activist, Released from Prison*, WASH. POST (Aug. 4, 2025), <https://www.washingtonpost.com/nation/2025/08/04/alexis-martin-release/> [https://perma.cc/UVR8-FK5L].

5. VAFA & EPSTEIN, *supra* note 1, at 11–12.

6. SHARED HOPE INT’L INST. FOR JUST. & ADVOC., IDENTIFICATION OF & RESPONSE TO VICTIMS: ISSUE BRIEF 2.8 (2023) [hereinafter ISSUE BRIEF 2.8], <https://reportcards.sharedhope.org/wp-content/uploads/2024/02/2023-Issue-Briefs-2.8.pdf> [https://perma.cc/BX6E-7ERB].

7. *Id.*

8. Krystle M. Fernandez, Note, *Victims or Criminals? The Intricacies of Dealing with Juvenile Victims of Sex Trafficking and Why the Distinction Matters*, 45 ARIZ. ST. L.J. 859, 862 (2013).

9. See SHARED HOPE INT’L INST. FOR JUST. & ADVOC. & VILLANOVA LAW INST. TO ADDRESS COM. SEXUAL EXPLOITATION, RESPONDING TO SEX TRAFFICKING VICTIM-OFFENDER INTERSECTIONALITY: A GUIDE FOR CRIMINAL JUSTICE STAKEHOLDERS 8 (2020) [hereinafter VICTIM-OFFENDER INTERSECTIONALITY], [https://sharedhope.org/wp-content/uploads/2020/01/SH\\_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020\\_FINAL.pdf](https://sharedhope.org/wp-content/uploads/2020/01/SH_Responding-to-Sex-Trafficking-Victim-Offender-Intersectionality2020_FINAL.pdf) [https://perma.cc/J8GN-755V].

by killing their abuser. These traditional ideas of victimhood fail to recognize the coping techniques that CST victims have developed to merely survive.<sup>10</sup> Moreover, traffickers generally prey on the most vulnerable, meaning these victims often manage pre-existing challenges, such as drug and alcohol addictions or criminal records.<sup>11</sup> Instead of being recognized as victims, trafficked and sexually exploited children are often viewed by many people as “willing participants in their own abuse,” having somehow “asked for it.”<sup>12</sup>

The conventional legal framework tends to overlook the nuanced experiences of CST victims, treating them as criminals rather than victims in need of protection and support.<sup>13</sup> To protect CST victims who commit *any* criminal offense, including violent felonies, as a result of their victimization, state laws should provide these victims with a trafficking-specific affirmative defense<sup>14</sup> that would recognize the “actual dynamics of trafficking, the nature and extent of control exerted by sex traffickers, and the influence of trauma on the decision-making process and behavior of sex trafficking survivors.”<sup>15</sup>

Part I explores the complex victimization of CST victims, examining definitions, trends, and risk factors, and concludes with the case study of *State v. Kizer* to highlight the need for a broad trafficking-specific affirmative defense for these victims. Part II examines the shortcomings of current and proposed legal reforms in addressing the needs of CST victims who commit criminal offenses. Part III emphasizes the importance of treating CST victims with dignity and respect, proposing a legal approach that considers their inherent rights and the long-term effects of childhood trauma on their behavior. Finally, Part IV argues for the establishment of an affirmative defense for CST victims who commit *any* criminal offense as a result of their victimization, outlining its necessity, implementation, and the challenges victims may face in raising the defense.

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10. *See id.*

11. *See* Meghan Hillborn, Note, *How Oklahoma’s Human Trafficking Victim Defense Is Poised to Be the Boldest Stand Against Human Trafficking in the Country*, 54 TULSA L. REV. 457, 461 (2019).

12. *See* Fernandez, *supra* note 8, at 862 (quoting RACHEL LLOYD, GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE, AN ACTIVIST FINDS HER CALLING AND HEALS HERSELF 126 (2011)).

13. *See* ISSUE BRIEF 2.8, *supra* note 6.

14. “An affirmative defense is a defense in which the defendant introduces evidence, which, if found to be credible, will negate criminal liability or civil liability, even if it is proven that the defendant committed the alleged acts.” *Affirmative Defense*, LEGAL INFO. INST. (June 2022), [https://www.law.cornell.edu/wex/affirmative\\_defense](https://www.law.cornell.edu/wex/affirmative_defense) [<https://perma.cc/2TH5-3GGE>].

15. ISSUE BRIEF 2.8, *supra* note 6. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

## I. MULTIPLE LAYERS OF VICTIMIZATION FOR CHILD SEX TRAFFICKING VICTIMS

This Part begins by examining how international and federal definitions of sex trafficking shape state-level statutes. A precise definition of sex trafficking ensures CST victims, in particular, can be properly identified and afforded the protections they need. This Part then explores recent trends, highlighting international and domestic statistics on sex trafficking and identifying at-risk populations. Next, this Part addresses the compounding effects of CST, focusing on how CST victims often become entangled in the criminal justice system, further perpetuating their victimization. Finally, this Part concludes with the case study of *State v. Kizer*, highlighting the urgent need for a trafficking-specific affirmative defense that effectively recognizes the trauma experienced by CST victims who commit *any* criminal offense as a result of their victimization.

### A. Defining Sex Trafficking

To appropriately identify and treat victims of sex trafficking, particularly CST victims, we must first come to a precise definition of sex trafficking. By outlining the specific elements of sex trafficking, the legal system can more effectively distinguish between children who are victims of trafficking and those who are engaged in criminal behavior of their own volition. For the purposes of this Note, the term “child” means any person under eighteen years of age.<sup>16</sup>

Adopted by the United Nations General Assembly in 2000, the Palermo Protocol<sup>17</sup> established what is now “universally accepted as the most comprehensive definition of human trafficking that has informed regional, sub-regional[,] and national counter-trafficking legal frameworks.”<sup>18</sup> The Palermo Protocol represents the first international treaty to provide a

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16. See, e.g., G.A. Res. 55/25, art. 3(d), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Nov. 15, 2000), 2237 U.N.T.S. 319 [hereinafter Palermo Protocol] (defining “[c]hild” as “any person under eighteen years of age”); G.A. Res. 44/25, art. 1, Convention on the Rights of the Child (Nov. 20, 1989), 1577 U.N.T.S. 3 [hereinafter CRC] (defining “child” as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”). The age of majority, or the “age at which one will be subject to the full legal rights and responsibilities of an adult,” is set at eighteen years of age in most countries and most U.S. states. *Age of Majority*, LEGAL INFO. INST. (Nov. 2021), [https://www.law.cornell.edu/wex/age\\_of\\_majority](https://www.law.cornell.edu/wex/age_of_majority) [<https://perma.cc/ZA6C-ZYBT>].

17. See generally Palermo Protocol, *supra* note 16 (highlighting the need to protect and support trafficking victims while fully respecting their human rights).

18. Joy N. Ezeilo, *Achievements of the Trafficking Protocol: Perspectives from the Former UN Special Rapporteur on Trafficking in Persons*, 4 ANTI-TRAFFICKING REV. 144, 146 (2015).

comprehensive definition of human trafficking, setting the stage for subsequent international and domestic laws aimed at preventing trafficking and protecting its victims.<sup>19</sup> Article 3(a) of the Palermo Protocol defines “[t]rafficking in persons” as follows:

the recruitment, transportation, transfer, harbouring[,] or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability[,] or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>20</sup>

Article 3(c) broadens the definition’s applicability, stating “the recruitment, transportation, transfer, harbouring[,] or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a).”<sup>21</sup>

In alignment with these global efforts, the Trafficking Victims Protection Act of 2000 (TVPA) was the first comprehensive federal law in the United States to specifically address human trafficking.<sup>22</sup> This statute identifies two main types of human trafficking: sex trafficking, which is the focus of this Note, and forced labor.<sup>23</sup> The crime of sex trafficking can be understood through the three-pronged framework of “acts,” “means,” and “purpose.”<sup>24</sup> The “acts” element of sex trafficking is satisfied when a trafficker recruits, harbors, transports, provides, obtains, patronizes, or solicits another person to engage in commercial sex.<sup>25</sup> As for the “means” element, a commercial sex act may be “induced by force, fraud, or coercion.”<sup>26</sup> In cases where “the person induced to perform such act has not attained [eighteen] years of age,”<sup>27</sup> the “means” element becomes irrelevant because the act of engaging

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19. See Laura L. Shoaps, Note, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931, 932–33 (2013); Palermo Protocol, *supra* note 16, art. 3.

20. Palermo Protocol, *supra* note 16, art. 3(a).

21. *Id.* art. 3(c).

22. See Pub. L. No. 106-386, 114 Stat. 1464 (2000); JACQUELYN C.A. MESHELEMIH & RAVEN E. LYNCH, *Landmark Policies in Trafficking in the USA and Trafficking in Persons Ratings Across the Globe*, in THE CAUSE AND CONSEQUENCE OF HUMAN TRAFFICKING: HUMAN RIGHTS VIOLATIONS 43, 45 (2019); see also *3Ps: Prosecution, Protection, and Prevention*, OFF. TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP’T OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention/> [https://perma.cc/EMR8-3JLN].

23. 22 U.S.C. § 7102(11).

24. *Understanding Human Trafficking*, OFF. TO MONITOR & COMBAT TRAFFICKING IN PERS., U.S. DEP’T OF STATE (Jan. 20, 2025), <https://www.state.gov/what-is-trafficking-in-persons/> [https://perma.cc/K3C9-UU7S].

25. *Id.*; § 7102(12).

26. *Understanding Human Trafficking*, *supra* note 24; § 7102(11)(A).

27. § 7102(11)(A).

a child in commercial sex is considered trafficking, “regardless of whether evidence of force, fraud, or coercion exists.”<sup>28</sup> The “purpose” element refers to the intent to engage the individual in a “commercial sex act.”<sup>29</sup>

At the state level, statutes defining sex trafficking often mirror international and federal definitions but may incorporate specific state-level nuances. For example, South Carolina’s statute specifies that sex trafficking covers the following:

recruitment, harboring, transportation, provision, or obtaining of a person . . . when it is induced by force, fraud, or coercion or the person performing the act is under the age of eighteen years and anything of value is given, promised to, or received, directly or indirectly, by any person . . . .<sup>30</sup>

Similarly, Massachusetts defines the crime of sex trafficking as follows:

(a) [w]hoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography . . . or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i) . . . .<sup>31</sup>

As shown above, state statutes defining sex trafficking often align with international and federal definitions, emphasizing common elements such as recruitment, harboring, and transportation for commercial sex acts involving coercion, force, or fraud. However, each state introduces specific variations in their definitions and requirements. Given this variation, this Note relies on the definition of sex trafficking provided by the TVPA, which has been subsequently reauthorized, to advocate for more comprehensive legal protections for CST victims.<sup>32</sup> The TVPA aligns with international standards on sex trafficking and serves as a model for state sex trafficking

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28. *Understanding Human Trafficking*, *supra* note 24.

29. *Id.*; § 7102(12).

30. S.C. CODE ANN. § 16-3-2010(7) (West 2025).

31. MASS. GEN. LAWS ANN. ch. 265, § 50 (West 2025).

32. *See supra* notes 22–29 and accompanying text. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

statutes, making it a reliable anchor for the analysis in this U.S.-focused Note.<sup>33</sup>

*B. Recent Trends and Risk Factors*

Between 2020 and 2023, a total of 202,478 trafficking victims were identified worldwide.<sup>34</sup> Of these victims, thirty-six percent were trafficked for sexual exploitation, with children representing thirty-one percent of that group.<sup>35</sup> The report highlights that, in 2022, children accounted for thirty-eight percent of trafficking victims detected globally.<sup>36</sup> Female children, representing twenty-two percent of all victims, were predominantly trafficked for sexual exploitation and other forms of exploitation, such as forced marriage.<sup>37</sup> Male children, accounting for sixteen percent of all victims, were mainly trafficked for forced labor and other forms of exploitation, typically forced criminality.<sup>38</sup> Children in high- and upper-middle-income countries, such as the United States, are more often trafficked for sex, whereas children in lower-income countries are more frequently trafficked for labor.<sup>39</sup> Given the absence of a standardized definition of sex trafficking, combined with individual barriers (e.g., victims not reporting due to fear of traffickers or law enforcement) and systemic barriers (e.g., the lack of a centralized database for tracking incidents), the “global prevalence of sex trafficking is likely underestimated.”<sup>40</sup>

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33. See *3Ps: Prosecution, Protection, and Prevention*, *supra* note 22; Amy Farrell, Monica J. DeLateur, Colleen Owens & Stephanie Fahy, *The Prosecution of State-Level Human Trafficking Cases in the United States*, 6 ANTI-TRAFFICKING REV. 48, 49 (2016).

34. UNITED NATIONS OFF. ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2024, at 20 (2024) [hereinafter 2024 GLOBAL REPORT], [https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024\\_BOOK.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf) [<https://perma.cc/3GVQ-BRY5>]. The purpose of the 2024 Global Report is to identify the “patterns, flows[,] and trends of trafficking in the aftermath of the global pandemic.” *Id.* at 25. This report primarily draws from “official statistics on the detected cases of trafficking in persons collected from 156 countries,” encompassing over ninety-five percent of the world’s population. *Id.*

35. *Id.* at 20.

36. *Id.* at 42. While the exact percentage of adult victims of sex trafficking who were trafficked as children remains unclear, one study focusing on the United States found that most individuals enter the sex trafficking trade between the ages of twelve and fifteen. See Cecilia Allan, Georgia M. Winters & Elizabeth L. Jeglic, *Current Trends in Sex Trafficking Research*, 25 CURRENT PSYCHIATRY REPS. 175, 176 (2023).

37. 2024 GLOBAL REPORT, *supra* note 34, at 42.

38. *Id.*

39. Allan et al., *supra* note 36, at 176.

40. *Id.*

CST affects urban, suburban, and rural areas across the United States, transcending racial, ethnic, socio-economic, and gender lines.<sup>41</sup> However, certain groups of youth are at higher risk, including immigrants or refugees, racial and ethnic minorities, LGBTQ+ individuals, those experiencing poverty or homelessness, youth involved in child-serving systems (such as foster care or juvenile justice), and those with disabilities (whether physical, intellectual, developmental, or a combination).<sup>42</sup> For example, individuals who identify as members of the LGBTQ+ community are twice as likely to be trafficked as their heterosexual counterparts.<sup>43</sup> The lack of family support, safe shelter, and LGBTQ+-affirming services make these individuals particularly “vulnerable to traffickers who are seeking to exploit their needs for housing, food, and social connections.”<sup>44</sup>

Additionally, many trafficked children have experienced “childhood sexual abuse, physical abuse, neglect, traumatic loss, separation from caregivers, and family and community violence,” impacting their social-emotional development in ways that affect their understanding of “personal safety, sexual boundaries, and healthy relationships.”<sup>45</sup> For example, children who have previously experienced trauma, abuse, or neglect may develop trauma bonds<sup>46</sup> with their trafficker, perceiving them as the only person who has shown them care and affection.<sup>47</sup> This relationship can lead a victim to engage in criminal behavior out of loyalty to, or emotional manipulation by, the trafficker.<sup>48</sup> These aggravating factors of trauma and abuse increase the likelihood that CST victims will engage in criminal behavior as a direct result of their victimization,<sup>49</sup> underscoring the need for a trafficking-specific affirmative defense for CST victims charged with *any* criminal offense.

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41. See NAT’L CHILD TRAUMATIC STRESS NETWORK, UNDERSTANDING AND ADDRESSING TRAUMA AND CHILD SEX TRAFFICKING 1 (2018) [hereinafter ADDRESSING TRAUMA], [https://www.dea.gov/sites/default/files/2018-07/Understanding\\_and\\_Addresssing\\_Trauma\\_and\\_Child\\_Trafficking.pdf](https://www.dea.gov/sites/default/files/2018-07/Understanding_and_Addresssing_Trauma_and_Child_Trafficking.pdf) [<https://perma.cc/S4ZN-4H99>].

42. See *About Child Sex Trafficking*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-child-trauma/traumatypes/sex-trafficking/about-child-sex-trafficking> [<https://perma.cc/95K4-32P3>].

43. Allan et al., *supra* note 36, at 176.

44. *About Child Sex Trafficking*, *supra* note 42.

45. ADDRESSING TRAUMA, *supra* note 41, at 1.

46. A victim who forms a trauma bond with their trafficker has “develop[ed] positive, loving[,] or loyal feelings toward the very people who are hurting and exploiting them.” VICTIM-OFFENDER INTERSECTIONALITY, *supra* note 9, at 10.

47. See *id.*

48. *Id.*

49. See *id.*

### C. *Compounding Effects of Child Sex Trafficking*

Despite comprehensive non-criminalization measures like safe harbor affirmative defenses<sup>50</sup> in certain states, CST victims in the vast majority of states still enter the criminal justice system under other charges.<sup>51</sup> These victims are often coerced by their traffickers to commit crimes they would otherwise not commit.<sup>52</sup> This practice protects traffickers from criminal liability, minimizes disruption to the trafficking operation “based on the child’s age and dispensability,” and enables traffickers to maintain control over their victims.<sup>53</sup> Victims often fear punishment for crimes they were coerced into committing, making them less inclined to seek help.<sup>54</sup> Many victims commit crimes as a direct result of their victimization,<sup>55</sup> ranging from status offenses, such as truancy and curfew violations, to more serious offenses, such as theft or possession of a firearm.<sup>56</sup> Some high-profile cases even involve victims assaulting or killing their traffickers or the buyers who paid to exploit them sexually.<sup>57</sup>

Upon entering the criminal justice system, CST victims face multiple layers of victimization: They are first exploited through trafficking, then subjected to unfair criminal penalties, and ultimately burdened by criminal

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50. See discussion *infra* Section II.C.

51. See NAT’L COUNCIL OF JUV. & FAM. CT. JUDGES, FREQUENTLY ASKED QUESTIONS ABOUT PREVENTING THE CRIMINALIZATION OF MINOR VICTIMS OF TRAFFICKING 1–2 (2023) [hereinafter NCJFCJ], [https://ncjfcj.org/wp-content/uploads/2023/09/FAQ-Criminalizing-Minor-Victims-of-Trafficking\\_FINAL2.pdf](https://ncjfcj.org/wp-content/uploads/2023/09/FAQ-Criminalizing-Minor-Victims-of-Trafficking_FINAL2.pdf) [<https://perma.cc/Q49E-XXZL>].

52. *Id.* at 1.

53. See Sarah Bendtsen Diedhiou, Sarah Roberts & Christine Raino, *Trauma, Coercion, and the Tools of Trafficking Exploitation: Examining the Consequences for Children and Youth in the Justice System*, 109 KY. L.J. 719, 740 (2021).

54. *Id.*

55. As Assistant U.S. Attorneys investigating and prosecuting human trafficking cases have noted:

Victims of human trafficking may, themselves, violate state or federal laws through actions that relate in some way to their own victimization. Most sex trafficking victims will, for example, have engaged in prostitution-related offenses. Because traffickers control many sex trafficking victims via a narcotics dependency, many victims suffering from addiction will also have committed drug-related crimes. Sex trafficking victims may also engage in more serious offenses intertwined with their own victimization, including recruitment of other victims into a trafficking enterprise.

Jeffrey H. Zeeman & Karen Stauss, *Criminal Conduct of Victims: Policy Considerations*, U.S. ATT’YS BULL., Nov. 2017, at 139, 140.

56. NCJFCJ, *supra* note 51, at 1–2.

57. *Id.*; Lucy Kafanov & Dalila-Johari Paul, *Iowa Teen Ordered to Pay Her Alleged Rapist’s Family \$150,000 Is Not the First Sex Trafficking Victim Penalized for Killing Their Alleged Assaulter*, CNN (Sept. 15, 2022), [www.cnn.com/2022/09/15/us/pieper-lewis-sex-trafficking-other-cases-reaj/index.html](http://www.cnn.com/2022/09/15/us/pieper-lewis-sex-trafficking-other-cases-reaj/index.html) [<https://perma.cc/B8HN-X75Z>]; see also *supra* note 3 (describing how Iowa teen Pieper Lewis was required to pay \$150,000 to her rapist’s estate for killing him).

records that restrict their ability to move forward with their lives.<sup>58</sup> The prolonged process of cases and probation violations can also make it difficult for these victims to escape the system.<sup>59</sup> CST victims can cause real harm in their communities, but it is important to recognize the “duality of the young person as both a victim and a perpetrator of violence in addition to the facts of the case.”<sup>60</sup> The ongoing criminalization of CST victims for criminal offenses they committed as a result of their victimization perpetuates “victim-blaming, rooted in the misguided belief that survivors are partially responsible for their own victimization.”<sup>61</sup>

The exploitation of CST victims by their traffickers, coupled with their subsequent criminalization for acts often committed under coercion, underscores ongoing legal gaps and renders this Note particularly important and timely. Focusing on state-level reform, the legal system needs to better account for the consequences of CST by implementing a trafficking-specific affirmative defense for these victims who commit *any* criminal offense as a result of their victimization.<sup>62</sup>

#### D. State v. Kizer Case Study

One example of a CST victim who committed a criminal offense as a direct result of her victimization can be found in *State v. Kizer*.<sup>63</sup> At sixteen years old, Chrystul Kizer needed money to buy “snacks, school supplies and food for her younger siblings.”<sup>64</sup> With limited options, she took the advice of some older girls and posted an ad on Backpage.com—the largest online marketplace for prostitution before being shut down for its facilitation of sex trafficking.<sup>65</sup> Randall Volar III, then thirty-three years old, responded to Kizer’s ad.<sup>66</sup> In interviews and court filings, Kizer confirmed that Volar

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58. Hillborn, *supra* note 11, at 469.

59. NCJFCJ, *supra* note 51, at 1.

60. *Id.* at 2.

61. Bendtsen Diedhiou et al., *supra* note 53, at 724–25.

62. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

63. *State v. Kizer*, 2022 WI 58, 403 Wis. 2d 142, 976 N.W.2d 356.

64. Kim Bellware & Jessica Contrera, *Sex-Trafficking Victim Chrystul Kizer Gets 11 Years for Killing Abuser*, WASH. POST (Aug. 19, 2024), <https://www.washingtonpost.com/nation/2024/08/19/chrystul-kizer-sentence-wisconsin-sex-trafficking/> [https://perma.cc/P2CL-J2X9].

65. *Id.*; Press Release, U.S. Dep’t of Just., Justice Department Leads Effort to Seize Backpage.Com, the Internet’s Leading Forum for Prostitution Ads, and Obtains 93-Count Federal Indictment (Apr. 9, 2018), <https://www.justice.gov/archives/opa/pr/justice-department-leads-effort-seize-backpagecom-internet-s-leading-forum-prostitution-ads> [https://perma.cc/5ZC5-L62A].

66. Bellware & Contrera, *supra* note 64; Jessica Contrera, *He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him.*, WASH. POST (Dec. 17, 2019), <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/> [https://perma.cc/G6BV-QS3B].

groomed her with money and shopping excursions, taking her on dates in exchange for sex acts.<sup>67</sup>

On the night of June 4, 2018, Kizer reached out to Volar, sharing that she was fighting with her boyfriend and needed an escape.<sup>68</sup> Volar arranged for an Uber to take her from Milwaukee, Wisconsin, to his home in Kenosha, Wisconsin.<sup>69</sup> That night, Kizer recalled rejecting Volar when he began massaging her leg.<sup>70</sup> After a year of giving in to his demands, Kizer no longer wanted him touching her.<sup>71</sup> She was tired of it.<sup>72</sup> In response, Volar attempted to rape her.<sup>73</sup> Kizer told detectives that Volar pinned her to the ground before she managed to get away.<sup>74</sup> In an act of desperation, seventeen-year-old Kizer retrieved a gun from her purse and fatally shot Volar in the head.<sup>75</sup> She then started a fire at Volar's home and fled in his BMW.<sup>76</sup> When detectives first questioned her about Volar's death, Kizer initially lied.<sup>77</sup> However, she soon revealed the truth.<sup>78</sup> Among other felonies, Kizer was charged with first-degree intentional homicide, carrying a mandatory sentence of life in prison.<sup>79</sup>

It is worth noting that the Kenosha Police Department had previously arrested Volar on child sexual assault charges but released him without bail around three months before his death.<sup>80</sup> During their investigation, police seized “hundreds” of videos of child sexual abuse, featuring Kizer and other girls who appeared to be as young as twelve years old.<sup>81</sup> Volar remained free as the investigation continued.<sup>82</sup> Kenosha County District Attorney Michael Graveley told the *Kenosha News* that he believes they would have

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67. Bellware & Contrera, *supra* note 64.

68. *Id.*

69. *Id.*

70. *Id.*

71. State v. Kizer, 2021 WI App 46, ¶ 2, 398 Wis. 2d 697, 963 N.W.2d 136, *aff'd*, 2022 WI 58, ¶ 2, 403 Wis. 2d 142, 976 N.W.2d 356.

72. *Id.*

73. VAFA & EPSTEIN, *supra* note 1, at 11.

74. Bellware & Contrera, *supra* note 64.

75. Jessica Contrera, *Child Sex-Trafficking Victim Who Killed Her Abuser Will Finally Learn Her Fate*, WASH. POST (Aug. 15, 2024), <https://www.washingtonpost.com/investigations/2024/08/14/chrystul-kizer-sentence-sex-trafficking/> [https://perma.cc/3YTC-DRFH].

76. *See id.*

77. State v. Kizer, 2021 WI App 46, ¶ 2, 398 Wis. 2d 697, 963 N.W.2d 136, *aff'd*, 2022 WI 58, ¶ 2, 403 Wis. 2d 142, 976 N.W.2d 356.

78. *Id.*

79. VAFA & EPSTEIN, *supra* note 1, at 11.

80. Bellware & Contrera, *supra* note 64; Contrera, *supra* note 66.

81. Bellware & Contrera, *supra* note 64.

82. *Id.*

charged Volar “that same day or the day after” his death.<sup>83</sup> Against this backdrop, Graveley described Kizer as “greedy,” “impulsive,” and “untrustworthy,” emphasizing how she had changed her story multiple times.<sup>84</sup> He further depicted Kizer as a “premeditated” murderer motivated by the theft of Volar’s BMW, whereas public defender Jennifer Bias maintained that Kizer was acting in “self-defense” after Volar attempted to rape her.<sup>85</sup>

In contrast to these conflicting portrayals, the Wisconsin Supreme Court weighed in and addressed the broader context of Kizer’s actions in July 2022.<sup>86</sup> The Court established a crucial precedent that allows all victims of sex trafficking to affirmatively assert a complete defense for crimes committed as a direct result of their trafficking.<sup>87</sup> This ruling enabled Kizer to introduce evidence supporting the use of this affirmative defense.<sup>88</sup> Thus, Kizer was left with essentially two options moving forward: to assert this defense at trial and risk losing or to accept a “plea deal that ensured she would not spend the rest of her life in prison.”<sup>89</sup>

After six years of legal proceedings, Kizer opted to plead guilty in May 2024 to a reduced charge of second-degree reckless homicide with use of a dangerous weapon, “which carried a maximum sentence of [thirty] years in prison.”<sup>90</sup> At the sentencing hearing in August 2024, Kizer expressed her remorse to Volar’s family, stating, “I’m filled with remorse and regret, and I’m genuinely sorry.”<sup>91</sup> Before being abused by Volar and trafficked to other men, she faced a challenging childhood marked by sexual abuse and

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83. TEGNA, *He Allegedly Sold Her for Sex. She Killed Him. Now She’s Facing Life in Prison.*, KTVB (Dec. 19, 2019), <https://www.ktvb.com/article/news/nation-world/teen-says-the-man-she-killed-was-selling-her-for-sex-now-she-faces-life-in-prison/507-e0bd28eb-bede-49a6-9633-e7fc1693aa33> [<https://perma.cc/QHG3-D8V4>].

84. Bellware & Contrera, *supra* note 64.

85. *Id.*

86. *See generally* State v. Kizer, 2022 WI 58, 403 Wis. 2d 142, 976 N.W.2d 356.

87. *Id.* ¶¶ 2, 19–20. For an overview of this affirmative defense, see *infra* notes 267–70 and accompanying text.

88. For example, courts nationwide have permitted “victims of abuse to present expert testimony on battering and its effects in support of a duress defense because it may help juries ‘understand the objective reasonableness of a defendant’s actions in the situation [he or she] faced, which included the history of violent and psychological abuse.’” *Kizer*, 2022 WI 58, ¶ 58, (Roggensack, J., dissenting) (citing United States v. Dingwall, 6 F.4th 744, 754 (7th Cir. 2021)).

89. Jamie Beck & Chelsea Estes, *Survivors Behind Bars: The Criminalization of Abuse, Assault, and Human Trafficking Victims and the Need for a Trauma-Informed Approach*, 30 ROGER WILLIAMS U. L. REV. 244, 247–48 (2025).

90. Bellware & Contrera, *supra* note 64; Jonathan Limehouse & David Clarey, *11-Year Sentence for Milwaukee Woman Who Killed Her Sex Trafficker Draws Outrage*, USA TODAY (Aug. 20, 2024), <https://www.usatoday.com/story/news/nation/2024/08/19/chrystul-kizer-milwaukee-sex-trafficking/74864773007/> [<https://perma.cc/R3WF-JATH>].

91. Bellware & Contrera, *supra* note 64.

poverty.<sup>92</sup> Eager to leave her past behind, Kizer envisioned a future for herself that included “a husband, a home[,] and a family.”<sup>93</sup> Ultimately, Kenosha County Judge David P. Wilk sentenced Kizer to eleven years in prison, along with five years of extended supervision.<sup>94</sup> She will be in her mid-thirties upon her eventual release from Taycheedah Correctional Institution, Wisconsin’s state women’s prison.<sup>95</sup>

Kizer’s criminal actions—stemming from continued abuse and manipulation by her trafficker—highlight the profound impact of trauma on the behavior of CST victims. Kizer’s desperate attempt to escape her trafficker resulted in criminal charges, including first-degree intentional homicide—a fate that many trafficking victims face when they resort to extreme measures to protect themselves. While the Wisconsin Supreme Court’s decision set a vital precedent that allowed Kizer to introduce evidence supporting an affirmative defense, such protections for CST victims remain inconsistent and inaccessible in many states. It is critical that states implement a clear and comprehensive affirmative defense, similar to that in Wisconsin, for CST victims who commit *any* criminal offense as a direct result of their victimization.<sup>96</sup>

## II. SHORTCOMINGS OF CURRENT AND PROPOSED REFORMS

This Part examines the shortcomings of current and proposed reforms in addressing the needs of CST victims who commit *any* criminal offense, including violent felonies, as a result of their victimization. First, this Part provides a brief overview of the juvenile justice system, emphasizing its primary goal of rehabilitation, while also recognizing instances where it may shift toward punitive measures. Next, this Part explores why CST victims deserve the opportunity to show how their trafficking victimization is connected to their criminal conduct, just as criminal defendants can use traditional affirmative defenses like duress and self-defense to demonstrate a lack of criminal intent.<sup>97</sup> The discussion then moves into the failures of safe harbor affirmative defenses, which aim to shield these victims from criminal liability but still leave critical gaps, particularly for those who commit violent felonies. Finally, this Part considers federal legislative efforts which seek to provide greater judicial discretion in sentencing CST victims, though these bills have yet to pass at the federal level.

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92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

97. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

### A. Existing Juvenile Justice Responses to Trauma

Between 1920 and 1960, as the number of incarcerated children increased, the juvenile justice system shifted its focus from rehabilitation to punishment.<sup>98</sup> During the “tough on crime” era of the 1990s, Congress passed the Violent Crime Control and Law Enforcement Act and the Gun-Free Schools Act to reduce youth violence through punitive measures.<sup>99</sup> However, many lawmakers soon recognized the ineffectiveness of this approach and began advocating for a less punitive response to juvenile offenders.<sup>100</sup>

Most states have implemented alternative responses for CST victims, such as diversion programs, affirmative defenses, and sentencing mitigation.<sup>101</sup> In *Roper v. Simmons*,<sup>102</sup> the U.S. Supreme Court reinforced these state-level efforts to support rehabilitation in juvenile proceedings, recognizing that children’s brains are not fully developed and, as a result, they should not be held to the same legal standards as adults.<sup>103</sup> Still, these responses operate within a punitive juvenile justice system, which is designed to “punish and rehabilitate juvenile offenders,” rather than protect and serve victims.<sup>104</sup> The inherent punishment within the juvenile justice system may lead to further trauma.<sup>105</sup>

For CST victims, it is seemingly impossible to escape such trauma, the consequences of which are comparable to torture.<sup>106</sup> Trauma often leads to immediate and long-term difficulties, including psycho-social disorders, physical diseases or disorders, and emotional struggles.<sup>107</sup> Unfortunately, the juvenile justice system’s response to these victims mirrors the coercive

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98. Erin Williamson & Aria Flood, *Systemic and Structural Roots of Child Sex Trafficking: The Role of Gender, Race, and Sexual Orientation in Disproportionate Victimization*, in *THE HISTORICAL ROOTS OF HUMAN TRAFFICKING: INFORMING PRIMARY PREVENTION OF COMMERCIALIZED VIOLENCE* 191, 206 (Makini Chisolm-Straker & Katherine Chon eds., 2021).

99. *Id.*

100. *Id.*

101. Bendtsen Diedhiou et al., *supra* note 53, at 723.

102. This case arose when a defendant was sentenced to death for a first-degree murder he committed at the age of seventeen, though he was convicted after turning eighteen. *Roper v. Simmons*, 543 U.S. 551, 556 (2005). The defendant petitioned for state postconviction relief, which was eventually granted by the Missouri Supreme Court. *Id.* at 559–60. The U.S. Supreme Court affirmed this decision, holding that the Eighth and Fourteenth Amendments prohibit the imposition of the death penalty for juvenile offenders who were under the age of eighteen at the time of their crimes. *Id.* at 578–79. The U.S. Supreme Court recognized that juveniles’ susceptibility to negative influences and immature behaviors means that “their irresponsible conduct is not as morally reprehensible as that of an adult.” *Id.* at 561 (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835 (1988)).

103. See Fernandez, *supra* note 8, at 887; Williamson & Flood, *supra* note 98, at 206.

104. Williamson & Flood, *supra* note 98, at 207.

105. Bendtsen Diedhiou et al., *supra* note 53, at 723.

106. *Id.* at 748.

107. *Id.*; ADDRESSING TRAUMA, *supra* note 41, at 1–2.

tactics used by their traffickers, “causing the [victim] to be tethered to their exploiter or, in this case, the system.”<sup>108</sup>

All states establish age limits for when a minor’s unlawful behavior would be labeled as “delinquent” for a child, rather than classified as a “crime” if committed by an adult.<sup>109</sup> In most states, juvenile court jurisdiction extends to offenses committed by minors at or below the age of eighteen.<sup>110</sup> Transfer provisions, however, allow or require certain cases to be handled in adult criminal court, “depending on the minor’s age, [criminal] history, or circumstances of the offense.”<sup>111</sup> For example, the juvenile court in Nevada may certify a child for adult criminal proceedings if the child was “charged with an offense that would have been a felony if committed by an adult and was [fourteen] years of age or older at the time” of the offense, or if the child was “charged with murder or attempted murder and was [thirteen] years of age or older when the murder or attempted murder was committed.”<sup>112</sup> If most individuals enter the sex trafficking trade between the ages of twelve and fifteen,<sup>113</sup> then the law fails to protect these children by treating them as adults before they reach full development. These transfer provisions create additional burdens for CST victims who commit violent felonies, as their trauma is often overlooked in favor of a more punitive approach.

## B. Traditional Affirmative Defenses<sup>114</sup>

### I. Duress

Generally, an affirmative defense for a CST victim who committed a criminal offense can be viewed as a particularized duress defense.<sup>115</sup> These defenses share several characteristics, including being excuse defenses<sup>116</sup>

108. Bendtsen Diedhiou et al., *supra* note 53, at 749–50; Williamson & Flood, *supra* note 98, at 208.

109. *Jurisdictional Boundaries: Delinquency Age Boundaries*, JUV. JUST., GEOGRAPHY, POL’Y, PRAC. & STAT. (2017), <http://www.jjgps.org/jurisdictional-boundaries> [<https://perma.cc/XGE7-VZY9>].

110. *Id.*

111. *Id.*

112. NEV. REV. STAT. ANN. § 62B.390(1) (West 2025).

113. See Allan et al., *supra* note 36, at 176.

114. Throughout this Section, I incorporate explanations from the related context of intimate partner violence due to the challenges associated with reporting and studying CST.

115. Hillborn, *supra* note 11, at 473. “[A] few states have enacted statutory provisions that merely state that human trafficking victims may raise the defense of duress to crimes they are charged with. Other states provide affirmative defenses to human trafficking victims and reference the duress and coercion as the underlying theory of their defense.” *Id.*

116. A defense based on excuse focuses on the *defendant*, claiming that even though the defendant committed a criminal act with the requisite intent, the defendant should not be held responsible for their

and recognizing the coercive tactics traffickers use to manipulate their victims.<sup>117</sup> However, while the trafficking-specific affirmative defense in Oklahoma, for example, is broad and applicable to nearly any situation where a human trafficking victim faces criminal charges, a duress defense is more narrow in scope.<sup>118</sup>

Any criminal defendant facing coercion can invoke the common-law duress defense, provided they satisfy the three requirements of (1) imminence, (2) proportionality, and (3) the limitation on the type of crime.<sup>119</sup> First, the time-based requirement of imminence indicates that the victim must have no reasonable means of escaping the threat of death or serious bodily injury.<sup>120</sup> This need to show a threat of “‘imminent’ physical harm” is often difficult for victims of sex trafficking to satisfy.<sup>121</sup> Since coercion may manifest in different ways, including “infliction of severe physical violence, threats of violence against victims or their families, inducement into drug dependency, and confiscation of documentation,” physical violence is not always necessary to compel victims of sex trafficking to engage in criminal behavior against their abuser.<sup>122</sup> Psychological manipulation may produce the same result.<sup>123</sup>

Second, using a lesser-of-two-evils approach, the social harm resulting from actions taken under duress must be proportional to the harm prevented.<sup>124</sup> Indeed, one report revealed that “[forty-one percent] of women incarcerated for killing a relative or intimate partner had been victims of physical and/or sexual abuse.”<sup>125</sup> It is impractical to apply a balancing test that solely compares the immediate threat of violence to the degree of violence used by these women to escape their situation.<sup>126</sup> Just as an accurate assessment of a battered woman’s behavior requires considering

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conduct. See Craig Hemmens, *Defenses to Criminal Liability: Justifications and Excuses*, in 1 ENCYC. OF CRIMINOLOGY 377, 378 (J. Mitchell Miller & Richard Alan Wright eds., 2005).

117. Hillborn, *supra* note 11, at 473–74.

118. *Id.* at 473.

119. *Id.* at 474–75.

120. *Id.* at 474.

121. See Alaina Richert, Note, *Failed Interventions: Domestic Violence, Human Trafficking, and the Criminalization of Survival*, 120 MICH. L. REV. 315, 327 (2021); see also *infra* notes 133–35 and accompanying text (showing how the general common-law duress defense leaves CST victims subjected to ongoing, but not imminent, abuse by their traffickers legally unprotected).

122. Bendtsen Diedhiou et al., *supra* note 53, at 753–54.

123. *Id.* at 754.

124. Hillborn, *supra* note 11, at 474.

125. Jacqueline Fink, Note, *Imminence Should Not Be a Controlling Factor in the Duress Defense in the Context of Battered Women*, 39 TOURO L. REV. 737, 751 (2024) (quoting Tracy L. Conn, Book Note, 27 HARV. WOMEN’S L.J. 285, 288 (2004) (reviewing BELINDA MORRISSEY, *WHEN WOMEN KILL: QUESTIONS OF AGENCY AND SUBJECTIVITY* (2003))).

126. See *id.*

her trauma and emotional state,<sup>127</sup> the same is true for CST victims who commit a violent felony as a result of their victimization, as they are likely to have endured significant trauma.

Finally, under the general common-law rule, duress is not a valid defense to murder, a principle followed by most states.<sup>128</sup> This exception for murder arises from public policy, which holds that a defendant under duress cannot value their own life more than that of an innocent person.<sup>129</sup> Many commentators criticize the rule both pragmatically and philosophically.<sup>130</sup> Pragmatically, it is unreasonable to expect people to choose death over self-defense in life-threatening situations.<sup>131</sup> Philosophically, the idea that “all innocent lives have equal worth” means that coerced killing remains morally unjustified.<sup>132</sup> In a case where a CST victim kills their abuser to escape harm, the general common-law duress defense would almost certainly fail.

But when a CST victim, for example, is coerced by their trafficker to commit a robbery, the question arises: Does the child qualify as “innocent” under this defense? Is it not the child—abused and tortured—who is the true victim? Yet, the law seems to say not necessarily.<sup>133</sup> Without a trafficking-specific affirmative defense for CST victims who commit *any* criminal offense, including violent felonies, as a result of their victimization, these victims are left without protection under the general common-law duress defense. Indeed, in 2016, a fifteen-year-old girl in Texas was sentenced to twenty years in prison for aggravated robbery and kidnapping, despite being coerced by an adult trafficker who physically abused her.<sup>134</sup> Texas has no laws protecting sex trafficking victims who commit crimes as a result of their exploitation, and this girl could not otherwise use a duress defense because “[d]uress does not take into account that abusers in coercive relationships don’t need to put a literal gun to their victims’ heads.”<sup>135</sup>

In contrast, in Wisconsin, there is an affirmative defense for victims of human trafficking who commit *any* criminal offense, including first-degree

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127. *See id.* at 750–51.

128. Steven J. Mulroy, *The Duress Defense’s Uncharted Terrain: Applying It to Murder, Felony Murder, and the Mentally Retarded Defendant*, 43 SAN DIEGO L. REV. 159, 172 (2006).

129. *Id.* at 174.

130. *Id.*

131. *Id.*

132. *Id.*

133. *See, e.g.*, Angelina Chapin, *She Was Sex Trafficked at 14—Then Sentenced to 20 Years in Prison*, HUFFPOST (Oct. 23, 2019), [https://www.huffpost.com/entry/sex-trafficking-teens-united-states\\_n\\_5d9f6e89e4b02c9da04692ef](https://www.huffpost.com/entry/sex-trafficking-teens-united-states_n_5d9f6e89e4b02c9da04692ef) [<https://perma.cc/3NA2-H95E>].

134. *Id.*

135. Angelina Chapin, *She Says Her Best Friend Sold Her to a Pimp. The Court Says She’s a Criminal.*, HUFFPOST (Dec. 21, 2019), [https://www.huffpost.com/entry/youth-sex-trafficking-violent-crimes-legal-system\\_n\\_5df7f060e4b0ae01a1e59701](https://www.huffpost.com/entry/youth-sex-trafficking-violent-crimes-legal-system_n_5df7f060e4b0ae01a1e59701) [<https://perma.cc/T7NJ-8XB8>].

intentional homicide, as a direct result of their trafficking.<sup>136</sup> A CST victim in Wisconsin could potentially use this defense to fully defend against a first-degree intentional homicide charge, rather than simply reducing it to second-degree intentional homicide.<sup>137</sup>

To ensure that as many trafficking victims as possible receive the support they need, states should implement an affirmative defense—similar to those in Wisconsin and Oklahoma—for CST victims who commit *any* criminal offense, including violent felonies, as a result of their victimization.<sup>138</sup> This affirmative defense would ideally avoid the limitations imposed by the common-law duress defense, offering more comprehensive protection for vulnerable CST victims.<sup>139</sup> For instance, a battered woman invoking the common-law duress defense is factually similar to a sex trafficking victim successfully raising the Oklahoma trafficking-victim affirmative defense; but the battered woman often fails due to the strict requirements of duress.<sup>140</sup> Duress defenses tend not to cover the subjective experiences of trafficked individuals.<sup>141</sup>

## 2. *Self-Defense*

To successfully assert self-defense in court, defendants must demonstrate a “reasonable belief that they were in ‘imminent’ danger of death or serious bodily harm” at the time of the alleged crime, similar to the requirements for a duress defense.<sup>142</sup> Additionally, individuals identified as an “aggressor”—meaning those who initiated the actions leading to the violence at issue—cannot claim self-defense.<sup>143</sup> These limitations prevent sex trafficking from being used as a mitigating factor when a defendant, having endured repeated abuse, finally confronts their abuser.<sup>144</sup> In this way, the law fails to recognize that CST victims may be trapped in a prolonged cycle of abuse lasting months or even years.<sup>145</sup> Lastly, courts often mandate that defendants asserting self-defense demonstrate they retreated before using force.<sup>146</sup> This condition, for example, precludes victims of intimate

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136. WIS. STAT. ANN. § 939.46(1m) (West 2025); *State v. Kizer*, 2022 WI 58, ¶ 2, 403 Wis. 2d 142, 976 N.W.2d 356.

137. *Kizer*, 2022 WI 58, ¶¶ 27–29.

138. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

139. Hillborn, *supra* note 11, at 475.

140. *Id.*

141. *See id.* at 481.

142. Richert, *supra* note 121, at 325.

143. *Id.* at 326.

144. *Id.*

145. *State v. Kizer*, 2022 WI 58, ¶ 15, 403 Wis. 2d 142, 976 N.W.2d 356.

146. Richert, *supra* note 121, at 326.

partner violence, who experience abuse within their own homes, from benefiting from the defense.<sup>147</sup> Like these victims, CST victims may not have had the means to otherwise escape their abusers. This oversight in legal protections underscores the need for a trafficking-specific affirmative defense to protect CST victims who commit *any* criminal offense, including homicide against their trafficker, as a result of their victimization.<sup>148</sup>

### C. *Safe Harbor Affirmative Defenses for Trafficking Victims*

While traditional affirmative defenses like duress and self-defense often fall short in protecting CST victims, safe harbor affirmative defenses offer greater protection, though they, too, are far from comprehensive in most states. CST victims may become involved in the criminal justice system in various ways.<sup>149</sup> Though a few states continue to charge CST victims with prostitution or commercialized vice, most states have implemented non-criminalization measures, such as safe harbor affirmative defenses,<sup>150</sup> that acknowledge that “minors are unable to consent to sell sexual services and should not be held criminally responsible for harms committed against them.”<sup>151</sup> These statutes realize that minors who engage in criminal behavior as a result of their trafficking victimization are victims first and foremost and should not be further criminalized for actions coerced or manipulated by traffickers.<sup>152</sup> Additionally, many states with these trafficking-specific affirmative defenses recognize human trafficking as a serious problem both domestically<sup>153</sup> and internationally.<sup>154</sup>

While the adoption of safe harbor affirmative defenses for trafficking victims in a growing number of states offers hope for sexually abused

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147. *Id.*

148. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

149. See NCJFCJ, *supra* note 51, at 1–2.

150. A safe harbor is a provision of a statute or regulation that “provides protection from liability or penalties under specific situations or conditions.” *Safe Harbor*, LEGAL INFO. INST. (June 2024), [https://www.law.cornell.edu/wex/safe\\_harbor](https://www.law.cornell.edu/wex/safe_harbor) [<https://perma.cc/V333-BQP7>]. This provision may be included in legislation to “give peace of mind to good-faith actors who might otherwise violate the law on technicalities beyond their reasonable control.” *Id.*

151. NCJFCJ, *supra* note 51, at 1.

152. See, e.g., Protections for Minor Human Trafficking Victims, S.B. 19-185, 72d Gen. Assemb., Reg. Sess. (Colo. 2019). “Minors who are forced into involuntary servitude and commercial sexual activity are more properly identified as victims and not as criminals . . .” *Id.* § 1(1)(c). “Protecting minors who are victims of human trafficking from further trauma by recognizing them as victims rather than criminals is beneficial for the minors involved and therefore in the public interest.” *Id.* § 1(2)(b).

153. *Id.* § 1(1)(a) (“Human trafficking is a serious problem in Colorado and across the nation.”).

154. See, e.g., An Act Relating to Human Trafficking, H.B. 153, 2011–2012 Gen. Assemb., Reg. Sess. (Vt. 2011). “The general assembly finds that: (1) According to the report of the Vermont Human Trafficking Task Force: (A) the number of human beings estimated to be enslaved today has reached over [twenty-seven] million worldwide, the highest in recorded history; and (B) Vermont and all of its bordering states have seen elements of human trafficking . . .” *Id.* § 1(1)(A)–(B).

children, most of these laws are limited to specific crimes, such as prostitution.<sup>155</sup> For example, California, Kentucky, Montana, and North Dakota have expressly enacted this defense for non-prostitution-related crimes,<sup>156</sup> while other states expressly limit the defense to prostitution-related crimes.<sup>157</sup> As of 2023, only nine states provide CST victims with non-criminalization protections or an affirmative defense for violent felonies,<sup>158</sup> seven of which extend protection to *all* violent felonies.<sup>159</sup> In states with trafficking-specific affirmative defenses for violent felonies, the defendant must establish a nexus between their offense and their trafficking victimization, based on the specific circumstances of the case.<sup>160</sup>

The limited scope of these safe harbor affirmative defenses in most states leaves children who are coerced by their traffickers into committing a wider range of criminal offenses, including violent felonies, largely unprotected. To fully center child rights, one study evaluated the impact of safe harbor laws on the commercial sexual exploitation of children by seeking input from those who provided care to this vulnerable population, such as law enforcement officers.<sup>161</sup> Interviewees overwhelmingly “indicated that not enough is known about the models of care needed to ensure positive outcomes” for CST victims.<sup>162</sup> Certainly, more research is needed to persuade state legislatures of the necessity for a broader affirmative defense

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155. See Amici Curiae Brief of Legal Momentum and Harvard Law School’s Gender Violence Program in Support of Defendant-Appellant at 10–11, *State v. Kizer*, 2022 WI 58, 403 Wis. 2d 142, 976 N.W.2d 356 (No. 2020AP000192-CR), 2020 WL 5991137 [hereinafter *Kizer Amicus*].

156. *Id.* at 10; see CAL. PENAL CODE § 236.23 (West 2025); KY. REV. STAT. ANN. § 529.170 (West 2025); MONT. CODE ANN. § 45-5-710 (West 2025); N.D. CENT. CODE ANN. § 12.1-41-13 (West 2025).

157. *Kizer Amicus*, *supra* note 155, at 10; see, e.g., N.Y. PENAL LAW § 230.01 (West 2025).

158. SHARED HOPE INT’L INST. FOR JUST. & ADVOC., NATIONAL STATE LAW SURVEY: AFFIRMATIVE DEFENSES (2023) [hereinafter NATIONAL STATE LAW SURVEY], [https://reportcards.sharehope.org/wp-content/uploads/2024/02/2023-NSL-Survey\\_2.8.pdf](https://reportcards.sharehope.org/wp-content/uploads/2024/02/2023-NSL-Survey_2.8.pdf) [<https://perma.cc/BA8N-8HYZ>]. Those nine states are Colorado [COLO. REV. STAT. ANN. § 18-1-713(1) (West 2025)], Louisiana [LA. STAT. ANN. § 14:46.3(E) (West 2025)], Oklahoma [OKLA. STAT. ANN. tit. 21, § 748(D) (West 2025)], Oregon [OR. REV. STAT. ANN. § 163.269(1)–(2) (West 2025)], South Carolina [S.C. CODE ANN. § 16-3-2020(F) (2024)], Tennessee [TENN. CODE ANN. § 39-11-611 (West 2025)], Vermont [VT. STAT. ANN. tit. 13, § 2652(c)(2) (West 2025)], Wisconsin [WIS. STAT. ANN. § 939.46(1m) (West 2025)], and Wyoming [WYO. STAT. ANN. § 6-2-708(a) (West 2025)]. NATIONAL STATE LAW SURVEY, *supra* note 158.

159. NATIONAL STATE LAW SURVEY, *supra* note 158. Of the nine states that provide CST victims with non-criminalization protections or an affirmative defense for violent felonies, two states, Colorado and Tennessee, do not extend protection to all violent felonies. *Id.*

160. *Kizer Amicus*, *supra* note 155, at 10.

161. BRANDN GREEN, STEPHEN V. GIES, EGIN B. HEALY & AMANDA BOBNIS, SAFE HARBOR LAWS: CHANGING THE LEGAL RESPONSE TO MINORS INVOLVED IN COMMERCIAL SEX, PHASE 3. THE QUALITATIVE ANALYSIS 3, 19 (2018), <https://www.ojp.gov/pdffiles1/ojdp/grants/253244.pdf> [<https://perma.cc/UG93-NJGE>]. This study was funded by the U.S. Department of Justice’s Office of Juvenile Justice and Delinquency Prevention. *Id.* at 3.

162. *Id.* at 19.

for these victims.<sup>163</sup> However, prioritizing child rights indicates that such a defense should extend to CST victims who commit *any* criminal offense as a direct result of their victimization.<sup>164</sup>

#### *D. Federal Legislative Efforts: Sara's Law*

While safe harbor affirmative defenses aim to protect CST victims from criminal liability, other legislative efforts, like Sara's Law, seek to provide greater judicial discretion in sentencing victims who commit violent felonies against their abusers, though these efforts have not been successful. Human Rights for Kids, an international nonprofit organization, collaborated with House Representative Bruce Westerman and Sara Kruzan to draft House Bill 1950,<sup>165</sup> or "Sara's Law," introduced to the House on March 28, 2019.<sup>166</sup> At just sixteen years old, Kruzan killed the man who had been sexually abusing and trafficking her for six years.<sup>167</sup> She was charged with first-degree murder and received a life sentence without the possibility of parole.<sup>168</sup> If passed, this bipartisan federal bill would increase the discretion of federal judges in sentencing children found "guilty of crimes against persons who sexually trafficked, abused, or assaulted them."<sup>169</sup> Under this bill, judges may impose sentences below mandatory minimums or suspend portions of the sentence, as well as consider the trauma experienced by the child.<sup>170</sup> Only applicable to "youthful victim offenders" under eighteen years of age, the law requires the court to find "clear and convincing evidence" that the crime was committed against an individual who trafficked or sexually abused the child within one year of the child's retaliation.<sup>171</sup> It is crucial to point out that this law would not mandate lighter

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163. *See id.*

164. For a more thorough treatment of this proposal, see discussion *infra* Parts III and IV.

165. Sara's Law, H.R. 1950, 116th Cong. (2019).

166. *Recent Accomplishments: Sara's Law*, HUM. RTS. FOR KIDS, <https://humanrightsforkids.org/impact/> [<https://perma.cc/VUY3-YAUM>]; *H.R. 1950—Sara's Law*, CONGRESS.GOV, <https://www.congress.gov/bill/116th-congress/house-bill/1950> [<https://perma.cc/8DW8-YYFY>].

167. *See* Sarah Devaney, Note, *Justice for All? Impeding the Villainization of Human Trafficking Victims via the Expansion of Vacatur Laws*, 49 PEPP. L. REV. 241, 243 (2022).

168. *See* Hannah Sarisohn, *California Governor Pardons Woman Sentenced to Life as a Teen in 90s for Fatally Shooting Abuser*, CNN (July 3, 2022), <https://www.cnn.com/2022/07/03/us/california-sara-kruzan-pardon-shooting-abuser/index.html> [<https://perma.cc/D5VB-SY6G>]. In 2022, California Governor Gavin Newsom granted clemency to Kruzan in recognition of the significant efforts she has made to transform her life. *Id.* However, this act of clemency does not forgive or diminish the harm caused by her actions. *See id.*

169. Press Release, Bruce Westerman, Congressman, House of Representatives, Westerman Introduces Legislation Reforming Juvenile Sentencing (Mar. 28, 2019), <https://westerman.house.gov/media-center/press-releases/westerman-introduces-legislation-reforming-juvenile-sentencing> [<https://perma.cc/V47S-FWTX>].

170. Sara's Law, H.R. 1950, 116th Cong. (2019).

171. *Id.*

sentences but would instead provide judges with more discretion to impose them on a case-by-case basis.<sup>172</sup>

On April 26, 2021, Representative Westerman introduced similar legislation to the House as House Bill 2858, known as Sara's Law and the Preventing Unfair Sentencing Act of 2021, to allow judges to impose a sentence below the mandatory minimum for a juvenile who was convicted of a violent offense against a person who sexually trafficked or abused them.<sup>173</sup> House Bill 1950 and House Bill 2858 were referred to the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security on May 3, 2019, and October 19, 2021, respectively, but they did not progress further.<sup>174</sup>

On July 18, 2023, Westerman introduced Sara's Law and the Preventing Unfair Sentencing Act of 2023.<sup>175</sup> This bill further advocated for granting judges greater discretion in sentencing minors who were victims of sex trafficking and committed crimes against their abusers. That same day, it was referred to the House Committee on the Judiciary, which was the last major action on this bill.<sup>176</sup>

While the passage of one of these federal bills would represent a major achievement for CST victims, its provisions are far too narrow in application. First, the rather arbitrary one-year limit between a child's trafficking and their subsequent crime does not adequately reflect the experiences of these victims.<sup>177</sup> Second, limiting the bills' applicability to victims under the age of eighteen is overly restrictive. Should it not matter that a victim who turns eighteen, and later commits a crime related to their trafficking, was originally trafficked as a child?<sup>178</sup> A more appropriate approach would be to follow the example of Wisconsin Statute § 939.46(1m), a trafficking-specific affirmative defense that requires the defendant to prove their crime has a "logical, causal connection to the underlying trafficking offense," with age only factoring into whether the

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172. *Id.*

173. Sidney McCoy, *Fact Sheet: Sara's Law and the Preventing Unfair Sentencing Act*, SHARED HOPE INT'L INST. FOR JUST. & ADVOC. (June 14, 2022), <https://sharedhope.org/2022/06/14/fact-sheet-saras-law-and-the-preventing-unfair-sentencing-act/> [<https://perma.cc/WH2F-29BU>]; Sara's Law and the Preventing Unfair Sentencing Act of 2021, H.R. 2858, 117th Cong. § 2(a) (2021).

174. *H.R. 1950—Sara's Law*, *supra* note 166; *H.R. 2858—Sara's Law and the Preventing Unfair Sentencing Act of 2021*, CONGRESS.GOV, <https://www.congress.gov/bill/117th-congress/house-bill/2858> [<https://perma.cc/6MJW-W2NV>].

175. Sara's Law and the Preventing Unfair Sentencing Act of 2023, H.R. 4724, 118th Cong. (2023).

176. *H.R. 4724—Sara's Law and the Preventing Unfair Sentencing Act of 2023*, CONGRESS.GOV, <https://www.congress.gov/bill/118th-congress/house-bill/4724/text/ih> [<https://perma.cc/NP87-LQF3>].

177. See discussion *infra* Sections III.B, III.C.

178. See Bendtsen Diedhiou et al., *supra* note 53, at 752–53.

defendant is a victim of human trafficking or CST.<sup>179</sup> Although most states recognize the “legal transformation from child to adult at the age of eighteen,” young people between the ages of eighteen to twenty-five “remain especially susceptible to sex trafficking victimization as their brain development continues.”<sup>180</sup> Finally, these bills would have a limited impact on protecting CST victims who commit violent felonies as a result of their victimization since most violent crimes are prosecuted at the state level.<sup>181</sup> Thus, it is critical for states to adopt a broad trafficking-specific affirmative defense to better protect these vulnerable victims.<sup>182</sup>

### III. CAN THE LAW SEE BEYOND A CHILD SEX TRAFFICKING VICTIM’S VIOLENT RESPONSE TO TRAFFICKING?

To understand the life course of young people, one must recognize that the world in which children live is imposed upon them from birth.<sup>183</sup> Children are inherently dependent on others for survival, and they need secure attachments to thrive.<sup>184</sup> As sociologist Anthony Giddens highlights, quasi-ontological security in one’s life fosters trust.<sup>185</sup> Early experiences of trust are often cultivated within mediating institutions of one’s family or school.<sup>186</sup> However, when these environments fail to provide the necessary love and support, children may seek attachment in dangerous ways—turning to sex traffickers who exploit their vulnerability and need for love.<sup>187</sup>

179. See *State v. Kizer*, 2022 WI 58, ¶ 19, 403 Wis. 2d 142, 976 N.W.2d 356; *infra* notes 268–69 and accompanying text.

180. Bendtsen Diedhiou et al., *supra* note 53, at 752–53.

181. See, e.g., John Floyd, *Violent Crimes Will Get Federal Jail Time, Says U.S. Attorney—True?*, JOHN T. FLOYD L. FIRM (Mar. 23, 2018), <https://www.johntfloyd.com/violent-crimes-will-get-federal-jail-time-says-u-s-attorney-true/> [<https://perma.cc/Z396-UU7N>]; *Violent Crime*, FBI, <https://www.fbi.gov/investigate/violent-crime> [<https://perma.cc/LBU5-D5XF>].

182. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

183. See GERISON LANSDOWN, *THE EVOLVING CAPACITIES OF THE CHILD 9–12* (2005). “The ‘deficit’ model of childhood renders much of children’s actual agency invisible. Children are not taken seriously because it is believed that they do not really know what they want or need, and the perception is of children as objects or possessions whose views do not really matter.” *Id.* at 10.

184. See discussion *infra* Section III.B; Colleen Doyle & Dante Cicchetti, *From the Cradle to the Grave: The Effect of Adverse Caregiving Environments on Attachment and Relationships Throughout the Lifespan*, 24 *CLINICAL PSYCH.: SCI. & PRAC.* 203, 205, 214 (2017).

185. See Samantha Meyer, Paul Ward, John Coveney & Wendy Rogers, *Trust in the Health System: An Analysis and Extension of the Social Theories of Giddens and Luhmann*, 17 *HEALTH SOCIO. REV.* 177, 180 (2008).

186. See generally Cynthia Ewell Foster et al., *Connectedness to Family, School, Peers, and Community in Socially Vulnerable Adolescents*, 81 *CHILD. & YOUTH SERVS. REV.* 321 (2017) (emphasizing the importance of family and school connectedness in a child’s emotional and behavioral development).

187. Williamson & Flood, *supra* note 98, at 195; see Kristi Hickle & Michelle Lefevre, *Learning to Love and Trust Again: A Relational Approach to Developmental Trauma*, in *SAFEGUARDING YOUNG PEOPLE: RISK, RIGHTS, RESILIENCE AND RELATIONSHIPS* 159, 163–66 (Dez Holmes ed., 2022).

An affirmative defense specific to CST victims who commit *any* criminal offense, including violent felonies, as a result of their victimization, accounts for the impact of this trauma and coercion on their development, promoting a more compassionate legal response. Empowering young people to understand their rights and providing them with a voice is fundamental to the development of basic trust, enabling them to break free from exploitation.

To frame the argument, this Part begins by challenging traditional views that silence children's voices, advocating instead for their active involvement in decisions that affect their lives. Next, this Part applies attachment theory to highlight the essential role of relationships in a child's development, with secure attachments fostering emotional well-being and resilience. This Part then explores the profound impact of childhood trauma and its long-term effects on behavior. Finally, this Part reviews international rights-based standards to protect CST victims, underscoring the need in U.S. states for a trafficking-specific affirmative defense that recognizes the unique vulnerabilities of these victims.

#### A. *Social Construction of Childhood*

In Western culture, childhood is typically perceived as a time of innocence and play, free from the burdens of adult responsibility.<sup>188</sup> However, for many children worldwide, this ideal is far from their lived reality.<sup>189</sup> In the United States alone, at least 100,000 children fall victim to commercial sexual exploitation and sex trafficking each year.<sup>190</sup> One study even estimates that "300,000 children in the United States are *at risk* for commercial sexual exploitation, including trafficking," at any given time.<sup>191</sup> These figures reveal that childhood can involve considerable risk of sexual abuse.<sup>192</sup> Such risks are only intensified when children lack supportive adults and fear that their disclosure of sexual abuse will not be believed.<sup>193</sup>

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188. Gerison Lansdown, *Can You Hear Me?: The Right of Young Children to Participate in Decisions Affecting Them* 4–5 (Bernard van Leer Found., Working Paper No. 36, 2005).

189. *Id.* at 5.

190. Fernandez, *supra* note 8, at 866.

191. *Id.* at 866–67 (quoting *Exploiting Americans on American Soil: Domestic Trafficking Exposed: Hearing Before the Comm'n on Sec. & Coop. in Europe*, 109th Cong. 1–2 (2005) (emphasis added) (statement of Hon. Christopher H. Smith, Co-Chairman, Comm'n on Sec. & Coop. in Europe)).

192. *See supra* notes 190–91 and accompanying text.

193. *See* David Finkelhor, Gerald Hotaling, I.A. Lewis & Christine Smith, *Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors*, 14 *CHILD ABUSE & NEGLECT* 19, 27 (1990); Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 *CLINICAL PSYCH. REV.* 271, 282 (2002).

Unfortunately, the failure of adults to create environments that allow children to express their views in meaningful ways often leads to children's abilities being underestimated and their voices silenced.<sup>194</sup> All too often, adults characterize children as “incompetent, unstable, credulous, unreliable, [and] emotional.”<sup>195</sup> The “common sense” belief that children's desires were not worth considering was so pervasive that national lawmakers in the nineteenth century accepted the exclusion of children from the Thirteenth Amendment's protections against slavery and involuntary servitude.<sup>196</sup> Comparatively, adults tend to view themselves more favorably: “[T]hey are competent, stable, well informed, reliable[,] and rational.”<sup>197</sup> This faulty assumption that children are incapable of reason and judgment fails to recognize the complexity of their emotions and experiences, as well as their potential to contribute meaningfully to decision-making processes.<sup>198</sup>

A rights-based perspective on child participation, championed by many non-governmental organizations, challenges this assumption.<sup>199</sup> For example, the American Bar Association's Model Rule of Professional Conduct 1.14 instructs lawyers to maintain a normal client-lawyer relationship with clients with diminished capacities.<sup>200</sup> This rule acknowledges that children, despite their diminished capacity, should be treated with respect and have their autonomy recognized.<sup>201</sup> Children have an inherent right to actively participate in decisions that affect their lives, rather than being seen merely as passive recipients of care.<sup>202</sup>

This emphasis on respecting and protecting children's rights contrasts sharply with the more traditional approach to childhood, which focuses primarily on promoting children's development in ways that overlook their rights.<sup>203</sup>

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194. Lansdown, *supra* note 188, at 2–3, 5.

195. Berry Mayall, *The Sociology of Childhood in Relation to Children's Rights*, 8 INT'L J. CHILD.'S RTS. 243, 246 (2000).

196. Anna Mae Duane, *The Long History of Child Saving as Nation Building in the USA: An Argument for Privileging Children's Perspectives on Recovery*, in THE HISTORICAL ROOTS OF HUMAN TRAFFICKING, *supra* note 98, at 217, 224.

197. *See* Mayall, *supra* note 195, at 246.

198. *Id.*

199. Lansdown, *supra* note 188, at v.

200. MODEL RULES OF PRO. CONDUCT r. 1.14(a) (AM. BAR ASS'N 2023).

201. *See* MODEL RULES OF PRO. CONDUCT r. 1.14 cmt. [1] (AM. BAR. ASS'N. 2023).

202. Lansdown, *supra* note 188, at v.

203. *Id.*

### B. Attachment Theory

In practice, interventions by adults involved in children's lives reflect a "problem-first" lens, where children are seen as either "troubled or causing trouble, at risk or creating risks, vulnerable or harmful."<sup>204</sup> Such labels can reduce children to their perceived problems, dismissing the complexity of their life experiences.<sup>205</sup> Many adults tend to disregard a young person's unresolved trauma, focusing on symptoms rather than their underlying developmental needs.<sup>206</sup> Attachment theory offers a helpful framework for understanding the importance of relationships in a child's development and ultimate survival.<sup>207</sup> This theory posits that "infants are biologically predisposed to bond with [their] caregivers," communicating their need for the protection and support of these caregivers.<sup>208</sup>

Adverse caregiving environments, marked by "neglect, deprivation, or abuse," cultivate an insecure attachment relationship.<sup>209</sup> Children growing up in these environments often view relationships as hurtful and unsafe, leading them to depend solely on themselves for emotional support and security.<sup>210</sup> Over time, they become increasingly compliant and suppress their basic needs for safety and support.<sup>211</sup> Traffickers exploit children who have experienced "sexual abuse, family dysfunction, or physical neglect" by offering them false love and a sense of belonging—a tempting deal too good to be true.<sup>212</sup> Without safe caregivers, these children lack the role models needed to learn how to regulate their emotions and understand the foundations of healthy relationships.<sup>213</sup> The grooming process starts with traffickers using flattery to befriend vulnerable children, offering them the attention and affection they crave, before selling them out for sex.<sup>214</sup> Traffickers control these children through a "combination of dependency and fear."<sup>215</sup> Using Maslow's hierarchy of needs, one study on recruitment tactics found that traffickers most often prioritize love and belonging when

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204. Hickle & Lefevre, *supra* note 187, at 159 (citing Michelle Lefevre, Kristine Hickle & Barry Luckcock, 'Both/And' Not 'Either/Or': Reconciling Rights to Protection and Participation in Working with Child Sexual Exploitation, 49 BRIT. J. SOC. WORK 1837 (2019)).

205. *See id.*

206. *Id.*

207. *See* Doyle & Cicchetti, *supra* note 184, at 204.

208. *Id.*

209. *Id.* at 205–06.

210. *Id.*; *see* Hickle & Lefevre, *supra* note 187, at 165.

211. *See* Hickle & Lefevre, *supra* note 187, at 165.

212. Williamson & Flood, *supra* note 98, at 195.

213. *See* Hickle & Lefevre, *supra* note 187, at 161.

214. *See* Fernandez, *supra* note 8, at 867–68.

215. *Id.* at 868.

luring victims, followed closely by promises of safety.<sup>216</sup> For a vulnerable child, a trafficker offering an opportunity for secure work and assurances that their basic needs will be met is rather appealing.<sup>217</sup> Many of these children, trapped in an adverse caregiving environment, face a devastating choice. What does society expect them to do?

Conversely, consistent and responsive caregiving promotes a *secure* attachment relationship.<sup>218</sup> Securely-attached children understand that they are deserving of love and care, and they develop a strong sense of self-worth.<sup>219</sup> They see relationships as safe and worthwhile connections.<sup>220</sup> Through the guidance of trusted caregivers, these children learn the relationship between cause and effect, differentiate right from wrong, and link their emotions to their behavior in a productive way.<sup>221</sup> However, as much as secure attachment relationships appear to protect children from grooming and exploitation, this is not a guarantee.<sup>222</sup> Even children who are securely attached can be vulnerable to exploitation, as the influence of peer relationships and external environments, including online platforms, becomes more prominent in their lives.<sup>223</sup>

A child's attachments directly shape their ability to trust, form relationships, and regulate their emotions.<sup>224</sup> Insecure attachments often leave children vulnerable to traffickers who prey on their unmet emotional needs, while secure attachments offer these children some, albeit imperfect, protection against such exploitation.<sup>225</sup> To understand how a CST victim could be coerced to commit a criminal offense as a result of their victimization, an affirmative defense informed by attachment theory would address the root causes of their behavior.<sup>226</sup>

### C. Long-Term Effects of Childhood Trauma

Trauma, whether stemming from a single event like rape or chronic abuse like sex trafficking, is a uniquely individual experience, causing one to lose control over their emotions or perceive a threat to their life, bodily

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216. Williamson & Flood, *supra* note 98, at 195.

217. *Id.*

218. Doyle & Cicchetti, *supra* note 184, at 205; Hickle & Lefevre, *supra* note 187, at 164.

219. Doyle & Cicchetti, *supra* note 184, at 205.

220. *Id.*

221. Hickle & Lefevre, *supra* note 187, at 164.

222. *Id.*

223. *Id.*

224. *Id.* at 161–62; Doyle & Cicchetti, *supra* note 184, at 204–06.

225. Hickle & Lefevre, *supra* note 187, at 161, 164.

226. For a more thorough treatment of this proposal, see discussion *infra* Part IV.

integrity, or sanity.<sup>227</sup> Children exposed to multiple traumatic events often display behaviors that are disruptive for both themselves and others, even as their bodies try to protect them through heightened stress responses.<sup>228</sup> For example, children with complex trauma histories may struggle with clear thinking and reasoning.<sup>229</sup> When children grow up in an environment where they constantly feel threatened, they remain in survival mode, always on high alert.<sup>230</sup> With their bodies and minds adapting to a chronic stress response, these children often find it difficult to think through problems calmly or consider multiple solutions.<sup>231</sup> Other disruptive behaviors may include “extreme mood shifts[;] . . . agitation and difficulty focusing or being still; physical pain; sleep disturbances; sensitivity to touch or sound; self-harm; and difficulties with motor coordination, cognitive development[,] and language processing.”<sup>232</sup>

Trauma can potentially lead to long-term challenges in establishing trusting relationships.<sup>233</sup> Trust—the “glue” of social life—simplifies decision-making and helps people navigate social environments more easily.<sup>234</sup> Though early experiences of secure attachment relationships with trusted family and friends can reduce children’s vulnerability to grooming and exploitation, they cannot guarantee their safety.<sup>235</sup> Still, these relationships provide children with people who they can turn to for support, advice, and protection when they need it most.<sup>236</sup>

In helping children mitigate the impact of traumatic experiences in their lives, it is necessary to understand “how their life experiences, including both early caregiving experiences and exposure to extra-familial harm within peer, school[,] and community contexts, have either laid the foundations for resilience or have increased their vulnerability to risk and trauma.”<sup>237</sup> Sarah Bendtsen, the director of policy strategy for the anti-trafficking nonprofit organization Shared Hope International, explains that individuals who have experienced trauma often seek control in ways that

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227. See VICTIM-OFFENDER INTERSECTIONALITY, *supra* note 9, at 8.

228. See Hickle & Lefevre, *supra* note 187, at 161; *Effects*, NAT’L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/complex-trauma/effects> [https://perma.cc/8LH7-FRJK].

229. *Effects*, *supra* note 228.

230. *Id.*

231. *Id.*

232. Hickle & Lefevre, *supra* note 187, at 161 (citing BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* (2014)).

233. See Delphine Brown, *Childhood Experiences, Growing Up “In Care,” and Trust: A Quantitative Analysis*, 144 *CHILD. & YOUTH SERVS. REV.* 2023, art. no. 106734, at 2.

234. Meyer et al., *supra* note 185.

235. See Hickle & Lefevre, *supra* note 187, at 164.

236. *Id.*

237. *Id.* at 162.

might seem “callous” to observers.<sup>238</sup> For example, a child with a history of complex trauma, perhaps brought on by CST, may become easily triggered and react aggressively to a perceived attack, even when such a response is unwarranted.<sup>239</sup> To an observer, this may seem like an overreaction, but for the child, it is a coping mechanism to protect themselves and maintain control in environments where they feel unsafe.<sup>240</sup> Bendtsen acknowledges that the “average person’s standard” cannot be applied to judge these victims of childhood trauma, who have “been to hell and back.”<sup>241</sup>

#### *D. International Rights-Based Standards for Protecting Child Sex Trafficking Victims*

Building on the foundational understanding of the unique vulnerabilities faced by CST victims, it becomes evident that special and additional measures for their protection are not only necessary but imperative. Certain international standards and guidelines affirm the need for specialized legal protections for CST victims. Importantly, these frameworks may inform the development of affirmative defenses in the United States for such victims who commit *any* criminal offense, including violent felonies, as a result of their victimization.<sup>242</sup>

In order for children to express their views, adults must provide the opportunities and support necessary for them to do so.<sup>243</sup> Article 12 of the United Nations Convention on the Rights of the Child explicitly requires adults—parents, professionals, and politicians alike—to empower and encourage children to share their views on all matters that affect them.<sup>244</sup> Of course, this provision does not mandate that children express their views if they are unwilling; rather, it affirms their right to do so.<sup>245</sup> Although the United States has yet to ratify the CRC,<sup>246</sup> its principles serve as a global

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238. Bellware & Contrera, *supra* note 64; *see also supra* notes 70–78 and accompanying text (detailing Chrystul Kizer’s response to her trafficking victimization).

239. *Effects*, *supra* note 228.

240. *Id.*

241. *See* Bellware & Contrera, *supra* note 64.

242. *See* REBECCA SURTEES & LAURA S. JOHNSON, SPECIAL AND ADDITIONAL MEASURES FOR CHILD TRAFFICKING VICTIMS: A PRACTITIONER GUIDE 4 (2021).

243. *Id.* at 2; Lansdown, *supra* note 188, at 5.

244. Lansdown, *supra* note 188, at 2.

245. *Id.*

246. LUISA BLANCHFIELD, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1 (2015), <https://www.congress.gov/crs-product/R40484> [<https://perma.cc/96XQ-ULSU>]. Opponents of the CRC argue that ratification would undermine U.S. sovereignty by granting the CRC Committee “authority over U.S. government and private citizens’ actions toward children.” *Id.* at 8. Many also worry that the CRC may interfere in “how parents choose to raise their children.” *Id.* at 9. Some view the CRC

standard for children's rights and continue to inform domestic laws aimed at empowering all children, including CST victims.<sup>247</sup>

Moreover, the Palermo Protocol<sup>248</sup> calls for a comprehensive international strategy across countries of origin, transit, and destination to address the vulnerabilities of trafficking victims, especially women and children.<sup>249</sup> A key objective of the Palermo Protocol is to uphold the internationally recognized human rights of trafficking victims.<sup>250</sup> In this regard, the Palermo Protocol establishes a higher threshold for rights obligations than the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949, which narrowly focused on addressing trafficking in the context of prostitution, neglecting the broader scope of trafficking and the diverse needs of its victims.<sup>251</sup> Article 6.4 of the Palermo Protocol underscores the importance of considering the "age, gender[,] and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education[,] and care," in protecting victims

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as ineffective in protecting children's rights because countries widely regarded as "abusers of children's rights—including Sudan, Democratic Republic of the Congo, and China—are party to the Convention." *Id.* at 15. Unlike many other human rights treaties, the CRC covers areas "primarily or exclusively under the jurisdiction of state or local governments," including child education, juvenile justice, and access to healthcare. *Id.* at 2, 7. Supporters counter that the CRC aims to protect children from government intrusion and abuse without undermining parental roles. *Id.* at 10. They highlight the CRC's "strong support for the role of parents and the family structure," asserting that U.S. federal and state laws generally align with CRC requirements. *Id.* at 8, 11. They believe that ratifying the CRC would increase the credibility of the United States in advocating for children's rights internationally. *Id.* at 16.

247. See *Martinez-Lopez v. Gonzales*, 454 F.3d 500, 502 (5th Cir. 2006) ("The United States has not ratified the CRC, and, accordingly, the treaty cannot give rise to an individually enforceable right."). *But cf.* Jean Galbraith, *Human Rights Treaties in and Beyond the Senate: The Spirit of Senator Proxmire*, in *FOR THE SAKE OF PRESENT AND FUTURE GENERATIONS: ESSAYS ON INTERNATIONAL LAW, CRIME AND JUSTICE IN HONOUR OF ROGER S. CLARK* 507, 508, 514 (Suzannah Linton, Gerry Simpson & William A. Schabas eds., 2015) (noting that "unratified [human rights] treaties can have direct effects on U.S. law," influencing "administrative action, state and local legislation, and judicial interpretation"). For example, in *Roper v. Simmons*, the U.S. Supreme Court cited the CRC, among "other international and comparative law sources," in holding that the Constitution prohibits "imposition of the death penalty on offenders who were under the age of [eighteen] when their crimes were committed." 543 U.S. 551, 576, 578 (2005); Galbraith, *supra* note 247, at 516. With respect to these sources of law cited, including the CRC, the Court acknowledged that the "opinion of the world community, while not controlling [the] outcome [of the case], does provide respected and significant confirmation for [the Court's] own conclusions." *Roper*, 543 U.S. at 578. One scholar also found that although state and local "engagement with [human rights] treaties is generally limited, it has occurred more frequently with respect to unratified human rights treaties than it has with those that have been ratified." Joanna Kalb, *The Persistence of Dualism in Human Rights Treaty Implementation*, 30 *YALE L. & POL'Y REV.* 71, 73 (2011).

248. See *supra* notes 17–21 and accompanying text.

249. Palermo Protocol, *supra* note 16, Preamble.

250. See *id.*; Ezeilo, *supra* note 18, at 145–46.

251. See Ezeilo, *supra* note 18, at 146; *cf.* G.A. Res. 317(IV), Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Mar. 21, 1950), 96 U.N.T.S. 271.

of trafficking.<sup>252</sup> As of November 2025, the Palermo Protocol has been ratified by 185 parties, including the United States, reinforcing its role as a critical tool in the protection of victims of trafficking, particularly children.<sup>253</sup>

In 2002, the United Nations Office of the High Commissioner for Human Rights also emphasized the “need for special safeguards and care, including appropriate legal protection” in definitions of the trafficking of children.<sup>254</sup> These principles explicitly protect CST victims from prosecution or punishment, recommending that “children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.”<sup>255</sup> This protection acknowledges the lack of agency that children have in crimes they commit while under the control of traffickers.<sup>256</sup>

By adopting a trafficking-specific affirmative defense, U.S. states can align with international standards and more effectively protect the rights of CST victims who commit *any* criminal offense as a result of their victimization.

#### IV. THE NEED FOR AN AFFIRMATIVE DEFENSE FOR CHILD SEX TRAFFICKING VICTIMS WHO COMMIT ANY CRIMINAL OFFENSE

This Part first articulates the need for an affirmative defense for CST victims who commit *any* criminal offense as a result of their victimization, emphasizing the importance of a rehabilitative legal approach. This Part then addresses key considerations for implementing the proposed defense, including: (1) the process for establishing the defense, (2) the scope of the defense, (3) the evidentiary burden required to invoke it, and (4) the heightened vulnerability of CST victims to coercion. Finally, this Part examines barriers victims may face in raising this defense in court and offers a rebuttal to critics who argue that such a defense could encourage criminal behavior. By the end of this proposal, it will be clear that adopting the proposed affirmative defense is essential to ensuring justice for CST victims who commit *any* criminal offense as a result of their victimization.

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252. Palermo Protocol, *supra* note 16, art. 6.4.

253. *A Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, UNITED NATIONS TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en) [https://perma.cc/5WU5-83Z3].

254. U.N. High Comm’r for Hum. Rts., *Recommended Principles and Guidelines on Human Rights and Human Trafficking* 12–13, U.N. Doc. E/2002/68/Add. 1 (May 20, 2002).

255. *Id.* at 13.

256. *See id.* at 12–13.

### A. Defining the Proposal

States should adopt a clear affirmative defense for CST victims that is applicable to *any* criminal offense, including violent felonies, committed as a result of their trafficking victimization. Such a defense is already available in seven states.<sup>257</sup> By providing comprehensive protection against all criminal offenses, including murder, assault, kidnapping, and robbery, this defense acknowledges the varied ways traffickers may coerce their victims into criminal activities, or force them to take extreme actions to escape harm. This defense would offer CST victims an opportunity to present their cases in a manner that thoroughly explores how the trauma they experienced as children at the hands of their traffickers has shaped their behavior. Such a defense would also ensure that state actors, such as judges, prosecutors, and defense attorneys, understand the unique vulnerabilities of CST victims. This statutory approach promotes a rehabilitative, rather than punitive, response to handling cases involving CST victims who commit *any* criminal offense as a result of their victimization.

### B. Implementation

To effectively implement an affirmative defense for CST victims that is applicable to *any* criminal offense committed as a result of their victimization, it is essential to define: (1) the process for establishing the defense, (2) the scope of the defense, (3) the evidentiary burden required to invoke it, and (4) the heightened vulnerability of CST victims to coercion.

First, given the interplay between trauma and behavior,<sup>258</sup> the proposed trafficking-specific affirmative defense should be established by statute, rather than left to judicial interpretation. Two primary sources of law form the basis of modern legal systems: judicial decisions and legislative acts.<sup>259</sup> While judge-made law relies on the principle of *stare decisis* as it evolves, statutory law is not bound by precedent and can instead adapt to changing societal needs.<sup>260</sup> Judicial interpretation can certainly shape the application of statutes, but the legislature has the power to respond and amend the statute if it disagrees with how courts apply the law. If established by statute,

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257. See *supra* notes 158–59 and accompanying text.

258. See Bendtsen Diedhiou et al., *supra* note 53, at 760 (finding that a “highly individualized assessment is . . . necessary to understand when there is a nexus between the trafficking victimization and the coercion to commit the violent act”).

259. Giacomo A.M. Ponzetto & Patricio A. Fernandez, *Case Law Versus Statute Law: An Evolutionary Comparison*, 37 J. LEGAL STUD. 379, 379 (2008).

260. See *id.* at 394; 2024 GLOBAL REPORT, *supra* note 34, at 3 (“If there is one key takeaway from this report, it is the need to adapt as human trafficking shifts.”).

the proposed affirmative defense would provide clear, codified guidelines, ensuring a consistent and trauma-informed legal response to CST across jurisdictions.<sup>261</sup>

The juvenile justice system was established to “punish and rehabilitate juvenile offenders,” not to care for their well-being or address their trauma.<sup>262</sup> Thus, relying on case law to gradually align with the modern understanding of how trauma affects a child’s perception of personal safety and healthy relationships leaves these CST victims vulnerable to inconsistent legal outcomes. Through a trafficking-specific affirmative defense, we urgently need to curb the harm of the juvenile justice system treating CST victims in the same manner as their traffickers, subjecting them to incarceration and mandating program participation.<sup>263</sup>

Second, a well-crafted statute should clearly outline its scope and purpose—namely, to protect CST victims who commit *any* criminal offense as a result of their victimization from further criminalization. Such a defense would give these victims an opportunity to present evidence of their victimization, potentially mitigating their culpability for the charged offense or, in some cases, absolving them of responsibility entirely.<sup>264</sup> First and foremost, it is critical that this defense acknowledges that these individuals *are* victims. Similar to Wisconsin Statute § 939.46(1m), a CST victim should be able to apply this defense regardless of whether anyone was prosecuted or convicted for the trafficking violation.<sup>265</sup> Likewise, this defense should not require that the trafficker “be aware of the offense, or that it occur at the trafficker’s behest in furtherance of the trafficking violation.”<sup>266</sup> This defense should apply to children who were trafficked, as well as extend to individuals who may have reached adulthood by the time they commit the offense but were trafficked as children.

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261. See generally Stephen Wolfson, *The Purposeful Messiness of United States Caselaw*, PENN LIBRS. NEWS (May 22, 2024), <https://www.library.upenn.edu/news/us-caselaw> [<https://perma.cc/4XER-TNVC>] (explaining the role of statutory law in clarifying legal issues and how case law can vary across jurisdictions); see Bendtsen Diedhiou et al., *supra* note 53, at 759–60 (suggesting that “affirmative defenses can be one appropriate avenue” to “balanc[e] . . . the non-offending victims’ rights, public safety, and a trauma-informed understanding of the victim-offender’s action”).

262. Williamson & Flood, *supra* note 98, at 207.

263. See *id.* at 207–08.

264. For instance, Wisconsin Statute § 939.46(1m) does not specify whether it applies as a complete or mitigating defense to first-degree intentional homicide. *State v. Kizer*, 2022 WI 58, ¶ 8, 403 Wis. 2d 142, 976 N.W.2d 356. In *Kizer*, the Wisconsin Supreme Court determined that this defense is a complete defense to first-degree intentional homicide. *Id.* ¶ 2.

265. Cf. WIS. STAT. ANN. § 939.46(1m) (West 2025). “A victim of a violation of s. 940.302(2) [human trafficking] or 948.051 [CST] has an affirmative defense for any offense committed as a direct result of the violation of s. 940.302(2) or 948.051 without regard to whether anyone was prosecuted or convicted for the violation of s. 940.302(2) or 948.051.” *Id.*

266. *Kizer*, 2022 WI 58, ¶ 18.

Third, the statute should clearly define the evidentiary burden required to invoke the defense. Following the example set by Wisconsin Statute § 939.46(1m), the first element of the proposed defense should require that the defendant identify themselves as a victim of the applicable trafficking statute in the relevant state.<sup>267</sup> The second element should require that the criminal offense “bear a logical, causal connection to the underlying trafficking offense; it must be a direct result of the trafficking.”<sup>268</sup> As noted in *Kizer*, even an offense that is “unforeseeable or that does not occur immediately after a trafficking offense is committed can be a direct result of the trafficking offense, so long as there is still the necessary logical connection between the offense and the trafficking.”<sup>269</sup> If the defendant who is a victim of trafficking can produce “some evidence on which a reasonable jury could find” that the alleged offenses were committed as a direct result of trafficking, the burden should shift to the state to prove beyond a reasonable doubt that the defense does not apply.<sup>270</sup>

Finally, the proposed statute should explicitly recognize the vulnerability of CST victims to coercion by their traffickers, highlighting their need for specialized services.<sup>271</sup> This critical aspect is missing in the aforementioned Wisconsin Statute § 939.46(1m).<sup>272</sup> By acknowledging their increased vulnerability, the defense would allow these children to present their cases in a way that humanizes their experiences, considering the complex power dynamics, manipulation, and abuse they endured. This defense must prevent these children from being retraumatized by the legal system and offer them a path toward healing and recovery.

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267. *Id.* ¶¶ 18–19.

268. *Id.* ¶ 19. This conclusion aligns with the only published decision from another state court that has interpreted similar statutory language. *Id.* ¶ 18 (citing *In re D.C.*, 275 Cal. Rptr. 3d 191 (Ct. App. 2021) (analyzing CAL. PENAL CODE § 236.23(a), which offers an affirmative defense to specific crimes if the defendant proves they were “coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm”).

269. *Id.* ¶ 15.

270. *See id.* ¶¶ 9, 19. In Oklahoma, form jury instructions state:

The defendant has raised the defense that he/she was a victim of human trafficking during the time of the alleged offense. It is the burden of the State to prove beyond a reasonable doubt that the defendant was not a victim of human trafficking during the time of the alleged offense. If you find that the State has failed to satisfy its burden of proof beyond a reasonable doubt, then the defendant must be found not guilty.

VERNON’S OKLA. FORMS 2D, OUJI-CR 8-61 (emphasis omitted).

271. *See, e.g.*, WYO. STAT. ANN. § 6-2-708(b) (West 2025) (“A victim of human trafficking who is a minor shall be deemed a child in need of supervision in accordance with the Children in Need of Supervision Act or a neglected child in accordance with the Child Protection Act.”); LA. STAT. ANN. § 14:46.3(E) (West 2025) (“No victim of trafficking as provided by the provisions of this Section shall be prosecuted for unlawful acts committed as a direct result of being trafficked. Any child determined to be a victim pursuant to the provisions of this Subsection shall be eligible for specialized services for sexually exploited children.”).

272. *See* WIS. STAT. ANN. § 939.46(1m) (West 2025).

### C. Policy Considerations

It is important to acknowledge that even when an affirmative defense for CST victims who committed *any* criminal offense as a result of their victimization exists in a particular state, victims may not always be able to raise it in court.<sup>273</sup> Many victims lack the necessary documentation to support their victimization claims, and they may not be aware of the laws and criminal relief options available to them.<sup>274</sup> Additionally, defense attorneys might not recognize the signs of CST and may fail to address this crucial issue with both victims and the prosecution.<sup>275</sup> Some victims may also not be emotionally prepared to disclose their trauma in legal proceedings.<sup>276</sup> While an affirmative defense can offer relief at the outset of the criminal justice process, it typically requires that victims have only recently escaped their trafficking situation.<sup>277</sup> At this point, victims are unlikely to have received trauma treatment, leading them to perceive themselves as “willing participants” in their abuse, despite the coercion they experienced.<sup>278</sup> Often, trauma can severely hinder a victim’s ability to recall and articulate the details of their victimization and involvement in any related criminal activities, even if they personally identify as a victim of trafficking.<sup>279</sup> Thus, trafficking victims unable to evade prosecution and conviction for offenses connected to their victimization through an affirmative defense should be given another chance to pursue relief under criminal record relief statutes.<sup>280</sup>

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273. See *Myths Debunked*, VA. COAL. AGAINST HUM. TRAFFICKING, <https://vcaht.org/myths-debunked/> [<https://perma.cc/L6A2-CQT3>].

274. *Id.*

275. *Id.*

276. *Id.*

277. Bendtsen Diedhiou et al., *supra* note 53, at 761.

278. *Id.* at 761–62.

279. *Id.* at 762.

280. *Id.*; see Devaney, *supra* note 167, at 246. As of spring 2023, only three states have not yet enacted a criminal record relief statute for human trafficking victims. See POLARIS PROJECT, CRIMINAL RECORD RELIEF FOR TRAFFICKING SURVIVORS: UPDATING GRADES AND RUBRIC TO REFLECT CURRENT IMPROVEMENTS AND CHANGES 6 (2023), <https://polarisproject.org/wp-content/uploads/2023/04/Criminal-Record-Relief-for-Trafficking-Survivors-by-Polaris.pdf> [<https://perma.cc/L5XN-T8AU>]. The protections provided by these statutes vary by state. *Id.* For example, two states, Missouri and South Dakota, limit criminal record relief to trafficking victims who committed crimes while under the age of eighteen. *Id.* These statutes also offer varying forms of relief, including sealing, expunging, or vacating the conviction. See Devaney, *supra* note 167, at 247. Sealing a criminal record limits public access, though it can still be accessed via a court order. *Id.* Expungement “removes a conviction from a person’s criminal record,” making the record unavailable. *Id.* Vacatur laws completely erase the conviction from one’s criminal record, “validat[ing] the survivor’s role as a victim, rather than a criminal.” *Id.*

This proposal is not intended to minimize the fact that some trafficking victims have committed very serious crimes. Critics of the proposed affirmative defense argue that excusing trafficking victims from criminal responsibility could encourage them to commit more crimes due to a perceived lack of legal consequences.<sup>281</sup> However, this argument overlooks the reality that trafficking victims are not typically making “rational, autonomous” decisions.<sup>282</sup> Instead, many act under the direction or control of their traffickers.<sup>283</sup> A careful, case-by-case evaluation, taking into account the “totality of the trafficking victim’s actions, intent and personal circumstances, as well as the impact of [the victim’s] conduct on others,” is required to determine whether justice supports holding someone accountable for criminal offenses committed as a result of their victimization.<sup>284</sup>

An affirmative defense for CST victims who commit criminal offenses as a result of their victimization does not ensure a favorable outcome in court. However, it provides these defendants with the opportunity to present evidence of their victimization and potentially mitigate their culpability.

#### CONCLUSION

Trauma and coercion inherently influence the response of a CST victim to their exploitation, often leading to actions that may be deemed criminal. An affirmative defense for CST victims who commit *any* criminal offense, including violent felonies, addresses a critical gap in legal protections in most states by recognizing the interplay between trauma and behavior.<sup>285</sup> CST victims facing violent felony charges deserve the opportunity to present a proper defense and share their trauma. Informed by a child-rights perspective, we can no longer silence these children. When asked how she would have liked the justice system to treat her, Sara Kruzan,<sup>286</sup> an activist and survivor of CST who killed her trafficker, offered a poignant response: “With kindness, with compassion . . . trying to ask the right questions to say,

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281. See Francisco Zornosa, *Protecting Human Trafficking Victims from Punishment and Promoting Their Rehabilitation: The Need for an Affirmative Defense*, 22 WASH. & LEE J. C.R. & SOC. JUST. 177, 191 (2016).

282. *Id.*

283. *Id.*

284. Zeeman & Stauss, *supra* note 55, at 145.

285. See Bendtsen Diedhiou et al., *supra* note 53, at 760–61.

286. See discussion *supra* Section II.D.

well, what happened to you? . . . How did this happen? . . . How did the adults miss it?"<sup>287</sup>

*Amanda N. Ghibaudo\**

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287. ABC News, *Sex Trafficking Survivor Advocates for New Law to Protect Child Victims*, YOUTUBE, at 03:17–03:30 (Jan. 24, 2023), <https://www.youtube.com/watch?v=vYSWvICoTlw> (last visited Dec. 20, 2025).

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