

# Prosecuting Sex Trafficking

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## Sex Trafficking: Defined

The federal crime of Sex Trafficking is colloquially known as prostitution by most Americans. Sex trafficking manifests in diverse and unique ways; and the venues often appear as legitimate businesses including **massage parlors, escort services, residential brothels, truck stops, strip clubs, hostess clubs, hotels and motels, and many more. Sex trafficking occurs when someone uses force, fraud, or coercion to induce a commercial sex act by an adult or minor.** In the United States, the Trafficking Victims Protection Act of 2000 (TVPA), as amended by the Justice for Victims of Trafficking Act of 2015 (JVTA), defines sex trafficking as "*recruiting, harboring, transporting, providing, obtaining, patronizing, or soliciting of an individual through the means of force, fraud, or coercion for the purposes of commercial sex.*" Moreover, it is not necessary to demonstrate force, fraud, or coercion in any sex trafficking case that involves children under the age of 18 (most sex workers enter the industry between the ages of 14-16). A commercial sex act includes prostitution, pornography, and erotic performances; and United States Code § 7102 defines the term "*commercial sex act*" as "*any sex act on account of which anything of value is given or received by any person.*" This industry thrives because there is considerable demand for the services. Buyers fuel the market with money; traffickers and pimps exploit the market to earn revenue, and victims of sex trafficking are bought and sold for profit. Sex-trafficking is a market-driven criminal enterprise that is dictated by the laws of supply and demand. Consumers of commercial sex reinforce the industry and increase the demand for the service. Sex traffickers appeal to this demand and

exploit victims in order to maximize their profits. Consequently, communities and individuals have a lot of power over the industry. To effectively dissolve the sex industry, consumers of commercial sex must simply stop contributing to the market.

## The American Sex Industry

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By the 1800s, most major American cities had legally designated areas of prostitution. However, increased urbanization and increasingly prevalent public education created a rapidly changing social climate that was increasingly hostile to the sex industry. Increased societal awareness of coercion and kidnapping within the sex industry would eventually precipitate numerous “*vice commissions*” that were tasked with investigating whether local prostitutes were participating willingly or being coerced into the industry. The Temperance Movement of the early 1900s gained momentum, and American culture became increasingly intolerant of the sex industry. Eventually, the Mann Act of 1910 would illegalize the interstate transport of any sex worker for the purposes of commercial sex; and by 1913, most cities across the United States had closed their red-light districts and brothels.

More recently, the TVPA strengthened services available to victims of trafficking, enhanced law enforcement capabilities, and increased funding for education against trafficking. The TVPA provides funding for critical services such as housing, feeding, and educating victims of trafficking. Additionally, the TVPA sets standards for distributing grant money internationally to aid the U.S. fight against sex trafficking. In 2001, the Bush Administration prioritized fighting sex slavery domestically and abroad—spending an average \$100 million annually in the fight against the industry.

Today, the scale and scope of the modern sex industry is absolutely staggering! Despite stringent and diverse government efforts to quash the industry, sex trafficking has proliferated more or less unaffected into a multi-billion-dollar business across the United States. And globally, sex trafficking generates an estimated \$150 billion annually according to the International Labor Organization. Some of the factors that have reinforced the sex industry include poverty, homelessness, domestic violence, the foster system, and the glamorization of the sex industry. Tragically, the aforementioned factors often intersect and combine to create what Dr. Sharon Cooper calls the “pipeline of vulnerability.” It is estimated that more than two-thirds of trafficking victims in the United States are US citizens, and the State Department estimates that between 15,000 and 50,000 sex workers are trafficked into the United States annually. Currently, it seems that the sex industry will continue to operate across the US and worldwide. And, accordingly, the government will continue the vain fight against the sex industry as best it can.

## Defending Against Allegations of Trafficking

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Federal and state legislation has defined various crimes associated with human trafficking, as well as assigned corresponding penalties. These new federal and state statutes have largely emerged over the last decade, and very little case law exists to

clarify the law. Because the legal paradigm associated with sex trafficking is less well defined, it is critical for a litigator to understand the federal and state laws intimately. Under the current legal regime, even marginal and unknowing participants can be charged with severe sex trafficking charges. The statutory language permits human trafficking charges to be levied against even legitimate businesses who fail to investigate how their clients are utilizing their facilities or services. Unjust human trafficking charges can ruin a reputation, even if the charges are acquitted— and if convicted of sex trafficking, the penalties are steep!

It is not easy to prove sex trafficking cases, but the charges can potentially be brought under two independent legal jurisdictions: federal and state. In order to prosecute a defendant for sex trafficking, the government needs to satisfy a three-pronged model: Action + Means + Purpose. Sex trafficking occurs when a trafficker takes any of the actions enumerated under federal law (i.e. transporting, soliciting, patronizing, etc.), and then utilizes force, fraud, or coercion for the purpose of inducing the sex worker to provide commercial sex acts. At a minimum, a factual basis must be proven for each column of the model in order to convict a defendant of sex trafficking. Without strong testimonial or physical evidence to satisfy each element of the crime, the charges will not stand. But properly presenting that evidence takes subtle skill and extensive legal understanding.

If you or someone you love has been charged with a human trafficking crime, now is the time to retain an experienced and knowledgeable attorney. Wasatch Defense Lawyers is a national firm with dedicated litigators that are eager to advocate for our clientele!