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**Human Trafficking Definition to Eradication in Virginia:**  
A Legislative Analysis

Hannah Kay Byrum  
Political Science  
May 18, 2020

Hollins University  
Political Science Honors Thesis  
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## I. ABSTRACT

The gap between the reality of human trafficking in Virginia and the necessary legislative systems, remedies, and support afforded to victims, is wide. My research arose from my experience navigating this incongruity in Virginia law and its impacts, through a delegate's office, the office of a United States Senator, and a government relations firm. This research articulates the significant, material legislative initiatives required in Virginia's human trafficking legislative landscape. In surveying this landscape, this research articulates where incongruences exist in unified language and legislative definitions, in key areas.

This research addresses the need for expansion on the parameters to which victims of human trafficking are found such as illicit massage parlors, prostitutes, and forced laborers. In order to accomplish this the definition of human trafficking victims must change to be the same across the board so that victims can better be identified as well as receive the services that they need and deserve.

## II. OBJECTIVES AND INTRODUCTION

This study defines and distinguishes terminology surrounding human trafficking, prostitution, and forced labor through laws and legislation, and primarily identifies gaps in Virginia's state legislative landscape. To do so, the laws of legislation Maryland and Illinois, which have both passed a base-line universal law for providing the standard of care or protection that is given to human trafficking victims within their state. By contrast, there is no comprehensive law in Virginia established to protect victims and prosecute traffickers through consistent definitions, a material distinction that has proven vital in combating human trafficking under the omnibus bills of Maryland and Illinois. My goal for Virginia is implement a law that would assist in reducing the number of cases of human trafficking and raise the number of cases of individuals prosecuted for

trafficking. A larger scale of this would be that other states would implement similar laws, while encouraging federal change to occur as well.

### III. RELEVANCE AND BACKGROUND

Human trafficking is an epidemic felt around the world on a daily basis. Often a crime hidden in plain sight because of its ability to change the way it appears just as quickly as it came. Human trafficking is not stagnant, if it was assisting victims would be able to receive the help they need without issue. This is not the case for human trafficking; instead it is in a constant state of vivaciousness. The lack of laws protecting victims is problematic in the United States because many citizens are unaware that there is even a problem or are unwilling to accept that there is a problem in the United States and possibly in their county or town. However, in the last decade, the focus on the front of human trafficking has shifted from tactics that would be considered “old school” to newer, uncharted territories, such as online tactics to lure victims in. This shift in focus has led to the congressional *Fight Online Sex Trafficking Act* of 2017.<sup>1</sup> The bill was introduced to amend the *Communications Act* of 1934 in clarification of section 230.<sup>2</sup> Although this law is a major step to better understand the shifting methods that traffickers use to obtain and control their victim as well as expanding the borders that are constantly shifting within human trafficking, there are still major strides to be taken by Virginia.

There are many organizations attempting to protect victims, such as Polaris, Unseen, and the Catholic Relief Services. These nonprofits provide resources to victims and advocates for

<sup>1</sup> Fight Online Sex Trafficking Act of 2017, H.R. 1865, 115<sup>th</sup> Cong. (2017)

<sup>2</sup> Communications Act of 1934, 73<sup>rd</sup> Cong. (1934)

stricter laws on finding criminals in the human trafficking realm. The Catholic Relief Services advocate for policy change in order to protect victims and prosecute traffickers. <sup>3</sup>

#### IV. STATISTICAL RELEVANCE

According to Doctor Kristen Bryant Rose, there are twenty-seven million people worldwide that are considered modern day slaves.<sup>4</sup> In 2018, there were 566 contacts made regarding human trafficking cases and from those contacts there was 198 confirmed cases.<sup>5</sup> There have been

279 contacts and 98 reported cases in Virginia for the year according to the Human Trafficking Hotline.<sup>6</sup> Of those cases, 67 were sex trafficking,<sup>7</sup> 14 were from a type of trafficking “not specified”,<sup>8</sup> 13 were from labor trafficking,<sup>9</sup> four were a combination of sex and labor trafficking,<sup>10</sup> and the majority of the reported cases were female and adults. These statistics provide a small insight of cases that occur when many of the cases are overlooked or go unnoticed. These numbers do not provide insight into the reality that these individuals go through while being trafficked.

Across the United States, human trafficking victims are commonly seen in the forms of forced labor and sexual servitude.<sup>11</sup> While sex trafficking is the most common form in the United

<sup>3</sup> From “Stand Against Human Trafficking” by Genevieve Jordan Laskey, 2019, Catholic Relief Services, (<https://www.crs.org/resource-center/human-trafficking>) <sup>4</sup> From “Looking for Love in All the Wrong Places” by Kristen Bryant Rose, (2013), Okla. L. Rev. 303, \*303, p. 2.

<sup>5</sup>From National Human Trafficking Hotline, Virginia, (2018), <https://humantraffickinghotline.org/state/virginia>

<sup>6</sup> From National Human Trafficking Hotline, Virginia, (2019), <https://humantraffickinghotline.org/state/virginia>

<sup>7</sup> Ibid

<sup>8</sup> Ibid



9 Ibid

10 Ibid

11 From “Total National Statistics”, By The National Human Trafficking Hotline, (2007-2019), <https://humantraffickinghotline.org/states> States, labor trafficking and the receiving of goods produced by labor trafficking victims is still a problem. The United States Department of Labor has identified 148 goods from 75 different countries that were made by child and forced laborers.<sup>12</sup> Since 2007, The National Human Trafficking Hotline has received over 199,163 calls, 16,899 webform contacts, and 13,954 emails about human trafficking cases.<sup>13</sup> The total number of victims classified as “high” is 59,092 (cases that have a high number of indicators of human trafficking), and there are 67,593 cases that are considered “moderate” (cases that have several indicators of human trafficking); these cases resemble common forms of human trafficking, but lack core details such as fraud, force, or coercion.<sup>14</sup> Throughout the United States, the most common form of human trafficking that is reported are those surrounding illicit massage and spa businesses, residence-based commercial sex, hotel/motel-based workers, pornography, online ad or venues that are unknown.<sup>15</sup> As reported by the number of contacts by state, Virginia is ranked as one of the top 15 states with the worst human trafficking numbers in 2017.<sup>16</sup> In October of 2018, Virginia was ranked sixth overall in active federal trafficking cases.<sup>17</sup>

12 From “List of Goods Produced by Child Labor or Forced Labor”, By the Department of Labor, (see “The List in Numbers”), (2019), <https://www.dol.gov/agencies/ilab/reports/child-labor/listof-goods> <sup>13</sup> Ibid, *See* 12

14 Ibid

15 Ibid

<sup>16</sup> From “Virginia Responds to Human Trafficking”, By Virginia Hospital and Healthcare Association, (2019), p. 12 and 17,  
<https://www.vhha.com/communications/wpcontent/uploads/sites/16/2019/09/VHHA-Review-Magazine-September-2019-HumanTrafficking-Edition.pdf>

<sup>17</sup> Ibid

## V. DEFINITION OF TERMS

In order to understand the laws and legislation being discussed, there are key definitions that are necessary understand. The words defined below will appear throughout the paper when discussing contradictions in laws, gaps, and possible positive outcomes.

### A. HUMAN TRAFFICKING

For the purpose of this research, human trafficking is defined as “stealing freedom for profit”.<sup>18</sup> According to The Human Trafficking Hotline these cases are most commonly seen as traffickers tricking, forcing, manipulating, or lying to its victims for the purpose of commercial sex acts or for forced labor.<sup>19</sup>

### B. LABOR TRAFFICKING

Labor trafficking is defined as the use of violence, threats, lies, debt bondage, or other forms of coercion to force individuals to work against their will in many different industries.<sup>20</sup>

### C. CHILD TRAFFICKING

Child trafficking is defined as the illegal movement of children, typically for the purpose of forced labor or sexual exploitation, according to UNICEF.<sup>21</sup>

18 From “What is Human Trafficking?” By National Human Trafficking Hotline, (2019), <https://humantraffickinghotline.org/what-human-trafficking>

19 Ibid

20 From “Labor Trafficking” By National Human Trafficking Hotline, (2019), <https://humantraffickinghotline.org/type-trafficking/labor-trafficking>

21 From “Child Trafficking” By UNICEF, (2019), [https://www.unicef.org/protection/57929\\_58005.html](https://www.unicef.org/protection/57929_58005.html)

#### D. SEX TRAFFICKING

Sex Trafficking is defined as the practice of illegally transporting individuals from one country or area to another for the purpose of sexual exploitation.<sup>22</sup>

#### E. JURISDICTION

Jurisdiction is:

- 1). The extend of the power to make legal decisions and judgements,
- 2). A system of law courts; a judicature,
- 3). The territory or sphere of activity over which the legal authority of a court or other

institution extends.<sup>23</sup> For the purpose of this research, the definition of jurisdiction is a combination of the two ways of defining jurisdiction. It is important to understand that the two parts of this definition must work simultaneously in order to achieve a comprehensive and complete law that provides protection of victims.

#### F. BORDER

A border is considered a line between two or more areas either between counties, towns, cities, states, or countries.<sup>24</sup> A characteristic of human trafficking is the “harboring, transfer[ing], and transportation”<sup>25</sup> of persons by improper means, mostly, the transportation of victims occurs over borders.<sup>26</sup>

22 From “Sex Trafficking” Definition, By LEXICO, [https://www.lexico.com/definition/sex\\_trafficking](https://www.lexico.com/definition/sex_trafficking)

23 From “Jurisdiction” Definition, By LEXICO, <https://www.lexico.com/en/definition/jurisdiction>

24 From “Border” Definition [1], By LEXICO, <https://www.lexico.com/en/definition/border>

25 Ibid, *See* [2]

26 Ibid, *See* [3]

## G. LAW

Laws are a “system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties”,<sup>27</sup> “an individual rule as part of a system of law”,<sup>28</sup> “statutory law and the common law”,<sup>29</sup> “a thing regarded as having the binding force or effect of a formal system of rules.”<sup>30</sup> The legal intersection with the topic of trafficking come from a variety of sources, both domestically and internationally. This research focuses on domestic statutory laws and legislation.

## H. FEDERAL LAW

Federal law is considered to be the law the reigns supreme over the United States of America and overrides state law where constitutionally permitted for Congress to legislate. In order for a federal law to become a law, a bill must pass both houses of Congress and been signed by the President.<sup>31</sup>

## I. STATE LAW

State laws are applied to the state in question and only apply to the those under the jurisdiction of the state, as defined by the state itself.<sup>32</sup>

27 From “Law” Definition, By LEXICO, [1], <https://www.lexico.com/en/definition/law>

28 Ibid, *See* [1.1]

29 Ibid, *See* [1.3]

30 Ibid, *See* [1.4]

31 From “Laws and Regulations”, By United States Senate,

[https://www.senate.gov/reference/reference\\_index\\_subjects/Laws\\_and\\_Regulations\\_vrd.htm](https://www.senate.gov/reference/reference_index_subjects/Laws_and_Regulations_vrd.htm)

32 From “The Differences between Federal, State, and Local Laws”, By Legal Aid Society of Northeastern New York, <https://www.lawhelp.org/resource/the-differences-between-federalstate-and-loc>

## J. VIRGINIA LAW

Virginia law is the law that applies to the Commonwealth of Virginia those that fall within the jurisdiction of the Commonwealth of Virginia. Laws are passed and enacted by the Virginia General Assembly, signed by the Governor of Virginia, and are placed into effect on July 1, of each year unless otherwise stated. Each of the laws go into the annotated code of Virginia.<sup>33</sup>

## K. VIRGINIA LEGISLATIVE CODE

Legislative term is defined by the Commonwealth of Virginia Constitution as requiring “Senate Members to be reelected quadrennially by the votes of the several senatorial districts on the Tuesday succeeding the first Monday in November”.<sup>34</sup> The House of Delegates is required to be elected biennially by the voters of the several House Districts on the Tuesday succeeding the first Monday in November”.<sup>35</sup>

## L. SERVICES

Services are defined as completing acts due to “force, fraud, or coercion” as defined by the United States Department of Justice in regard to victims of human trafficking.<sup>36</sup> Services can include, but are not limited to, domestic servitude, sexual acts or favors, and exploitation.<sup>37</sup>

33 From “Virginia Law”, Code of Virginia, By Legislative Information System, (2020), <https://law.lis.virginia.gov/>

34 From “Constitution of Virginia”, Article IV. Legislature; Section 2. Senate, By Legislative Information System, <https://law.lis.virginia.gov/constitution/article4/section2/> 35  
Ibid, Section 3. House of Delegates

36 From “Human Trafficking Defined”, By The United States Department of Justice, definition B, <https://www.justice.gov/humantrafficking>

37 From “Human Trafficking Prosecution Unit (HTPU), By The United States Department of Justice, Overview, (2019), <https://www.justice.gov/crt/human-trafficking-prosecution-unit-htpu>

#### M. TRAINING

Training, for the purposes of human trafficking, is encouraged by the United States Department of Health and Human Services in the Office on Trafficking in Persons, Office of Administration of Children and Families.<sup>38</sup> These offices define training as providing communities with the resources, technical support, and encouragement to identify human trafficking and to identify the needs that the victims may have regarding less of the complexity.<sup>39</sup>

#### N. PROSTITUTION

“Any person who, for money or its equivalent (i) commits adultery, fornication, or any act in violation of § 18.2-361, preforms cunnilingus, fellatio, or analingus upon or by another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or analingus upon or by another person, or engages in anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 Misdemeanor.”<sup>40</sup>

#### O. SEX WORK

Sex work is the provision of sexual services for money or goods.<sup>41</sup>

<sup>38</sup> From “National Human Trafficking Training and Technical Assistance Center (NHTTAC), By The Office on Trafficking In Persons, An Office of the Administration for Children & Families, (2020), <https://www.acf.hhs.gov/otip/training/nhttac>

<sup>39</sup> Ibid

<sup>40</sup> From §18.2-346. Prostitution, By the Code of Virginia, (2014), <https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-346/> See Appendix A for § 18.2-361

<sup>41</sup> From “Sex Workers: Part of the Solution”, By Cheryl Overs, World Health Organization, p.2 Definitions, [https://www.who.int/hiv/topics/vct/sw\\_toolkit/115solution.pdf](https://www.who.int/hiv/topics/vct/sw_toolkit/115solution.pdf) (2002),

P. PIMP

“A man who controls prostitutes and arranges clients for them, taking part of their earnings in return.”<sup>42</sup>

## VI. THE HISTORY OF HUMAN TRAFFICKING LAWS

Human trafficking laws have been in place in the United States since 1865, when the 13th Amendment was enacted abolished slavery and involuntary servitude. The 13th Amendment was passed at the end of the Civil War and laid the foundation for anti-slavery and modern slavery laws.<sup>43</sup>

Enacted in 1910, the Mann Act which stated that it was a felony to induce, entice, coerce, or persuade an individual to cross over state lines for the purpose of prostitution, making the act of transporting victims over borders human trafficking.<sup>44</sup>

The Tariff Act was enacted in 1930 and reauthorized in 2009.<sup>45</sup> This was renamed The Customs and Facilitations and Trade Enforcement Reauthorization Act of 2009 (CFTRA) and discontinued the importation of goods that was made by the benefit of human trafficking victims.<sup>46</sup> In addition, in 2009, there was further discussion about the importation of goods made by human trafficking victims in the CFTRA.<sup>47</sup> This Act extends the provisions made in the Tariff

42 From “Pimp”, Defined by LEXICO, (2020), <https://www.lexico.com/en/definition/pimp>

43 From “13<sup>th</sup> Amendment to the U.S. Constitution: Abolition of Slavery (1865), <https://www.ourdocuments.gov/doc.php?flash=false&doc=40>

44 From “Congress passes Mann Act, aimed at curbing sex trafficking”, By History (2019), <https://www.history.com/this-day-in-history/congress-passes-mann-act>

45 From “Human Trafficking Laws & Regulations”, By the Homeland Security, (2019), See The Customs and Facilitations and Trade Enforcement Reauthorization Act of 2009, <https://www.dhs.gov/human-trafficking-laws-regulations>

46 Ibid

47 Ibid

Act of 1930 by including materials made by individuals who were being forced or coerced by one or more individuals that are subjected to human trafficking.<sup>48</sup>

In 2000, the Trafficking Victims Protection Act (TVPA)<sup>49</sup> which provided the national framework for how the federal government responds to human trafficking victims. The TVPA has been reauthorized five times since it was introduced, with the most recent happening in January of 2019. The Act allots \$250 million dollars for human trafficking resources and funding for victims.

It is a three-pronged approach to fighting human sex trafficking and labor trafficking.<sup>50</sup> The Civil Asset Forfeiture Reform Act of 2000 (CAFRA), which aims to fight human trafficking by identifying home and property owners that are being used to “facilitate smuggling or harboring aliens;”.<sup>51</sup> This is vital given that often times, property owners have been found to “turn a blind eye on criminal activities on their property.”<sup>52</sup>

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT Act)<sup>53</sup> was enacted in 2003 as a way to protect children from abuse and sexual exploitation, both of which are very common within child sex trafficking.

In addition, the Intelligence Reform and Terrorism Prevention Act of 2004<sup>54</sup> touches loosely on human trafficking and the smuggling of persons that can occur when in relation to terrorism.



Ibid

<sup>49</sup> From “Human Trafficking Laws & Regulations”, By the Homeland Security, (2019), See The Victims of Trafficking and Violence Act (TVPA), <https://www.dhs.gov/human-trafficking-lawsregulations>

<sup>50</sup> Ibid

<sup>51</sup> Ibid, *See* Civil Asset Forfeiture Reform Act of 2000 <https://www.dhs.gov/human-traffickinglaws-regulations>

<sup>52</sup> Ibid

<sup>53</sup> Ibid, *See* PROTECT Act of 2003, <https://www.dhs.gov/human-trafficking-laws-regulations>

<sup>54</sup> Ibid, Intelligence Reform and Terrorism Prevention Act of 2004, <https://www.dhs.gov/humantrafficking-laws-regulations>

The Preventing Sex Trafficking and Strengthening Families Act<sup>55</sup> was in relation to adoption and foster care for children who were victims of human trafficking. It aims to ensure that states are aware of the responsibility in ensuring those children receive stability and assistance once they have been rescued from human trafficking.

The Justice for Victims of Trafficking Act of 2015<sup>56</sup> is another milestone in human trafficking legislation. This Act establishes the Domestic Trafficking Victims Fund which provides funding to support victims and establishes that it is illegal to purchase sexual acts from a victim of human trafficking.<sup>57</sup>

## VII. LITERATURE REVIEW

The language of law aims to singularly define diverse human experiences. When it comes to human trafficking and the potential overlap between human trafficking and prostitution, there is room for discussion and debate. Most recently, the debate is largely focused around if (i) prostitution falls under the same category of human trafficking, and (ii) if prostitution and other forms of labor-centered work is a choice an individual find them self in as well if those actions infringe on human rights.

55 From “The Preventing Sex Trafficking and Strengthening Families Act of 2014”, By Child and Family Services Reviews, (2020), <https://training.cfsrportal.acf.hhs.gov/section-2-understandingchild-welfare-system/3148>

56 From “Justice for Victims of Trafficking Act: Section-By-Section Analysis”, By Shared Hope International, (2015), [http://sharedhope.org/wp-content/uploads/2015/03/Justice-for-Victims-of-Trafficking-Act-2015\\_Section-by-Section\\_Reported-....pdf](http://sharedhope.org/wp-content/uploads/2015/03/Justice-for-Victims-of-Trafficking-Act-2015_Section-by-Section_Reported-....pdf)

57Ibid, Section 101. Domestic Trafficking Victims’ Fund, p. 1, (2015) [http://sharedhope.org/wp-content/uploads/2015/03/Justice-for-Victims-of-Trafficking-Act-2015\\_Section-bySection\\_Reported-....pdf](http://sharedhope.org/wp-content/uploads/2015/03/Justice-for-Victims-of-Trafficking-Act-2015_Section-bySection_Reported-....pdf)

To clarify, human rights include the right to life, liberty, freedom from slavery and torture, right to work and education, freedom of opinion and expression.<sup>58</sup> Below are two different approaches to the ways in which human trafficking, prostitution, labor trafficking victims are looked at. The two primary discussions are worker’s rights and victim’s rights. The first discusses how human trafficking victims have had their human rights violated and that even in the instance of forced prostitution.

The first group of scholars primarily argue that human trafficking, prostitution, and labor workers that may be victims all have human rights infringed on, they argue for victim’s rights. Such scholars including Seo-Young Cho,<sup>59</sup> Simon Hedlin,<sup>60</sup> and Dorchen Leidholdt,<sup>61</sup> argue that these rights are infringed by the use of manipulation, coercion, exploitation in order to force their victims to behave a certain way. They believe that rather than looking at the economic impact and fighting an argument that everything is a choice and that these individuals are free to leave with no repercussions whenever they would like to, in order to understand the complexity and depth of human trafficking and human rights, researchers need to look into the daily lives of these individuals by means of studies in order to determine if a violation of human rights has occurred, or if there are unnoticed victims of human trafficking that are being labeled as one group, when in reality, they are victims.

58 From “Capabilities and Human Rights”, By Martha C. Nussbaum, Fordham L. Rev. 273, (1997), p. 292, <https://ir.lawnet.fordham.edu/flr/vol66/iss2/2>

59 From “Does Legalized Prostitution Increase Human Trafficking?”, By Seo-Young Cho, German Institute for Economic Research- DIW Berlin, Germany, World Development Vol 41 pp. 67-82, <http://dx.doi.org/10.1016/j.worlddev.2012.05.023>

60 From “Can Prostitution Law Reform Curb Sex Trafficking Effects?”, By Simon Hedlin, Michigan Journal of Law Reform, n.d.

61 From “Prostitution: A Violation of Women’s Human Rights.”, By Dorchen Leidholdt, 1 Cardozo Women’s L.J. 133 (1993-1994),

The second group of scholars makes the claim that prostitution and individuals within the labor realm does not infringe on human rights nor are they a form of human trafficking. These scholars advocate for worker’s rights. The idea is that it simply a choice that the individual made and continues to make on a daily basis.<sup>62</sup> The scholars in this school of thought agree that human trafficking was a major issue that infringed on human rights and is abuse.

The differing opinions and arguments between the two areas are that any area that has the potential to hide victims of human trafficking should be analyzed through a closer lens in order to establish whether or not any abuse or human trafficking characteristics have occurred.

Scholars such as Susan E. Thompson,<sup>63</sup> Svitlana Batsyukova,<sup>64</sup> and Julia O’Connell Davidson<sup>65</sup> all argue that the individuals who participate in prostitution or who work in other non-traditional fields, have a choice to leave that job whenever they would like. They maintain that the individuals possess the same freedoms they had prior to entering the field. Davidson’s main argument is that in the instance of prostitution, even when the individual works under a pimp or madam, the relationship is really no different than that of a professional athlete and their manager.<sup>66</sup> The last argument that these scholars collectively agree with is that prostitution is shown in a negative light and that it can be empowering for both men and women who

participate in prostitution.<sup>67</sup> Collectively, these scholars approach their arguments from a feminist approach and research method, primarily framing prostitution as “sex work” that should

<sup>62</sup> From “Prostitution and Human Trafficking for Sexual Exploitation.” By Svitlana Batsyukova, Springer Science and Business Media, 2007

<sup>63</sup> From “Prostitution- A Choice Ignored.”, By Susan E. Thompson, Women’s Rights Law Reporter, 2000 <sup>64</sup> Ibid, *See* 64

<sup>65</sup> From “The Anatomy of “Free Choice” Prostitution”, By Julia O’Connell Davidson, Work and Organization Gender Journal V.2 I.1, <https://doi.org/10.1111/j.1468-0432.1995.tb00022.x>

<sup>66</sup> Ibid, *See* 65

<sup>67</sup> Ibid, *See* 65

be considered as a business that empowers individuals and allows them control on how they can conduct business in their lives.

For the purpose of this research, the idea that most align is the idea that individuals could be directly impacted by human trafficking but may go unnoticed as prostitutes and go without support.<sup>68</sup> However, my research shifts the focus from the debate of if a controversial “job” is actually a job or if it could be a form of human trafficking to addressing these areas through legislation in order to capture more potential victims. This research is by no means dismissing the pro-sex work agenda; these two ideas are compatible however, the inconsistency in language often pits these ideas against each other. It does address that there are potential victims that may be actively ignored due to certain jobs being labeled as a free choice of work, rather than the possibility of being a forced situation.

## VIII. METHODOLOGY

The methodology used to analyze this information is policy analysis. From the workings of the Legal Scholar and Professor Jack Balkin, who drew from the work of the French “structuralist-cup-post-structuralist” Jacques Derrida.<sup>69</sup> Derrida argued the importance of a deconstructive legal analysis.<sup>70</sup> It is noted by both Derrida and Balkin, that in order to fully

understand the legal text in question, you must first start the interpretation by “interrogating” the text in question.<sup>71</sup> There are two areas of particular interest that can be applied to the work completed in this research, “the inversion of hierarchies” and “the liberation of the text from the author.”

<sup>68</sup> Ibid, *See* 61-63

<sup>69</sup> From “Structure and Structuralism in The Interpretation of Statutes” By Maxwell O. Chibundu, 62 U. Cin. L. Rev. 1439, (1994)

<sup>70</sup> Ibid

<sup>71</sup> Ibid

Working alongside the workings of Jack Balkin and Jacques Derrida, Yoav Dotan provides the understanding and importance of consistency in the analysis of legal work. According to Yoav Dotan, “the requirement for consistency makes sense and finds its strongest justifications where all the relevant decisions, which are expected to be consistent with each other, are made under an existing rule or policy.”<sup>72</sup> Consistency in language is key to establishing comprehensive legislation for victims. Understanding where legislation has been, what was successful, what needs to be improved upon, and the importance of consistency allows a pathway for the necessary changes to better protect victims of human trafficking and ensure their rights are protected while also supporting their needs. In order to strengthen Virginia’s legal system by creating a comprehensive piece of legislation that improves safety measures for victims, looking at previous legislation in Virginia is invaluable to fully comprehend where we have been, where we are, and where we need to go as a community that fights human trafficking. Not only is it important to understand where we have been and where we are going, but also demanding consistency in policy. In order to fully accomplish what policy is intended to do, consistency in language is key.

The specific laws chosen were based on the time in which they were established, starting in 2011 to more recent laws in Virginia. These years that will be discussed are vital given that the laws have been in effect recently or will go into effect. This research also includes usage of case studies of individual laws that are in effect, including the use of task forces, the Violence Against Women Act, the Sexual Assault Survivors Act, and more minor pieces of legislation, such as the Intimate Touching Bill that was introduced in Virginia General Assembly in 2020.

<sup>72</sup> From “Making Consistency Consistent” By Yoav Dotan, (2005), Section I: “Consistency, Procedural Formats, and Legal Values” Subsection C: Consistency and the Distinction Between Policy Revision and Implementation” PG 1004, *Administrative Law Review*, Vol 57. No. 4 (Fall 2005).

Providing states with a form of accountability can facilitate the installation of legislative change, therefore, this research will also utilize the individual state report cards provided by Shared Hope International.<sup>73</sup> It will also discuss the means in which Virginia has been receiving its grades from the report cards in order to determine the areas that are most in need of improvement, as compared to the identified strengths and absences of coverage by other states’ legislation. Understanding the key distinctions between what has been improved and what needs to be improved will provide a baseline for what is necessary to be included in future legislation for Virginia. Prior to 2011, the Commonwealth of Virginia was not ranked or graded in its efforts to combat human trafficking due to Shared Hope having not completed any report cards prior. Through the Protecting Innocence Challenge conducted by Shared Hope International, each state within the United States of America receives a report card that details their overall score of fighting human trafficking, along with a letter grade. Understanding these scores is vital to understanding the areas needing the most improvement in Virginia. The report cards for each state are given a numerical score, followed by a letter grade ranging from “F” to “A,” similar to receiving a letter grade in school. The grades are broken down into six different categories,

including the criminalization of domestic minors in sex trafficking,<sup>74</sup> criminal provisions addressing demand,<sup>75</sup> criminal provisions for traffickers,<sup>76</sup> protective provisions for child victims,<sup>77</sup> criminal provisions for facilitators,<sup>78</sup> and last, criminal justice tools for investigation

<sup>73</sup> From “Protected Innocence Challenge: Tool Kit 2019”, By Shared Hope International, (2019), <https://sharedhope.org/what-we-do/bring-justice/reportcards/>

<sup>74</sup> Ibid, *See* Key Issues

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Ibid

<sup>78</sup> Ibid

and prosecutions.<sup>79</sup> Each of the different categories are given a numerical range for scores, ranging from a maximum of 5 to 27.5 depending on the category.

The framework establishes the criteria in which WHO provides to the states. This also includes how laws and legislation from each state will be analyzed. This same framework will be applied to the breakdown of Virginia’s legislation that was introduced in the 2020 General Assembly Session. The framework used by Shared Hope International to determine the grades that states receive is broken down by each of the scored sections. Each of the six sections are structured in the same format; there is one specific question that needs to be answered. In order to establish an answer to the question, each state is surveyed on a number of questions specific to different types of legislation to protect sex trafficking victims. This is repeated for each section and the numerical score is given depending on if the state has specific laws or not.

Section one of the Report Card asks, “Does state law specifically criminalize the exploitation of minors, through sex trafficking and other offenses that relate to the commercial sexual exploitation of children?”<sup>80</sup> After establishing a specific question, Shared Hope surveyed

each state on the topic of Force, Fraud, or Coercion.<sup>81</sup> three characteristics that were surveyed for section one including proof of force, fraud, or coercion IS NOT Required when victim of sex trafficking is a minor; proof of force, fraud, or coercion IS Required when victim of sex trafficking is a minor; and DOES NOT have a human trafficking law or a law criminalizing child sex trafficking. Section one also addresses the question of racketeering laws by surveying if the

<sup>79</sup> Ibid

<sup>80</sup> From “National State Law Survey: Force, Fraud, or Coercion” By Protected Innocence Challenge, 2019

<sup>81</sup> Ibid

“state racketeering or gang crimes statute includes sex trafficking and/or CSEC offense as predicate acts” the continuation of this survey is “what if any Predicate acts are in the law.”<sup>82</sup>

Section two of the Report Card addresses the issue of whether “state laws impose criminal penalties on sex buyers, who drive the commercial sex market?”<sup>83</sup> In order to answer this question, section two surveys three characteristics to laws which is focused on criminal provisions addressing demands. These include buy-applicable laws,<sup>84</sup> mistake of age defense,<sup>85</sup> and addressing demand under sex trafficking laws.<sup>86</sup> For the first survey on buy-applicable laws, each state is assessed on if current trafficking laws could be applied to buyers, if CSEC could be applied to buyers,<sup>87</sup> what are the applicable offenses,<sup>88</sup> is there a penalty,<sup>89</sup> and do applicable offenses protect all minors under 18<sup>90</sup>? In the survey for mistake of age defense, the criteria of assessment is based on “is there a buyer applicable to trafficking or CSEC law?”<sup>91</sup> “does a buyer-applicable trafficking or CSEC law expressly prohibit a mistake of age defense in

<sup>82</sup> Ibid



83 From “Protected Innocence Challenge National State Laws Surveys”, By Shared Hope International, Sect. 2, (2019), <https://sharedhope.org/what-we-do/bring-justice/reportcards/statesurvey-charts/#section2>

84 From “Protected Innocence Challenge: National State Law Survey: Buyer-Applicable Laws”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_Buyer-ApplicableLaws.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_Buyer-ApplicableLaws.pdf) 85

From “Protected Innocence Challenge: National State Law Survey: Mistake of Age Defense”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_MistakeofAgeDefense.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_MistakeofAgeDefense.pdf)

86 From “Protected Innocence Challenge: National State Law Survey: Addressing Demand Under Sex Trafficking Laws”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_AddressDemandUnderSexTraffickingLaws.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_AddressDemandUnderSexTraffickingLaws.pdf)

87 Ibid, See 81

88 Ibid, See 81

89 Ibid, See 81

90 Ibid, See 81

91 Ibid, See 82

prosecutions for buying a commercial sex act with a minor?”,<sup>92</sup> what “buyer-applicable law(s) that prohibit a mistake of age defense”,<sup>93</sup> and is there “Men’s Rea for buyer applicable trafficking and/or CSEC law(s)”.<sup>94</sup> The third survey addressed the issue of “Is there a buyer applicable trafficking law?”,<sup>95</sup> what “applicable offense” there may be,<sup>96</sup> and “does the core sex trafficking offense *expressly* include the conduct of buyers?”.<sup>97</sup>

Section three of the Report Card addresses the question of “does state law impose criminal penalties on those who traffic minors into commercial sex, including pimps, gang members, and family members?”.<sup>98</sup> This section surveys the issue of if there is mandatory restitution/civil remedies.<sup>99</sup> This survey addresses “do state asset forfeiture laws apply to trafficking, CSEC, and CSAM offenses?”,<sup>100</sup> “must forfeited assets be applied to the payment of restitution first?”,<sup>101</sup> and lastly, “is restitution mandatory for trafficking and/or CSEC offenses?”.<sup>102</sup>

Section four of the Report Card addresses the issue of “does state law impose criminal penalties on those who facilitate the sale of minors including hotels, drivers, and brothel owners?”.<sup>103</sup> Section four surveys two aspects to answering this question: facilitator culpability

<sup>92</sup> Ibid, *See* 82

<sup>93</sup> Ibid, *See* 82

<sup>94</sup> Ibid, *See* 82

<sup>95</sup> Ibid, *See* 83

<sup>96</sup> Ibid, *See* 83

<sup>97</sup> Ibid, *See* 83

<sup>98</sup> Ibid, *See* 71

<sup>99</sup> From “Protecting Innocence Challenge: National State Law Survey: Mandatory Restitution/Civil Remedies”, By Shared Hope International, (2019),

[https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_MandatoryRestitution\\_CivilRemedies.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_MandatoryRestitution_CivilRemedies.pdf) <sup>100</sup> Ibid, *See* 96

<sup>101</sup> Ibid, *See* 96

<sup>102</sup> Ibid, *See* 96

<sup>103</sup> Ibid, *See* 71

under trafficking law and sex tourism laws.<sup>104</sup> Under the facilitator culpability under trafficking

law, the area that was surveyed was “can facilitators who benefit financially from assisting or

enabling domestic minor sex trafficking be prosecuted under the state sex trafficking statute?”.<sup>105</sup>

The sex tourism laws survey asks “is there a state law criminalizing facilitators who promote or sell sex tourism?”. <sup>106</sup>

Section five of the Report Card addresses the question, “Does state law prevent minors from being charged with a crime if they are engaged in commercial sex acts and provide a range

of services and protections, such as emergency shelter, medical and psychological services, and life skills training?”.<sup>107</sup> The survey addresses five key issues including child sex trafficking

definitions, non-criminalization of juvenile sex trafficking victims, barriers to child welfare

involvement, protective responses for child sex trafficking victims, and expungement and vacatur

laws.<sup>108</sup> The first survey addresses definitions; “When the victim is a minor, force, fraud or

coercion is . . .” and the possible answers were either “not required” or “required”, “establishing the crime of sex trafficking, third party control is . . . “ which can be answered either by “required” or “not required” and “are all commercially sexually exploited children

<sup>104</sup> From “Protecting Innocence Challenge: National State Law Survey: Facilitator Culpability Under Trafficking Law”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_FacilitatorCulpabilityUnderTraffickingLaw.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_FacilitatorCulpabilityUnderTraffickingLaw.pdf) <sup>105</sup> Ibid, *See* 101

<sup>106</sup> From “Protecting Innocence Challenge: National State Law Survey: Sex Tourism Laws”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_SexTourismLaws.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_SexTourismLaws.pdf) <sup>107</sup> Ibid, *See* 71

<sup>108</sup> From “Protected Innocence Challenge National State Law Survey”, Section 5, By Shared Hope International, (2019), <https://sharedhope.org/what-we-do/bring-justice/reportcards/statesurvey-charts/#section2>

defined as sex trafficking victims under the core sex trafficking offense?”.<sup>109</sup> The second survey is based on non-criminalization of juvenile sex trafficking victims, specifically, “Does state law prohibit the criminalization of minors for prostitution?”, “Statutory Non-Criminalization Approach”, and “Does state law extend non criminalization to other offenses?”. <sup>110</sup> The following survey addresses “barriers to child welfare involvement”, this includes “Does state law define child abuse and/or neglect to include child sex trafficking?”, “Does state law define ‘caregiver’ broadly enough to include protection for victims of nonfamilial child sex trafficking and otherwise eliminate barriers to sex trafficking victims accessing child welfare services?”, and “Is child welfare able to screen in and serve child sex trafficking victims pursuant to, or regardless of, “abuse and neglect” and “caregiver” definitions?”.<sup>111</sup> The fourth survey includes

issues relating to protective responses for child sex trafficking victims.<sup>112</sup> This survey includes “State law provides an avenue to protect JuST<sup>113</sup> victims from delinquency adjudications for

<sup>109</sup> From “Protected Innocence Challenge: National State Law Survey: Child Sex Trafficking Definitions”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_ChildSexTraffickingDefinitions.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_ChildSexTraffickingDefinitions.pdf)

<sup>110</sup> From “Protected Innocence Challenge: National State Law Survey: Non-Criminalization of Juvenile Sex Trafficking Victims”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_NonCriminalizationofJuvenileSexTraffickingVictims.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_NonCriminalizationofJuvenileSexTraffickingVictims.pdf)

<sup>111</sup> From “Protected Innocence Challenge: National State Law Survey: Barriers to Child Welfare Involvement”, By “Shared Hope International”, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_BarrierstoChildWelfareInvolvement.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_BarrierstoChildWelfareInvolvement.pdf)

<sup>112</sup> From “Protected Innocence Challenge: National State Law Survey: Protective Responses for Juvenile Sex Trafficking (JuST) Victims”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_ProtectiveResponsesforJuvenileSexTraffickingJuSTVictims.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_ProtectiveResponsesforJuvenileSexTraffickingJuSTVictims.pdf) <sup>113</sup> Juvenile Sex Trafficking Victims

prostitution” and “State law provides JuST victims with access to specialized services”.<sup>114</sup> The last survey for section 5 is focused on expungement and vacatur laws by looking at topics such as “Is expungement or sealing permitted for juvenile delinquency records?”, “Does state law contain a vacatur provision that could apply to victims of human trafficking?”, “Does the vacatur provision apply to juvenile delinquency adjudications?”, “Are Prostitution and other offenses related to trafficking victimization eligible?”, “Is vacatur available without a waiting period?”, “Are vacatur and expungement available within a single proceeding?”, and then providing a brief “summary”.<sup>115</sup>

Section six of the Report Card tackles the issue of “Does state law provide enough tools for Law Enforcement to complete the detailed investigations required for successful

prosecutions?”. Section six addresses one key issue of law enforcement officer human trafficking training, it answers this area by looking to see if state law mandates or authorized training on human trafficking, and “does training specifically address commercial sexual exploitation of children?”.<sup>116</sup> Each of these sections provide the questions that need to be addressed each year by law makers prior to each legislative session in order to continue to spot inconsistencies or gaps within the laws that were passed to reassess where improvements can be made.

<sup>114</sup> Ibid

<sup>115</sup> From “Protected Innocence Challenge: National State Law Survey: Expungement and Vacatur Laws”, By Shared Hope International, (2019), [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_ExpungementandVacaturLaws.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_ExpungementandVacaturLaws.pdf)

<sup>116</sup> From “Protected Innocence Challenge: National State Law Survey: Expungement and Vacatur Laws”, By Shared Hope International, (2019) [https://sharedhope.org/PICframe9/statesurveycharts/NSL\\_Survey\\_ExpungementandVacaturLaws.pdf](https://sharedhope.org/PICframe9/statesurveycharts/NSL_Survey_ExpungementandVacaturLaws.pdf)

For analyzing Virginia’s legislation in 2020, using the basis of the framework provided for the report cards, changing the topic of children and minors to overall victims of human trafficking will facilitate the discussion of whether or not Virginia has improved its laws in order to protect human trafficking victims. The legislation for this research is chosen on the basis of if it passed and the language of the bill. This reasoning is because it is a piece of legislation that will go into effect or the bill did not pass, and the language would have been a vital addition to human trafficking laws based on the understanding of Virginia’s report card which lays the baseline for areas of improvement. Each piece of legislation will be textually deconstructed by issue, rule, application, and conclusion (IRAC). Legal analysis is not just applicable to court

cases, can easily be applied here to legislation. The issue section will be a question that was established by the framework, the rule section will establish what the takeaway of the legislation will be, the application section addresses any previous laws that the new piece of legislation is relying on, and the conclusion is the results of the bill based on votes from the Virginia General Assembly. The results of analyzing current laws through the framework and IRAC methods will determine the recommendations for how Virginia should proceed in order to best serve and protect victims of human trafficking.

IX. THE ISSUE WITHIN VIRGINIA'S LEGISLATION: SHARED HOPE  
INTERNATIONAL REPORT CARD  
A. OVERVIEW

To understand the ways in which Virginia has historically fallen behind on the issue of human trafficking and how the Commonwealth handles the discovery of victims, supporting victims, and the prosecution of perpetrators, it is essential to look at the report cards Virginia has received since 2011, as well as the current state of the Code of Virginia. Virginia does not have a comprehensive piece of law that helps with identifying victims due to the vagueness in the current statutes of the Commonwealth. Thus far, the Commonwealth has primarily used federal laws and actions to combat human trafficking as the method to fighting it in Virginia, this includes major federal laws that were addressed in the history of major human trafficking laws section.<sup>117</sup> This is problematic because, without comprehensive, in-depth understanding of the complexities of human trafficking, it is nearly impossible to capture all that must be included for victims and to prosecute offenders, while avoiding those that are not within the human trafficking realm.

## B. THE REPORT CARDS

The Report Cards provide a uniformed approach to addressing strengths and weaknesses in states in regard to the individual laws for the respective states. While discussing the overall national average of all of the states is beneficial to assess the nation as a whole, assessing the individual states will improve the overall rating for the nation by allowing for improvements to be made based on demographics, tourism, and population size.

For each Virginia law identified, the Report Cards provides a methodology of textual deconstruction, and framework questions discussed in the Report Cards are applied to the law and bills discussed.

### i. 2011 REPORT CARD

This research will address the years in which major changes occurred in terms of the grade received. These years include 2011, the first-year report cards were given out, 2015, 2016, and 2019. In 2011, Shared Hope gave Virginia a total score of 43.5 out of 100 which equates to a

<sup>117</sup> See Section VI: THE HISTORY OF HUMAN TRAFFICKING LAWS

letter grade of “F”.<sup>118</sup> In the category of Criminalization of Domestic Minor Sex Trafficking,

Virginia received a 2.5 out of 7.5.<sup>119</sup> Virginia received such a low score due to the fact that neither human trafficking nor sex trafficking were defined in its code. The only law that came remotely close to sex trafficking was in regard to child-specific sex trafficking. Child sex trafficking could only be prosecuted under §18.2-48 (2011) which reads:

§ 18.2-48. Abduction with intent to extort money or for immoral purposes.

Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age

for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony. If the sentence imposed for a violation of (ii), (iii), (iv), or (v) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

Children who were victim of sex trafficking could have a case for protection under the law from section (iii) in §18.2-48 (2011).

In the category of Criminal Provisions Addressing Demand, Virginia received a 3.5 out of a possible 25.<sup>120</sup> As the language stood for “abduction” in 2011, the definition and law did not extend to buyers who bought commercial sex acts with a minor. This issue expanded to other

<sup>118</sup> From “Protected Innocence Initiative: Virginia Report Card”, By Shared Hope International, (2011), [http://sharedhope.org/PICframe2/reportcards/PIC\\_RC\\_2011\\_VA.pdf](http://sharedhope.org/PICframe2/reportcards/PIC_RC_2011_VA.pdf)

<sup>119</sup> Ibid, *See* Score and Section for Criminalization of Domestic Minor Sex Trafficking

<sup>120</sup> Ibid, *See* Criminal Provisions Addressing Demand and Score  
Commercial Sexual Exploitation of Children (CSEC) laws. Buyers could be prosecuted under prostitution laws; however, the law does not distinguish between adult prostitution and prostitution with a minor in §18.2-346. §18.2-346 reads:

§ 18.2-346. Prostitution; commercial sexual conduct; commercial exploitation of a minor; penalties.

A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by



another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

The third rating category is Criminal Provisions for Traffickers. In this category, Virginia received an 11.5 out of 15, as most of the criminal sentencing is similar to federal provisions for abduction, producing child pornography, and a trafficker may be forced to forfeit assets for abduction violations and child pornography laws.<sup>121</sup>

In the category of Criminal Provisions for Facilitators, Virginia received 3.5 out of a possible 10.<sup>122</sup> Since Virginia did not have any human trafficking laws at this point in time, those who assisted in some capacity or aided traffickers could be prosecuted for aiding and assisting an abduction for the purpose of prostitution.<sup>123</sup>

According to the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP), Commercial Sexual Exploitation of Children is defined as:

“Commercial Sexual Exploitation of Children (CSEC) refers to a “range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person.””<sup>124</sup>

Virginia received a 12 out of 27.5 in the fifth category, Protective Provisions for the Child Victims.<sup>125</sup> In 2011, without the understanding of human trafficking from a legal standpoint, children who were victims of human sex trafficking were largely ignored because there were not any human trafficking laws providing protections under the law, and the existing prostitution laws possess many gaps. Although the prostitution law discussed above is not exclusive to adults and does address minors who may be prostitutes, if a minor commits a crime

<sup>121</sup> Ibid, *See* “Criminal Provisions for Traffickers” section and Score

<sup>122</sup> Ibid, *See* “Criminal Provisions for Facilitators” section and Score <sup>123</sup> Ibid

<sup>124</sup> From “Commercial Sexual Exploitation of Children and Sex Trafficking”, By the Department of Justice’s Office of Juvenile Justice and Delinquency Prevention, p. 1, (August 2014), <https://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>

<sup>125</sup> Ibid *See* 114, “Protective Provisions for the Child Victims” section and Score that is related to the crime of human trafficking, they are still responsible and held accountable for those crimes as the language stands.

The largest issue within this is that the language of CSEC laws, prostitution laws, and abduction laws does not include a complete definition of sexual exploitation, making it significantly harder to completely provide legal protections to victims on a case-by-case basis.

The last section that Virginia was rated on was Criminal Justice Tools for Intervention and Prosecutions. The Commonwealth received a score of 10.5 out of 15.<sup>126</sup>

## ii. 2015 REPORT CARD

The first human trafficking laws in Virginia were introduced and put into effect in July of 2015.

These laws increased Virginia’s numerical score from the original 43.5 in 2011, to a 66 out of 100, corresponding with a letter grade of “D”.<sup>127</sup> In the same order that 2011’s scores were presented; Virginia received a 7.5 out of 10 for the criminalization of domestic minor sex trafficking,<sup>128</sup> a 17 out of 25 in the category of criminal provisions addressing demand,<sup>129</sup> a 12.5 out of 15 for criminal provisions for traffickers,<sup>130</sup> a 5 out of 10 for the category of criminal provisions for facilitators,<sup>131</sup> 11.5 out of 27.5 for the category of protective provisions for the child victims,<sup>132</sup> and finally a 12.5 out of 15 for criminal justice tools for investigating and prosecution.<sup>133</sup> In 2015 House Bill 1964: Chief Patron Delegate Timothy Huger<sup>134</sup> and Senate Bill 1188: Chief Patron Senator Mark

<sup>126</sup> Ibid See 114, “Criminal Justice Tools for Investigation and Prosecutions” section and Score

<sup>127</sup> From “Protected Innocence Challenge: Virginia Report Card 2015”, By Shared Hope International, (2015), [http://sharedhope.org/PICframe5/reportcards/PIC\\_RC\\_2015\\_VA.pdf](http://sharedhope.org/PICframe5/reportcards/PIC_RC_2015_VA.pdf)

<sup>128</sup> Ibid, See “Criminalization of Domestic Minor Sex Trafficking” section and score

<sup>129</sup> Ibid, See “Criminal Provisions Addressing Demand” section and score

<sup>130</sup> Ibid, See “Criminal Provisions for Traffickers” section and score

<sup>131</sup> Ibid, See “Criminal Provisions for Facilitators” section and score

<sup>132</sup> Ibid, See “Protective Provisions for Child Victims” section and score

<sup>133</sup> Ibid, See “Criminal Justice Tools for Investigating and Prosecution” section and score <sup>134</sup> See Appendix B

Obenshain were introduced and passed, establishing the first human trafficking laws.<sup>135</sup> These laws addressed key areas that had been ignored, including defined and established the offense of human sex trafficking, created penalties for trafficking persons, and closed gaps in the current state of the law to criminalize the recruitment of minors by sex traffickers.<sup>136</sup> These human trafficking laws were a major factor in the grade increase on the report cards.

### iii. 2016 REPORT CARD

In 2016, Virginia’s report card score increased again, to a 71 and a letter grade of “C”.<sup>137</sup> The individual category scores remained exactly the same for all except the protective provisions

for the child victims and criminal justice tools for investigation and prosecution. The scores increased from an 11.5 out of 27.5 for the category of protective provisions for the child victims to a 14.5,<sup>138</sup> and for the category of criminal justice tools for investigating and prosecuting, there was an increase of two (2) points for a 2016 score of 14.5 out of 15.<sup>139</sup> The score increase in the protective provisions section, from 2015 to 2016, resulted from Virginia laws establishing that not all commercially exploited children are defined as “juvenile sex trafficking victims” because sex trafficking laws do not protect minors who are exploited by buyers without an identification tracker. The increase in the section criminal justice tools is a result of requiring that the Department of Criminal Justice establish training standards as well as “publish and disseminate a model policy or guideline for law enforcement on human trafficking.”<sup>140</sup>

<sup>135</sup> See Appendix C

<sup>136</sup> See Appendix B and C

<sup>137</sup> From “Protected Innocence Challenge: Virginia Report Card 2016”, From Shared Hope International, (2016), [http://sharedhope.org/PICframe6/reportcards/PIC\\_RC\\_2016\\_VA.pdf](http://sharedhope.org/PICframe6/reportcards/PIC_RC_2016_VA.pdf)

<sup>138</sup> Ibid, See “Protective Provisions for the Child Victims” section and score

<sup>139</sup> Ibid, See “Criminal Justice Tools for Investigation and Prosecution” section and score

<sup>140</sup>Ibid, See 135

The last year that will be broken down is 2019, the most recent year that report cards were distributed to each state. While all of the years distributed are valuable to understand where Virginia has been and the direction for which the Commonwealth is heading, the most recent year provides a snapshot of the now for Virginia.

#### iv. 2019 REPORT CARD

In 2019, Virginia received a score of 75.5 with a letter grade of a “C.”<sup>141</sup> The areas in which the score increased are the fourth and fifth categories addressed in the prior years. In the criminal

provisions for facilitators there was a 2.5-point increase from 2016 by expanding the penalties under CSEC laws to not just “taking, detaining, etc. person for prostitution,” “receiving money from earnings of male or female prostitute,” and “receiving money for procuring person.”<sup>142</sup> The expansion was created by a change of language to include “...CSEC laws, including, but not limited to...”<sup>143</sup> The language was also primarily changed from ICSE<sup>144</sup> laws to CSAM<sup>145</sup> laws. The major change that occurred was the legislation that addressed and criminalized the promotion of sex tourism, House Bill 1817, a bill that was carried by Delegate Karrie Delaney.<sup>146</sup>

In the protective provision category, the score increased by two points bringing the overall section score to a 16.5.<sup>147</sup> The increase in score occurred due to the language change for the

<sup>141</sup> See “Protected Innocence Challenge: Virginia Report Card 2019”, By Shared Hope International, (2019), [http://sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_VA.pdf](http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_VA.pdf)

<sup>142</sup> See “Criminal Provisions for Facilitators” section and score

<sup>143</sup> Language compared from 2016 to 2019, See paragraph one of the “Criminal Provisions for Facilitators” section, p.2 [http://sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_VA.pdf](http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_VA.pdf)

<sup>144</sup> ICSE means Images of Child Sexual Exploitation

<sup>145</sup> CSAM means Child Sexual Abuse Material

<sup>146</sup> See Appendix D for House Bill 1817

<sup>147</sup> See “Protective Provisions for the Child Victim” section and score

criminalization of victims to now say “may face criminalization...”<sup>148</sup> 2019 also introduced the statutory mandated requirement that the Statewide Trafficking Response Coordinator and the Department of Social Services to develop plans for how the state and law enforcement will respond to juvenile sex trafficking victims, which includes provisions to a specialized services.<sup>149</sup> There was also a language change that removed “ICSE” and replaced it with “CSAM”.<sup>150</sup> This is vital because images of child sexual exploitation (ICSE) is limiting in what it captures and the

commercialized child sexual abuse materials (CSAM) expands on what is included under requirements, a change that is necessary to victims by way of expansion. One major change observed in the differing years was that the extension of the “rape shield” law<sup>151</sup> was removed from the language provided in 2019; the language used from 2016-2018 included the extension of the “rape shield” law to victims whereas the language for 2019 removed it entirely.

## X. ANALYSIS OF VIRGINIA’S 2020 LAWS

For each Virginia law identified, legal analysis (IRAC) provides a methodology of textual deconstruction, and framework questions discussed above are applied.

### A. SENATE BILL 706: HUMAN TRAFFICKING ASSESSMENTS BY LOCAL DEPARTMENTS

Senate Bill 706 (SB 706) was introduced by Senator Mark Obenshain on January 7th, 2020. The bill addresses the preexisting “sex trafficking assessment” by expanding the forms of

<sup>148</sup> Language compared from 2016 to 2019, *See* paragraph one, p. 2

[http://sharedhope.org/PICframe9/reportcards/PIC\\_RC\\_2019\\_VA.pdf](http://sharedhope.org/PICframe9/reportcards/PIC_RC_2019_VA.pdf)

<sup>149</sup> *Ibid*

<sup>150</sup> *Ibid*, *See* 138

<sup>151</sup> *See* Appendix D

human trafficking that the assessments address to severe forms through a name change.<sup>152</sup> The issue is establishing whether or not this bill meets the criteria of the framework questions from the report cards. This question will be revisited at the conclusion of the breakdown of this bill. SB 706 not only expands the name of the assessments for investigating human trafficking cases, but also establishes exactly the human trafficking assessment will do. On line 19 to 23, Section

B, “A human trafficking assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and the child’s family that will deter abuse and neglect; and,
3. Risk of future harm to the child.”<sup>153</sup>

This requirement accomplishes improving protective provisions of the child or minor by allowing and providing information of services that may be beneficial and necessary for the child. SB 706 continues to section C which discusses requirements for when a local department response to a report or complaint by conducting a human trafficking assessment. Section C provides that in the instance of a complaint or report, they *may*:

- “1. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and the child’s family;
2. Petition the court for services deemed necessary; or
3. Commence an immediate investigation or family assessment, if at any time during the human trafficking assessment the local department determines that an investigation or family

<sup>152</sup> Senate Bill 706, 2020 Reg. Sess. (2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+SB706ER+pdf>

<sup>153</sup> Ibid, *See* lines 24 and 25

assessment is required pursuant of §63.2-1505<sup>154</sup> or 63.2-1506.”<sup>155</sup> <sup>156</sup> These requirements assist law enforcement and the local departments in how they address human trafficking assessments and cases by giving more abilities and options for approaching the assessment.

SB 706 addresses if the instance of concern occurs in multiple jurisdictions, the parents or guardians reside in another jurisdiction, and orders all jurisdictions involved in some capacity to work together on the assessment and establishes how the courts will proceed with human trafficking cases.<sup>157</sup> Allowing multiple jurisdictions to work in conjunction with one another can facilitate the gathering of evidence and or information that would be vital in the assessment or case of child trafficking. The Bill requires local departments to contact the Child Protective Services Unit in writing whenever an assessment is being conducted.<sup>158</sup> The Child Protective Services ensure that the child(ren) are safe, and their rights are maintained as well as creating a support team for the child and or their family. Finally, SB 706 allows law enforcement agents and officers or the local department to interview the child in question and their siblings “without the consent and outside presence of such child’s or siblings’ parent, guardian, legal custodian, or other person standing in loco parentis, or school personnel.”<sup>159</sup>

SB 706 references the Trafficking Victims Protection Act of 2000 (TVPT)<sup>160</sup> as well as the Justice for Victims of Trafficking Act of 2015 (JFVTA).<sup>161</sup> These acts lay the foundation for the standard of what human trafficking laws should include.

<sup>154</sup> See Appendix F

<sup>155</sup> See Appendix G

<sup>156</sup> Ibid See 148, lines 24 through 31

<sup>157</sup> Ibid See 148, Section D, Lines 32-35

<sup>158</sup> Ibid, See 148 Lines 38 and 39

<sup>159</sup> Ibid, See 148 Lines 40 through 43

<sup>160</sup> Ibid, See 148 Line 14

<sup>161</sup> Ibid, See 148 Line 15

Combining the information pointed out in SB 706, including the foundation of the TVPT and JFVTA, this bill provides protective provisions for protecting the child while also providing tools



for which law enforcement can investigate human trafficking cases. Allowing for officers to conduct interviews of potential child victims without a family member that could be suspected of facilitating the sale of a child trafficking victim or trafficking the child fosters an environment in which the child or their siblings can assist law enforcement or the local departments in determining the severity of the case and assessment. Senate Bill 706 was passed by both the House of Delegates and the Senate of Virginia. While this bill is focused on child sex trafficking victims, it could easily be applied to young adults between the ages of 18 and 20, even if providing them with a team of individuals whether that be through the Child Protective Services or the Department of Social Service. Not only will providing victims with a team of advocates be beneficial to these individuals; providing a unification and consistency in definitions allows for workers and victims to be defined correctly.<sup>162</sup> This will lead to helping both groups with their identities, legal autonomy, resources provided and received as well as influencing decisions made for the victim or worker.<sup>163</sup> In many instances of misidentification, fall under this definitional umbrella, a juvenile benefit from a support entity and advocate. As a guide and educator, this definition expands to connect critical social services that may be lifesaving, including medical and protective services.

#### B. HOUSE BILLS 128 AND 268: EXPUNGEMENT OF RECORDS

To date, no bills expunging the criminal record of individuals who have been convicted of a crime that has since conviction been determined to have been committed because of human

<sup>162</sup> Ibid *See* 69

<sup>163</sup> Ibid *See* 69

trafficking have passed. Both House Bill 128 (Patron Delegate Miyares)<sup>164</sup> and House Bill 268

(Patron Delegate Heretick and Co-Patrons Delegates Delaney, Cole, Guy, Hope, Jenkins, Kory, Levine, Lopez, Murphy, Rasoul, Samirah, Simonds, Watts, and Willett; Senator Morrissey)<sup>165</sup> were both referred to committee on Courts of Justice in block. All of the expungement bills that were introduced in the 2020 session and were in the Court of Justice committee were continued to 2021 session to allow for the Crime Commissioner to conduct a study; Delegate Herring who was Madam Chair of the full committee added that she would be writing a letter to the crime commissioner in support of the study of expungement of criminal records bills.<sup>166</sup> There are many similarities between House Bill 128 and 268. Both bills address the issue of human trafficking victims being criminalized for a crime committed as a result of being trafficked.

House Bill 268 provides definitions for the purpose of the section that the bill is in reference to, including human trafficking, official documents, and human trafficking victim.

Under the

“victims of human trafficking victim”<sup>167</sup> definition, it is expanded to prostitutes who were forced, intimidated, or were deceived to perform the sexual acts.

If the definitions provided in House Bill 268 are applied to House Bill 128, specifically the definition of “victims of human trafficking”<sup>168</sup> and the inclusion of “through the use of force, intimidation, and deception of another”,<sup>169</sup> then the bills are identical and in the realm of human trafficking victims and prostitution.

<sup>164</sup> House Bill 128, 2020 Reg. Sess. (2020),  
<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB128+pdf>

<sup>165</sup> House Bill 268, 2020 Reg. Sess. (2020),  
<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB268+pdf>

<sup>166</sup> Archived Committee Meeting for Courts of Justice, January 31<sup>st</sup>, 2020, 3:12:27 Block Bills,  
<https://viriniageneralassembly.gov/house/chamber/chamberstream.php>

<sup>167</sup> Ibid See 159, Lines 21 through 24

<sup>168</sup> Ibid

<sup>169</sup> Ibid

House Bill 268 is more inclusive, as to who may avail themselves of the option to vacatur and expungement of court and police records including §18.2-47<sup>170</sup> Specifically, this bill addresses abduction, abduction with immoral purpose, commercial exploitation of a minor, and commercial sexual conduct and categorized individuals who fall into these categories are victims of human trafficking if the individual was forced, intimidated to participate, and deception of another.<sup>171</sup>

Both bills also provide the process and requirements for requesting expungement or vacatur of records and include small adjustments to §19.2-392.4. which “prohibited practices by employers, educational institutions, and agencies, etc. of state and local governments.”<sup>172</sup> This section addressed employers and educational institutions from asking an applicant to disclose information about a criminal charge, arrest, or conviction that has been expunged.

While both bills ultimately accomplish the same goal and address the issue of victims being labeled as criminals, House Bill 268 must be the bill that moves forward in 2021. This bill provides power to victims where being a human trafficking victim has taken away the potential for empowerment to a victim. By expunging the criminal records of those who are human trafficking victims, the Commonwealth would be protecting victims by helping solidify a future that is not defined by being a victim or labeled a criminal. House Bill 268 and 128, if passed, would define trafficked person as having the ability to expunge their records for crimes committed because of being a trafficked person. This makes the distinction between individuals who have committed the crime for reasons not associated to human trafficking and those that did commit it due to being trafficked.

<sup>170</sup> See Appendix H

<sup>171</sup> Ibid See 161

<sup>172</sup> See Appendix I

### C. HOUSE BILL 1524: PROSTITUTION; TOUCHING THE UNCLOTHES GENITALS OF ANUS OF ANOTHER

House Bill 1524 addresses a gap in prostitution laws that Virginia has, was carried by Delegate Karrie Delaney and recommended by the Crime Commissioner.<sup>173</sup> Until July 1, 2020, it is legal for a person to touch the unclothed genitals of another person to sexually arouse or gratify. This bill closes that gap by considering the touching of a persons' unclothed genitals to be prostitution.<sup>174</sup> While this bill does backpedal the pro-sex work agenda by expanding what is included as prostitution, it does possess means in which a person can be considered a human trafficking victim if the intimate touching has been determined to have occurred by the use of force, intimidation, or deception. This bill does criminalize the person who would be classified as a prostitute however, criminalizing this does help the human trafficking victims more than it hurts the pro-sex work agenda because this expands to another group of people slipping through the cracks of both human trafficking and prostitution.

This bill expands to not only §18.2-346<sup>175</sup> which is the “commercial sexual conduct; commercial exploitation of a minor but it also includes penalties” for §18.2-348,<sup>176</sup> which is the code pertaining to aiding of prostitution or illicit sexual intercourse, etc., and §18.2-356,<sup>177</sup> the receiving money for procuring person; penalties. All of these sections of the code are changed to include “touching of the unclothed genitals or anus of another person with the intent to sexually arouse or gratify.”<sup>178</sup> This bill closes a gap in the legislation for prostitution but also provide a way to also protect victims while also giving law enforcement the opportunity to find more victims. By

<sup>173</sup> House Bill 1524, 2020 Reg. Sess. (2020),

<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB1524ER+pdf>

<sup>174</sup> Ibid, Line 2 and 3

175 See Appendix J

176 See Appendix L

177 See Appendix O

178 Ibid See 170, First seen in line 13

including the intimate touching of the unclothed genitals of a person for gratification or to sexually arouse, law enforcement expands the definition of victimization; and therefore, of who is a victim. While this will define sex trafficking victims as prostitutes, this would still allow victims to have access to services once in the custody of law enforcement.

#### D. HOUSE BILL 808: ADDS CHAPTER 5 OF TITLE 32.1 RELATING TO THE TREATMENT OF SEXUAL ASSAULT SURVIVORS

The support and treatment that victims require can not only be expensive but also can be a deterrent for victims to receive the medical help they need. House Bill 808 which was carried by Delegate Karrie Delaney lays the foundation for victims to begin to receive medical treatment related to physical and sexual abuse. HB 808 sets the requirements for how victims of sexual assault are to be treated regarding services required to be given to victims of sexual assault (victims), treatment services, transfer services, services for pediatric survivors of sexual assault, inspections, storage retention and dissemination of photographic documentation, submission of evidence, complaints, and task force on services for survivors of sexual assault, and pediatric sexual assault survivor services.<sup>179</sup> Due to the amount that the bill covers, each of the major aspects (transfer and treatment services,<sup>180</sup> collection, submission, and storage of evidence,<sup>181</sup> and the task force<sup>182</sup>) will be broken down and evaluated.

##### i. TRANSFER SERVICE AND TREATMENT SERVICES

This bill accomplishes many areas that were lagging in how Virginia hospitals respond to victims. It was established during this session that oftentimes victims need to travel to multiple

179 House Bill 808, 2020 Reg. Sess., (2020),

<https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+HB808ER+pdf>

180 Ibid, *See* Lines 85 through 151

181 Ibid, *See* lines 208 through 224

182 Ibid, *See* lines 228 through 266

hospitals to receive the care they need after being sexually abused. In Northern Virginia, many victims have to travel to Richmond in order to receive the type of care they need including the collection of evidence and storage. This bill requires that hospitals treat all immediate injuries that require care if they cannot provide the overall medical services needed including forensic recovery kits, and evidence collect and storage as well as providing transfer services to a hospital that can give victims the medical care that is outlined in this bill. In short, a hospital must either be a treatment hospital with an approved treatment plan, or it must be a transfer hospital with an approved transfer plan both which must be approved by the Department of Health.<sup>183</sup> The treatment includes verbal and written information on Human Immunodeficiency Virus (HIV), sexually transmitted infections and diseases, and information that is both factually and medically accurate about pregnancies and emergency contraceptives.<sup>184</sup> The treatment hospital can also evaluate the victim's risk of contracting HIV and also prescribe prescriptions for the treatment of HIV if deemed necessary.<sup>185</sup> These services extend to pediatric cases as well so long as the plan for treatment or transfer services have been approved by the Department of Health. This bill does not specifically include victims of human sex trafficking; however, it includes sections of Article 7 of 18.2-61 (Virginia's Rape laws)<sup>186</sup> which also include the laws on abduction and abduction with the intent to extort money for immoral purposes; human trafficking victims can fall into this classification. The bill also includes crimes against nature, taking indecent liberties with children, and taking indecent liberties with a child by person in custodial or supervisory relationship. Including §18.2-61<sup>187</sup> in this bill extends the reach of the bill's intentions to human trafficking

183 *Ibid*, *See* 177

184 *Ibid*, *See* 177

185 *Ibid*, *See* 177

186 *See* Appendix E

187 *See* Appendix E

victims. This defines trafficked persons to have rights to medical services. While the services provided cannot force the victim to explain in explicit detail the nature of the abuse, it does provide a space in which a person can discuss the abuse in a safe environment and seek out resources and options if they so feel comfortable.

ii. STORAGE OF PHOTOGRAPHIC DOCUMENTATION AND SUBMISSION OF EVIDENCE

This bill adds in §32.1-162.15:8<sup>188</sup> and §32.1-162.15:9<sup>189</sup> which set the requirements for storing and submitting evidence whether it be an adult or a pediatric sexual assault case. §32.1162.15:8<sup>190</sup> requires that all photographic documentation of the assault be stored in the patients file and only those who are identified by the treatment hospital in the plan approved by the Department of Health have access to. This is beneficial to survivors and victims of sexual abuse because the evidence remains in storage under their personal patient file for which the access to such file is limited. This reduces the ability for the files to be tampered with by any individuals that are not approved by the hospital's plan.

With regard to the submission of a forensic medical examination that includes a physical evidence recovery kit, local law enforcement must be made aware of the alleged sexual assault and the kit must be collected within four (4) hours of the examination in accordance with §19.211.6.<sup>191</sup> While it may be difficult for a victim to be questioned by law enforcement about their sexual

assault, it can provide evidence and means of protection for any victim involved including human trafficking victims. It can foster the environment where a conversation can occur between

<sup>188</sup> Ibid, *See* 177, Line 208

<sup>189</sup> Ibid, *See* 177, Line 215

<sup>190</sup> Ibid, *See* 186

<sup>191</sup> *See* Appendix S

victims and law enforcement or provide information on the perpetrator of the victim. This defines trafficked person with protective provisions while also assisting law enforcement in gathering evidence.

### iii. THE TASK FORCE

Trafficking victims have unique legal needs as discussed by the research provided by Cho,<sup>192</sup> Simon Hedlin,<sup>193</sup> and Dorchen Leidholdt.<sup>194</sup> The Task Force was established in this bill so that as the needs of victims change, changes to the requirements of hospitals may also remain updated that is tailored to the needs of victims. The Task Force will consist of “ (i) two members of the House of Delegates appointed by the Speaker of 231 the House of Delegates; (ii) one member of the Senate appointed by the Senate Committee on Rules; 232 (iii) the Attorney General, or his designee; (iv) the Commissioners of Health and Social Services, or 233 their designees; (v) the Director of the Department of State Police; (vi) two representatives of hospitals 234 licensed by the Department of Health appointed by the Governor; (vii) three physicians licensed by the 235 Board of Medicine to practice medicine or osteopathy appointed by the Governor, each of whom is a 236 practitioner of emergency medicine and at least one of whom is a pediatrician; (viii) three nurses 237 licensed to practice in the Commonwealth appointed by the Governor, each of whom



is a sexual assault 238 nurse examiner; (ix) two representatives of organizations providing advocacy on behalf of survivors of 239 sexual assault appointed by the Governor; and (x) one

<sup>192</sup> From “Does Legalized Prostitution Increase Human Trafficking?”, By Seo-Young Cho, German Institute for Economic Research- DIW Berlin, Germany, World Development Vol 41 pp. 67-82, <http://dx.doi.org/10.1016/j.worlddev.2012.05.023>

<sup>193</sup> From “Can Prostitution Law Reform Curb Sex Trafficking Effects?”, By Simon Hedlin, Michigan Journal of Law Reform, n.d. <sup>194</sup> From “Prostitution: A Violation of Women’s Human Rights.”, By Dorchen Leidholdt, 1 Cardozo Women’s L.J. 133 (1993-1994),

representative of an organization providing 5 of 5 <sup>240</sup> advocacy on behalf of children appointed by the Governor. The Commissioner of Health or his designee <sup>241</sup> shall serve as chairman of the Task Force. Staff support for the Task Force shall be provided by the <sup>242</sup> Department of Health.”<sup>195</sup>

The entire purpose of the Task Force is to continue providing support to victims while also maintaining the ability to work together with all parties that play a role in the care and support of those who suffer from sexual abuse. The Task Force will establish and develop a model written transfer agreement to be used by treatment hospitals, transfer hospitals, and pediatric health care facilities. It also will develop educational material “regarding the implementation of the provisions of this article to hospitals, health care providers, rape crisis centers, children’s advocacy centers, and others.”.<sup>196</sup> This can help any person that is victim to sexual abuse by having a group of individuals who are looking to provide the best care and support to victims during a traumatic and difficult time. This establishes a unique opportunity to openly discuss the different needs that are observed by each of the parties of the task force ultimately providing more tools to prosecution of abusers (including traffickers) by expanding the definition of victimization to include specific task force jurisdiction.

## XI. POST LEGISLATION UNDERSTANDING AND RECOMMENDATION

The pieces of legislations that were introduced in the analysis show that there are areas in which efforts are continuing to be made in order to provide victims of human trafficking with the best support that could be given to them. While these bills pose a vigilant effort in protecting

<sup>195</sup> Ibid, *See* 179, Line 229 through 240

<sup>196</sup> Ibid, *See* 179, Lines 261 and 262

victims and establishing new ways in which to discover victims, there is still a major component that needs to be addressed: consistency in the legal language.

Through the experiences I have gained working in legislation, both as a Government Relations personnel, a Session Aide for a Delegate, and through the analysis of the legislation presented in this research and by the Code of Virginia that has been established regarding human trafficking and the code that is surrounding prostitution, it is clear that Virginia establishes and captures victims of human sex trafficking by criminalizing them for prostitution. By categorizing human trafficking victims as prostitutes, law enforcement is able to use them as evidence and a method of gaining information about who the traffickers are as well as continuing to prosecute those that aid prostitution and human trafficking--contributing largely to the demand of the industry. Once these victims are criminalized for prostitution, they face a new strand of adversities surrounding the ability to move forward with their lives, often times placing them into an unwanted, perpetual circle of returning to places and people of familiarity, such as their abusers and traffickers.

In order for Virginia to become a better and safer state that provides services and legal support for the victims that are within the Commonwealth, a few critical pieces of legislation need

to pass. First, the House Bills that were introduced that would expunge the records of human trafficking victims that were charged with one of the crimes that was cited in the code, which included prostitution, that was a result of the victim being trafficked need to pass. Passing these laws would allow victims to have a fresh start and move away from being unfairly labeled as criminals. Virginia would also find success in making the distinction between prostitution and human trafficking when dealing with law enforcement and the courts in Virginia. There is no guarantee that labeling a victim as a prostitute would encourage the victim to come forward about their abuse and crimes possibly committed as a result of being trafficked. Introducing laws that penalize traffickers that represents the severity of this heinous crime as well as legislation that also places a higher punishment on the buying of prostitutes and humans for the purpose of sex will also assist in cutting off the demand of the industry. The final, and perhaps the most important and controversial, recommendation is the legalization and decriminalization of prostitution. If Virginia were to define the legalization and decriminalization of prostitution, independent from an expanded definition of trafficking, the conflation of the two will not bar services, support, and remedies to those who require them. There is clearly a connection between prostitution and human trafficking that varies in severity; however, if prostitution can be regulated and monitored as a business, then it is extremely likely that human trafficking victims can be supported in a way that Virginia has not yet been able to experience. Defining the terms of both circumstances in uniform and expansive ways, will reflect the distinct difference between prostitution and human trafficking. Thus, in better defining this distinction, possibilities open to strengthening Virginia's human trafficking laws, including and beyond, the legislation examined herein.

As shown in the pieces of legislation dissected in this research and the Report Cards from Shared Hope International, having consistency within the language of definitions can allow for not only

individual states to improve the services the respective state can provide but also it can improve the approach to human trafficking at the national level. Consistency at the state level and national level will foster the environment for individual discussions about the different levels and severity of human trafficking, to continue with greater ease, and will allow for changes to be made from a legal standpoint.

Appendix A: §18.2-361. CRIMES AGAINST NATURE; PENALTY

§ 18.2-361. Crimes against nature; penalty.

A. If any person carnally knows in any manner any brute animal or voluntarily submits to such carnal knowledge, he is guilty of a Class 6 felony.

B. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus, or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

C. For the purposes of this section, parent includes stepparent, grandparent includes stepgrandparent, child includes stepchild, and grandchild includes step-grandchild.

Code 1950, § 18.1-212; 1960, c. 358; 1968, c. 427; 1975, cc. 14, 15; 1977, c. 285; 1981, c. 397; 1993, c. 450; 2005, c. 185; 2014, c. 794.<sup>197</sup>

<sup>197</sup> From Code of Virginia, Crimes Against Nature; Penalty, (2014),  
<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-361/>

Appendix B: HOUSE BILL 1964 (2015 REG. SESS.)

Introduced by Delegate Timothy D. Hugo

**“Commercial sex trafficking; penalties.** Creates new felonies for trafficking of persons for commercial sexual activity. The bill provides that any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to engage in prostitution with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of the solicited person from an act of prostitution is guilty of a Class 5 felony. Felonies are increased if such behavior is done by an adult and the person solicited is a minor (Class 3 felony) and if force, intimidation, or deception is used against the person solicited (Class 4 felony). The new crime was added to the definition of violent felony for the purposes of the sentencing guidelines, predicate criminal acts for street gangs, the Virginia Racketeer Influence and Corrupt Organization Act, multijurisdictional grand jury, and asset forfeiture and, if a minor is solicited, the Sex Offender Registry. The bill also amends two existing Code sections on receiving money for procuring a person for prostitution and receiving money from the earnings of a person engaged in prostitution to increase penalties if the crime involves a minor. This bill is identical to SB 1188.”<sup>198</sup>

<sup>198</sup> House Bill 1965, 2015 Short Sess., (2015), [bin/legp604.exe?151+sum+HB1964](http://legp604.exe?151+sum+HB1964)  
<https://lis.virginia.gov/cgi->

Appendix C: SENATE BILL 1188 (2015 REG. SESS.)

Introduced by Senator Mark D. Obenshain

**“Commercial sex trafficking; penalties.** Creates new felonies for trafficking of persons for commercial sexual activity. The bill provides that any person who solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to engage in prostitution with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of the solicited person from an act of prostitution is guilty of a Class 5 felony. Felonies are increased if such behavior is done by an adult and the person solicited is a minor (Class 3 felony) and if force, intimidation, or deception is used against the person solicited (Class 4 felony). The new crime was added to the definition of violent felony for the purposes of the sentencing guidelines, predicate criminal acts for street gangs, the Virginia Racketeer Influence and Corrupt Organization Act, multijurisdictional grand jury, and asset forfeiture and, if a minor is solicited, the Sex Offender Registry. The bill also amends two existing Code sections on receiving money for procuring a person for prostitution and receiving money from the earnings of a person engaged in prostitution to increase penalties if the crime involves a minor. This bill is identical to HB 1964.”<sup>199</sup>

<sup>199</sup> Senate Bill 1188, 2015 Short Sess. (2015), [bin/legp604.exe?ses=151&typ=bil&val=sb1188](http://legp604.exe?ses=151&typ=bil&val=sb1188)  
<https://lis.virginia.gov/cgi->

Appendix D: HOUSE BILL 1817: PROSTITUTION; PROMOTING TRAVEL, PENALTY

Introduced by Delegate Karrie Delaney

**“Promoting travel for prostitution; penalty.** Makes it a Class 1 misdemeanor for any travel agent to knowingly promote travel services for the purposes of prostitution or certain offenses involving minors that require registration on the Sex Offender and Crimes Against Minors Registry.”<sup>200</sup>

<https://lis.virginia.gov/cgi->



200 House Bill 1817, 2019 Short Sess. (2019), <bin/legp604.exe?191+sum+HB1817>

<https://lis.virginia.gov/cgi->

## Appendix E: RAPE

“§ 18.2-61. Rape.

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling

or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness. Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1982, c. 506; 1986, c. 516; 1994, cc. 339, 772, 794; 1997, c. 330; 1999, c. 367; 2002, cc. 810, 818; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.”<sup>201</sup>

201 From the Code of Virginia, §18.2-61, (2013),  
<https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-61/>

#### Appendix F: §63.2-1505 INVESTIGATIONS BY LOCAL DEPARTMENTS

“A. An investigation requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;
2. Complete a report and enter it into the statewide automation system maintained by the Department;
3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;
4. Petition the court for services deemed necessary including, but not limited to, removal of the child or his siblings from their home;
5. Determine within 45 days if a report of abuse or neglect is founded or unfounded and transmit a report to such effect to the Department and to the person who is the subject of the investigation. However, upon written justification by the local department, the time for such determination may be extended not to exceed a total of 60 days or, in the event that the investigation is being conducted in cooperation with a law-enforcement agency and both parties agree that circumstances so warrant, as stated in the written justification, the time for such determination may be extended not to exceed 90 days. If through the exercise of reasonable diligence the local department is unable to find the child who is the subject of the report, the time the child cannot be found shall not be computed as part of the total time period allowed for the investigation and determination and documentation of such reasonable diligence shall be placed in the record. In cases involving the death of a child or alleged sexual abuse of a child who is the subject of the report, the time during which records necessary for the investigation of

the complaint but not created by the local department, including autopsy or medical or forensic records or reports, are not available to the local department due to circumstances beyond the local department's control shall not be computed as part of the total time period allowed for the investigation and determination, and documentation of the circumstances that resulted in the delay shall be placed in the record. In cases in which the subject of the investigation is a full-time, part-time, permanent, or temporary employee of a school division who is suspected of abusing or neglecting a child in the course of his educational employment, the time period for determining whether a report is founded or unfounded and transmitting a report to that effect to the

Department and the person who is the subject of the investigation shall be mandatory, and every local department shall make the required determination and report within the specified time period without delay;

6. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant and parent or guardian and the person responsible for the care of the child in those cases where such person was suspected of abuse or neglect; and

7. If a report of child abuse and neglect is founded, and the subject of the report is or was at the time of the investigation or the conduct that led to the report a full-time, part-time, permanent, or temporary employee of a school division located within the Commonwealth, notify the relevant school board of the founded complaint without delay.

Any information exchanged for the purposes of this subsection shall not be considered a violation of § 63.2-102, 63.2-104, or 63.2-105.

C. Each local board may obtain and consider, in accordance with regulations adopted by the Board, statewide criminal history record information from the Central Criminal Records Exchange and shall obtain and consider results of a search of the child abuse and neglect central registry of any individual who is the subject of a child abuse or neglect investigation conducted under this section when there is evidence of child abuse or neglect and the local board is evaluating the safety of the home and whether removal will protect a child from harm. The local board shall determine whether the individual has resided in another state within at least the preceding five years and, if he has resided in another state, the local board shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state. The local board also may obtain such a criminal records or registry search on all adult household members residing in the home where the individual who is the subject of the investigation resides and the child resides or visits. If a child abuse or neglect petition is filed in connection with such removal, a court may admit such information as evidence. Where the individual who is the subject of such information contests its accuracy through testimony under oath in hearing before the court, no court shall receive or consider the contested criminal history record information without certified copies of conviction. Further dissemination of the information provided to the local board is prohibited, except as authorized by law.

D. A person who has not previously participated in the investigation of complaints of child abuse or neglect in accordance with this chapter shall not participate in the investigation of any case involving a complaint of alleged sexual abuse of a child unless he (i) has completed a Boardapproved training program for the investigation of complaints involving alleged sexual

abuse of a child or (ii) is under the direct supervision of a person who has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse of a child. No individual may make a determination of whether a case involving a complaint of alleged sexual abuse of a child is founded or unfounded unless he has completed a Board-approved training program for the investigation of complaints involving alleged sexual abuse of a child.

E. Any individual who is the subject of a child abuse or neglect investigation conducted under this section shall notify the local department prior to changing his place of residence and provide the local department with the address of his new residence.

2000, c. 500, § 63.1-248.6:01; 2002, c. 747; 2007, c. 495; 2008, c. 555; 2013, cc. 340, 506; 2014, cc. 299, 504; 2015, c. 524; 2017, cc. 176, 428; 2018, cc. 3, 193; 2019, cc. 276, 436.”<sup>202</sup>

202 From the Code of Virginia, §63.2-1505, (2019),

<https://law.lis.virginia.gov/vacode/title63.2/chapter15/section63.2-1505/>

Appendix G: §63.2-1506 FAMILY ASSESSMENTS BY LOCAL DEPARTMENTS

“§ 63.2-1506. Family assessments by local departments.

A. A family assessment requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Whether the mother of a child who was exposed in utero to a controlled substance sought substance abuse counseling or treatment prior to the child's birth; and
5. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services.

B. When a local department has been designated as a child-protective services differential response system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint by conducting a family assessment, the local department shall:

1. Conduct an immediate family assessment and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;
2. Obtain and consider the results of a search of the child abuse and neglect registry for any individual who is the subject of a family assessment. The local board shall determine whether the individual has resided in another state within at least the preceding five years, and, if he has resided in another state, the local board shall request a search of the child abuse and neglect registry or equivalent registry maintained by such state. The local board also may obtain and consider, in accordance with regulations of the Board, statewide criminal history record information from the Central Criminal Records Exchange for any individual who is the subject of a family assessment;
3. Immediately contact the subject of the report and the family of the child alleged to have been abused or neglected and give each a written and an oral explanation of the family assessment procedure. The family assessment shall be in writing and shall be completed in accordance with Board regulation;
4. Complete the family assessment within 45 days and transmit a report to such effect to the Department and to the person who is the subject of the family assessment. However, upon written justification by the local department, the family assessment may be extended, not to exceed a total of 60 days;
5. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family. Families have the option of declining the services offered

as a result of the family assessment. If the family declines the services, the case shall be closed unless the local department determines that sufficient cause exists to redetermine the case as one that needs to be investigated. In no instance shall a case be redetermined as an investigation solely because the family declines services;

6. Petition the court for services deemed necessary;
7. Make no disposition of founded or unfounded for reports in which a family assessment is completed. Reports in which a family assessment is completed shall not be entered into the central registry contained in § 63.2-1515; and
8. Commence an immediate investigation, if at any time during the completion of the family assessment, the local department determines that an investigation is required.

C. When a local department has been designated as a child-protective services differential response agency by the Department, the local department may investigate any report of child abuse or neglect, but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) cases involving a child's being left alone in the same dwelling with a person to whom the child is not related by blood or marriage and who has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1902, (v) child has been taken into the custody of the local department, or (vi) cases involving a caretaker at a state-licensed child day center, religiously exempt child day center, licensed, registered or approved family day home, private or public school, hospital or any institution. If a report or complaint is based upon one of the factors specified in subsection B of § 63.2-1509, the local department shall (a) conduct a family assessment, unless an investigation is required pursuant to this subsection or other provision of law or is necessary to protect the safety of the child, and (b) develop a plan of safe care in accordance with federal law, regardless of whether the local department makes a finding of abuse or neglect.

D. Any individual who is the subject of a family assessment conducted under this section shall notify the local department prior to changing his place of residence and provide the local department with the address of his new residence.

2000, c. 500, § 63.1-248.6:02; 2002, cc. 641, 642, 747; 2017, cc. 176, 428; 2018, c. 823; 2019, cc. 276, 436.”<sup>203</sup>



203 From the Code of Virginia, §63.2-1506, (2019),  
<https://law.lis.virginia.gov/vacode/title63.2/chapter15/section63.2-1506/>

Appendix H: §18.2-47 ET. AL. SECTIONS

#### §18.2-47 ABDUCTION AND KIDNAPPING DEFINES; PUNISHMENT

- A. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to deprive such other person of his personal liberty or to withhold or conceal him from any person, authority or institution lawfully entitled to his charge, shall be deemed guilty of "abduction."
- B. Any person who, by force, intimidation or deception, and without legal justification or excuse, seizes, takes, transports, detains or secretes another person with the intent to subject him to forced labor or services shall be deemed guilty of "abduction." For purposes of this subsection, the term "intimidation" shall include destroying, concealing, confiscating, withholding, or threatening to withhold a passport, immigration document, or other governmental identification or threatening to report another as being illegally present in the United States.
- C. The provisions of this section shall not apply to any law-enforcement officer in the performance of his duty. The terms "abduction" and "kidnapping" shall be synonymous in this Code. Abduction for which no punishment is otherwise prescribed shall be punished as a Class 5 felony.
- D. If an offense under subsection A is committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending, the offense shall be a Class 1 misdemeanor in addition to being punishable as contempt of court. However, such offense, if committed by the parent of the person abducted and punishable as contempt of court in any proceeding then pending and the person abducted is removed from the Commonwealth by the abducting parent, shall be a Class 6 felony in addition to being punishable as contempt of court.

Code 1950, §§ 18.1-36, 18.1-37; 1960, c. 358; 1975, cc. 14, 15; 1979, c. 663; 1980, c. 506; 1997, c. 747; 2009, c. 662.”<sup>204</sup>

#### §18.2-48: ABDUCTION WITH THE INTENT TO EXTORT MONEY FOR IMMORAL PURPOSE

“Abduction (i) of any person with the intent to extort money or pecuniary benefit, (ii) of any person with intent to defile such person, (iii) of any child under sixteen years of age for the purpose of concubinage or prostitution, (iv) of any person for the purpose of prostitution, or (v) of any minor for the purpose of manufacturing child pornography shall be punishable as a Class 2 felony. If the sentence imposed for a violation of (ii), (iii), (iv), or (v) includes a term of confinement less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life subject to revocation by the court.

204 From the Code of Virginia, §18.2-47, (2009),

<https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-47/>

Code 1950, § 18.1-38; 1960, c. 358; 1966, c. 214; 1975, cc. 14, 15; 1993, c. 317; 1997, c. 747; 2006, cc. 853, 914; 2011, c. 785.”<sup>205</sup>

§ 18.2-346. PROSTITUTION COMMERCIAL SEXUAL CONDUCT; COMMERCIAL EXPLOITATION OF A MINOR; PENALTIES.

A. Any person who, for money or its equivalent, (i) commits adultery, fornication, or any act in violation of § 18.2-361, performs cunnilingus, fellatio, or anilingus upon or by another person, or engages in anal intercourse or (ii) offers to commit adultery, fornication, or any act in violation of § 18.2-361, perform cunnilingus, fellatio, or anilingus upon or by another person, or engage in anal intercourse and thereafter does any substantial act in furtherance thereof is guilty of prostitution, which is punishable as a Class 1 misdemeanor.

B. Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated in subsection A and thereafter does any substantial act in furtherance thereof is guilty of solicitation of prostitution, which is punishable as a Class 1 misdemeanor. However, any person who solicits prostitution from a minor (i) 16 years of age or older is guilty of a Class 6 felony or (ii) younger than 16 years of age is guilty of a Class 5 felony.

Code 1950, § 18.1-194; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 1993, c. 609; 2013, cc. 417, 467; 2014, c. 794.”<sup>206</sup>

§ 18.2-347. KEEPING, RESIDING IN, OR FREQUENTING A BAWDY PLACE; “BAWDY PLACE” DEFINED; PENALTY

It is unlawful for any person to keep any bawdy place, or to reside in or at or visit for immoral purposes any such bawdy place. Each day such bawdy place is kept, resided in, or visited shall constitute a separate offense. In a prosecution under this section, the general reputation of the bawdy place may be proved. A violation of this section is a Class 1 misdemeanor.

As used in this Code, "bawdy place" means any place within or outside any building or structure that is used or is to be used for lewdness, assignation, or prostitution.

Code 1950, §§ 18.1-195, 18.1-196; 1960, c. 358; 1975, cc. 14, 15; 2019, c. 617.”<sup>207</sup>

205 From the Code of Virginia, §18.2-48, (2011),

<https://law.lis.virginia.gov/vacode/title18.2/chapter4/section18.2-48/>

206 From the Code of Virginia, § 18.2-346, (2014),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-346/>

<sup>207</sup> From the Code of Virginia, §18.2-347, (2019),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-347/>

§ 18.2-348. AIDING PROSTITUTION OR ILLICIT SEXUAL INTERCOURSE, ETC.;  
PENALTY

It is unlawful for any person or any officer, employee, or agent of any firm, association, or corporation with knowledge of, or good reason to believe, the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport on foot or in any way, any person to a place, whether within or outside any building or structure, used or to be used for the purpose of lewdness, assignation, or prostitution within the Commonwealth or to procure or assist in procuring for the purpose of illicit sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act violative of § 18.2-361, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution. A violation of this section is a Class 1 misdemeanor. However, any adult who violates this section with a person under the age of 18 is guilty of a Class 6 felony.

Code 1950, § 18.1-197; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2014, c. 794; 2019, c. 617.”<sup>208</sup>

§ 18.2-349. USING VEHICLES TO PROMOTE PROSTITUTION OR UNLAWFUL SEXUAL INTERCOURSE; PENALTY

It is unlawful for any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle. A violation of this section is a Class 1 misdemeanor. However, any adult who violates this section by using a vehicle or allowing a vehicle to be used for or to aid or promote prostitution or unlawful sexual intercourse with a person under the age of 18 is guilty of a Class 6 felony.

Code 1950, § 18.1-198; 1960, c. 358; 1975, cc. 14, 15; 2019, c. 617.”<sup>209</sup>

§ 18.2-355. TAKING, DETAINING, ETC., PERSON FOR PROSTITUTION, ETC., PERSON FOR PROSTITUTION, ETC., OR CONSENTING THERETO; HUMAN TRAFFICKING

Any person who:

(1) For purposes of prostitution or unlawful sexual intercourse, takes any person into, or persuades, encourages or causes any person to enter, a bawdy place, or takes or causes such person to be taken to any place against his or her will for such purposes; or

<sup>208</sup> From the Code of Virginia, §18.2-348, (2019),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-348/>

209 From the Code of Virginia, §18.2-349, (2019),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-349/>

(2) Takes or detains a person against his or her will with the intent to compel such person, by force, threats, persuasions, menace or duress, to marry him or her or to marry any other person, or to be defiled; or

(3) Being parent, guardian, legal custodian or one standing in loco parentis of a person, consents to such person being taken or detained by any person for the purpose of prostitution or unlawful sexual intercourse; or

(4) For purposes of prostitution, takes any minor into, or persuades, encourages, or causes any minor to enter, a bawdy place, or takes or causes such person to be taken to any place for such purposes; is guilty of pandering.

A violation of subdivision (1), (2), or (3) is punishable as a Class 4 felony. A violation of subdivision (4) is punishable as a Class 3 felony.

Code 1950, § 18.1-204; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 1997, c. 555; 2014, cc. 649, 706; 2015, c. 395.”<sup>210</sup>

#### § 18.2-356. RECEIVING MONEY FOR PROCURING PERSON; PENALTY

Any person who receives any money or other valuable thing for or on account of (i) procuring for or placing in a house of prostitution or elsewhere any person for the purpose of causing such person to engage in unlawful sexual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus or any act in violation of § 18.2-361 or (ii) causing any person to engage in forced labor or services, concubinage, prostitution, or the manufacture of any obscene material or child pornography is guilty of a Class 4 felony. Any person who violates clause (i) or (ii) with a person under the age of 18 is guilty of a Class 3 felony.

Code 1950, § 18.1-206; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2011, c. 785; 2014, c. 794; 2015, cc. 690, 691.”<sup>211</sup>

“§ 18.2-357. Receiving money from earnings of male or female prostitute; penalties.

Any person who shall knowingly receive any money or other valuable thing from the earnings of any male or female engaged in prostitution, except for a consideration deemed good and valuable in law, shall be guilty of pandering, punishable as a Class 4 felony. Any person who violates this section by receiving money or other valuable thing from a person under the age of 18 is guilty of a Class 3 felony.

Code 1950, § 18.1-208; 1960, c. 358; 1975, cc. 14, 15; 1980, c. 534; 2015, cc. 690, 691.”<sup>212</sup>

210 From the Code of Virginia, §18.2-355, (2015),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-355/>

211 From the Code of Virginia, §18.2-356, (2015),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-356/>

<sup>212</sup> From the Code of Virginia, §18.2-357, (2015),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-357/>

§ 18.2-357.1. COMMERCIAL SEX TRAFFICKING; PENALTIES

- A. Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of subsection A of § 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate subsection A of § 18.2346 is guilty of a Class 5 felony.
- B. Any person who violates subsection A through the use of force, intimidation, or deception is guilty of a Class 4 felony.
- C. Any adult who violates subsection A with a person under 18 years of age is guilty of a Class 3 felony.
- D. Each violation of this section constitutes a separate and distinct felony.

2015, cc. 690, 691; 2019, c. 617.”<sup>213</sup>

213 From the Code of Virginia, §18.2-357.1., (2019),

<https://law.lis.virginia.gov/vacode/title18.2/chapter8/section18.2-357.1/>

Appendix I: §19.2-392.4. PROHIBITED PRACTICES BY EMPLOYERS, EDUCATIONAL INSTITUTIONS, AGENCIES, ETC., OF STATE AND LOCAL GOVERNMENTS

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments.

A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning arrests or charges that have been expunged.

B. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest or criminal charge against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges that have been expunged. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any arrest or criminal charge against him that has been expunged.

C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.

1977, c. 675.”<sup>214</sup>

214 From the Code of Virginia, §19.2-392.4., (1977),

<https://law.lis.virginia.gov/vacode/title19.2/chapter23.1/section19.2-392.4/>

Appendix J: §19.2-11.6. ANONYMOUS PHYSICAL EVIDENCE RECOVERY KITS

“§ 19.2-11.6. Anonymous physical evidence recovery kits.

A. When a victim of sexual assault who undergoes a forensic medical examination elects not to report the offense to law enforcement, the health care provider shall inform the victim that the physical evidence recovery kit shall be forwarded to the Division for storage as an anonymous physical evidence recovery kit. The health care provider shall further inform the victim of the length of time the anonymous physical evidence recovery kit will be stored by the Division, the victim's right to object to the destruction of the anonymous physical evidence recovery kit, and how the victim can have the anonymous physical evidence recovery kit released to a lawenforcement agency at a later date. The health care provider shall forward the anonymous physical evidence recovery kit to the Division in accordance with the policies and procedures established by the Division.

B. The Division shall store any anonymous physical evidence recovery kit received for a minimum of two years. The Division shall store the anonymous physical evidence recovery kit for an additional period of 10 years following the receipt of a written objection to the destruction of the anonymous physical evidence recovery kit from the victim. After the initial two years or any additional 10-year storage period, the Division, in the absence of the receipt of a written objection from the victim in the most recent 10-year period, may destroy the anonymous physical evidence recovery kit or, in its discretion or upon request of the victim or the lawenforcement agency, may elect to retain the anonymous physical evidence recovery kit for a longer period of time. Upon notification from either the law-enforcement agency or the attorney for the Commonwealth that the victim has elected to report the offense to the law-enforcement agency, the Division shall release the anonymous physical evidence recovery kit to the lawenforcement agency.

2016, cc. 332, 698; 2017, c. 535.”<sup>215</sup>

215 From the Code of Virginia, §19.2-11.6., (2017),  
<https://law.lis.virginia.gov/vacode/title19.2/chapter1.2/section19.2-11.6/>