

Buying and Selling Sex in Colorado

by Janet Stansberry Drake and Lisha R. McKinley

The commercial sex industry is being reshaped by the anti human trafficking movement. Commercial sex often collides with human exploitation in the most personal, violent way. A multifaceted approach that includes prevention, protection, prosecution, and partnerships is an effective model to combat human trafficking.

Kristi is 16 years old and dropped out of school. She has repeatedly run away from her suburban home. Kristi is committing acts of prostitution because she knows no other viable alternative to survive. She is vulnerable. She is being exploited by a pimp, her fourth in two years. Kristi has sex for money an average of ten times per day. All the money she is paid is turned over to her pimp, who provides only the barest of necessities in return.

Kristi's story is all too common. How we as a community respond is the challenge. There was a time when people turned a blind eye to commercial sex, claiming it was the "oldest profession." Some people continue to view commercial sex as an ugly annoyance that happens in bad neighborhoods. The reality is that sexual exploitation is victimization and it occurs virtually everywhere: hotels, apartments, homes, cars, and commercial businesses.

This article provides an overview of sex trafficking. It also suggests that a multi-faceted approach—including prevention, protection, prosecution, and partnerships—is an effective method to combat human trafficking.

Commercial Sex or Human Trafficking

Commercial sex is sex in exchange for money or something else of value. Sex trafficking involves commercial sex that is induced by force, fraud, or coercion, and includes harboring, recruiting, and/or transporting a person for commercial sex. Force, fraud, or coercion are presumed when the person being sex trafficked is under 18 years old.¹

The Sex Trafficking Industry

Sex trafficking is the most common form of human trafficking,² and victims are predominately women and girls.³ Roughly 80% of all human trafficking cases involve sexual exploitation.⁴ Sex trafficking is difficult to quantify, but Polaris Project⁵ reports that human trafficking is one of the fastest growing criminal industries

in the world.⁶ The "Trafficking in Persons Report" that is issued annually by the federal government estimates that as many as 2 million children are sexually exploited by traffickers around the world at any given time.⁷

Colorado statistics vary widely and depend on how the crime is characterized. Law enforcement in 2010 estimated that it had investigated 100 to 150 sex trafficking cases in the Denver metro area over the span of a few years.⁸ However, a comprehensive study of the protocols and punishments involved in prostitution-related offenses sampled 2,072 people who were arrested in Denver between 2006 and 2011 for prostitution-related offenses.⁹

The Federal Response

The federal government enacted the Trafficking Victims Protection Act (TVPA) in 2000 to ensure just punishment to traffickers and protection for victims.¹⁰ The TVPA validated individual human rights, recognizing victims regardless of immigration status. Additionally, victim consent to an illegal act is not a defense to subsequent force, fraud, or coercion. For example, if a person voluntarily agrees to be smuggled across an international border into the United States, and that person is subsequently forced into prostitution by a human trafficker, the trafficker may be prosecuted. Likewise, the victim still may be afforded the rights and benefits provided by law (such as medical care, protective orders, and continued presence immigration assistance) despite the fact that initial entry into the United States was unlawful.

The TVPA was reauthorized in 2003, 2005, and 2008; however, the TVPA expired in 2011.¹¹ Congress currently is considering the Trafficking Victims Protection Reauthorization Act of 2011.¹²

The Colorado Response

Prostitution and related acts are considered criminal offenses relating to morals under Colorado criminal statutes. Under Colorado law, any person who performs (or offers or agrees to perform)



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any sexual act with a person not his or her spouse in exchange for money or another thing of value commits prostitution.¹³ Prostitution is a class 3 misdemeanor.¹⁴

In 2005, the Colorado Legislature created an interagency task force on trafficking in persons.¹⁵ One year later, the legislature enacted human trafficking laws to combat modern day slavery. Under Colorado law, a person commits human trafficking if he or she sells, exchanges, barter, or leases another person and receives any money or other consideration or thing of value for that person as a result of such transaction.¹⁶ Trafficking in children is a class 2 felony, carrying a presumptive prison sentence between eight and twenty-four years.¹⁷ Trafficking in adults is a class 3 felony, unless the trafficking victim is illegally present in the United States, which increases the crime to a class 2 felony.¹⁸ Class 3 felonies carry a presumptive prison sentence between four and twelve years.¹⁹

The Colorado statutes do not expressly distinguish between labor trafficking and sex trafficking. Additionally, force, fraud, or coercion need not be proven to establish human trafficking in Colorado. It is, however, commonly understood that human trafficking does involve some level of force, fraud, or coercion.²⁰ One national organization characterizes victimization as follows: “When an adult is coerced, forced or deceived into prostitution—or maintained in prostitution through coercion—that person is a victim of trafficking.”²¹

Transportation across state or national borders is not an element of human trafficking. Human trafficking is a crime of exploitation, not a crime of movement.

In 2011, Colorado Senate Bill 11-085 focused on the demand for commercial sex. The bill authorizes diversion programs for individuals with no prior felony or prostitution-related convictions who are charged with soliciting for prostitution or patronizing a prostitute.²² Additionally, the fines for soliciting for prostitution, pandering, and patronizing a prostitute were increased to a maximum of \$5,000.²³ Fines are to be transferred to a newly created Prostitution Enforcement Resources Grant Program that will assist law enforcement to combat prostitution-related offenses.²⁴

During the 2012 session, the Colorado General Assembly passed victim-centered legislation by way of House Bill 12-1151, which creates a civil cause of action for trafficking victims regardless of criminal prosecution or conviction. Also, under previously enacted law, property used for prostitution and related crimes is subject to seizure and forfeiture.²⁵ This legislation expands the statutory definition of a class 1 public nuisance to include property used for trafficking and involuntary servitude. As a result, property and vehicles used to facilitate human trafficking also will be subject to seizure and forfeiture.

Outreach to victims is another component of the bill. It imposes a duty on escort bureaus and massage parlors to notify employees that human trafficking and involuntary servitude are prohibited and to provide victim services contact information. Additional relief for victims is offered by allowing victims of trafficking or involuntary servitude to petition for expungement of juvenile delinquency records and/or sealing of adult criminal records concerning prostitution-related offenses, provided that the petitioner can prove by a preponderance of the evidence that he or she was a victim.

Prevention, Protection, Prosecution, and Partnerships

A multifaceted approach that includes prevention, protection, prosecution, and partnerships is the most effective model to combat human trafficking. It is a protocol that has been adopted by the U.S. Department of State.²⁶

Prevention

Prevention is a proactive strategy that is promoted through education, training, and public awareness campaigns. Human trafficking victims are vulnerable. That vulnerability may be caused by a variety of factors, such as poverty, homelessness, physical abuse, lack of education, drug addiction, alcohol addiction, and mental health challenges.

Colorado lacks a coordinated prevention plan. In Texas, the Dallas Police Department expanded its Child Exploitation Unit in 2004 to include high-risk victims and trafficking.²⁷ This specialized unit reaches out to chronic runaways and minors who are victims of sexual exploitation or abuse. Trained law enforcement officers work with other service providers, prosecutors, and judges to identify the vulnerable population and proactively prevent victimization by offering treatment and services.²⁸ Colorado law enforcement officers could develop a similar prevention-oriented program by teaming up with schools and medical providers.

Protection

Protection is critical to a victim-centered approach to restoration and reintegration. Victims commonly are manipulated by traffickers, who create a façade by promising romance and a better future.²⁹ Many sex trafficking victims identify their trafficker or pimp as “boyfriend.” In this way, the relationship between trafficker and victim is similar to a domestic violence relationship. A relationship built on power, control, and fear ties the victim to the trafficker. Victims require resources such as housing, food, clothing, medical care, and related services. Protection also may involve legal assistance, such as restraining orders or assistance with immigration documents. Sex trafficking victims often do not self-identify as victims, which can cause barriers to creating a safe environment and protecting victims.

Prosecution

Prosecution is necessary to deter human trafficking and hold perpetrators responsible. Prosecution provides both punishment to the perpetrators and restoration to the victims.

Who should be the focus of a criminal investigation is a matter of debate. Some people think that reducing demand is key, and that without demand prostitution would not exist:

- Advocates who focus on the demand side of prostitution advise: (1) targeting the johns and all players in the demand side of prostitution; (2) abandoning the idea of legalization; (3) changing societal attitudes; (4) educating boys; (5) enforcing the laws; (6) and helping the women [who are predominately victims].³⁰

Diversion programs, commonly referred to as “john schools,” are one approach to educating offenders and reducing recidivism.³¹ Other research suggests that supply generates demand, and that societal and cultural norms heavily influence consumer demand.³²

At first glance, human trafficking victims who are sexually exploited appear to be engaging in criminal activity—exchanging

sexual acts for money. Accordingly, misidentifying victims as criminals is a challenge to identifying and rescuing human trafficking victims. Historically, law enforcement agencies put resources into reducing the supply side of the commercial sex equation by conducting sting operations. People offering sex in exchange for money frequently were charged with prostitution-related offenses, and little effort was made to determine whether the person was acting voluntarily. As a result, sex trafficking victims often were subject to criminal prosecution and labeled as prostitutes.³³

A comprehensive study by the Laboratory to Combat Human Trafficking analyzed Denver Police Department vice records between 2006 and 2011, and found significant gender disparities in arrests and court sentences.³⁴ In terms of arrest rates, 61% of arrestees were women, compared to 39% men. Prosecution patterns and the resulting sentences were very different for men and women. Men in the study were more likely to receive community service and fines, while women received area restrictions and jail time and were more likely to be sentenced to enter a court-ordered treatment program. Jail time was largely suspended for both groups.³⁵

The study also found that diversion and treatment programs do not place the same burdens on men and women. An alternative program in Denver, where a vast majority of the participants were men, did not require a guilty plea, and participants exited the program without a criminal conviction.³⁶ Women who were sentenced to similar programs were first required to plead guilty, and their criminal records remained even if they successfully completed the program.³⁷

Most people agree that human traffickers should be prosecuted; however, successful prosecutions are time-consuming and costly. Many agencies lack the manpower and resources to successfully prosecute a human trafficking case.³⁸ Global statistics are telling, as indicated by the accompanying chart entitled “Trafficking in Persons—2011.”

Year	Prosecutions	Convictions	Victims Identified
2008	5,212 (312)	2,983 (104)	30,961
2009	5,606 (432)	4,166 (335)	49,105
2010	6,017 (607)	3,619 (237)	33,113

* U.S. Department of State, “Trafficking in Persons Annual Report”⁹ (2011), available at www.state.gov/j/tip/rls/tiprpt/2011/index.htm.

Partnerships

Partnerships are critical to maximize communication and resources for the victims’ benefit. Collaboration between agencies is a key component to reducing human trafficking and rescuing victims.

Law enforcement officers and victim service providers from around the Front Range started an Anti Human Trafficking Working Group in 2007, which eventually developed into a federally funded task force. Unfortunately, a lack of funding leaves the future of the Colorado Anti Human Trafficking Task Force uncertain. The Human Trafficking Task Force of Southern Colorado was formed in September 2008 with a mission to “build a collaboration of organizations and individuals to reduce human suffering

caused by human trafficking, through advocacy, awareness, rehabilitation, and services for survivors.”³⁹ A multi-agency working group specifically designed to rescue juvenile victims from domestic sex trafficking is forming under the Federal Bureau of Investigation Innocence Lost National Initiative. These groups all are designed to share information to identify and prosecute perpetrators, and rescue and restore victims of human trafficking.

The Colorado Organization for Victim Assistance (COVA) is a statewide nonprofit organization committed to providing assistance to victims or crime and their families. COVA has specially trained victim advocates available to assist victims of human trafficking. COVA also manages the statewide network of human trafficking services providers—the Colorado Network to End Human Trafficking (CoNEHT).⁴⁰

The Laboratory to Combat Human Trafficking (LCHT) is a nonprofit organization that conducts community-based research and promotes awareness through education and collaboration. LCHT is conducting a national study of promising practices that will provide Colorado and other states critical information to assess strengths and gaps in anti-trafficking efforts.⁴¹

Conclusion

Human trafficking is a serious problem in the community that should not be tolerated. Colorado laws to support victims and prosecute perpetrators are slowly developing. Research is being done to develop promising practices to combat human trafficking. Practitioners should ask what services and resources they can offer

to stop modern day slavery through prevention, protection, prosecution, and partnerships.

Notes

1. 22 USC § 7102(8)(A).
2. This article focuses on sex trafficking, not other forms of human trafficking, such as labor trafficking.
3. United Nations Office on Drugs and Crime, “Global Report on Trafficking in Persons” 48-50 (Feb. 2009), available at www.unodc.org/documents/Global_Report_on_TIP.pdf.
4. Banks and Kyckelhahn, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, “Characteristics of Suspected Human Trafficking Incidents, 2008-2010” (April 2011), available at www.bjs.gov/content/pub/pdf/cshti0810.pdf.
5. Polaris Project is a nonprofit, nongovernmental organization working exclusively on the issue of human trafficking since 2002. Its focus is to transform the way individuals and communities respond to human trafficking in the United States and globally, and create long-term solutions that move society closer to a world without slavery. See polarisproject.org/media-center/press-releases.
6. Polaris Project, “Human Trafficking,” available at polarisproject.org/human-trafficking/overview.
7. U.S. Department of State, “Trafficking in Persons Annual Report”⁹ (2011), available at www.state.gov/j/tip/rls/tiprpt/2011/index.htm.
8. Morris *et al.*, Laboratory to Combat Human Trafficking, “Prostitution and Denver’s Criminal Justice System: Who Pays?” 11 (2012), available at www.combathumantrafficking.org/whopays.
9. *Id.* at 28.
10. 22 USC § 7101(a).
11. U.S. Department of State, “U.S. Laws on Trafficking in Persons,” available at www.state.gov/j/tip/laws.
12. Trafficking Victims Protection Reauthorization Act of 2011, S. 1301, 112th Cong. (1st Sess. 2011).
13. CRS § 18-7-201.
14. CRS § 18-7-201(3).
15. CRS § 18-1.8-101, repealed 2012.
16. CRS §§ 18-3-501 and -502.
17. CRS §§ 18-3-502(3) and 18-1.3-401(1)(a)(V)(A).
18. CRS § 18-3-501(3).
19. CRS § 18-1.3-401(1)(a)(V)(A).
20. U.S. Department of State, *supra* note 7 at 7-8.

21. *Id.* at 7. According to Polaris Project, child sex trafficking includes any child involved in commercial sex. Polaris Project, “Sex Trafficking in the U.S.,” available at polarisproject.org/human-trafficking/sex-trafficking-in-the-us.

22. CRS § 13-10-126.

23. CRS §§ 18-7-202, -203(2), and -205(2).

24. CRS § 24-33.5-513.

25. CRS § 16-13-303(a)(1) and (2).

26. U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, www.state.gov/j/tip.

27. Hay, “Dallas Assessment: Identification of Domestic Minor Sex Trafficking Victims and Their Access to Services” (Shared Hope International, 2008), available at www.sharedhope.org/Portals/0/Documents/Dallas_PrinterFriendly.pdf.

28. *Id.*

29. Polaris Project, “The Victims,” available at www.polarisproject.org/human-trafficking/overview/the-victims.

30. Soroptomist International of the Americas, White Paper: “Prostitution is Not a Choice” 17-21 (2010), available at www.soroptimist.org/whitepapers/WhitePaperDocs/WPPProstitution.pdf.

31. Shively *et al.*, “Final Report on the Evaluation of the First Offender Prostitution Program” (2008), available at www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf.

32. Anderson and O’Connell Davidson, “Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study” 41-42 (2003), available at www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/mrs15b.pdf.

33. Morris, *supra* note 8 at 24-25.

34. *Id.* at 48-52.

35. *Id.*

36. *Id.* at 52.

37. *Id.*

38. *Id.* at 86.

39. Human Trafficking Task Force of Southern Colorado, “Our Mission,” available at ht-colorado.org.

40. Colorado Organization for Victim Assistance, “Colorado Network to End Human Trafficking,” available at www.coloradocrimevictims.org/human_trafficking.html.

41. Laboratory to Combat Human Trafficking, available at www.combathumantrafficking.org/home. ■

Buying and Selling Sex in Colorado

Page 59

by Janet Stansberry Drake and Lisha R. McKinley

ANSWERS

1. b: Commercial sex is sex in exchange for money or something else of value, and sex trafficking involves force, fraud, or coercion and includes harboring, recruiting, and/or transporting a person for commercial sex. Force, fraud, and coercion are implied if the victim is under the age of 18.

2. c and d: People offering sex commercially often are charged with prostitution-related offenses without any determination of whether they are acting voluntarily. Law enforcement may focus on supply reduction instead of combating the larger issues of human trafficking.

3. b: The Trafficking Victims Protection Act expired in 2011, but Congress is currently considering whether to reauthorize the act, as it did in 2003, 2005, and 2008.

4. a: A recent study discussed in the article found significant gender disparities in both arrests and court sentences, with men much more likely to receive community service and fines, while women were required to serve jail time or enter a court-ordered treatment program.

5. c: Under CRS § 18-3-501(3), trafficking in adults is a class 3 felony, unless the trafficking victim is illegally present in the United States, which increases the crime to a class 2 felony.