

# From Hotel Rooms to the Courtroom: Civil Remedies for Sex Trafficking Victims

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## Abstract

The hotel industry is a critical component of sex trafficking in the United States; yet not a single Hotel chain has been held civilly liable for their compliance in sex trafficking under the current legal landscape. This Note compares state and federal civil liability laws targeting hotels and their participation in sex trafficking, with a focus on the variance in required mental states. This Note argues for a stricter standard to hold hotels liable, applying per se liability where Hotels fail to comply with mandated sex trafficking training, therefore providing victims with a real chance at receiving recovery.

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## I. INTRODUCTION

In *J.L. v. Best Western International, Inc.*, J.L. was held captive for over a month, was consistently moved between various hotels, and was forced to sexually service multiple men per day.<sup>1</sup> J.L. was brought to a Best Western in Colorado with no luggage and did not leave for days.<sup>2</sup> She was seen wearing the same clothes repeatedly at the hotel, bore injuries from assaults by her traffickers, and had up to six men per day visit her room. J.L. was escorted by her trafficker into the room and the foot traffic to her room was “constant and voluminous.”<sup>3</sup> At one point, J.L. was “injured so badly by a buyer who . . . slammed her head so hard against a dresser that the dresser was damaged . . . [and screamed] so loudly . . . that her trafficker decided to move her to a different hotel.”<sup>4</sup> Her case against Best Western was dismissed.<sup>5</sup>

In *L.H. v. Marriott International Inc.*, L.H. was trafficked for commercial sex for ten years, during which she was held at a variety of hotels in Miami.<sup>6</sup> L.H.’s traffickers personally knew multiple hotel employees, and these employees helped facilitate her trafficking in exchange for compensation from L.H.’s traffickers. L.H. was required to perform sex acts on 11 to 14 men per day, “resulting in an obvious . . . parade of sex buyers into and out of the Miami Hotels each day.”<sup>7</sup> At one hotel, hotel employees paid L.H.’s traffickers to have sex with L.H.<sup>8</sup> Another hotel employee “witnessed one of L.H.’s trafficker’s being arrested for trafficking and strangling one of the other victims.”<sup>9</sup> The hotel employees did not assist L.H.<sup>10</sup> L.H.’s claim for civil liability against the hotel companies was dismissed for failure to state a claim.<sup>11</sup>

Hotels are a critical element in sex trafficking ventures in the United States. In 2020, 77% (248) of active sex trafficking cases involving a completed sex act occurred at a hotel.<sup>12</sup> However, hotels are escaping civil

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<sup>1</sup> *J.L. v. Best W. Int’l, Inc.*, 521 F. Supp. 3d 1048, 1056 (D. Colo. 2021).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1057.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 1056.

<sup>6</sup> *L.H. v. Marriott Int’l, Inc.*, 604 F. Supp. 3d 1346, 1352 (S.D. Fla. 2022).

<sup>7</sup> *Id.* at 1354.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> KYLEIGH FEEHS & ALYSSA CURRIER WHEELER, HUM. TRAFFICKING INST., 2020 FEDERAL HUMAN TRAFFICKING REPORT 54 (2020), <https://traffickinginstitute.org/wp-content/uploads/2022/01/2020-Federal-Human-Trafficking-Report-Low-Res.pdf> [<https://perma.cc/GC73-HRNA>].

liability for their participation in sex trafficking, leaving victims with either a hope for a settlement, or no recovery at all.<sup>13</sup> Both the states and the federal government have introduced legislation aimed at providing victims with an opportunity to recover from hotels and hold hotels civilly liable; however, it is clear from the historical lack of recovery for victims that this legislation is not enough. Not a single hotel has been held civilly liable under the federal law, and the state laws require an even higher standard for recovery. Therefore, the states should implement a *per se* liability standard for hotels who fail to follow state-mandated sex trafficking training and subsequently participate in trafficking, thus providing victims with a realistic chance at recovery and holding hotels sufficiently accountable.

Part II of this Note will discuss the history and prevalence of sex trafficking in the United States. This section will look at the ties between sex trafficking and hotels and will outline the history of sex trafficking legislation in the United States, focusing on civil liability statutes. This section will also discuss the similarities and differences between state sex trafficking legislation and federal sex trafficking legislation, specifically as it pertains to participation by hotels, and how the law has been applied in various cases against hotels. Finally, this section will include a look at legislation requiring sex trafficking training for hotels at both the state and federal level.

Part III of this Note will discuss the faults in the current civil liability statutes targeting hotels. First, this section will argue that an actual knowledge standard, as used in the majority of state civil liability sex trafficking statutes, creates too heavy a burden for victims seeking to recover from hotels involved in sex trafficking. State statutes should not have a stricter standard for victims to recover than that of the federal sex trafficking statute. The Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”) requires a constructive knowledge standard.

Second, Part III will argue that even a constructive knowledge standard is too strict for victims seeking recovery. While some cases under the constructive knowledge standard have advanced past summary judgment, not a single victim has yet succeeded on a claim under the current federal constructive knowledge standard. While this is likely due to settlements and the lengthy and costly litigation process, this lack of recovery still highlights the ineffectiveness of the TVPRA in enforcing civil liability for hotels.

Finally, this section will argue that a stricter, *per se* liability standard is more appropriate for hotel sex trafficking civil liability. This section will argue that in order to provide victims with a true opportunity for recovery, states should implement mandatory sex trafficking training for hotels and their employees, as many states already have. Additionally, states and the TVPRA should implement legislation finding that, where a hotel fails to comply with the procedures discussed in the mandated sex trafficking training, and where

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<sup>13</sup> See *id.* at 55.

sex trafficking occurs during this failure, the hotel is per se liable for participation in the sex trafficking activity on their premises. This section will argue that this stricter standard against hotels will lower the burden on victims, increase the protections available to victims who are trafficked at hotels, and provide hotels and victims clear, identifiable steps for what is required for a victim to prove liability.

## II. BACKGROUND

Congress has declared trafficking to be a form of modern-day slavery.<sup>14</sup> Sex trafficking encompasses the range of activities involved when a trafficker uses force, fraud, or coercion to compel another person to engage in a commercial sex act or causes a child to engage in a commercial sex act.<sup>15</sup> While it is extremely difficult to collect data on sex trafficking in the United States, it is estimated that “between 15,000 to 50,000 women and children are forced into sexual slavery in the United States every year.”<sup>16</sup>

“Hotels and motels are critical sites for both sex and labor trafficking business operations” in the United States.<sup>17</sup> Between 2007 and 2015, 1,434 cases of human trafficking were reported to the National Human Trafficking Resource Center (NHTRC) and Polaris’s BeFree texting helpline as occurring in hotels.<sup>18</sup> This is likely due to the “ease of access for buyers, ability to pay in cash and maintain secrecy through finances, and lack of facility maintenance or upkeep expenses.”<sup>19</sup>

With an increase in sex trafficking in the United States, legislation has been changing quickly. In 2000, the United States first enacted a federal sex trafficking statute, the Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”) and has made many additions throughout the years with the goal of increasing prosecutions.<sup>20</sup> These changes have included introducing

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<sup>14</sup> 22 U.S.C. § 7101(b) (2000).

<sup>15</sup> *About Human Trafficking*, U.S. DEP’T OF STATE, [https://www.state.gov/humantrafficking-about-human-trafficking/#human\\_trafficking\\_U\\_S](https://www.state.gov/humantrafficking-about-human-trafficking/#human_trafficking_U_S) [https://perma.cc/26LT-RHTH].

<sup>16</sup> *Facts About Human Trafficking in the US*, DELIVERFUND (Apr. 17, 2020), <https://deliverfund.org/facts-about-human-trafficking-in-the-us/#:~:text=learn%20more%20about%20Sex%20Trafficking%20in%20the%20United%20States,is%20very%20difficult%20to%20research> [https://perma.cc/F2LS-Q3HZ].

<sup>17</sup> *Human Trafficking and Hotels & Motels*, POLARIS, <https://polarisproject.org/human-trafficking-and-hotels-motels> [https://perma.cc/VX68-QJDZ].

<sup>18</sup> POLARIS, HUMAN TRAFFICKING AND THE HOTEL INDUSTRY 1 (2019), <https://polarisproject.org/wp-content/uploads/2019/09/human-trafficking-hotel-industry-recommendations.pdf> [https://perma.cc/83GJ-97KS].

<sup>19</sup> *Hotel/Motel-Based*, NAT’L HUM. TRAFFICKING HOTLINE (2023), <https://humantraffickinghotline.org/sex-trafficking-venuesindustries/hotelmotel-based> [https://perma.cc/JMZ8-2ZAAQ].

<sup>20</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 8.

civil liability statutes allowing victims to recover from hotels.<sup>21</sup> Furthermore, all states have introduced their own sex trafficking statutes, many of which also include legislation targeting hotels.<sup>22</sup> Some states have also begun introducing legislation that would require hotels and their employees to complete sex trafficking training to help recognize and assist when sex trafficking occurs on their premises.<sup>23</sup>

#### A. History and Status of Human Trafficking in the United States

In 2020, 10,583 instances of human trafficking were reported to the U.S. National Human Trafficking Hotline, involving 16,658 individual victims.<sup>24</sup> This is likely only a fraction of the number of actual victims of sex trafficking in the United States, as many victims of trafficking do not report their experience to the hotline, or have not escaped their trafficking yet.<sup>25</sup> There are an estimated 25 million victims of sex trafficking across the globe, making it likely that the number of victims in the United States far surpasses the 16,658 reported victims.<sup>26</sup> “The United States not only faces an influx of international victims but also has its own homegrown problem of interstate sex trafficking of minors.”<sup>27</sup> It is estimated that almost 300,000 American youths are at risk of becoming victims of commercial sex exploitation.<sup>28</sup> Young people in the United States are often forced into sex trafficking through “forced abduction, pressure from parents, or through deceptive agreements.”<sup>29</sup>

Sex trafficking in the United States is an organized business.<sup>30</sup> Sex trafficking is “the fastest-growing business of organized crime and the third-largest criminal enterprise in the world.”<sup>31</sup> As stated by the Chief Executive

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<sup>21</sup> *Id.* at 11.

<sup>22</sup> HUMAN TRAFFICKING STATE LAWS, NAT’L CONF. OF STATE LEGISLATURES. (Aug. 12, 2020), <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx> [https://perma.cc/C6B9-9HBS].

<sup>23</sup> *See, e.g.*, CAL. GOV. CODE § 12950.3 (West 2019); MINN. STAT. ANN. § 157.177 (2022).

<sup>24</sup> *Myths, Facts, and Statistics*, POLARIS (2023), <https://polarisproject.org/myths-facts-and-statistics> [https://perma.cc/M8VC-4Q2C].

<sup>25</sup> *Id.*

<sup>26</sup> Carmen Niethammer, *Cracking the \$150 Billion Business of Human Trafficking*, FORBES (Feb. 2, 2020, 7:04 AM), <https://www.forbes.com/sites/carmenniethammer/2020/02/02/cracking-the-150-billion-business-of-human-trafficking/?sh=79cd6a1d4142> [https://perma.cc/MAL4-YV82].

<sup>27</sup> Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, 80 FBI L. ENF’T BULL. 1, 2 (2011).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 3.

<sup>31</sup> *Id.* at 2.

Officer of Polaris, “[h]uman trafficking is a \$150 billion a year global industry and can’t be fully addressed without businesses taking active and effective measures to reduce the potential for exploitation within their own systems.”<sup>32</sup>

Traffickers are organized,<sup>33</sup> and target victims based on various vulnerabilities.<sup>34</sup> For instance, traffickers often target those with substance dependencies, youth that have run away from home, undocumented immigrants, those experiencing homelessness, children in foster care, and those in financial debt.<sup>35</sup> Traffickers also target victims based on their gender and age.<sup>36</sup> Of active human trafficking cases in the United States in 2020, the average age of victims was 16 years old, and 53% of victims were children.<sup>37</sup> Additionally, 98% of these sex trafficking victims were female.<sup>38</sup>

### *B. Sex Trafficking and Hotels: Their Relationship in the United States*

Hotels and motels are critical sites for sex trafficking business operations<sup>39</sup> and have been reported as being used for recruitment into sex trafficking.<sup>40</sup> In a study conducted by Polaris, 80% of commercial sex acts from 2007–2017 occurred at hotels.<sup>41</sup> During this time, Polaris reported 1,434 cases of trafficking in hotels and motels in the United States.<sup>42</sup> Similarly, according to the 2020 Federal Human Trafficking Report published by the Human Trafficking Institute, in 2020, 77% (248) of active sex trafficking cases in the United States involving a completed sex act occurred at a hotel.<sup>43</sup> These reports demonstrate a deep reliance by traffickers on hotels. According to Polaris, traffickers do not necessarily choose the cheapest hotels, but rather factor in hotel practices and procedures, including the likelihood that the hotel is collaborating with law enforcement. This practice suggests that hotels

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<sup>32</sup> Niethammer, *supra* note 26.

<sup>33</sup> Walker-Rodriguez & Hill, *supra* note 27, at 3.

<sup>34</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 28.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Human Trafficking and Hotels & Motels*, *supra* note 17.

<sup>40</sup> BRITTANY ANTHONY, POLARIS, ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES: A ROADMAP FOR SYSTEMS AND INDUSTRIES TO PREVENT AND DISRUPT HUMAN TRAFFICKING 16 (2018), <https://polarisproject.org/wp-content/uploads/2018/08/A-Roadmap-for-Systems-and-Industries-to-Prevent-and-Disrupt-Human-Trafficking-Hotels-and-Motels.pdf> [<https://perma.cc/X65X-JMJ8>].

<sup>41</sup> *Id.*

<sup>42</sup> POLARIS, *supra* note 18, at 1.

<sup>43</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 54.

have some influence over whether they are susceptible to use by traffickers.<sup>44</sup>

According to the Human Trafficking Institute, “170 federal human trafficking lawsuits were initiated against hotels in 2019 and 2020” in the United States.<sup>45</sup> Additionally, almost half of the civil lawsuits brought by the victims of sex trafficking were brought against hotels, “including a series of high-profile lawsuits against some of the largest and most well-known international hotel management and franchise companies.”<sup>46</sup>

The major hotel chains implicated most frequently in active sex trafficking cases were the same as in years past: Motel 6 (8%, 21), Super 8 Motel (8%, 19), Days Inn (7%, 17), Red Roof Inn (6%, 16), and La Quinta (5%, 13). Together, these five hotel brands were the location of more than a third (34%, 86) of all hotel-based compelled sex acts in 2020 active sex trafficking cases.<sup>47</sup>

Civil sex trafficking lawsuits have increased significantly over the past few years as awareness of these civil laws increase. In 2019, plaintiffs sued nearly three times as many defendants (257) for sex trafficking than in the preceding four years combined (91), 46% of which (117) were hotels.<sup>48</sup> Sex trafficking often occurs in hotels because hotels provide deceptive and discreet environments, as traffickers are able to change locations frequently, pay for their rooms in cash without providing identification, and bring victims in undetected.<sup>49</sup>

The hospitality industry is one of the many venues that traffickers use to exploit their victims and affords them a degree of anonymity. Trafficking victims, both sex and labor trafficking, often have a low profile among hotel guests and hotel staff, giving little opportunity for external parties to notice a potential trafficking situation.<sup>50</sup>

The National Human Trafficking Resource Center has identified key

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<sup>44</sup> Niethammer, *supra* note 26.

<sup>45</sup> Todd E. Soloway & Bryan T. Mohler, *Proliferation of Human Trafficking Lawsuits in the Hotel Industry*, 266 N.Y. L.J. 1, 1 (Nov. 18, 2021), <https://www.pryorcashman.com/publications/proliferation-of-human-trafficking-lawsuits-in-the-hotel-industry> [<https://perma.cc/L47H-8E3Z>].

<sup>46</sup> *Id.*

<sup>47</sup> FEEHS & CURRIER WHEELER, *supra* note 12.

<sup>48</sup> *Id.* at 55.

<sup>49</sup> Parminder Batra, *Why Human Trafficking Is Booming - And How Hoteliers Can Stop this Trend*, HOSPITALITYNET (Feb. 1, 2022), <https://www.hospitalitynet.org/opinion/4108780.html> [<https://perma.cc/6C97-TQGL>].

<sup>50</sup> HUMAN TRAFFICKING AND THE HOSPITALITY INDUSTRY, NAT’L HUM. TRAFFICKING RES. CTR. 1, <https://humantraffickinghotline.org/sites/default/files/Human%20Trafficking%20and%20the%20Hotel%20Industry.pdf> [<https://perma.cc/8RQJ-ZDPU>].

indicators of sex trafficking in hotels, including: (a) rooms paid for in cash, (b) heavy foot traffic in and out of the room, (c) victims dressed inappropriately for the climate, (d) frequent requests for new linens and towels, (e) presence of excessive alcohol, drugs, or sex paraphernalia, (f) signs of physical or sexual abuse, (g) signs of poor hygiene, malnourishment, or fatigue, (h) a guest with a lack of control of money, identification, their phone, and (i) guests that exhibit fearful, anxious, or submissive behavior.<sup>51</sup> These indicators provide opportunities for hotels to spot trafficking victims and intervene.

Hotels have started making changes to help combat sex trafficking on their premises, but it is unclear if these changes are making a difference as sex trafficking litigation against hotels is on the rise. For example, Marriott International introduced sex trafficking training globally across its hotels, reaching over 500,000 employees.<sup>52</sup> Marriott has also made efforts to educate hotel customers on warning signs and ways to report suspicious activity and provide victims with information on how to access help.<sup>53</sup> Additionally, Marriott “created a program with the Global Fund to End Modern Slavery with the objective to prepare trafficked survivors for careers in the hospitality industry.”<sup>54</sup>

### *C. The History and Status of Sex Trafficking Legislation in the United States*

Sex trafficking legislation is expanding, signaling that the government has a growing interest in both increasing prosecutions and holding more parties involved in trafficking civilly liable. This desire to hold traffickers accountable and provide relief for victims has resulted in the enactment of the federal Victims of Trafficking and Violence Protection Act of 2000, which criminalizes sex trafficking, and led to every state enacting its own legislation criminalizing sex trafficking.

#### 1. TVPRA

Before 2000, the United States did not have any federal laws criminalizing human trafficking.<sup>55</sup> Previously, any acts of sex trafficking were therefore prosecuted under historical slavery laws, which made it a crime to “compel labor or services through ‘use or threat of physical restraint or physical injury or by the use of threat of coercion through law or the legal process.’”<sup>56</sup> In 2000, however, Congress decided to expand the definition of

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<sup>51</sup> *Id.* at 3.

<sup>52</sup> Niethammer, *supra* note 26.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 10.

<sup>56</sup> *Id.*



trafficking and enact a law specifically criminalizing human trafficking, the Trafficking Victims Protection Act (TVPA), in response to the increase of human trafficking in the United States.<sup>57</sup>

The TVPA focuses on the “three Ps”: protection, prevention, and prosecution.<sup>58</sup> Protection initiatives included “identifying victims, providing referrals for a comprehensive array of services, directly providing or funding NGOs to provide those services, and supporting these individuals as they rebuild their lives.”<sup>59</sup> Prevention efforts included intervention programs for at-risk populations, and partnerships to expand awareness.<sup>60</sup> Finally, in order to focus on prosecution, the TVPA added new crimes, including an expanded definition of what constitutes compelled labor or services.<sup>61</sup> The updated definition recognized coercion which occurs through psychological, financial, and reputational harm, rather than simply physical coercion.<sup>62</sup> “By legally recognizing that nonphysical coercion is a powerful tool that traffickers use to compel labor and sex, the U.S. government enhanced its ability to hold more human traffickers accountable.”<sup>63</sup>

In 2003, Congress passed the Trafficking Victims Protection Reauthorization Act (TVPRA), providing several amendments intended to increase prosecution opportunities as well as improve protection for victims.<sup>64</sup> These amendments added new methods of holding traffickers accountable, including “establish[ing] human trafficking as a predicate offense . . . under the Racketeering Influenced Corrupt Organizations Statute.”<sup>65</sup> Notably, the 2003 amendments added a claim for civil liability against traffickers.<sup>66</sup> The addition of civil liability means that under 18 U.S.C. § 1595, victims of sex trafficking can now directly sue their trafficker in court.<sup>67</sup> While this version of the TVPRA did not yet provide any avenues for litigation against hotels, it was an important step in providing victims with an opportunity to seek their own recovery in court.

In 2006, the TVPRA was again amended, recognizing that victims of sex

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Off. to Monitor & Combat Hum. Trafficking in Pers., *3Ps: Prosecution, Protection, and Prevention*, U.S. DEP'T OF STATE, <https://www.state.gov/3ps-prosecution-protection-and-prevention> [https://perma.cc/EF6F-ZK9Z].

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 10.

<sup>64</sup> *Id.* at 11.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

trafficking included not only foreign nationals, but U.S. citizens.<sup>68</sup> Additionally, this amendment added opportunities for investigation, including grant programs for states and local law enforcement; today, most federal human trafficking prosecutions are the result of collaboration between federal, state, and local law enforcement partners.<sup>69</sup> An additional provision, 18 U.S.C. § 3299, “abolished the statute of limitation for sex trafficking crimes prosecuted under 18 U.S.C. § 1595,” expanding opportunities for prosecution.<sup>70</sup>

Most notably, in 2008, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“2008 TVPRA”) was signed into law. This reauthorization again increased opportunities for prosecution, adding a specific offense for conspiracy to commit sex trafficking, and expanding penalties to those who knowingly benefit financially from sex trafficking, such as hotels or websites facilitating sex trafficking.<sup>71</sup> Since these additions, the government has charged 1114 defendants with knowingly benefitting financially from sex trafficking and 623 defendants with conspiracy to commit sex trafficking.<sup>72</sup> Importantly for victims, the 2008 TVPRA also expanded opportunities for civil liability, now including civil liability against those who knowingly benefit financially from participation in ventures that they knew or should have known had engaged in human trafficking.<sup>73</sup> This final addition is what now enables victims to bring civil liability claims against hotels for their participation in the victim’s trafficking.<sup>74</sup> The relevant language that is used to hold hotels liable reads:

An individual who is a victim of [sex trafficking] may bring a civil action against . . . whoever knowingly benefits . . . financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act [of sex trafficking].<sup>75</sup>

The first plaintiff to bring a civil claim under 18 U.S.C. § 1595 against a hotel did not occur, however, until 2015 in *Ricchio v. Shangri-La Motel*.<sup>76</sup> Lisa

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<sup>68</sup> *Id.* at 10.

<sup>69</sup> FEEHS AND CURRIER WHEELER, *supra* note 12, at 10.

<sup>70</sup> *Id.* at 12.

<sup>71</sup> *Id.* at 13.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 10.

<sup>74</sup> *Id.*

<sup>75</sup> 18 U.S.C. § 1595(a).

<sup>76</sup> Todd Bookman, *Human Trafficking Survivor Settles Lawsuit Against Motel Where She Was Held Captive*, NPR (Feb. 20, 2020, 5:00 AM), <https://www.npr.org/2020/02/20/807506786/human-trafficking-survivor-settles-lawsuit-against-motel-where-she-was-held-capt> [https://perma.cc/WMT4-XNUS] (“Legal experts and anti-trafficking groups say her 2015 case was the first filed against a hotel or motel for its role in a trafficking crime.”).

Ricchio was held against her will for several days at the defendant Shangri-La Motel, where she was assaulted, burned, cut, and told she was going to be forced into prostitution.<sup>77</sup> Employees of the motel repeatedly saw her in distress; at one point when her trafficker fell asleep, Ricchio begged for help from the woman running the motel, but was ignored.<sup>78</sup> Ricchio's case lasted over four years, involving numerous delays and appeals.<sup>79</sup> In 2019, Ricchio decided to settle her claim against the motel and its employees for an undisclosed amount of money; however Ricchio stated her case was about more than just money, but rather accountability.<sup>80</sup>

Similarly, in *M.A. v. Wyndham Hotels & Resorts, Inc.*, M.A. was trafficked for months at several hotels across Columbus, Ohio.<sup>81</sup> Throughout that time, M.A. exhibited numerous warning signs of sex trafficking, many of which were visible to the hotel staff, including trash cans containing “an extraordinary number of used condoms,” rooms that were paid for in cash, signs of physical deterioration, excessive requests for towels and linens, and physical changes in M.A. such as bruises.<sup>82</sup> Additionally, hotel staff ignored M.A.'s “desperate pleas and screams for help, after being beaten or choked at [the hotels].”<sup>83</sup>

Addressing M.A.'s claim, the court broke civil liability under the TVPRA into 3 elements: “(1) the person or entity must ‘knowingly benefit[ ], financially or by receiving anything of value,’ (2) from participating in a venture, (3) that the ‘person knew or should have known has engaged in an act [of sex trafficking].”<sup>84</sup>

Analyzing element one, the court found that “the rental of a room constitutes a financial benefit from a relationship with the trafficker sufficient to meet [the financial benefit] element of the § 1595(a) standard,” and thus M.A. sufficiently alleged Wyndham financially benefitted.<sup>85</sup> Under element two, the court determined M.A. sufficiently alleged the hotel “‘participated in a venture’ under § 1595 by alleging that [the hotels] rented rooms to people it knew or should have known were engaged in sex trafficking.<sup>86</sup> These acts and omissions by [the hotels], M.A. alleges, facilitated the sex trafficking

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<sup>77</sup> *Id.*

<sup>78</sup> Ricchio v. Bijal, Inc., 386 F. Supp. 3d 126, 128 (D. Mass. 2019).

<sup>79</sup> Bookman, *supra* note 76.

<sup>80</sup> *Id.*

<sup>81</sup> M.A. v. Wyndham Hotels & Resorts, Inc, 425 F. Supp. 3d 959, 962 (S.D. Ohio 2019).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 964.

<sup>85</sup> *Id.* at 965.

<sup>86</sup> *Id.* at 971.

venture.”<sup>87</sup> Under element three, the court acknowledged that the “knew or should have known” standard invoked a negligence, or constructive knowledge, standard, not an actual knowledge standard.<sup>88</sup> The court found that M.A. plausibly alleged constructive knowledge under element three, stating:

[The d]efendants were on notice about the prevalence of sex trafficking generally at their hotels and failed to take adequate steps to train staff in order to prevent its occurrence. [M.A.] also alleges facts specific to her own sex trafficking, including a number of signs she alleges should have alerted staff to her situation.<sup>89</sup>

M.A.’s claim therefore survived a motion to dismiss. The case is still being litigated in 2023.<sup>90</sup>

While the 2008 TVPRA included the critical update for victims to directly sue hotels for their participation, further changes have been made over the last few years. In 2013, updated legislation targeted relationships with foreign countries to reduce international child trafficking.<sup>91</sup> In 2015, further amendments targeted child trafficking, including a lowered mens rea requirement for child trafficking cases, and provided improved victims’ access to helpful services such as compensation funds.<sup>92</sup> The most recent updates, made effective in 2018, enhanced training for law enforcement and required each federal district to establish a Human Trafficking Justice Coordinator,<sup>93</sup> designated to prosecute sex trafficking cases.<sup>94</sup> In 2020, civil plaintiffs brought 149 sex trafficking cases under the TVPRA, almost half of which were brought against hotels.<sup>95</sup>

Though civil claims brought against hotels involved in sex trafficking are becoming more common, victims have yet to recover under the constructive knowledge standard of the TVPRA. For example, in *L.H. v. Marriott International, Inc.*, “[t]he traffickers personally knew several front-desk employees at the Miami Hotels and those employees, in exchange for

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<sup>87</sup> *M.A. v. Wyndham Hotels & Resorts, Inc.*, 425 F. Supp. 3d 959, 965 (S.D. Ohio 2019).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 14.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 16.

<sup>94</sup> HUM. RTS. FIRST, S. 1236: A BILL TO DESIGNATE HUMAN TRAFFICKING COORDINATORS IN U.S. ATTORNEY OFFICES 1 (2017), <https://humanrightsfirst.org/wp-content/uploads/2022/10/Human-Trafficking-Accountability-Act-Brief-6.8.17.pdf> [<https://perma.cc/2RWP-EPK7>].

<sup>95</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 55.

compensation, helped facilitate and conceal the sex-trafficking operations.”<sup>96</sup> The court, however, stated that L.H.’s pleadings were “inadequate, vague, speculative, or wholly conclusory,” and therefore granted the defendants’ motion to dismiss.<sup>97</sup>

## 2. State Sex Trafficking Laws

Since the enactment of the TVPA, all 50 states have passed sex trafficking legislation criminalizing human trafficking.

However, there is significant variation in the degree to which these laws facilitate efforts to identify and prosecute such offenses. Little is known about the effectiveness of these efforts. In a recent assessment of state antitrafficking legislation, a leading antitrafficking advocacy group affirmed the necessity of state laws but cautioned that passing legislation alone was an insufficient response. The group wrote that “using the laws is the next important step.”<sup>98</sup>

Many state laws almost exactly mirror the language of the TVPRA, except when it comes to the required mental state. While the TVPRA includes language imputing a constructive knowledge standard, “knew or should have known,” most state laws require an actual knowledge standard to hold defendants liable.

Additionally, most of these state laws have not yet been tested in court, making application somewhat ambiguous. For example, some state statutes are unclear whether the actual knowledge standard applies to all elements or just the first element of benefitting financially. Applying the actual knowledge standard to only the first element, benefitting financially, would impose a strict liability standard on hotels who receive money from sex traffickers, regardless of their knowledge or constructive knowledge of the trafficking occurring on their premises. Given this would be an extremely strict standard, it is unlikely that the states are enforcing a strict liability standard. Therefore, the statutes likely apply an actual knowledge standard to all elements, requiring hotels to have actual knowledge of the trafficking itself in order to be held liable.

For example, as acknowledged in *J.C. v. Choice Hotels International, Inc.*, California’s sex trafficking laws, the California Trafficking Victims Protection Act (“CTVPA”) does not include the knew or “should have known” language included in the federal TVPRA, and therefore requires victims to show intent

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<sup>96</sup> *L.H. v. Marriott Int'l, Inc.*, 604 F. Supp. 3d 1346, 1353 (S.D. Fla. 2022).

<sup>97</sup> *Id.* at 1360.

<sup>98</sup> Amy Farrell et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME L. & SOC. CHANGE 139, 141 (2014).

by the hotel.<sup>99</sup> In *Choice Hotels*, J.C. was sex trafficked at the defendants' hotels, during which she exhibited many warning signs of sex trafficking: she was "unable to leave and visibly deteriorating," her trafficker regularly rented rooms for weeks, and requested an inordinate amount of towels, and "a steady stream of men, who were not registered guests of the hotels, would enter and exit her room."<sup>100</sup> J.C.'s state civil claim against the hotels for participation in her sex trafficking was dismissed, while her federal claim under the TVPRA was allowed to move forward.<sup>101</sup>

Washington, however, does not specify any mental state at all under Wash. Rev. Code § 9A.40.100 (2023), providing that "a person is guilty of trafficking in the second degree when such person . . . [b]enefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) [involving trafficking]."<sup>102</sup> Because this statute has not been put to the test in court, it is unclear if this statute has a knowledge requirement or if it provides for strict liability. However, the standard for sex trafficking itself set forth in section (a)(i) includes a "knowing, or in reckless disregard" standard.<sup>103</sup> "This means that hotels can be found criminally liable if they are in reckless disregard of the fact that human trafficking is occurring on their premises."<sup>104</sup> Because this statute provides for liability where a hotel was in reckless disregard of the fact that sex trafficking occurred, this statute is the closest state sex trafficking statute to mirroring the TVPRA set forth by the federal government. This statute, however, has not yet been used to bring a civil case against a hotel in Washington.

While most state sex trafficking statutes have not yet been tested against hotels in court, there are currently five active claims against the Roosevelt Inn franchise in Philadelphia which will put its state law to the test in *M.B. v. Roosevelt Inn LLC*.<sup>105</sup> In Pennsylvania, 18 PA. CONS. STAT. § 3011 (2023) provides for sex trafficking:

(1) of the first degree if the person recruits, entices, solicits, advertises, harbors, transports, provides, obtains or maintains an individual if the person knows or recklessly

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<sup>99</sup> *J.C. v. Choice Hotels Int'l, Inc.*, No. 20-CV-00155-WHO, 2020 WL 6318707, at \*11 (N.D. Cal. Oct. 28, 2020).

<sup>100</sup> *Id.* at \*1–2.

<sup>101</sup> *Id.* at \*2.

<sup>102</sup> WASH. REV. CODE § 9A.40.100 (2023).

<sup>103</sup> *Id.*

<sup>104</sup> *Can Hotels Face Civil Liability for Human & Child Trafficking in Washington?*, GUARDIAN GRP., <https://guardiangroup.org/can-hotels-face-civil-liability-human-child-trafficking-washington> [https://perma.cc/R6DS-737H].

<sup>105</sup> *M.B. v. Roosevelt Inn LLC*, No. CV 21-2984, 2021 WL 5046216, at \*1–2 (E.D. Pa. Oct. 27, 2021).

disregards that the individual will be subject to sexual servitude; (2) of the first degree if the person knowingly benefits financially or receives anything of value from any act that facilitates any activity described in paragraph (1).<sup>106</sup>

The plaintiffs in *M.B. v. Roosevelt Inn LLC* seem to advance their claim under a theory of constructive knowledge:

The hotels insist that they did not know about the prostitution. The young women counter that the hotels should have known. They point to suspicious circumstances: The young women had no luggage. . . . Traffickers paid for the rooms in cash and kept up ‘Do Not Disturb’ signs. . . . In lobbies and hallways, the traffickers ‘visibly treated’ the young women ‘in an aggressive manner.’ . . . Men came in and out of rooms, which ‘contained used condoms and condom wrappers.’<sup>107</sup>

Although *Roosevelt Inn LLC* is still in its early stages, this case will shed light on the standard set forth by Pennsylvania state law. Additionally, this case will likely provide some much-needed insight into how other states with similarly worded statutes will implement their laws moving forward.

While victims may not be able to gain recovery under their state’s sex trafficking laws, there may be hope for recovery under a negligence claim.<sup>108</sup> For example, in *Doe v. OM Hospitality Inc.*, rather than risking the uncertainty of bringing a sex trafficking claim, the victim brought a negligence claim against the hotel at which she was trafficked, an Economy Inn in Springdale, Arkansas.<sup>109</sup>

Economy Inn management would notify [the victim’s] trafficker if law enforcement was looking around and would advise [the] trafficker to move her down the street to [another hotel] until things quieted down . . . . Motel cleaning staff were never allowed in the rooms where [the victim] and her trafficker were staying.<sup>110</sup>

The judge found that the hotel owed the victim a duty of care, and breached that duty by failing to keep her safe on their property.<sup>111</sup> The judge

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<sup>106</sup> 18 PA. CONS. STAT. § 3011 (2023).

<sup>107</sup> *M.B. v. Roosevelt Inn LLC*, 2021 WL 5046216, at \*1.

<sup>108</sup> See Court Order at 7, *Doe v. OM Hospitality, Inc.*, 04CV-21-1039 (Ark. Cir. Ct. 2022), <https://interactive.5newsonline.com/pdfs/Order-FM-07282022-1.pdf> [<https://perma.cc/ZLC8-TFD9>].

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 2.

<sup>111</sup> *Id.* at 7.

ordered the hotel chain to pay the victim \$25.4 million, including over \$19 million in punitive damages, intended to “send a message to those that engage in this business in whatever capacity, whether they are traffickers, hotels, advertising, or any other entity that allow this sort of business to occur.”<sup>112</sup> It is unclear whether the victim also brought their claim under Arkansas’s sex trafficking statute, ARK. CODE ANN. § 5-18-103, however this does not seem to be the basis of their recovery.

### 3. Sex Trafficking Training Standards

In addition to criminalizing sex trafficking and providing victims with new avenues for civil liability claims against hotels, states have begun implementing mandatory sex trafficking training, requiring hotels to train employees on how to spot sex trafficking and how to respond. “Seven states and two cities currently require hotel workers to take training about human trafficking. Virginia will become the eighth state on January 1, 2023.”<sup>113</sup> While this is a newer trend, more states are likely to implement similar legislation as they search for new ways to increase prosecutions.

For example, a recent law in Iowa, I.C.A. § 80.45A, “aims to build awareness for human trafficking by training staff at any businesses offering lodging how to spot and report the crime.”<sup>114</sup> This law however, does not mandate training, but rather provides that “a lodging provider may voluntarily complete and certify to the commissioner that each of the lodging provider’s employees have completed human trafficking prevention training.”<sup>115</sup>

Other states are taking a stricter approach, mandating sex trafficking training for hotels rather than providing for voluntary training. For example, under Cal. Gov. Code § 12950.3, California requires twenty-minute sex trafficking training for employees every two years.<sup>116</sup> Similarly, Minnesota requires sex trafficking prevention training of “every person, firm, or corporation that operates a hotel or motel in Minnesota.”<sup>117</sup> The specifics of the sex trafficking training are left up to the hotels themselves to some degree, but the Minnesota statute requires that the training include instruction on:

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<sup>112</sup> *Id.* at 8.

<sup>113</sup> Todd Stanton, *Human Trafficking Training for Hotels: What, How, Why*, ETACTICS (July 5, 2022), <https://etactics.com/blog/human-trafficking-training-for-hotels> [https://perma.cc/AN46-5BAN].

<sup>114</sup> Mary Sugden, *Effective Jan. 1, Iowa Law Will Enhance Training for Hotel and Lodging Employees to Spot Human Trafficking*, WE ARE IOWA (Dec. 8, 2021, 6:21 PM), <https://www.weareiowa.com/article/news/local/iowa-law-reduce-human-sex-trafficking-hotel-staff-training/524-c46d1202-6b14-49c4-aa88-046ad15d2d83> [https://perma.cc/RYN8-D95L].

<sup>115</sup> IOWA CODE § 80.45A(C)(a) (2021).

<sup>116</sup> CAL. GOV. CODE § 12950.3 (West 2019).

<sup>117</sup> MINN. STAT. § 157.177 (2023).



(1) what sex trafficking is in order to raise awareness of it; (2) how to recognize potential victims of sex trafficking; (3) how to identify activities commonly associated with sex trafficking; and (4) effective responses to trafficking situations including, but not limited to, how to report suspected sex trafficking to proper law enforcement officials.<sup>118</sup>

Other states are experimenting with different types of legislation aimed at preventing sex trafficking through hotels. Pennsylvania, for example, has introduced a bill which, if enacted, would make it illegal for hotels to have hourly rates, as this is something typically used by traffickers who only use rooms for a few hours at a time.<sup>119</sup> Florida is also looking to enact similar legislation,<sup>120</sup> and some cities have already implemented similar laws, including Pomona, California<sup>121</sup> and Nashville, Tennessee.<sup>122</sup>

A Councilwoman sponsoring the Pennsylvania bill stated, “[h]otels and motels offering hourly rates raise a big red flag for those of us who care that this type of inappropriate activity is happening.”<sup>123</sup> Interestingly, Arizona has introduced legislation providing for sex trafficking training done by hotels to serve as a mitigating factor in the case of a conviction at their hotel.<sup>124</sup> While this may serve to motivate hotels to provide training, this may also lead to a decrease in opportunities for victims to recover. As states continue to focus on preventing sex trafficking, it is likely that more and more statutes such as this one will appear across the states.

#### D. Recovery for Victims

Even with the increases in sex trafficking legislation and litigation in the United States, at the time of this Note it appears the courts have yet to find any hotel civilly liable for participation in sex trafficking under a federal or

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<sup>118</sup> MINN. STAT. § 157.177(c) (2023).

<sup>119</sup> Dean Mensah, *Bills Aim to Lock Out Human Trafficking at Hotels in Philadelphia*, HOTEL ONLINE (Feb. 6, 2022), [https://www.hotel-online.com/press\\_releases/release/bills-aim-to-lock-out-human-trafficking-at-hotels](https://www.hotel-online.com/press_releases/release/bills-aim-to-lock-out-human-trafficking-at-hotels) [<https://perma.cc/V73R-SMWE>].

<sup>120</sup> *Florida Lawmakers Could Ban Hourly Rates at Hotels to Reduce Human Trafficking*, CBS NEWS MIAMI (Feb. 1, 2022, 2:27 PM), <https://www.cbsnews.com/miami/news/florida-lawmakers-could-ban-hourly-rates-at-hotels-to-reduce-human-trafficking> [<https://perma.cc/D5AX-2WLH>].

<sup>121</sup> Javier Rojas, *Pomona Bans Hourly Motel Rates to Combat Human Trafficking*, DAILY BULL. (Oct. 21, 2020, 4:54 PM), <https://www.dailybulletin.com/2020/10/21/pomona-bans-hourly-motel-rates-to-combat-human-trafficking> [<https://perma.cc/385M-3DJS>].

<sup>122</sup> Joey Garrison, *Nashville Bans Hourly Room Rentals at Hotels, Motels*, TENNESSEAN (July 6, 2017, 10:39 PM), <https://www.tennessean.com/story/news/politics/2017/07/07/nashville-bans-hourly-room-rentals-hotels-motels/457301001> [<https://perma.cc/69ZR-7W48>].

<sup>123</sup> See Mensah, *supra* note 119.

<sup>124</sup> See Stanton, *supra* note 113.

state sex trafficking statute. In 2019, victims brought 117 sex trafficking cases against hotels under the TVPRA, 44% (51) of which “saw the claims against them dismissed (32 voluntarily by the plaintiffs, which is often an indication of a settlement, and 19 by the court) and 56% (66) [of which] still have pending claims against them.”<sup>125</sup> This leaves zero cases that have resulted in recovery for the victim through the judicial process.

This appears true at the state level as well. While there is no national report of sex trafficking claims against hotels under state laws, litigation under these state laws is less common than under the TVPRA. Additionally, of the few civil cases brought under state sex trafficking statutes, none have yet resulted in recovery for the victim.

### III. ANALYSIS

Even with the expanding landscape of sex trafficking legislation in the United States, the current laws allowing victims to recover from hotels are not sufficient. State laws utilizing an actual knowledge standard create opportunities for hotels to turn a blind eye and escape liability, leaving victims without any reasonable hope for recovery. While the federal TVPRA provides for a less harsh, constructive knowledge standard, this standard still imposes too difficult a burden on victims and has not provided recovery. Additionally, the constructive knowledge standard of the TVPRA creates ambiguity as to what constitutes culpable conduct from a hotel, leaving victims in the dark as to what they need to show in order to sufficiently prove liability.

A *per se* liability standard would decrease the burden on victims seeking recovery and would provide a clear, easy to apply standard for determining when hotels are culpable for their involvement in sex trafficking. Because many states are already imposing mandatory sex trafficking training legislation for hotels, these training requirements would create a simple, consistent basis to determine when hotels should be considered *per se* liable. Additionally, states such as Arizona have already contemplated the relationship between sex trafficking training for hotels and whether hotels should be considered liable for the trafficking occurring on their properties, suggesting this would likely be a natural progression for sex trafficking state legislation targeting hotels.

#### *A. Actual Knowledge Standard Used by States Is too Strict*

State sex trafficking laws do not sufficiently serve victims, nor do they secure prosecutions. In a study addressing the difficulties with human trafficking legislation, the researchers found that “there is social benefit to holding traffickers accountable, but more emphasis should be placed on

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<sup>125</sup> See FEEHS & CURRIER WHEELER, *supra* note 12, at 55.

policies that identify and serve victims.”<sup>126</sup> This lack of focus on the victims prevents many sex trafficking cases from being tested under the state sex trafficking laws: “[w]e found that few human trafficking cases are identified by local law enforcement, most cases forwarded to state prosecution are sex trafficking cases involving U.S. citizens, and state prosecutors overwhelmingly charge human trafficking offenders with other, lesser crimes.”<sup>127</sup>

State sex trafficking laws do not serve victims because they impose a harsh actual knowledge standard for recovery. An actual knowledge standard allows hotels to turn a blind eye and is a near impossible standard for victims to satisfy. Under an actual knowledge standard, victims must show that the hotel knew that they were financially benefiting from a venture involved in sex trafficking. Even if a victim can sufficiently show that the hotel should have known the victim was being sex trafficked, this is not enough to receive recovery. This standard enables hotels and their employees to be willfully ignorant of sex trafficking occurring on their premises, and escape liability by refusing to take a closer look.

Victims feel some hotels are complicit in the trafficking that occurs across their properties and want those hotels to be held liable.<sup>128</sup> A constructive knowledge standard is already hard for victims to satisfy, making an actual knowledge standard harsh and unnecessary. For example, in *L.H. v. Marriott International, Inc.*, L.H. was trafficked for commercial sex for ten years, “[t]he traffickers personally knew several front-desk employees at the Miami Hotels and those employees, in exchange for compensation, helped facilitate and conceal the sex-trafficking operations.”<sup>129</sup> Additionally, L.H. was required to perform sex acts on 11 to 14 men per day, “resulting in an obvious parade of sex buyers into and out of the Miami Hotels each day.”<sup>130</sup>

However, even with this obvious participation by hotel employees, the court still did not find that the hotel knew *or should have known* that L.H. was being sex trafficked and dismissed her claim on a motion to dismiss. It is hard to imagine what a victim could possibly allege to satisfy an actual knowledge standard when hotel staff with personal relationships with the victim’s traffickers and intentional blindness by the hotel to key indicators of sex trafficking do not even satisfy constructive knowledge.

State laws should not provide a stricter standard for victims to recover than the federal law they mirror. Victims are able to proceed under federal

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<sup>126</sup> Farrell et al., *supra* note 98, at 139.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *L.H. v. Marriott Int’l, Inc.*, 604 F. Supp. 3d 1346, 1353 (S.D. Fla. 2022).

<sup>130</sup> *Id.* at 1354.

law where they are not able to proceed under state law for the same crime. For example, in *J.C. v. Choice Hotels International, Inc.*, the court denied the hotels' motions to dismiss Plaintiff's TVPRA claim, allowing the claim to move forward under the federal law, but granted the hotels' motions to dismiss Plaintiff's claim under California's state CTVPA laws, even though both claims related to the same sex trafficking crime.<sup>131</sup> The court stated that "[t]he CTVPA does not include negligent 'should have known' language as in the TVPRA; cases interpreting the CTVPA have required plaintiffs to plausibly allege intent at the pleading stage."<sup>132</sup>

Additionally, a stricter standard at the state level than at the federal level implies that intrastate sex trafficking carries less culpability for traffickers than that of interstate sex trafficking.

Sex trafficking is a state crime. Federal law, however, makes it a federal crime to conduct the activities of a sex trafficking enterprise in a way that affects interstate or foreign commerce or that involves travel in interstate or foreign commerce.<sup>133</sup>

Victims of sex trafficking deserve to receive recovery, regardless of where their trafficking originated or where they were taken.

A constructive knowledge standard is also a plausible option for states when imposing liability on hotels for sex trafficking. Washington has already implemented such a standard: WASH. REV. CODE § 9A.40.100 provides for liability against hotels that benefit financially from participation in a sex trafficking venture under a "knowingly or with reckless disregard" standard. While this standard has not yet been put to the test against any hotels in Washington, this statute establishes that it is not unrealistic for states to impose a constructive knowledge standard on hotels.

Additionally, if states are going to make targeting sex trafficking a priority, victims of sex trafficking should be able to pursue their sex trafficking claim under the state's specified sex trafficking law, rather than under a theory of negligence. This, however, is not always the case. For example, the victim in *Doe v. OM Hospitality LLC* was awarded \$25.4 million in recovery under a theory of negligence against the hotel, Economy Inn.<sup>134</sup> The victim in *OM Hospitality* was held and abused at the Economy Inn in Springdale, Arkansas for three years. During this time, the hotel management

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<sup>131</sup> *J.C. v. Choice Hotels Int'l, Inc.*, No. 20-CV-00155-WHO, 2020 WL 6318707, at \*1 (N.D. Cal. Oct. 28, 2020).

<sup>132</sup> *Id.* at \*11.

<sup>133</sup> CHARLES DOYLE, CONG. RSCH. SERV., R43597, SEX TRAFFICKING: AN OVERVIEW OF FEDERAL CRIMINAL LAW 1 (2015).

<sup>134</sup> See generally Court Order, *Doe v. OM Hosp., Inc.*, 04CV21-1039 (Ark. Cir. 2022) (granting the victim \$25.4 million against Economy Inn under negligence).

“would notify Plaintiff’s trafficker if law enforcement was looking around and would advise Plaintiff’s trafficker to move her down the street to the Royal Inn until things quieted down.”<sup>135</sup>

These actions by the hotel management seem to be the exact form of participation from a hotel such that the hotel would be liable under the state sex trafficking laws; however, this was not the case. The victim in *OM Hospitality* was not awarded damages under Arkansas’s sex trafficking law nor under the TVPRA.<sup>136</sup> Rather, the victim’s damages were awarded under a theory of negligence.<sup>137</sup> If states are going to make prohibiting sex trafficking a priority and implement laws intending to target those who participate in sex trafficking, such as hotels, these laws should serve the victim in the courtroom. Sex trafficking laws should not be the least successful legal remedy for victims of sex trafficking; however, under the current state laws, other legal routes have proven more successful.

*B. Constructive Knowledge Standard of TVPRA Is Still Too Strict and Does Not Provide Recovery*

While the constructive knowledge standard utilized by the federal TVPRA is better for victims than the actual knowledge standard used by the majority of states, this standard is still extremely difficult for victims satisfy. While some cases against hotels have made it past the motion to dismiss stage, no hotels have actually been held liable for sex trafficking under either the TVPRA or any state laws. With victims bringing cases against 117 hotels in 2019 alone,<sup>138</sup> this signals that the law is not adequately serving its purpose of providing victims with relief.

As identified by the Human Trafficking Institute, there are three reasons that no victims have yet successfully held a hotel civilly liable for their sex trafficking. In each case, either (1) the litigation is lengthy and still ongoing, (2) the case has been settled outside of the courtroom, or (3) the case was dismissed by the court.<sup>139</sup> None of these outcomes sufficiently serve victims.

A long litigation process can push victims to settle, even when they have a potentially winning case against the hotel. For example, in *Ricchio v. Shangri-La*, a “first-of-its-kind” lawsuit, the litigation process took over four years, leading the victim to eventually settle the claim against the hotel.<sup>140</sup> Lisa Ricchio, a victim of sex trafficking at Shangri-La, stated that “her lawsuit against [the motel] was about more than money. It was also about

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<sup>135</sup> *Id.* at 2.

<sup>136</sup> *Id.* at 7.

<sup>137</sup> *Id.*

<sup>138</sup> FEEHS & CURRIER WHEELER, *supra* note 12, at 55.

<sup>139</sup> *Id.* at 119.

<sup>140</sup> Bookman, *supra* note 76.

accountability.”<sup>141</sup> Yet the TVPRA failed to hold Shangri-La accountable, and Lisa Ricchio had to rely on a settlement for any semblance of closure.<sup>142</sup>

While cases that end up settling do provide some level of relief, victims should not be turned away from recovery under the law. As stated by Lisa Ricchio, there is more to litigation than money.<sup>143</sup> Settlements provide hotels a way to hide from the repercussions of being held liable; settlements can be done in private and without explanation or ownership of culpability. A true decision by a court finding a hotel civilly liable for sex trafficking would likely have a much larger impact on the victim, the hotel, and the approaches taken by hotels in the future, as it requires the hotel to take ownership of its participation.

Additionally, a true court decision against a hotel chain would have a stronger effect on that hotel’s reputation and result in substantial social repercussions, rather than simply financial repercussions. This might include loss of business or increased litigation as more victims feel encouraged to pursue their own claims. Lastly, if large hotel chains saw that other chains were actually being held liable by the courts, they would be even more likely to implement sex trafficking training and ensure that it is being followed by employees. Right now, the threat of civil liability for hotel chains is very low and has never been realized; therefore, hotels likely feel that the risk of being held liable for sex trafficking is far too low to justify the cost of taking action to prevent it. If a court held a large hotel chain liable, this threat would become reality and would likely encourage hotels to take further precautions. The risk of hotels not intervening in sex trafficking occurring on their premises is high for victims; this risk should be felt by the hotels as well.

The constructive knowledge standard is also difficult to satisfy because evidence that the hotel knew or should have known that the victim was involved in prostitution at the hotel is not sufficient to show that the hotel knew or should have known that the victim was being sex trafficked. For example, in *A.B. v. Hilton Worldwide Holdings Inc.*, the court held that “[a]lthough the complaint suggests the hotels had some level of notice that Plaintiff engaged in commercial sex acts, the vague allegations fail to show the hotels knew or should have known that Plaintiff was engaging in commercial sex as a result of fraud, force, or coercion.”<sup>144</sup> Therefore, even if a victim can show the hotel had constructive knowledge of commercial sex activities, this is not sufficient to show the hotel had constructive knowledge of sex trafficking.

While it is true that commercial sex activity does not always indicate sex

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<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 941 (D. Or. 2020).

trafficking, this distinction by the courts creates a heavy burden on victims for two reasons. First, prostitution and sex trafficking are often intertwined, making it hard to draw a determinative line between the two. A report published by the U.S. Department of Justice provides that “[t]he links between street prostitution and both domestic and international trafficking have been confirmed by dozens of studies, with the market forces of prostitution driving demand for human trafficking of women and girls.”<sup>145</sup> “[S]tudies find that up to 80% of samples of women and girls serving as prostitutes had been coerced or forced to engage in prostitution by pimps or traffickers.”<sup>146</sup> Therefore, it is plausible, and realistically likely, that constructive knowledge of commercial sex activity could sufficiently put a hotel on notice of the likelihood of sex trafficking occurring on the premises.

Secondly, the common indicators for sex trafficking are also indicators of prostitution, making it incredibly difficult for victims to allege sufficient facts showing constructive knowledge of sex trafficking specifically; evidence of indicators of sex trafficking may merely serve as evidence of indicators of commercial sex activity. For example, in New Jersey, officers warned hotels to look for signs of prostitution such as signs of guests paying in cash, rooms receiving heavy foot traffic, rooms with an excess of condoms, drugs, and sex paraphernalia, and more.<sup>147</sup> As identified by the National Human Trafficking Resource Center, key indicators of sex trafficking in hotels include rooms paid for in cash, heavy foot traffic in and out of the room, presence of excessive alcohol, drugs, or sex paraphernalia, and more.<sup>148</sup> These similarities make recovery extremely difficult: if the key warning signs indicating that a hotel knew or should have known that a victim was being sex trafficked are also key warning signs of prostitution, then this creates an almost impossible burden for victims to show that the hotel knew or should have known that the victim was actually being trafficked.

*C. Hotels Should be Found Per Se Civilly Liable for Failure to Comply with Mandated Sex Trafficking Training*

If the government has an interest in preventing sex trafficking and holding participants liable, it needs to re-evaluate the laws it has established and focus on victims’ opportunities for recovery. Current sex trafficking legislation falls short because it creates ambiguous standards that leave victims and hotels questioning what is required for a hotel to be held culpable, and creates too harsh of a burden on victims to prove the hotels were liable.

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<sup>145</sup> MICHAEL SHIVELY ET AL., NAT’L INST. OF JUST., A NATIONAL OVERVIEW OF PROSTITUTION AND SEX TRAFFICKING DEMAND REDUCTION EFFORTS, FINAL REPORT 11 (Apr. 30, 2012), <https://www.ojp.gov/pdffiles1/nij/grants/238796.pdf> [<https://perma.cc/2WJC-RVPC>].

<sup>146</sup> *Id.* at 13.

<sup>147</sup> *Id.*

<sup>148</sup> HUMAN TRAFFICKING AND THE HOSPITALITY INDUSTRY, *supra* note 50, at 3.

Because enforcement of the laws is the biggest hurdle for states right now, implementing a clear standard for what makes a hotel liable would ensure triable cases are not slipping between the cracks, and would also put pressure on hotels to do their part in preventing sex trafficking from happening.

States should therefore implement legislation requiring sex trafficking training for hotels and their employees and find that where a hotel fails to comply with the procedures taught in these trainings and sex trafficking occurs during that failure, the hotel is *per se* liable for the sex trafficking on their premises. This standard would create clear guidelines for hotels and victims on what constitutes culpable behavior, would increase protections from hotels for victims of sex trafficking, and would lower the burden on victims to sufficiently show that the hotel was liable in their trafficking.

Sex trafficking training should include how to look for specific warning signs of sex trafficking. If a victim demonstrates any of those warning signs, then the hotel should be found, by default, to have constructive knowledge of the victim's trafficking. In most of the cases currently being litigated, and even in the cases which have already been dismissed, the court acknowledged that the victim demonstrated certain warning signs of trafficking, but found that because the victim failed to demonstrate that the hotel staff noticed the warning signs, the hotel could not be held liable.<sup>149</sup>

In these scenarios, if employees participated in the mandatory training, they would know to look for these warning signs, and failure to do so would provide evidence of constructive knowledge for the victim. Additionally, because the employees would have participated in mandatory training, there is an increased likelihood that they would be capable of intervening and helping the victim.

While individuals have been prosecuted, hotels are more capable to contribute to sex trafficking than a single individual. Holding hotels liable and limiting their opportunities for involvement without liability would more effectively limit sex trafficking and provide more victims with opportunities for recovery. A victim may not be able to identify their perpetrator, but they will likely be able to identify the hotel they were trafficked at, and how the hotel ignored their warning signs. Additionally, a victim would likely be able to more easily establish that the hotel as a whole ignored the signs of their trafficking, as hotels have a large number of employees who interact with the guests and the rooms, therefore, creating a greater chance that someone did, in fact, notice the warning signs.

Establishing required sex trafficking training for hotels would provide a consistent basis for victims to bring claims against hotels and eliminate ambiguity. Rather than trying to determine whether a hotel knew or should have known the trafficking was going on, victims, hotels, and courts would

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<sup>149</sup> *A.B. v. Hilton Worldwide Holdings Inc.*, 484 F. Supp. 3d 921, 935 (D. Or. 2020).



simply look at whether the hotel and its employees operated within the requirements of the sex trafficking training. If the victim showed any of the warning signs of sex trafficking which were a part of the mandatory sex trafficking training, but the hotel made no steps to assist the victim, this would be sufficient to show the hotel had constructive knowledge of the trafficking.

A *per se* standard would also protect hotels from unexpected litigation. As long as a hotel complies with the mandatory sex trafficking training and reports signs of sex trafficking when they occur, the hotel would be at no risk of liability. This gives hotels clear steps on how to help victims and protect themselves from liability. By creating a crystal-clear basis for what is culpable behavior for hotels, this new legislation would keep hotels from being held liable any time someone was trafficked at their property without also limiting victims' opportunities for recovery.

#### IV. CONCLUSION

Sex trafficking is a significant issue in the United States,<sup>150</sup> and the problem is only increasing.<sup>151</sup> The legal landscape around sex trafficking is consistently changing due to the desire to prosecute traffickers and reduce the number of victims. These changes have rightfully brought hotels, a critical element in the business of sex trafficking, into the realm of liability.

However, even though hotels are a critical part of sex trafficking, and even with the changing legal landscape,<sup>152</sup> hotels are escaping liability, likely because, on their own, these laws are ineffective. An actual knowledge standard, as used in the majority of state civil liability sex trafficking statutes, creates too heavy a burden for victims seeking to recover from hotels involved in sex trafficking. Additionally, these laws are not sufficiently being put to the test, and when they are being tested victims are being told their evidence is not enough and having their cases dismissed.

Even the less strict, constructive knowledge standard, as used by the federal TVPRA, still fails victims. Not a single victim has recovered for civil liability under the TVPRA in a claim brought against a hotel.<sup>153</sup> This lack of recovery is partially due to settlement agreements and lengthy litigation processes,<sup>154</sup> however it still highlights the failures of the TVPRA to provide victims with recovery. This lack of recovery also leads to ambiguity as to what a plaintiff can do to sufficiently show a hotel was liable under the TVPRA, as there is no example of a successful claim.

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<sup>150</sup> *Facts About Human Trafficking in the US*, *supra* note 16.

<sup>151</sup> *FEEHS v. CURRIER WHEELER*, *supra* note 12, at 2.

<sup>152</sup> *Id.* at 54.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

Due to these ineffective sex trafficking laws, many states are already mandating sex trafficking training for hotels. In company with these sex trafficking training mandates, states should implement a stricter, per se liability for hotels who fail to comply with the procedures taught during the sex trafficking training, and as a result, allow sex trafficking to occur on their premises. This stricter standard would decrease the ambiguity surrounding recovery, increase opportunities for victims to recover, and provide incentive for hotels to maintain vigilant to spot sex trafficking procedures on their premises.