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Kathy J. Steinman*

The two little girls, arms folded across their chests to ward off the unseasonable chill of the night, eyed the pair of tall gringo men speculatively, then offered tentative smiles. “So, what’s up?” the older of the girls, barely 13, asked.

“Nothing much,” replied one of the men. “What’s up with you?”

“Well, I don’t know,” the girl answered, her smile bolder. “You look like you might be looking for something. You look like you might want to buy something.”

“Buy something?” the man asked, glancing around the deserted downtown street. “Like what?”

“Like us,” the girl said. “Like us.” Both kids dissolved in giggles, but when the older looked up again, her face was solemn. “Thirty dollars for my little sister, 15 for me.”

Meet Stephanie, 12, and Ivette, 13, two members of a fast-growing Costa Rican workforce: child prostitutes. The country that prides itself as Latin America’s most stable democracy and the inventor of ecotourism is becoming the hemisphere’s best-known playground for pedophiles.¹

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I. INTRODUCTION

The international tourism industry drives the world’s economy and often provides a potential solution to the economic problems of developing countries. Since the 1960s, international travel has increased seven-fold. It is estimated that by 2010, the number of international tourists will be 967 million. The tourism industry is the largest employer in the world and is fast becoming the world’s largest industry.

However, there is a darker side to the tourism industry, a side that diverges from the stereotypical tourist seeking to explore a foreign country’s landscape and culture. This darker, clandestine side of the tourism industry instead delves into the realm of child prostitution and exploitation, namely sex tourism. The World Tourism Organization (hereinafter WTO) has defined sex tourism “as ‘trips organized within the tourism sector, or from outside the sector but using its structures and networks, with the primary purpose of effecting a commercial sexual relationship by the tourist with residents at the destination.’”

Child sex tourism is an incredibly lucrative, world-wide industry. However, in recent years, Central and South America have become the new “playground” for sexual predators seeking children as their prey. The tightening of child exploitation laws in Asia instigated the increase of sex tourists’ forays into new territory. The proximity of the source countries of sex tourists to Latin America has also fueled this shift in location.

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country with a child prostitution problem. The length of the isthmus, children can be found selling sex to escape extreme poverty and dysfunctional families . . . .” Id.
4. Id.
5. Id. “[E]very sixth job in the world depends on or is related to travel and tourism.” MAI-LOS VOSS, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: AN OVERVIEW, at 4 (1999).
10. José Lambiet, A Sexual Marketplace in Florida’s Backyard; Young Victims Traded
While the global community has expressed much outrage at the sexual exploitation of children, little has been done to curb this crisis. Many Latin American countries have enacted laws criminalizing the sexual exploitation of children. However, the governments in those countries rarely enforce these laws, and the “sexploitation,” or sexual exploitation, continues. The United States has also enacted section 2423(b) of the Violent Crime Control and Law Enforcement Act of 1994, legislation aimed at eliminating the sexploitation of children, specifically child sex tourism. However, prosecutions under this statute have been minimal; though Congress passed the statute in 1994, it was not until 1999, that the government obtained its first conviction. Much more needs to be done in order to eradicate the problem.

This note will focus on child sex tourism in Latin American countries and the ineffectiveness of the laws of those nations, as well as the United States, in curbing the crisis. Section II explores the history behind sex tourism and reasons why Latin America has become the new hotspot for such activity. It will also address who sex tourists are and why children are their desired sex objects. Section III will address the laws of Latin American countries aimed at eliminating child prostitution and the ineffectiveness of these laws. Finally, Section IV discusses the United States’ attempt to prosecute sex tourists, in particular the Crime Bill of 1994 and the Child Sexual Abuse Prevention Act, and these statutes’ shortcomings. It will then propose possible remedies to this problem, which may be more effective than the current statute.

II. THE FIVE W’S: THE HISTORY OF CHILD SEX TOURISM, PROCURERS AND VICTIMS

The rapid growth of the sex industry, the spread of sexual tourism of citizens of the so-called developed world, combined with the often devastating effects of globalization, the politics of structural adjustment, the lack of basic social policies and economic opportunities, the force of a patriarchal culture, and the lack of acknowledgement of and respect for the rights of children and youth, have created conditions in which the commercial sexual
exploitation of children and youth have [sic] become a growing phenomenon. 18

A. WHAT, WHEN AND WHY?: CHILD PROSTITUTION AND SEX TOURISM
"PUSH PRINCIPLES"

Child sex tourism stems from the longstanding problem of child prostitution. 19 "Prostitution of a massive nature involving children originated in Thailand and the Philippines in the late 1960s during the Vietnam War." 20 During the 1970s and 1980s, sex tourism in Asia increased, as "pedophiles from both Europe and North America found a Shangri-La for sexual activity with minors in Thailand and the Philippines." 21 In recent years, however, the child sex tourism industry has shifted its focus away from Asia, concentrating instead on Latin America. 22 The primary factors driving children into prostitution are poverty, materialism and consumerism, consumer demand, dysfunction and sexual abuse, gender discrimination, and the Internet.

1. Poverty

Many factors serve as the impetus behind child prostitution and sex tourism. 23 Poverty, resulting from political and economic upheaval, is one of the main "push principles." 24 Poorer, developing countries, perceiving tourism as a potentially highly profitable source of income, succumb to economic pressure and become tourist-oriented. 25 The growth of the sex industry and sex tourism goes hand in hand with this new tourism-focused economy. 26 "Government policies, such as for the promotion of tourism . . . may have indirectly encouraged the growth of prostitution and sale and trafficking in children." 27

19. Margaret A. Healy, Note, Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?, 18 FORDHAM INT'L LJ. 1852, 1858 (1995). This is because "[t]housands of U.S. servicemen were either stationed in these countries or sent there for rest and recreation during the war. Brothels, bars, and massage parlors, often serviced by underage prostitutes, emerged in areas surrounding the bases or ports of call." Id. at 1864-65.
20. Bevilacqua, supra note 7, at 173; see also Healy, supra note 19, at 1864.
24. Id.; Voss, supra note 5, at 4.
25. ECPAT, supra note 3.
26. Voss, supra note 5, at 9. Reports vary, but the sex tourism industry is estimated to be a five to ten billion dollar a year industry. Roger J.R. Levesque, Sexual Use, Abuse and Exploitation of Children: Challenges in Implementing Children's Human Rights, 60 BROOK. L. REV. 959, 981 (1994); Todres, supra note 6, at 2.
27. Voss, supra note 5, at 9. "Tourism is not the cause of the sexual exploitation of children; it does however, provide easy access to vulnerable children." Id. at 8.
“Poverty results in illiteracy, desperate need, and limited employment opportunities, leaving parents easy prey to procurement agents who scour the villages in search of young children.”

Parents often resort to encouraging their children to enter the sex industry or selling their children into prostitution in order to feed the family. Children themselves also often enter the industry of their own volition. Some take to the streets in search of “legitimate” jobs, such as street vendors, but turn to prostitution because such legitimate jobs do not provide an adequate source of income.

2. Materialism and Consumerism

Materialism and consumerism, resulting from a move from a subsistence-based economy to a cash-based economy, are other factors driving the child sex tourism industry. As consumer goods are introduced and made available on a large scale in developing countries, the desire for these items has undermined traditional cultural values. As a result, a number of parents sell their children into prostitution so that they may obtain “modern comforts and luxury items.”

3. Consumer Demand

The demand for child prostitutes is another factor prompting pimps and procurers to coerce children into prostitution. The reasons for the high demand for children are vast, ranging from pedophilia to a fear of contracting HIV or other sexually transmitted diseases.

28. Healy, supra note 19, at 1869.
32. Captive Daughters, supra note 2.
33. Levesque, supra note 26, at 980; Healy, supra note 19, at 1870.
34. Healy, supra note 19, at 1870.
35. Id.; Captive Daughters, supra note 2. Levesque, supra note 26, at 980. For example, Marvin Hersh, the first person convicted as a sex tourist under U.S. law, gave his preys’ parents such luxury items, including, money, clothes and cheap electronic gadgets. Lambiet, supra note 10.
4. Dysfunction and Sexual Abuse

Prior sexual abuse and the disintegration of the family are also “push principles” behind the child sex tourism industry.39 “[C]hildren coerced into sex with foreigners usually come from broken homes: those without a father, with a mother struggling to feed her children, or where the children don’t feel particularly loved.”40 “[S]ome children leave their homes to escape violence and neglect, and find themselves unable to support themselves by any means other than prostitution.”41

“I go over and talk to those girls a lot,” says an American who operates a business near downtown San Jose’s Morazan Park, where scores of underage prostitutes line up Saturday nights to await customers from nearby bars.

“And every single one of them tells the same story: She decided to come to the park so she could get paid for what she was having to give away free at home. There’s something wrong in this country.”42

According to various studies, between eighty and eighty-five percent of child prostitutes were sexually abused in the home before turning to the streets.43 Some psychologists argue that foreigners are not to blame for originating the crisis surrounding child sex tourism and prostitution.44 Jorge Sanabria, a psychologist with the Child Welfare Institute in Costa Rica explains: “[t]he idea that foreigners created this problem is wrong. What has happened is that there is a culture of sexual abuse of children in this country, and foreigners have taken advantage of it.”45

5. Gender Discrimination

Gender discrimination is another major factor forcing children into prostitution.46 Female children are provided with fewer opportunities for education or substantial employment.47 Thus, they must find other means

13, 1998, at B7; Captive Daughters, supra note 2; ECPAT, supra note 37. For further discussion of the myth of child prostitutes as free of sexually transmitted diseases, see discussion infra Part I.C.


40. Lambiet, supra note 10.

41. Berkman, supra note 31, at 401.

42. Marvin, supra note 1.

43. Id. (eighty-two percent); ECPAT, Client, Customer, Exploiter: The Users of Child Prostitutes, at http://www.rb.seIecpat/exploitlhtm (last visited Jan. 6, 2001) (on file with author) (eighty-five percent); Scott & Ross, supra note 30 (eighty percent).

44. Marvin, supra note 1.

45. Id. (internal quotations omitted).

46. Healy, supra note 19, at 1872.

47. Id.
of earning a living. Furthermore, cultural and religious practices often objectify girls sexually.48

6. The Internet

The availability of information via the Internet is also likely to be a motivating factor of child sex tourism.49

Internet sites devoted to sexual tourism brim with comments about Costa Rican nightclubs, hotels, and street corners where young prostitutes can be found, complete with prices.

A typical exchange on a site called the World Sex Guide: “The Hotel Park was kind of interesting . . . We notice that most of the ladies sitting out in a little courtyard were about 16 or 17.”50

The ease with which this information is obtained has made it easier for child sex consumers to plan their sexually deviant trips abroad.

B. WHERE?: LATIN AMERICA’S RISE AS THE DESIRED DESTINATION OF SEX TOURISTS

Sex tourism’s roots took hold in Asia during the Vietnam War.51 However, pressure on Asian countries to end this sexploitation led to the enactment of laws prohibiting child prostitution and to stricter enforcement of those laws.52 The passing of Megan’s Laws53 in the United States has also driven American pedophiles overseas in their quest for younger sex objects.54 This has caused the sex tourism industry to shift location, increasingly to Latin America.55

During the 1980s, Central America went through economic and socio-political crises.56 “The origins of the crisis can be found in both internal and external factors. Conflict among political, ideological and economic interests hastened the fragility of agrarian-based multiethnic societies.”57 As a result, many countries in the region found themselves in the midst of bloody civil wars and social unrest.58

This upheaval caused many of the residents to flee Central America,

48. Id.
49. ECPAT, supra note 39, at 3-4. See Birch, supra note 29.
50. Marvin, supra note 1.
51. Bevilacqua, supra note 7, at 173; Healy, supra note 19, at 1864.
52. Lambiet, supra note 10; Marvin, supra note 1.
54. Marvin, supra note 1.
55. Id.; Lambiet, supra note 10.
56. de Lara Ruiz, supra note 18.
57. Id.
58. Id.
and could “be seen as forced migration with strong political overtones.”

This exodus continued into the 1990s. However, the main motivation during this time was no longer war and strife, but the spread of poverty, or “economic violence.”

“The social and economic situation created, without a doubt, conditions of deprivation which led families to explore and create new strategies for survival, some of which included the exploitation of their own children.”

Sex tourists’ shift in attention to Latin America, did not go unnoticed. Humanitarian organizations are receiving more and more reports of sexual abuse of local children by foreigners. The sex tourism industry itself also noticed the change in locale to South and Central America. One sex tourism newsletter, “Asia Files,” which once provided information to sex tourists concerning travels and exploits in Asia, expanded its coverage to include Latin America and is now titled “The Erotic Traveler.”

The proximity of the United States to Latin American countries is another reason why sex tourism in that region has become so popular with exploiters. An average of 750 direct flights leave from Miami International Airport for destinations throughout the region. Furthermore, flights from Miami to Latin America are of shorter duration than many domestic flights and often comparable in price.

C. WHO?: PERPETRATORS, PROCURERS, FACILITATORS AND VICTIMS

“Maria is a twelve years [sic] old girl prostituted by her aunt. Maria is obliged to sell her body exclusively to foreign tourists in Costa Rica, she only works mornings as she has to attend school in the afternoon. Maria is in fifth grade.”

Four parties are typically involved in the sexual exploitation of children: perpetrators, procurers, facilitators and the victim, or child.

1. The Perpetrator

The perpetrator, or “john,” is usually male, most likely from either Europe or North America. Some of the perpetrators are pedophiles, but

59. Id.
60. Id.
61. Id.
63. Id.
64. Id.
65. Id.
66. Id. During some seasons, the price of a flight to Latin America is as little as $300 to $400. Lambiet, supra note 10.
67. Birch, supra note 29.
68. Berkman, supra note 31, at 399.
69. Id.; Captive Daughters, supra note 2. “[V]arious studies from different countries... indicate that [a] large majority of domestic and international child abusers are men... There are, however, a growing number of women pedophiles who travel in search of young boys, particularly in the Caribbean.” Healy, supra note 19, at 1867 n.93.
70. Todres, supra note 6, at 3-4; Marvin, supra note 1. “In Costa Rica, 25% of foreigners
most are “respectable doctors, lawyers, servicemen and teachers—many with children of their own.”71 Sex tourists are generally divided into two groups: preferential abusers and situational abusers.72 Preferential abusers, the pedophiles, “have clear and definite sexual preferences for children,”73 while situational abusers generally have not “planned to have commercial sex while abroad, but took the opportunity when it presented itself. They use the ‘why not’ approach and might consider it a bit of holiday ‘fun’. . . .”74

Most of these perpetrators tell themselves that there is no abuse or harm occurring to the child because the child has actively “chosen” that “profession.”75 They also assume that because the child has “chosen” prostitution, the child consents to and ultimately benefits from sexual relations with adults,76 and “that commercial sex is a way to help children out of poverty.”77 One such sex tourist explains:

> On this trip, I’ve had sex with a 14-year old girl in Mexico and a 15-year old in Columbia,” says a 65-year old retired Orlando schoolteacher. He talks about his trip, on the condition of anonymity, in a ramshackle casino in downtown Tegucigalpa.

For three months this winter, the divorced grandfather traveled Latin America, visiting brothels. He sees nothing wrong with having sex with teens.

> “I’m helping them financially,” he says. “If they don’t have sex with me, they may not have enough food. If someone has a problem with me doing this, let UNICEF feed them. I’ve never paid more than $20 to these young women, and that allows them to eat for a week.”78

Sexual tourists attempt to delude themselves that they commit no wrong by telling themselves that Latin American cultures are less sexually inhibited and sexually freer than Western societies.79 They rationalize this by maintaining that “[g]irls in these countries are portrayed as grown up and sexually experienced at 14 already, and that there is no stigma attached
to prostitution . . .”

Many of these perpetrators enjoy the anonymity of traveling abroad, which releases them from social constraints that they would feel in their home countries. "Child sex tourist[s] persuade themselves that in another country, normal social and moral restraints can be discarded, along with the belief that one will not be held responsible for his behavior. It is within these circumstances that child sexual exploitation thrives.”

Racist attitudes of sex tourists cause them to be blind to the harm they cause. Many of these perpetrators “hold strong views about the inferiority of people other than their own [and] have no scruples about exploiting other persons as long as they consider them to be inferior.”

Perpetrators also believe that by having sex with a child prostitute, they will be less likely to contract HIV or other sexually transmitted diseases. However, experts believe that child prostitutes are actually more likely to carry HIV than adults. Other myths that perpetrators believe and posit as reasons they prefer child prostitutes include the propositions that having sex with a virgin can cure venereal diseases or lead to male longevity, and the premise that greater sexual pleasure is derived from intercourse with children.

2. The Procurers and Facilitators

Other parties involved in the sexual exploitation of children are procurers and facilitators. Procurers or pimps are the individuals who extend “the services, capital, and resources that make sexual trafficking of children both a feasible and lucrative industry.” Procurers exploit the bleak economic situation and poverty of many of the children and their families by persuading the children to enter into their employ. Some of the procurers are former child prostitutes, who “climbed the ranks” of the industry.

80. Id.
81. ECPAT, supra note 3.
82. Captive Daughters, supra note 2.
83. ECPAT, supra note 3.
84. Id.
85. Berkman, supra note 31, at 399; Giordanella, supra note 15, at 135; Healy, supra note 19, at 1871; Scheer, supra note 38; Captive Daughters, supra note 2; ECPAT, WHAT YOU SHOULD KNOW ABOUT SEX TOURISM, supra note 37; see discussion infra Part II.C.3.
86. Berkman, supra note 31, at 399.
87. Id. at 399-400.
88. Id. at 400.
89. Id.
90. Healy, supra note 19, at 1869.
91. Scott & Ross, supra note 30. Maritza, a procurer and facilitator for Tony “Max” Castillo, a wealthy brothel owner in Costa Rica, detailed the Castillo operation and her role within the organization to undercover ABC reporters:

A notorious pimp, Tony “Max” Castillo, . . . ran a lucrative brothel with teenage girls for 18 years . . . Castillo and his American wife, Sharon, built the thriving business in one of their San Jose homes. They flew an
Facilitators, while often not directly involved in the child prostitution transaction itself, expedite the victimization process. The facilitator might be either a recruiter, a parent who sells his or her child into prostitution, a landlord or motel owner who permits the activity to occur on his or her property, or a sex tour travel agent. These sex tour travel agents publish brochures and guides that specifically cater to sex tourists. The brochures emphasize the youth of prostitutes at these advertised destinations. In 1999, there were over twenty-five businesses in the United States that offered and arranged sex tours.

3. The Victims: The Children

At sunset in San Jose, Costarica [sic] the day for Lilliana is just beginning. She leaves to work at 6:00 pm, wearing a short skirt, a little blouse, high heels, and a tired glance. Tonight Lilliana will sell her body to any bidder, whoever pays by her services, she has different tariffs, if oral sex, she charges 5000 colonos, about 15 dollars, if complete sex, as she call [sic] it, 15,000 colonos, less than 50 dollars. She sees approach [sic] luxurious cars to her corner, full with men wearing neckties, foreigners with dollars who walk in search of her innocence. Lilliana must work because in her

American flag above the property as a sign post for clients . . .

. . .

Maritza says she was recruited by Sharon Castillo to work in the brothel when she was a teenager. She was lured by the promise of good money and protection. The girls lived in the house, where tyrannical Tony would lord over them, inspect their bodies and “train” them to pleasure customers.

. . .

Maritza worked as a prostitute for Castillo for 10 years. When Tony was incarcerated and Sharon became a fugitive, Maritza became the business’ principal agent. In a way, she had climbed the ranks of the business. Now, she was the one doing the recruiting, finding young girls to bring into the life. “The Castillos,” she said, “had been very good to her.”

Id.

92. Berkman, supra note 31, at 400.
93. Id.
94. ECPAT, supra note 3.
95. ECPAT, supra note 3.

Small-scale travel operators, very often one-man-shows, arrange sex travels and indicate resorts where prostitution is available. They arrange . . . for a 24 hr companion or with hotels known to tolerate or actively promote prostitution. Customers can choose child escorts from catalogue pictures. Apart from that, the broader tourist industry at least provides the vehicle for movements of sex tourists. Travel arrangements of the vast majority of sex tourists are organised [sic] by reputable travel agents and package tour operators, sex tourists are all transported by “ordinary” airlines. Sex tourism by implication is big business for large corporations as well as small travel companies.

Id.

96. Id.
97. Todres, supra note 6, at 4.
house mamma is waiting for her, a woman with other four [sic] children who depends on Lilliana’s money to survive.

She works from 6:00 pm to 2:00 am, after this she and her little friends play in the streets, make jokes and eat anything that keep [sic] hunger away, because she is just 11 years old. 98

Children are the fourth party involved in the child prostitution transaction. 99 It is believed that, every year, over one million children enter the world’s sex trade. 100 Victims are both boys and girls, but most are girls between ten and eighteen years of age. 101 However, researchers believe that the age of victims is decreasing, “and sexual exploitation of children as young as six has been documented.” 102

As mentioned above, 103 various reasons are offered as to why perpetrators prefer children as their prey. Mainly, it stems from a fear of HIV/AIDS, or a belief that virgins have a cleansing or healing power that can cure AIDS. 104 “To meet a growing demand for virgins, agents have intensified the recruitment of very young children, primarily girls, from remote villages and across borders.” 105 However, experts believe that child prostitutes are actually more likely to carry the HIV virus than adults. 106

In reality, children are more vulnerable than adults to infection with sexually transmitted diseases including HIV. . . .

Children are not only at greater risk of being infected with HIV from sexual contact with the virus but are more likely to unknowingly infect others. Most sexually exploited children lack not only information about HIV/AIDS and access to health care, but also the ability to take or have their exploiters take precautions to prevent the spread of HIV. 107

The fact that child prostitutes are more likely to carry HIV is to be expected considering that studies indicate child prostitutes serve between two and thirty clients per week, which can be extrapolated to be between one hundred and fifteen hundred clients per year. 108

100. Todres, supra note 6, at 1.
101. Voss, supra note 5, at 2.
102. Id.
103. See discussion supra Part II.C.1.
104. See supra note 85 and accompanying text.
105. Voss, supra note 5, at 10.
106. See supra note 86 and accompanying text.
107. Voss, supra note 5, at 10.
108. ECPAT, supra note 43.
The sexual exploitation of children has devastating physical and mental effects on them. Mentally, many of the children experience depression and become withdrawn. Physically, the effects may be worse:

The consequences for abused and exploited children include profound physical, developmental, emotional and social problems. Many suffer from a range of illnesses, including tuberculosis, respiratory problems, headaches, exhaustion, results of infections and wounds, the effect of substance abuse, sexually transmitted diseases, from injuries resulting from violence inflicted either by those involved in controlling and organizing the sexual transactions, or resulting from self-harm. They may be malnourished or debilitated because of the inevitable hazards of a poor living environment, of poverty or from neglect.

For various reasons, Latin America has become the favored destination of sex tourists in their quest for child prostitutes. This exploitation must be eradicated. The next section will examine how Latin American countries, and specifically Costa Rica, have attempted to solve this problem.

III. THE RESPONSE OF LATIN AMERICAN COUNTRIES TO THE CRISIS: COSTA RICA AS A CASE STUDY

Many Latin American countries have laws criminalizing the sexual exploitation of children. However, many of these laws are weak and ineffective. Where stricter laws do exist, the sex tourism industry still thrives: "many pimps continue to fill their pockets with money; paedophiles and sexual degenerates continue to rob minors of their innocence and infancy."

Furthermore, the governments in these countries rarely enforce these laws and the exploitation continues. "National case studies indicate that the sex sector continues to flourish partly because it is protected and supported by corrupt politicians, police, armed forces and civil servants who receive bribes, demand sexual favors and are themselves customers or owners of brothels.”

Law enforcement officials in these countries are

109. Voss, supra note 5, at 8-9. "The symptoms experienced by child prostitutes are similar to those reported by other sexually abused children, such as depression, self destructive tendencies, inability to enter mainstream of society and ostracism." Id.
110. Id. at 2-3.
111. Lambiet, supra note 11.
113. Id.
114. Id.
115. Lambiet, supra note 11.
116. Voss, supra note 5, at 9. Lilliam Gomez, the chief sex-crimes prosecutor in Costa Rica states, "It’s not just that the government is not trying hard enough to solve this problem. Parts of the government are actually promoting this. We have advertisements for escort services in our own tourist brochures. Escort services! For God’s sake! What are we doing here?” Marvin, supra note 1.
not trained to deal with this crisis.  

These countries have dealt with this child exploitation and sex tourism crisis differently, with varying degrees of success. The remainder of this section will examine one such country; it will detail the actions Costa Rica has taken in an attempt to eradicate child sexploitation and why these actions have failed.

In 1998, Costa Rica adopted the National Action Plan against the Commercial Sexual Exploitation of Children (hereinafter Plan Marco de Acción), which was developed by governmental and non-governmental organizations. The Plan Marco de Acción is comprehensive, covering policies, law, law enforcement, research, prevention and rehabilitation; however, it lacks detail. Though it seeks to improve these areas via building and buttressing the system, raising awareness and monitoring, the Plan Marco de Acción does not provide timelines for implementation.

One reason underlying the inability to accomplish change is a lack of funding. In 1929, Costa Rica created the Patronato Nacional de la Infancia (hereinafter PANI), an organization designed to aid children. Costa Rican law requires that the government give seven percent of all tax income to PANI. However, only four to six percent has been given to PANI. Thus, PANI is severely under-funded.

PANI has neither the resources nor the manpower to combat the problem. For example, neither Liliam Gomez, the special prosecutor of the sex crimes division of the Ministerio Público, nor her police investigators have a computer with internet access, despite the fact that the Internet is cited as one cause for the increase in sex tourism. Furthermore, Gomez has only six investigators on her staff. They must cover the entire country, yet they have no vehicles, no travel budget, and no video cameras with which to collect evidence. Meanwhile, the Costa Rican government recently purchased a new fleet of Nissan Pathfinders for high-ranking government officials.

Under pressure from other countries, the Costa Rican government

117. See Lambiet, supra note 10; Rodriguez Garcia, supra note 53. “Latin America is still far from offering the level of enforcement now found in Southeast Asia.” Lambiet, supra note 10.
118. ECPAT, supra note 39, at 5.
119. Id.
120. Id. at 6.
121. Id. at 5-6.
122. Harris, supra note 8.
123. Id.; Harris, supra note 9; Scott & Ross, supra note 30.
124. Scott & Ross, supra note 30.
125. Harris, supra note 9.
126. See generally Harris, supra note 8; Harris, supra note 9.
127. Harris, supra note 8; Harris, supra note 9.
128. Id.; ECPAT, supra note 39, at 3-4. See Birch, supra note 29.
129. Harris, supra note 8; Harris, supra note 9.
130. Harris, supra note 8.
131. Harris, supra note 9.
formed the Commission Against the Commercial Sexual Exploitation of Boys, Girls and Adolescents in Costa Rica (hereinafter the Commission), coordinated by PANI. The Commission is made up of government agencies, non-governmental organizations and the judiciary. However, it has been ineffective due to a lack of funding, "an ineffective leadership and a highly political posture towards this difficult social issue." However, some good has come from the formation of this Commission. Specifically, the Commission was successful in overhauling the Costa Rican criminal code.

Up until 6 months ago, perpetrators of sexual exploitation of children... could not be prosecuted! If the sexual abuser agreed to marry the child victim, then all charges were dropped! Charges of "corruption of minors" were dropped by the judiciary when the accused adult proved that he was not the first man to pass over the 13 or 14 year old girl and so "she was already corrupt!"

Furthermore, "[t]he adult clients of children who are sexually exploited can now be prosecuted for sexual abuse, even though the minor may be willing and even if the minor is paid money or in kind for the sexual services."

Yet, even though tougher laws prohibiting the sexual exploitation of children have been passed, they are rarely enforced. The police are often corrupt and many officials themselves are involved in the industry. One young prostitute explains that police officers that detain them often force the girls to perform oral sex on them. Furthermore, when judicial authorities raided "an illegal operation where foreigners sexually exploit children, a high ranking police official [was] inside the building helping the American owner to escape over the back wall."

Corruption is also rampant within the judicial system. This corruption, combined with inefficiency, has, implicitly, created impunity and many offenders go free. As of March 2000, only two foreign

132. Id.
133. Id.
134. Id.
135. Id.
136. Id.
137. Harris, supra note 9.
138. Id.
139. Id.
140. Id.
141. Id.
142. Id.
143. Harris, supra note 9. "For example, the case against two Americans, who were arrested in Quepos, Costa Rica for allegedly drugging and sexually abusing three dozen underage girls, has not gone to trial in more than 19 months because the judiciary has not formed a criminal court in Quepos to hear the case." Harris, supra note 8.
nationals were in prison for sexually exploiting children. 144

The fight to end child sexual exploitation in Central America will not be an easy one. Weak laws, poor resources, and corrupt law enforcers mean that abusers operate in the region with total impunity. . . . Politicians in this region turn a blind eye to what goes on . . . because the exploitation is inextricably linked to a huge importer of cash—tourism. 145

Because of the failure of Central and South American laws, the United States must step in and protect children from exploitation at the hands of its own citizens.

IV. THE UNITED STATES’ RESPONSE TO CHILD SEX TOURISM

In September of 1994, President Clinton signed into law the Violent Crime Control and Law Enforcement Act of 1994 (hereinafter Crime Bill), which included the Child Sex Abuse Prevention Act of 1994. 146 This bill extended the Mann Act, which made it a felony for a person “to travel across state lines for immoral purposes.” 147 “The power to enact such legislation derives from the federal government’s power to regulate interstate and foreign commerce, granted by the U.S. Constitution.” 148

The relevant current statute, section 2423(b), criminalizes travel outside the United States for the purpose of engaging in sexual activities with minors. 149 The statute, in pertinent part, reads:

[a] person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act . . . with a person under 18 years of age . . . shall be fined under this title, imprisoned not more than 10 years, or both. 150

“In addition, the law contains no double criminality requirement. Therefore, the United States nationals who commit sex offenses abroad may be prosecuted under federal law, regardless of whether or not the act is

144. Harris, supra note 9.
145. Birch, supra note 29.
147. Berkman, supra note 31, at 415; Healy, supra note 19, at 1904; ECPAT, U.S. Law Against Child Abuse, supra note 37; see also 18 U.S.C. § 2423(a) (the Mann Act).
148. Healy, supra note 19, at 1904-05.
149. Id. at 1905-06; Berkman, supra note 31, at 415; Bevilacqua, supra note 7, at 175; Giordanella, supra note 15, at 148; ECPAT, U.S. Law Against Child Abuse, supra note 37.
150. 18 U.S.C. § 2423(b).
Considered a crime abroad.\textsuperscript{151}

Despite this recent law, however, prosecutions of sex tourists have been minimal and convictions even less frequent. It was not until 1999 that the government obtained its first conviction,\textsuperscript{152} when a federal court jury convicted Marvin Hersh, a former professor at Florida Atlantic University, of violating section 2423(b) and various other statutes.\textsuperscript{153} The convictions stemmed from Hersh's sexual exploitation of a Honduran teenager.\textsuperscript{154} The young boy met Hersh at the international airport in San Pedro Sula in 1992.\textsuperscript{155} "I was selling chiclets (gum) at the airport and a friend came to me to say that a man wanted to take me on a trip, [he] says. The man was Marvin (Hersh). I told him I would go, but I would have to ask my mother first,"\textsuperscript{156} Hersh befriended the boy's family, giving them gifts, such as clothes, cheap watches, Walkmans, Gameboys, and Nike Airs.\textsuperscript{157} He even paid the family's rent.\textsuperscript{158} "That earned Hersh hours, sometimes days, with [the boy], including out-of-town trips and stays in fancy hotels."\textsuperscript{159}

A. SECTION 2423(B) AND ITS SHORTCOMINGS

Although there have been more convictions as of late,\textsuperscript{160} section 2423(b) is still ineffective, for the most part, and offenders escape prosecution. Some legal scholars claim that the failure of the federal government to prosecute sex tourists under section 2423(b) stems from the fact that the law is still in its infancy.\textsuperscript{161} It is believed that as case law develops, enforcement will be easier and more feasible.\textsuperscript{162} However, a fundamental problem exists within the statute itself.

In attempting to try offenders under this statute, prosecutors face several hurdles, including jurisdictional issues, evidentiary issues,\textsuperscript{163} and problems with the mens rea, or intent, requirement.\textsuperscript{164}

1. Jurisdictional Issues

"The United States adheres to the principles of territoriality and
nationality in asserting extraterritorial criminal jurisdiction in international law. Territoriality principles apply when a crime is committed within the borders of the United States. Nationality principles apply when a United States national commits a criminal act abroad.

Section 2423(b) utilizes nationality principles in criminalizing the acts of U.S. nationals who travel or conspire to travel abroad with the intent of performing sexual acts with minors. This allows the federal government to prosecute sex tourists, even though their acts may not have been unlawful in the country where it occurred. While the federal government wields the jurisdictional authority to prosecute sex tourists who commit these crimes abroad, the government has continually failed to exercise its jurisdictional authority to prosecute offenders.

2. Evidentiary Issues

Even if prosecutors can overcome jurisdictional hurdles, they still face difficulties in meeting stringent federal evidentiary standards. Prosecutors in the U.S. may find it extremely difficult to procure admissible evidence from foreign nations. One legal scholar notes that the statute’s focus on the intent of the offender to commit a sex offense abroad might eliminate problems with obtaining admissible evidence.

165. Bevilacqua, supra note 7, at 176.
167. Bevilacqua, supra note 7, at 177.
168. Id.; Healy, supra note 19, at 1908. For example, the nationality principle was applied in U.S. v. Thomas, 893 F.2d 1066 (9th Cir. 1990), to prosecute a defendant who “crossed the border into Mexico with a thirteen-year-old girl and photographed his sexual acts with her.” Healy, supra note 19, at 1908. See also Thomas, 893 F.2d at 1067-68.

Three other areas of extraterritorial criminal jurisdiction include “the protective principle, the universal principle, or the passive personality principle.” Giordanella, supra note 15, at 153 n.164. With respect to these other principles of U.S. criminal jurisdiction, “[t]he United States may use the protective principle to prosecute those that commit crimes against the United States, such as espionage . . . . The universal principle applies to ‘crimes against humanity’ such as war crimes . . . . The passive personality principle provides jurisdiction over those that commit crimes against U.S. nationals.” Id.

169. Bevilacqua, supra note 7, at 177.
170. Id.
171. For example, Sharon Castillo, wife of Tony “Max” Castillo, one of Costa Rica’s most notorious pimps, has yet to be charged by U.S. officials for arranging sexual encounters between sex tourists and young girls. 20/20: Paradise Lost (ABC television broadcast, Dec. 8, 2000), transcript available at http://abcnews.go.com/sections/2020/2020/transcripts/2020001208childprostitution-trans.html (last visited January 4, 2001) (on file with author). Ms. Castillo, an American citizen, assisted her husband in running a brothel in San Jose, Costa Rica, which provided underage prostitutes to American tourists. Id. Costa Rican prosecutors charged Ms. Castillo, along with her husband, with violating its child sexual exploitation laws, but she managed to flee the country. Id. 20/20 reporters tracked her down in Arizona. Id. However, even after the reporters notified Costa Rican and American authorities of Ms. Castillo’s whereabouts, no action was taken. Id.

172. Bevilacqua, supra note 7, at 177.
173. Id.
174. Id.
She explains that by only having to prove the intent to travel abroad in order to have sexual relations with a minor, the sex acts themselves do not have to be proven.\(^{175}\) However, such ease in prosecution does not necessarily result from the inclusion of the intent requirement in section 2423(b) because this requirement has problems of its own.\(^{176}\)

Furthermore, sex tourists are more likely to be apprehended in the foreign country for violating that country’s child sexual exploitation laws.\(^{177}\) If the United States prosecutes sex tourists under section 2423(b), it is necessary to collect evidence of sex acts performed abroad.\(^{178}\) While the United States is party to treaties with foreign countries that may facilitate the gathering and exchange of such evidence, these treaties are with Asian countries.\(^{179}\) An inspection of the most recent edition of *Treaties in Force*, a list of treaties and international agreements to which the United States is a party, reveals no such treaties providing for the exchange of evidence or judicial assistance between the United States and most Latin American countries.\(^{180}\) Thus, it is extremely difficult for the United States to obtain admissible evidence from these countries.

3. The Intent Requirement

As stated above, under section 2423(b), a person who travels, or conspires to travel, abroad “for the purpose of engaging in any sexual act . . . with a person under 18 years of age” may be prosecuted.\(^{181}\) The statute’s requirement that the person have the intent to engage in sexual acts with a minor, therefore, exempts everyday, ordinary travelers who have no such preconceived design.\(^{182}\)

Rather, [section 2423(b)] is a restriction on the utilization of common carriers . . . and other means of international travel in U.S. foreign commerce for the purpose of committing the prohibited sexual acts. The crime occurs during the actual travel where the offender has the requisite intent to commit a proscribed sexual act. Therefore, the law does not require proof of sexual acts but rather proof of intent to travel for the purpose of engaging in such acts.\(^{183}\)

While the intent requirement has facilitated the prosecution of sex tour operators, establishing intent has been a difficult feat in prosecuting sex

\(^{175}\) Id.
\(^{176}\) See discussion infra Part IV.A.3.
\(^{177}\) Bevilacqua, *supra* note 7, at 177.
\(^{178}\) Id.
\(^{179}\) Id. For example, “[t]he United States and Thailand have signed the Mutual Legal Assistance Treaty [hereinafter MLAT] which facilitates the gathering of admissible evidence from abroad.” Id. Mutual Legal Assistance Treaty, Feb. 1994, U.S.-Thail., Art. VII, 247 U.S.T.
\(^{180}\) UNITED STATES DEPARTMENT OF STATE, *TREATIES IN FORCE* 402-03 (2000).
\(^{182}\) Healy, *supra* note 19, at 1906.
\(^{183}\) Id.
Practitioners in this field note the difficulty with the statute’s intent requirement. Bruce Taylor, president and chief legal counsel of the National Law Center for Families and Children, explains: “Enforcing that law is tough, and we knew that... Proving that a person is in a state of mind intending to engage in sex with minors before he leaves the country is difficult. It’s a lot of work, but it can be done.” Nevertheless, the fact that the intent requirement can be proven does not diminish the problems prosecutors have had in prosecuting sex tourists and achieving convictions.

Some legal scholars believe that the intent requirement actually makes it easier to prosecute sex tourists. This is based on the fact that obtaining admissible evidence that the sex tourist committed the actual act abroad is extremely difficult. They state that with the intent requirement, extraterritoriality is no longer an issue, because the intent occurred in the United States. They further maintain that the present statute’s intent requirement eliminates the evidentiary problems because “intent can be easily revealed through contracts or travel agreements made by the defendant, evidence of which generally remains in the United States.”

However, requiring that the tourist form the intent to engage in sexual acts with minor(s) prior to reaching his destination exempts situational abusers, i.e., those who may not have planned on having sex with minors while abroad, but do so once the opportunity presented itself. Bruce Taylor explains that, “a man who leaves on a business trip but ends up having sex with a child overseas could escape prosecution. Or, an American walking across the Mexican border into Tijuana, a well-known prostitution center, wouldn’t be charged because he didn’t use commercial means of travel...” Thus, if a sex tourist “can prove that he or she traveled for any other reason, such as for business or study, then the law cannot apply.”

Some argue that such situational abuser tourists can be prosecuted under section 2423(b). They claim that the intent of the framers of the Crime Bill was to allow the prosecution of any persons who engage in sexual acts with underage persons overseas, even those who did not “solely or explicitly go overseas to seek underage sex partners.” However, there

184. Id.
185. Lambiet, supra note 11 (internal quotations omitted).
186. See Berkman, supra note 31, at 416.
187. Id. See also discussion supra Part IV.A.2.
188. Berkman, supra note 31, at 416.
189. Id.
190. See Lambiet, supra note 11. For a discussion on the difference between situational abusers and preferential abusers, see supra Part II.C.1.
192. Lambiet, supra note 11.
193. Harris, supra note 8.
195. Giordanella, supra note 15, at 149 (internal quotation omitted).
is no actual legal authority or legislative history to support this argument. Those making these assertions are nongovernmental organizations whose aim is to eradicate child sex tourism.\textsuperscript{196} While, these organizations’ goals are important and admirable, their interpretation of the framers’ intent of section 2423(b) is without statutory foundation or documentation.

B. PROPOSED AMENDMENT TO SECTION 2423(B) TO ENABLE EFFECTIVE PROSECUTION OF SEX TOURISTS, SPECIFICALLY SITUATIONAL ABUSERS

As detailed above,\textsuperscript{197} section 2423(b) in its present form allows situational abusers and other sex tourists\textsuperscript{198} to escape prosecution in the United States.\textsuperscript{199} In order to achieve the statute’s goal of preventing adults from engaging in sex acts with minors abroad,\textsuperscript{200} the statute must be amended to effectuate that purpose; the intent requirement of section 2423(b) must be eliminated. This would allow the government to prosecute situational abusers because the situational abusers could no longer avoid prosecution by claiming that they had not formed the requisite intent until they had reached the destination country.

Eliminating the intent requirement would, in effect, hold sex tourists strictly liable for committing sex acts abroad or in the United States, with persons under the age of eighteen. Strict liability crimes require no mens rea element.\textsuperscript{201} Typically, strict liability applies only to activities involving the public health, safety and welfare.\textsuperscript{202}

The imposition in this context of absolute liability has been explained on the grounds that the proscribed conduct may seriously threaten a community’s health or safety. Under this view, the threat to the public health and safety posed by the thing or activity which is the object of the statute is considered sufficient to place a defendant on notice of the likelihood of its regulation, and thus to excuse the need to prove mens rea.\textsuperscript{203}

The sexual exploitation of children is undoubtedly a concern of public health, safety and welfare. Though the children at issue here are not United

\textsuperscript{196} Sources making these assertions cited to statements by a nongovernmental organization, specifically ECPAT. See Giordanella, supra note 15, at 149 n.120. See also ECPAT, U.S. Law Against Child Abuse, supra note 37 (in which the organization states “[h]owever it is the interpretation of the framers of the 1994 legislation that persons engaging in sexual acts with minors overseas can be charged, even if they did not solely or explicitly go overseas to seek underage sex partners.”).

\textsuperscript{197} See supra Part IV.A.

\textsuperscript{198} See Lambiet, supra note 11. See also notes 192, 193 and accompanying text.

\textsuperscript{199} Harris, supra note 8.

\textsuperscript{200} See Todres, supra note 6, at 8.

\textsuperscript{201} 21 AM. JUR. 2D Criminal Law § 144 (2000).

\textsuperscript{202} Id. § 145. See, e.g., Commonwealth v. Koczwara, 155 A.2d 825, 397 Pa. 575 (1959) (upheld conviction of bar owner on theory of strict liability when he was not present when alcohol was served to minors).

\textsuperscript{203} Id.
States citizens, but residents in foreign countries, their citizenship or residency status should be of no consequence.204

It could be argued that this is not a strict liability crime because the sex tourist does have the intent to engage in sexual acts with minors, the intent is just formed in the destination country and not the country from which the sex tourist has traveled. However, the proposed amendments to section 2423(b) would eliminate consideration of intent entirely. Section 2423(b) as amended would read as follows: a person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, and engages in an act of prostitution with a person under eighteen years of age shall be fined and imprisoned not more than fifteen years, or both.

The “engages in an act of prostitution” provision is necessary in order to avoid constitutional equal protection problems.205 If the amended statute instead criminalized any person engaging in sexual acts with a person under the age of eighteen, the statute would, essentially, make statutory rape206 a federal crime. Equal protection problems would arise because the federal age of consent would be eighteen, whereas the age of consent varies among states.207 Thus, sex tourists who are similarly situated might be denied equal protection of the laws if they are prosecuted under a federal statute, but are not prosecuted under a state statute.208 In order to avoid this problem, the prostitution provision becomes necessary.

The prostitution provision affords the opportunity to avoid such constitutional issues. The inclusion of this provision dissipates such problems because the only state where prostitution is legal, Nevada, provides that prostitutes must be at least eighteen years of age.209 Engaging in an act of prostitution with a person under the age of eighteen is a “crime against a child.”210 The proposed amendment also criminalizes acts of prostitution with persons less than eighteen years of age. Thus, sex tourists

204. The welfare and safety of children globally should be of great importance because the “exploitation of children and youth assaults there integrity and violates their most fundamental rights.” de Lara Ruiz, supra note 18.
205. The Fourteenth Amendment guarantees that similarly situated persons will receive equal protection of the laws. U.S. CONST. amend. XIV, § 1.
206. “Statutory rape” is defined as “[u]nlawful sexual intercourse with a person under the age of consent (as defined by statute), regardless of whether it is against that person’s will.” BLACK’S LAW DICTIONARY 521 (pocket ed. 1996).
207. For example, the age of consent in California is sixteen (CAL. PENAL CODE § 261.5 (West 1999)); the age of consent in Nevada is fourteen (NEV. REV. STAT. § 201.230 (2001)).
208. For example, a tourist could travel to Nevada and engage in a consensual sex act, but not prostitution, with a person under eighteen but over fourteen, without violating Nevada’s statutory rape laws. See NEV. REV. STAT. §§ 201.230 (2001). However, a tourist traveling to Costa Rica and engaging in a sex act with a person between the ages of fourteen and eighteen could potentially be prosecuted if the statute was amended to criminalize engaging in sexual acts with persons under eighteen.
engaging in acts of prostitution with minors, whether the act is committed in the United States or abroad, would be treated similarly under the laws.\footnote{211}

It may also be argued that eliminating the intent requirement from section 2423(b) would remove the statute’s jurisdictional hook.\footnote{212} However, the U.S. can establish jurisdiction without the intent requirement; territoriality and nationality principles may still be utilized in order to establish jurisdiction under the proposed amendment.

There is no constitutional bar to the extraterritorial application of penal laws. Numerous decisions have upheld the authority of the United States to enact and enforce criminal laws with extraterritorial effect.\ldots

From the body of international law, the Congress may pick and choose whatever recognized principle of international jurisdiction is necessary to accomplish the purpose sought by the legislation. The mere fact that, in the past, Congress may not have seen fit to embody in legislation the full scope of its authorized powers is not a basis for now finding that those powers are lacking.\footnote{213}

The intent of section 2423(b) “was to reduce the incidence of sexual exploitation, particularly of children.”\footnote{214} Congress may utilize territoriality and nationality principles to effectuate that purpose. Thus, the proposed amendment to section 2423(b) still has the requisite jurisdictional hook.

\section*{V. CONCLUSION}

The exploitation of children by sex tourists must stop. The laws of many of the destination countries, especially Latin American countries, are insufficient and do little to curb the crisis. Many of these countries lack the resources and manpower to enforce these laws; where there is the present ability to enforce the law, corruption within the system usually prevents apprehension of offenders. The United States’ reaction to the problem has also been problematic. The U.S. has passed legislation that allows

\footnote{211. It may be argued that the prostitution provision would still allow some sex tourists to escape prosecution because it would only punish those who procure sexual favors in exchange for money, goods, or other tangibles. Those who engage in sexual acts with minors without “paying” for these services could escape prosecution. While this argument has some merit, the potential number of those who would escape prosecution under the amended statute would be miniscule. Sex tourists would be hard-pressed to find an indigent child who would be willing to engage in sexual acts without expecting payment of some form in return.}

\footnote{212. 18 U.S.C. section 2423(b) (1999) utilizes nationality principles in criminalizing the acts of U.S. nationals who travel or conspire to travel abroad with the intent of performing sexual acts with minors. Bevilacqua, \textit{supra} note 7, at 177. For further discussion see \textit{supra} Part IV.A.I.}


\footnote{214. Todres, \textit{supra} note 6, at 8.}
prosecution of tourists who intend to engage in sexual acts with minors while abroad. However, this legislation has been mostly ineffective to date; prosecutions of sex tourists are rare. In response to these problems, section 2423(b) should be amended and the intent requirement removed. Such a provision would be more effective and give prosecutors the ability to prosecute those who, under the current statute could escape prosecution.