EXPLOITED:

Redefining Sexual Trafficking of Minors & A Uniform Approach for the Protection of Our Children

Written by Ryan Timothy Jacobs

The University of North Carolina, Wilmington
INTRODUCTION

Human trafficking is a widespread epidemic throughout the world. The United States of America has been an international leader in the prevention of this atrocity. As the most influential state in the United Nations, the U.S. needs to strengthen the enforcement against the crime of human trafficking. Stricken laws need to be implemented internationally and domestically. “Trafficking is not just an issue that happens to people in other countries. The United States is a source and transit country, and is also considered one of the top destination points for victims of child trafficking and exploitation. Cases of human trafficking have been reported in all 50 U.S. States; anyone can be trafficked regardless of race, class, education, gender, age, or citizenship when forcefully coerced or enticed by false promises.”¹ The victims of human trafficking may come from different backgrounds, but they all share one common attribute; vulnerability. “Human trafficking is also known as modern day slavery. Human trafficking deviates from our historic view of slavery, making it hard to conceptualize. But ultimately, slavery today and 200 years ago share the same notion: It’s the notion that one person’s life, liberty and fortune can be under the absolute control of another, and be sold, bought, or used at the will of the owner.”²

More so, many of the victims of human trafficking are children. “Child victims of trafficking are recruited, transported, transferred, harbored or received for the purpose of exploitation. They may be forced to work in sweatshops, on construction sites or in houses as

¹ Child Trafficking. (n.d.). Retrieved April 7, 2015, from http://www.unicefusa.org/mission/protect/trafficking?gclid=CjwKKEAjw9bKpBRD-geiF8OHz4EcSJACO4O7T01nSDPHdZqGx5_xihjR8eXR65YLF_lrv0gQNGDvmqxoCJoTw_wcB
domestic servants; on the streets as child beggars, in wars as child soldiers, on farms, in traveling sales crews or in restaurants and hotels. Some are forced to work in brothels and strip clubs or for escort and massage services.3 The following sections will provide an extensive examination of international and domestic definitions of human trafficking, sex trafficking, and most significantly: child sex trafficking. The purpose of the inquiry is to evaluate the meaning of the definitions.

By emphasizing the countenanced interpretations of human trafficking, suggestions will be made available; which will benefit federal and state laws; in accordance with international and domestic approaches to human trafficking. Furthermore, analyzing various definitions will aid in establishing a more valuable domestic definition of domestic minor trafficking. Afterwards, the current article will assess recent domestic policies and laws to recommend a uniform approach for the U.S. to enhance federal law.

REDEFINING SEXUAL TRAFFICKING OF MINORS:

EXPLOITATION

“Trafficking in persons” and “human trafficking” have been defined by the U.S. Department of State’s Definitions and Methodology webpage as “umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. The Trafficking Victims

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3 Child Trafficking. (n.d.). Retrieved April 7, 2015, from http://www.unicefusa.org/mission/protect/trafficking?gclid=CjwKEAjw9bKpBRD-geiF8OHz4EcSJACO4O7TO1nSDPHdZqGx5_xihjR8eXR65YLf_lrv0gQNGDvmqxoCJoTw_wcB
Protection Act (TVPA) of 2000 (Pub. L. 106-386), as amended, and the Palermo Protocol describe this compelled service using a number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labor.” The definition continues, by stating, “human trafficking can include but does not require movement. People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so.”

4 Exploitation is not used within these definitions. Out of the seven definitions, the term exploitation is not used to define” sex trafficking” nor “child sex trafficking”. Yet, it is mentioned in all five of the other definitions: Forced Labor; Forced Child Labor; Involuntary Domestic Servitude; and Unlawful Recruitment and Use of Child Soldiers.

Also, the U.S. Department of State’s webpage, as of the Trafficking in Persons Report 2013, defines “Child Sex Trafficking” as:

- When a child (under 18 years of age) is induced to perform a commercial sex act, proving force, fraud, or coercion against their pimp is not necessary for the offense to be characterized as human trafficking. There are no exceptions to this rule: no cultural or socioeconomic rationalizations should prevent the rescue of children from sexual servitude. The use of children in the commercial sex trade is prohibited both under U.S. law and by statute in most countries around the world.

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Sex trafficking has devastating consequences for minors, including long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and even death. \(^5\)

In addition, the United States places strict standards on other countries in the TVPA. This includes assurance that they produce various opportunities that are not available within U.S. “The Act states that other governments should provide "legal alternatives to removal to countries in which [trafficking victims] would face retribution or hardship." This language is significantly less restrictive than the "extreme hardship involving unusual and severe harm" that victims in the United States must demonstrate to prevent removal. This discrepancy undermines the validity of the United States' insistence that other countries comply with anti-trafficking measures, given the lesser protections the United States provides to victims within its own borders.”\(^6\)

Moreover, “the Act should adopt a broader definition that includes all kinds of trafficking, similar to that of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention Against Transnational Organized Crime. The Protocol’s operative concept is exploitation, rather


than coercion.”\textsuperscript{7} The United Nations Convention Against Transnational Organized Crime determined:

- “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- “Child” shall mean any person under eighteen years of age.\textsuperscript{8}

It is imperative that the United Nations definition of “trafficking in persons” is emulated by the United States of America, in order to achieve successful strategies; combating the sexual exploitation of children.

More so, “Sex Trafficking of Children or by Force, Fraud, or Coercion, 18 U.S.C. § 1591. Section 1591 criminalizes sex trafficking, which is defined as causing a person to engage in a commercial sex act under certain statutorily enumerated conditions. A commercial sex act means any sex act, on account of which anything of value is given to or received by any person. The specific conditions are the use of force, fraud, or coercion, or conduct involving persons under the age of 18. The punishment for conduct that either involves a victim who is under the age of 14 or involves force, fraud, or coercion is any term of years or life. The punishment for


conduct that involves a victim between the ages of 14 and 18 is 40 years.” Stipulating 14 years of age, as a crucial age for criminalizing traffickers, this should also be upheld by domestic law in all human trafficking offenses to protect children from being treated as a criminal.

RECOMMENDATIONS

It is necessary for the United States to reevaluate the definition of domestic minor trafficking, including sex trafficking of children, to create a more reasonable meaning; emphasizing exploitation. The United Nations Convention Against Transnational Organized Crime’s definition (see above) provides the context that would be valuable at the domestic level. As the U.S. has been a predominately significant member of the U.N., it would serve the state to undertake its’ international role to serve domestic policy. As 18 U.S.C. § 1591 imposes fines and sentences based on the age of the child, this should also reflect in the protection of the child from facing punishment. As the U.S. strengthens laws against the exploitation of minors, laws should better express and serve to defend children from criminalization. U.S. domestic and international policy should be coextensive.

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A UNIFORM APPROACH FOR THE PROTECTION OF OUR CHILDREN

"The fact is human trafficking is happening right here, right now, in the United States, probably in any city where anybody lives. Just because you don’t know anything about it doesn’t mean it’s not happening." - Vicki Zito, Mother of Survivor

CURRENT STATE LAW(S):

CALIFORNIA AND WASHINGTON

In the past few decades, there has been a multifold of policies proposed and enacted by state governments to thwart human traffickers and protect minors from sexual exploitation. These demands for heightened management of human trafficking illustrate the need to strengthen the federal government’s role in enforcing the law by passing significant legislation. Empowering the federal government with the ability to increase their role is overwhelmingly imperative. By doing so, the development of more sufficient procedures to prosecute criminals and protect children will be established. This will also assist state’s capacity to actuate within a uniform standard facilitated by the U.S. federal government. Moreover, an efficacious federal provision regarding tutelage for state governments will further canopy state
enforcement, as well as envelope crucial policies to this fundamental achievement. The following will examine current laws enacted by state governments that exemplify the necessary policies towards a uniform approach to prosecuting criminals and protecting minors from sexual exploitation.

In California, “voters passed Proposition 35 (the CASE Act) with over 81% approval, making it the most popular initiative in California history and the first initiative to receive over 10 million votes,”\(^{10}\) in November 2012. CASE is abbreviated for, “Californians Against Sexual Exploitation”. Among the findings and declarations of the CASE Act, an emphasis is placed on protecting children. It also states, in number five of section two of the CASE Act, that it is necessary to, “strengthen laws to combat the threats posed by human trafficking and online predators seeking to exploit women and children for sexual purposes.”\(^{11}\) The CASE Act is an exceptional example of U.S. states, and the desire to stricken laws.

Obtaining the funds necessary to provide services for victims is illustrated by Washington’s Sex Crimes law.

“Washington’s Sex Crimes law has three funding provisions. The law imposes a $5000 fine on all johns for soliciting and patronizing a minor. A $5000 fine is also imposed for pimping a minor. Vehicles used to commit commercial sexual abuse of a minor are impounded and the owner is charged $2,500 to release the vehicle. All the fees are deposited

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into a “prostitution prevention and intervention account” to provide (1) “mental health and substance abuse counseling, parenting skills training, housing relief, education, and vocational training” for youth diverted for prostitution offenses; (2) services for sexually exploited children “in secure and semi-secure crisis residential centers with access to staff trained to meet their specific needs”; (3) funding for services for child victims of sexual abuse and assault; and (4) funding for prostitution prevention and intervention services.”

Every fine imposed and collected pursuant the sexual exploitation of a minor should be deposited in a victim assistance fund to be available for appropriation to fund services for victims. A portion of the fines collected and deposited pursuant to the sexual exploitation of a minor should be granted to community based organizations that serve victims.

**RECOMMENDATIONS**

Protective provisions for trafficked children or “Safe Harbor” laws exhibit the necessity for a uniform approach. Darren Geist, from the *New York University of Law*, determined:

- Safe Harbor laws should have four central features. First, Safe Harbor laws need to focus on rescuing and protecting prostituted minors. Prostituted minors need to be protected from pimps, and from themselves. They are at serious flight risk and may need to be confined in a protective service or some variant of detention. Without the option of putting victims in secure facilities, they may simply run away and return to exploitation. Second, minors have to be protected from the criminal and juvenile justice system which often treats them as criminals and delinquents. Police should be trained to approach potential cases of prostituted minors as rescues rather than arrests. Juvenile detention can itself be traumatic and harmful, reinforcing the victim’s sense of abandonment and shame, and the victims often return to life on the street upon release. These first two objectives are often at tension with one another, which will be explored later in this article. Third, prostituted minors are victims of sex trafficking and suffer from severe

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trauma and abuse. As a result, they can be difficult and troublesome victims. There need to be specialized services to handle their unique needs. Regular services like shelters and foster homes are often insufficient. Many of the prostituted minors have been failed by that system time and time again. Fourth, the law needs to deter the prostitution of minors through aggressive prosecution of pimps and johns. Once prostituted minors are recognized as sex trafficking victims, efforts must be made to arrest and prosecute their exploiters. Further, the prosecution of minors hinders victim cooperation, which is almost always necessary to convict pimps and johns.\(^\text{13}\)

Requiring data collection for all relevant trafficking statistics including number of arrests, prosecutions, and convictions from the states is foremost in tackling this issue, as the vast majority of states within the U.S. have recently adopted stricter legislation. For example, at least thirty one U.S. states enacted new anti-trafficking laws incorporating trafficking of children and the development of rehabilitative services for exploited youth. Other important aspects that need further evaluation include: how trafficked children are treated under the law, such as being treated as victims, not prosecuted as prostitutes; meaning, diverted from the justice system, and placed in appropriate services.

Additionally, protective response to prevent further victimization; and those who fund, profit from, or pay for sex with children should be appropriately punished are the end goal of this approach. Thus far, twenty eight states have enacted legislation addressing these issues. Under a uniform approach, all U.S. states would have to complement federal law. Geist suggested four recommendations:

“to be accepted with a strong qualification”, in order to establish uniformity; “preventing states from serving their role as laboratories for policy.” These included: “Decriminalize prostitution for minors and divert them to specialized services, but only if Protective Services in secure or semi-secure facilities are available”; if they are not available, an in-custody program with specialized services should be developed; provide specialized services ideally through survivor-based groups partially funded by fines imposed on traffickers; increase fines on traffickers, and fines to treat them as sex traffickers; provide training and awareness raising programs for first responders, and members of the legal, medical, and social services professions likely to encounter prostituted minors.¹⁴

Further analysis of the issues: affirmative defense; immunization from prosecution; and pretrial diversion, which concerns minors charged with prostitution’s access to programs including housing, chemical dependency treatment, trauma treatment, and other services, should provide beneficial federal policy procedures. Victims with prior convictions of prostitution or related offenses petitioning to have their records cleared should then be considered whence federal legislation is passed; for the solidarity of U.S. governance.

In general, exceptional assurance of the appropriation of funds for trafficked victims programs, concerning education, skills training and training for state personnel, services for at-risk youths, housing, rehabilitative services, and other services is vital to protecting all vulnerable populations of human trafficking. The federal government should increase fines on sex traffickers to provide for state’s funding of programs. States forfeiting (at least) twenty five percent of their funds from trafficking crimes to agencies that provide programs for victims should accommodate these needs.

Also, “state policy towards prostituted minors conflicts with federal law. Passed in 2000, the Trafficking Victims Protection Act (TVPA) marked a major shift in federal policy, reorienting legal efforts against human trafficking towards a “3P” strategy of prosecution, protection, and prevention. The TVPA and subsequent reauthorizations addressed prostituted minors as a special case. Under Section 1591, the government does not need to prove force, fraud, or coercion for minors under the age of 18 in commercial sexual exploitation. Every minor in commercial sexual exploitation who has a pimp is a victim of sex trafficking. As a result, federal law treats most, if not all minors in prostitution as victims of sex trafficking, with cases of survivor sex being a possible exception. While the initial target of the statute was on international trafficking, the language of the TVPA is broad enough to cover domestic sex trafficking, an outcome which was in the minds of several of the sponsors.”\textsuperscript{15} Importantly, mirroring the protection of minors to the age of a minor to related offenses, specified in U.S.C. § 1591. Section 1591; for these procedures should entail significantly comparable protective clauses.

Furthermore, “state law and policy of arresting and prosecuting prostituted minors also runs in tension with other state laws. Every state has laws on statutory rape and child abuse. These laws are often justified by a need to “protect minors from sexual intercourse” and “predatory, exploitative sexual relationships.” State laws maintain that under a certain age, minors cannot consent to sex. Many states also recognize minors lack capacity to enter contracts

or engage in commercial activities. Yet once money changes hands, the legal system treats a victim of sexual abuse as a prostitute, as a criminal and delinquent. Even the word “prostitute,” according to Sharmin Bock, Alameda County Deputy District Attorney, “implies a willingness and consent that isn’t legally sustainable.”

Lastly, as states have illustrated, independent laws convolute abilities of the U.S. to provide an exemplified manner to approach the serious problem that plagues children. Funds should also be reallocated to other projects that contribute to confronting the problem. Awareness and education of issues that have arisen should be a continuous aspect of the state’s role in combating serious issues. “The End Trafficking project is the U.S. Fund for UNICEF’s initiative to raise awareness about child trafficking and mobilize communities to take meaningful action to help protect children. In partnership with concerned individuals and groups, the End Trafficking project aims to stop all exploitation.” Once more, by re-defining the definition of sexual trafficking in minors, “a “victim-centered philosophy” with counseling, emergency housing, and crisis intervention, rather than detention, provides the best chance to protect and restore children, instead of stigmatizing them through criminal penalties.”

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17 Child Trafficking. (n.d.). Retrieved April 7, 2015, from http://www.unicefusa.org/mission/protect/trafficking?gclid=CjwKEAjw9bKpBRD-geiF80H4eC3JACO4O7TO1n5DPHdZqGx5_xihjR8eXR65YLf_lrv0gQNGDvmqxoCJoTw_wcB