

## **Prevention, Prosecution, and Protection: A Look at the United States' Trafficking Victims Protection Act**

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### ***I. Introduction***

Human trafficking is the second largest fast growing criminal industry in the world today. (U.S. State Department) The illegal trade of humans is often misunderstood and misrepresented as purely an international issue, often overlooking that human trafficking happens throughout the United States. Human trafficking is a multifaceted issue that includes fraud, force, coercion, and exploitation for sexual purposes as well as for purposes of forced labor. (The Sold Project) Human trafficking is not an issue exclusively about children; however children are most vulnerable to these forms of exploitation and will be the focus of this paper. Additionally while human trafficking includes both labor and sexual exploitation, the focus of this paper on sexual exploitation is not to devalue focus on slave labor but time and length constraints force a specific focus on one issue.<sup>1</sup>

The commercial sexual exploitation of children (CSEC) is the agreed upon term for child victims of human trafficking for sexual purposes. (Cooper) CSEC as defined by the anti-trafficking advocacy group The Sold Project, is something that

“arises through a commercial transaction or exchange in which one or more parties gain a benefit – cash, goods or kind – from the exploitation for sexual purposes of someone aged below 18. CSEC includes child prostitution, child pornography, and other forms of transactional sex where a child engages in sexual activities to have key needs fulfilled, such as food, shelter or access to education.” (The Sold Project)

This provides a shared definition to officials and advocates who come in contact with sexually exploited children including law enforcement, medical care providers, social service agencies, and lawyers.<sup>2</sup>

In 2000, the United States implemented the Victims of Trafficking and Violence Prevention Act (TVPA) to directly respond to the tragedy of human trafficking and commercial sexual exploitation. The law was written for a threefold purpose: to prevent exploitation, prosecute offenders, and protect victims. The act was reauthorized in 2003 to produce the Trafficking Victims Protection Reauthorization Act (TVPRA) and since 2003 there has been more prosecution against offenders of these types of crimes. (Small et al.) Carrying out the threefold purpose of the TVPA however has had strains for those involved in anti-trafficking efforts. Addressing all three areas equally results in a tension between those taking a law enforcement approach or a victim centered approach because the treatment given to victims differs depending on which approach is used.

The difference between the victim centered approach and the law enforcement approach results from misinterpreting or misunderstanding the reasons children become victims of sexual exploitation. The responsibility of clearing this misunderstanding has most commonly fallen upon nonprofit agencies while the prosecution of criminals remains the main focus of the U.S. government. Nonprofit agencies such as the Sold Project, The Polaris Project, and Stop Child Trafficking Now work to prevent children from falling into circumstances that put them at a higher risk of being sexually exploited. For those in law enforcement difficulties in defining the issue have led to difficulty in being able to prosecute cases. Successful prosecution often relies on victim testimony which re-traumatizes children.

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<sup>1</sup> Professionals and anti trafficking advocates agree that human trafficking victims, whether victims of sexual or labor exploitation, are both victims of modern day slavery and thus can be talked about separately while understood that one is deeply related to the other.

<sup>2</sup> CSEC is appropriate to use interchangeably with human trafficking unless distinguished otherwise because of the agreement that most instances of human trafficking involve this kind of exploitation.

High conviction rates must not be at the expense of putting exploited children through the stress of testimony at a trial when that stress works counter to the rehabilitation that they need. (Bump) Nonprofit groups that advocate prevention and protection as well as prosecution that does *not* revictimize children must work with government officials in order for success in all three areas of the Trafficking Victims Protection Act to occur.

### ***I. Significance***

The United States State Department reports that human trafficking is one of the fastest growing crimes in the world and next to drugs, is the largest criminal industry globally. Both an international and domestic issue the exploitation of humans, and especially children, is a violation of the most basic of human rights. As a multibillion dollar industry with nearly 1.2 million children in the sex trade around the globe (UNICEF) human trafficking has been the focus of many nonprofit organizations. The United States however has limited federal policy that directly impacts the commercial sexual exploitation of children, the key piece of federal legislature being the Trafficking Victims Protection Act (TVPA) of 2000. The secret nature of human trafficking makes reducing the spread of this crime difficult. Both law enforcement nonprofit agencies work domestically and internationally at anti-trafficking efforts. Therefore these anti trafficking efforts within the United States are the basis for this paper.

### ***II. Question and Hypothesis***

I suggest that the principal law, the Trafficking Victims Protection Act, while having a threefold purpose, because of a Presidential incentive to prosecute trafficking cases, often fails to carry out the purposes equally. Additionally I suggest that nonprofit agencies better implement prevention strategies, working to address the root causes of exploitation while making human trafficking an issue that is understood by all people, not just those within the areas of law, social services, and medical professions. These advocacy groups' victim centered approaches compliment the law enforcement approaches that are taken by prosecutors. Ultimately the question I address is: how have the TVPA and subsequent legislation been used in cases regarding the commercial sexual exploitation of children? Because of the advocacy efforts of nonprofit agencies and the law enforcement approach that government officials take I hypothesize that the TVPA, while mandated to promote **prevention, protection, and prosecution**, has been more heavily used to prosecute offenders than protect the victims, often at the expense of the revictimization of the children while prevention efforts fall too heavily on nonprofit groups alone.

### ***III. Methodology***

Because so many different types of agencies come into contact with victims of human trafficking I attempted to gain information from each of these agencies and departments. To understand the United States' involvement with human trafficking I examine how nonprofits and law enforcement agencies work together "to deter the spread of crime, to punish perpetrators, and protect victims." (Small et al. 1) To do this, I examined three different components of the human trafficking issue, the language used to define the problem, collaborative efforts of various agencies, and court cases against trafficking. To understand the language and the complexities that arise when trying to define the issue<sup>3</sup>, I attended two trainings at the National Center for Missing and Exploited Children (NCMEC) on the topic of the commercial sexual exploitation of children. A goal of the seminar was to train medical providers, social service agents, and law enforcement officials on the topic of identifying victims of CSEC and how to treat and examine victims when they come into contact with them.

To understand the collaborative efforts from various agencies I looked at nonprofit anti-trafficking efforts from groups such as The Sold Project, The Polaris Project, and Stop Child Trafficking Now. I pulled mission statements, goals, campaign efforts, statistics, and educational resources via internet to see what action they were taking against this crime. Since nonprofits are issue oriented I examined these anti-trafficking groups in order to see how they are focused on eliminating the rapid spread of human trafficking, what awareness they are promoting, and how they go about promoting that awareness.

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<sup>3</sup> For example, while human trafficking is not exclusively an issue related to children alone, the U.S. State Department estimates that over half of trafficking victims are minors and about 80% of them are woman and girls. The language used to talk about this particular group is specific to this cohort and has various implications depending on how one understands that language.

*Sex and Money: A National Search for Human Worth*, is a documentary that uncovered the hidden truths behind human trafficking within the United States and was an important resource in discovering how the general American public responds, or doesn't respond, to the issue. It also detailed involvement from federal officials and other nonprofit agencies, journalists, filmmakers, and academic professionals. Additionally, I examined annual reports from the federal government to see how the government was responding to this issue and how they were conveying that information to the public. To examine the court cases prosecuting traffickers I examined the two key pieces of federal law, the TVPA of 2000 and TVPRA of 2003.<sup>4</sup> The purposes set forth within these pieces of legislation I evaluated against court cases that have used these laws in prosecution. Additionally, federal agencies compile annual reports with statistics and research conducted on the issue of human trafficking. The U.S State Department and Department of Justice produced such reports from which I was able to gather specific data.

The National Center for Missing and Exploited Children (NCMEC), where I am currently interning, also compiled an annual report<sup>5</sup> with data from each of their different departments. This report documents the efforts they have made, the results they have attained and the progress they have had within each department. NCMEC also operates as a law enforcement training center where I was able to attend seminars and trainings about topics related to the commercial sexual exploitation of children. This firsthand knowledge from trained professionals provided the framework for the subsequent research I conducted through secondary sources that included an analysis of federally prosecuted CSEC cases, new articles highlighting instances of human trafficking offenses, and articles written for professional scholarly journals.

Because of the time constraints I had to restrict the amount of prosecuted cases and nonprofit groups I analyzed. My personal experience doing advocacy work with The Sold Project and interning at NCMEC led me to heavily rely on resources obtained from these two places because it gave me the most detailed information I could find on the issue. With the respected time constraints, materials provided by NCMEC were more available and more easily obtained. Attending seminars and interacting with law enforcement professionals during my internship allowed me to have personal experience that complimented the research I was able to conduct through the use of secondary sources.

The biggest problem encountered during research was in gathering data and is best summarized by Jonathon Todres in an article for *The Vanderbilt Journal of Transnational Law* when he states that, "the lack of uniform definitions and terminology leads to data sets that may be over-or under-inclusive, and, even if accurate, difficult to compare with other data sets that rely on a different definition of trafficking or other key terms." (18) I encountered this very issue when gathering my own data. For example, 1.2 million children are trafficked globally each year according to UNICEF. No distinction however is made between whether those 1.2 million children being victims of labor trafficking or sex trafficking, as both are seen as part of the larger category of human trafficking. The *Sex + Money* documentary about exposing human trafficking in the United States concluded that there are at least 100,000 American children who are victims of trafficking each year. That number in other documents was as high as 700,000, and sometimes distinction *was* made between sex trafficking and labor trafficking. However since human trafficking is agreed upon as a violation of basic human rights, and one form most often involves the other, the lack of distinction between labor and sex trafficking was not detrimental to this research because it is agreed that all forms of exploitation are heinous and should be eliminated.

#### **IV. Framing the Problem**

##### **a. History of Legislation**

The earliest formal definition of the commercial sexual exploitation of children came in 1996 from The Declaration and Agenda for Action of the World Congress against Commercial Sexual Exploitation of Children in Stockholm, Sweden. The definition they produced was,

"The commercial sexual exploitation of children is a fundamental violation of children's rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object.

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<sup>4</sup> H.R. 3244 and H.R. 2620 respectively

<sup>5</sup> The most recent report was from 2009.

The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labor and a contemporary slavery<sup>6</sup>” (Smith et al. 86)

Considering the rapid growth of this criminal industry the policy produced in the two decades since this definition remains small. In 1984 the National Center for Missing and Exploited Children (NCMEC) was created as a national clearinghouse for missing and exploited children as a response to the passing of the Missing Children’s Assistance Act. Over a decade later in 1996 a specific department for exploited children was created at NCMEC. It wasn’t until 2000 that the first piece of federal law to criminalize human trafficking was produced. The Trafficking Victims Protection Act (TVPA) was this comprehensive law that specifically addresses trafficking with a threefold purpose of prevention, prosecution, and protection. (TVPA Fact Sheet, 2003<sup>7</sup>) The TVPA also federally provided a uniform definition for the commercial sexual exploitation. “The term ‘commercial sex act’ means any sex act on account of which anything of value is given to, or received by, any person. The term ‘exploiter’ means any person who, for financial gain, procures, sells, or purveys a person for the purpose of engaging in an unlawful commercial sex act, including pimps, panderers, procurers, and brothel operators.” (TVPA Section 103)

However, 2003 was the pivotal year for federal anti trafficking efforts. That year the Bush Administration allocated \$200 million dollars to anti trafficking efforts with the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003.(TVPA Fact Sheet, 2003) In the same year the PROTECT ACT strengthened tools for law enforcement officials to use to investigate and prosecute violent crimes against children. These tools include things such as eliminating statutes of limitations on crimes involving the sexual abuse of a child and increasing maximum incarceration from 15 to 30 years for CSEC crimes. (PROTECT Act Fact Sheet, 2003) The Innocence Lost Initiative, through combined effort of the FBI’s Crimes Against Children department and NCMEC, began in 2003 to create task forces in U.S. cities with high volumes of CSEC crimes in addition to other action. (Smith et al.) In an analysis for the Department of Justice the Urban Institute found that, “had the 2003 initiatives never occurred, the number of CSEC prosecutions would have been lower” (58) They also found that the TVPA of 2000 was key in successful prosecutorial efforts as defendants who cases were filed after the passage of the TVPA had a greater likelihood of being convicted than prior to the TVPA. Thus these federal laws *are* being used to achieve positive prosecution outcomes<sup>8</sup> but further research reveals that the other aspects of the law, prevention and protection, should be given heightened intention in order to achieve the ultimate goal of eradicating human trafficking. Federal law alone does not successfully achieve this goal.

Jonathon Todres, in his article “Taking Prevention Seriously: Developing a Comprehensive Response to Child Trafficking and Sexual Exploitation,” for the *Vanderbilt Journal of Transnational Law*, states that “focusing on prevention might be relevant to other issues where the dominant response has been criminal law. Similar to state responses to child trafficking and CSEC, the focus in other areas has often centered on addressing the harm once it has occurred rather than tackling the root causes of those problems.” (8) It is clear that addressing the root causes of the problem of human trafficking needs to be given adequate attention while criminal law continues to find success in the courts.<sup>9</sup>

## **b. Implications of Language**

Another major problem faced in the fight against human trafficking is the language used to identify the victims of exploitation. The Urban Institute interviewed federal United States attorneys who agreed that the language used to discuss CSEC needs to be uniform.

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<sup>6</sup> This conference was organized by the Swedish government, the United Nations International Children’s Emergency Fund(UNICEF) and the End Child Prostitution, Child Pornography and Trafficking in Children for Sexual Purposes (ECPAT International)

<sup>7</sup> See Appendix for full fact sheet

<sup>8</sup> While it is true that more cases are being prosecuted due to the TVPA’s enactment, UNICEF and the Department of State reveal that for the extreme amount of exploited victims the amount of prosecutions and convictions is unsatisfactorily small.

<sup>9</sup> One such root cause is that the business of sexual exploitation is a profitable enterprise. (Smith et al.)

These prosecutors stated that a goal in the characterization of this problem is “to shift the criminal justice field and public from viewing child prostitutes as criminals to viewing them as victims.” (Smith et al. 64) I attended a seminar at the NCMEC where Sharon Cooper M.D., of the University of North Carolina School of Medicine, agreed that it is important for people to identify sexually exploited children as victims of exploitation even if they are criminally liable for their actions. Children under the age of 18 are easily brainwashed, coerced, and often have become normalized to sexual harm leading them to believe that their sexuality is linked with violence, disrespect and sexual objectification. Therefore it is important to use uniform language when talking about all victims of sexual exploitation because it allows all practitioners to understand the problem and give equal treatment to victims.

The advocates in the Urban Institute analysis noted that a dichotomy exists between foreign national prostituted children and domestic prostituted children. Domestic victims are more likely to be seen as ‘prostitutes’ while foreign national victims are more likely to be seen as ‘sex trafficking victims.’ These different labels when applied to children influences the way the children view themselves, either as a criminal or as a victim, because of the stigmas associated with each term. The fact is we, those trying to combat the issue, treat prostitutes different from sex trafficking victims, so a shift must be made in the way we discuss them in order to properly care for the victims as such. The TVPA makes no difference between foreign national and domestic victims and therefore neither should practitioner involved in caring for human trafficking victims. Advocates also suggest that ‘pimps’ be referred to as ‘sex traffickers’ because a trafficker seems to imply that a person was coerced and controlled and thus a victim, not a criminal. (Smith et al.)

Additionally there needs to be a shift from a law enforcement approach to a victim centered approach when dealing with csec victims. A law enforcement approach relies heavily on the prosecution of offenders while a victim centered approach focuses on the rehabilitation of the victims. A third and perhaps best approach, and one that Jonathon Todres suggests should be the biggest focus, is a child-centered approach.<sup>10</sup> A victim approach, while working positively to protect a child, is only an approach that can occur after a crime has already happened, making it a post facto model. Todres suggests that if professionals use a child-centered approach when developing responses to the trafficking and commercial sexual exploitation of child it would help to prevent harm to the child before a crime would be able to occur. A child-centered approach focuses *every* aspect on the well being of the child, not just on their rights as survivors or victims. With harm prevention at its core, a child-centered approach has a focus of overall child well being. (Todres)

### c. Collaboration

Part of the Trafficking Victims Protection Act included the creation of the President’s Interagency Task Force to Monitor and Combat Trafficking in Persons which included the following agencies<sup>11</sup>:

- U.S. Department of Health and Human Services
- U.S. Department of Justice
- U.S. Department of Labor
- U.S. Department of State
- U.S. Department of Homeland Security: U.S. Citizenship and Immigration Services(USCIS) and Bureau of Immigration and Customs Enforcement (ICE)<sup>12</sup>

The U.S. Department of Health and Human Services (HHS) is the agency designated to help victims receive benefits and services which is vital to their rehabilitation as survivors. (Federal Efforts Fact Sheet<sup>13</sup>, 2003) HHS works with organizations throughout the U.S. that provide services to trafficking victims including providing grants to these groups.

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<sup>10</sup> “While acknowledging value in each of those [ a law enforcement approach and victim centered approach] I submit that ultimately both fall short in that they address these issues only after the harm to children has occurred and thus do not prevent such harm. Instead, I propose that a child-centered approach should be the guiding principle in state responses [to csec]” ( Todres 7)

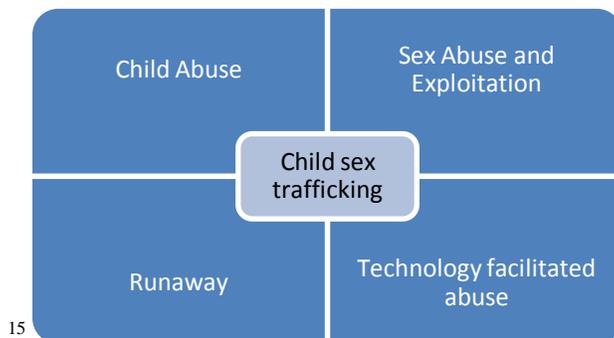
<sup>11</sup> See Appendix for detailed listed of the responsibility of these agencies as pertains to the TVPA

<sup>12</sup> This is not an exhaustive list, rather these are just the departments specifically set aside by the President’s Interagency Task Force

<sup>13</sup> See Appendix for full fact sheet

Specific task force participation such as the FBI's Crimes Against Children and the Exploited Children's Unit at NCMEC also exists to supplement these agencies in their fight against human trafficking. (Smith et al)

Many anti-trafficking specific nonprofit and advocacy groups exist that continually work to rid the world of this crime. I examined the goals and strategies of The Sold Project, The Polaris Project, and Stop Child Trafficking Now, as well as the documentary *Sex and Money: A National Search for Human Worth*. The focus of these groups all center around prevention efforts, such as recognizing factors that make children potential victims of sexual exploitation, as they continue to support anti-trafficking legislation. Sgt. Bryon Fasset, of the Dallas Police Department in his presentation at the National Center for Missing and Exploited Children, presented a table of factors that are found within the child sex trafficking network. He noted that all of the factors on the outer circles are found within the inner circle, the child sex trafficking trade.<sup>14</sup>



Examining these factors further gives a better understanding of what preventative measures could be taken in order to stop children from becoming victims. NCMEC estimates that as many as 2.8 million children run away each year in the United States. Within 48 hours of hitting the streets, one-third of these children are lured or recruited into the underground world of prostitution and pornography. (This is evident through my present work at NCMEC where I have spoken with social workers of these youth runaways who have been found to be involved in prostitution.)

Additionally in 2009 NCMEC staff reviewed more than 10.5 million images of child pornography, a form of technology facilitated abuse. Looking how a child's runaway status, as well as history of child, sexual, and technology facilitated abuse, is an important topic for further research in order to identify ways to keep children from becoming victims of potential exploitation. Sgt. Fasset suggests that we not just look at the sex trafficking issue retrospectively, but that we pay more attention to these risk factors before the exploitation occurs in order to better understand the root causes of the sex industry which would result in better preventative measures being produced. Secretary of State Hilary Clinton agrees that "much remains to be done, particularly in identifying and addressing the root causes of trafficking, including policies and practices that contribute to the trafficking of vulnerable populations."(Trafficking 3)

The Sold Project<sup>16</sup> is one nonprofit anti-trafficking advocacy group that is dedicated to finding these policies and practices that contribute to child prostitution. Team members of SOLD found that a reason children end up sexually exploited was because they were not able to afford an education due to poverty. Their response to this fact was in May 2008 when The SOLD Project Scholarship Fund was founded. The scholarship provides schooling for children who otherwise would be at risk of exploitation.

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<sup>14</sup> It is important to note that not all runaways, child abuse victims, sexual abuse victims, and technology facilitated abuse victims end up in the sex trafficking industry but within the sex trafficking industry all of those factors are found to precede a child's likelihood of ending up in the sex trafficking trade.

<sup>15</sup> Technology facilitated abuse includes such things like internet chat room online solicitation, social networking sites like Backpage.com and online child pornography.

<sup>16</sup> Even though the SOLD Project is rooted in Thailand, their efforts at identifying and responding to risk factors for exploitation serve as a model for other groups to follow in order to react with positive and successful preventative measures.

By identifying poverty as a high risk factor for exploitation The Sold Project reacted by using education as a way to keep kids out of circumstances that lead to exploitation. Their goal “is that no child ever be exposed to a life of exploitation,” (SOLD) and by identifying vulnerability they are able to transform lives by providing education to those who otherwise remain victims of poverty.

Secretary of State Hilary Clinton in her letter for the Trafficking In Persons Report 2009 identifies, as the Sold Project did, that poverty is an issue that makes people vulnerable to exploitation. Secretary Clinton states that, “as the ongoing financial crisis takes an increasing toll on many of the world’s migrants – who often risk everything for the slim hope of a better future for their families – too often they are ensnared by traffickers who exploit their desperation.”

Identifying these root causes is vital in order to rid the world of this heinous industry. The Sold Project’s work as well as the Department of States’ efforts serves as models for continued prevention efforts.

The Polaris Project and Stop Child Trafficking Now are two other anti-trafficking organizations whose goals are focused on eliminating childhood prostitution by reducing instances of potentially exploitative circumstances. The Polaris Project “combines grassroots activism with policy advocacy at the local, national and international level.” (Smith et al Appendix A) By using a comprehensive strategy of direct intervention, survivor support, and policy advocacy The Polaris Project incorporates all three parts of the TVPA (prevention, prosecution, and protection) in order to make a positive difference in the fight against human trafficking.

Stop Child Trafficking Now (SCTN) states that “research indicates funding efforts to support the deterrence and eliminate the demand fueling this heinous crime is most effective.” Their focus is on identifying the demand for human trafficking in order to eliminate the supply for sex slaves. By decreasing the demand, the economic principle of supply and demand reveals that, the supply as a byproduct of demand goes down as well. SCTN is committed “to addresses demand—by targeting child predators for prosecution and conviction,” as their preventative strategy against human trafficking.

For the documentary *Sex+Money: A National Search for Human Worth* journalists traveled across America to better understand why CSEC is the fastest growing form of organized crime and looked to see what measures were being taken to stop it. (*Sex + Money*) The documentary team has an advisory board that includes Congresswoman Carolyn Maloney, co-founder of the Congressional Human Trafficking Caucus, whose commitment to anti-trafficking efforts is supported by many nonprofit groups. The government and advocates joint work is vital to anti trafficking efforts. Their collaboration reveals how a blending of legal and awareness efforts work positively to eliminate this crime. Ambassador Luis CdeBaca, in the 2009 Trafficking in Persons Report for the Department of State noted that as a federal prosecutor he “learned that when law enforcement authorities work with survivors and NGOs who assist them, trafficking networks are dismantled and victims are empowered.” Collaboration between survivors, NGOs and nonprofits, and government authorities remain an integral part of fighting this horrible industry and the United States would benefit even more to increase their efforts on this collaboration.

#### **d. Court Cases**

To examine how the TVPA has been used in practice I examined *An Analysis of Federally Prosecuted CSEC Cases since the Passage of Victims of Trafficking and Violence Prevention Act of 2000*, done by The Urban Institute, for the U.S. Department of Justice. Additionally Micah Bump, in a publication titled “Treat the Children Well: Shortcomings in the United States’ Efforts to Protect Child Trafficking Victims,” for the *Notre Dame Journal of Law*, examined how federal prosecutors circumvented measures of the TVPA in order to secure victim witness testimony for their cases. The Urban Institutes’ analysis revealed that between 1995-2003 “the total number of suspects in criminal matters investigated and convicted by U.S. attorneys where the lead charge was a CSEC-related offense more than doubled.” They also found that “convictions of CSEC cases overwhelmingly resulted in a prison sentence being imposed.” (58) These conclusions reveal that the TVPA *is* being used to successfully prosecute federal cases involving CSEC answering the original question set forth in the start of this paper.

However, while the TVPA is being used successfully to prosecute cases, Bump’s article reveals that attorneys’ actions in these prosecutions are sometimes detrimental to a survivor’s rehabilitation when those victims are forced to testify in order for success at trial.

Because trafficking cases are resource intensive, requiring coordination from different government agencies and social service providers, when a federal prosecutor does get a chance to try a case, witness testimony is vital to the trial's success. Under Section 107 of the TVPA an adult victim in order to receive benefits must be "(I) **willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons.**" While the TVPA states that this part of the law applies to adult victims only and not children, the case of *U.S. v Luisa Medrano et al* shows how federal prosecutors used a subpoena to gain witness testimony from child victims even though their mental and emotional wellbeing were not stable. (Bump)

Although the TVPA specifically acknowledges that children need not cooperate with prosecution efforts in order to receive benefits, prosecutors are likely to pressure a child to participate since there is a large appeal to pursue trafficking cases. Although *U.S. v Luisa Medrano et al* is the only case to date where a subpoena was used against a child to secure their testimony, a precedent was set that allows for specific protective measures of the TVPA to be bypassed. (Bump) Prosecutors in The Urban Institute's analysis agree that they do not consider it to be in the "best interest of the child" to make child victims witnesses in trials and instead prefer plea bargains as their strategy against traffickers. The precedent setting of mandated witness testimony of victims is counterintuitive to the protective measures in place and through his research Bump concludes that, "there is a general consensus among both legal advocates and victims' advocates that prosecution of traffickers is in the best interest of the trafficked child *as long as* the child's best interests are upheld during the entire process." (96, emphasis mine)

## **V. Additional Research**

### **a. Prevention**

In addition to the preventive measures stated throughout this paper one big strategy that is currently being used is exposing the tragedy of human trafficking as it truly is. The *Sex + Money* documentary conducts research by asking average Americans what they understand about human trafficking. Their answers range from, "I try not to get into current affairs because I want to stay happy and stupid," to "I don't think it is going on today in our modern society," (*Sex + Money*) and more. Jonathon Todres notes that, "the clandestine nature of the activity [child sex trafficking] makes law enforcement challenging," (33) and furthermore makes the general American public unaware that human trafficking occurs widespread in the United States. One commentator in the *Sex + Money* documentary notes that the only way not to find sex trafficking in America is simply not to look for it.

In a response to making information about human trafficking more available, The Sold Project created a resource that exposes some common myths and misconceptions that reflect some of the attitudes of those in the documentary. Some of these myths include:

- it doesn't happen in America
- trafficked persons can only be foreign nationals or are only immigrants from other countries
- human trafficking only occurs in illegal underground industries
- victims of trafficking will immediately ask for help or assistance and will self-identify as a victim of a crime
- trafficking is essentially a crime that must involve some form of travel, transportation, or movement across state or national borders

By exposing these myths and misconceptions the Sold Project is allowing the American public a better understanding on the topic so that they can be aware of how widespread this issue truly is. Exposing the secret nature of human trafficking, as well as providing legal resources, strengthens collaboration with the American people to eventually be able to eliminate the world this heinous crime.

### **b. Prosecution**

As noted throughout this paper there have been many successful prosecutions against traffickers. *United States. vs Luisa Medrano et al*<sup>17</sup>, *Ohio v. Blankenburg*, and *United States vs. Corey aka 'Magnificent' Davis* are three additional cases where the defendant(s) were on trial due to crimes involving the sexual exploitation of children. *Ohio v. Blankenburg*, was a case in which twin brother pediatricians were found guilty of sexually exploiting their young male patients through unreasonable touching of their genital areas during exams.

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<sup>17</sup> Refer to Section V part C for further details of this case.

The Blankenburg brothers, furthermore, offered their underage patients money in order to secure their cooperation in this abuse. In *United States vs. Corey aka 'Magnificent' Davis*, Davis was a sex trafficker who was involved in the sexual exploitation of multiple girls including a 12 year old child. Davis' victims included girls who were runaways out of the foster care system, girls who were promised money as part of a job (that was not described as being sexual in nature), and girls who were mugged off of the street and sexually abused. (Cooper) These, along with the cases mentioned in Micah Bump's article and The Urban Institute's analysis, support the statement "the United States is successfully prosecuting trafficking cases"; however, as stated previously, these prosecutions have not been made without flaws.

### c. Protection

The TVPA specifically implements measures in its policy that protect trafficking survivors. A lot of these protection measures are set forth in ways that victims "can safely and securely rebuild their lives." (Victim Assistance Fact Sheet, 2003) These services include but are not limited to:

- housing or shelter assistance
- food assistance
- income assistance
- employment assistance
- English language training
- health care assistance
- mental health services
- assistance for victims of torture<sup>18</sup>

By providing these and similar services the government hopes to remove survivors from potentially re-victimizing situations. Sharon Cooper stated that in regards to witness protection for the duration of a criminal investigation and eventual prosecution it is customary to work on keeping a victim out of the state where the crimes took place in order to receive proper mental health and medical care. Moving the victim to a different state also works as a measure to avoid being in the same location where a natural impulse might be to return to the criminal situation or lifestyle. It is important to understand that while victims at times do choose to return to their traffickers and former lifestyles it is at the fault of the traffickers, who as part of their brainwashing and controlling ways, often get their victims addicted to drugs and expensive lifestyles in order to keep them under their control. (Cooper) One pimp in the *Sex + Money* documentary reveals that "as a real pimp" his strategy is to, "dress 'em, feed 'em, keep 'em broke" in order that they continue to turn to him and only him in order for their basic needs to be met. It is a shared responsibility of government authorities and advocates to victims from returning to these situations mentioned above where their health and wellbeing of survivors would remain permanently in jeopardy.

## VI. Conclusion

The research conducted on this topic reveals that a lot of positive activity including bringing awareness about the issue is being done to support anti-trafficking efforts. The Department of State and Department of Justice, as well as other NGOs and nonprofit groups, annually produce reports that bring together international and domestic efforts that respond to this crisis. However these reports continually highlight that an integral part to the fight against human trafficking is exposing the crime, increasing collaborative efforts between survivors, law enforcement, and advocates, and placing a continued emphasis on prosecution as long as that prosecution remains in the best interest of the victim. The Trafficking Victims Protection Act, and subsequent reauthorizations, remains the key piece of federal legislation and its three pronged mandate- to prevent exploitation, prosecute offenders, and protect victims –is being carried out by different agents of anti-trafficking efforts. However, the most recent conclusion is that an increased emphasis needs to be placed on addressing the root causes of this problem. Human trafficking needs to be addressed more preventatively and less retrospectively in order to eradicate the tragedy of human trafficking from the globe.

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<sup>18</sup> See appendix 1.3 for full list of victim assistant programs offered by the federal government

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## **Appendix**

### **1.1 TVPA FACT SHEET (2003) United States Department of Health and Human Services**

#### **FACT SHEET:TRAFFICKING VICTIMS PROTECTION ACT OF 2000**

In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) (Public Law 106-386) was enacted. Prior to that, no comprehensive Federal law existed to protect victims of trafficking or to prosecute their traffickers.

Human trafficking is increasingly committed by organized, sophisticated criminal groups, and is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the U.S. and worldwide.

#### **TVPA Goals**

- Prevent human trafficking overseas
- Protect victims and help them rebuild their lives in the U.S. with Federal and state support
- Prosecute traffickers of persons under stiff Federal penalties

#### **Prevention, Protection and Prosecution**

The law is comprehensive in addressing the various ways of combating trafficking, including prevention, protection and prosecution. The **prevention** measures include the authorization of educational and public awareness programs.

**Protection** and assistance for victims of trafficking under the law include making housing, educational, health care, job training and other Federally-funded social service programs available to assist victims in rebuilding their lives. The law also established the **T visa**, which allows victims of trafficking to become temporary residents of the U.S. The TVPA authorizes up to 5,000 victims of trafficking each year to receive permanent residence status after three years from issuance of their temporary residency visas. The T visa signifies a shift in the immigration law policy, which previously resulted in many victims being deported as illegal aliens. The law also makes victims of trafficking eligible for the Witness Protection Program.

The law makes victims of trafficking eligible for benefits and services under Federal or state programs once they become certified by the U.S. Department of Health and Human Services (HHS). Adult trafficking victims must be certified as a pre-condition for their eligibility for benefits and services. Once certified, they will be eligible to apply for benefits and services under any Federal or state funded programs, to the same extent as refugees including refugee cash, medical assistance and social services. Victims under the age of 18 do not need to be certified. HHS issues these victims letters of eligibility so that providers know these victims are eligible for services and benefits.

Victims of human trafficking who are non-U.S. citizens are eligible to receive **benefits and services** through the TVPA to the same extent as refugees. Victims who are U.S. citizens do not need to be **certified** by HHS to receive benefits; as U.S. citizens, they are eligible for many benefits.

The TVPA also created new law enforcement tools to strengthen the prosecution and punishment of traffickers, making human trafficking a Federal crime with severe penalties.

For example, if a trafficking crime results in death or if the crime includes kidnapping, an attempted kidnapping, aggravated sexual abuse, attempted aggravated sexual abuse, or an attempt to kill, the trafficker could be sentenced to life in prison. Traffickers who exploit children (under the age of 14) using force, fraud or coercion, for the purpose of sex trafficking (a commercial sex act) can be imprisoned for life. If the victim was a child between the age of 14 and 18 and the sex trafficking did not involve force, fraud or coercion, the trafficker could receive up to 20 years in prison.

Moreover, the law addresses the subtle means of coercion used by traffickers to bind their victims in to servitude, including: psychological coercion, trickery, and the seizure of documents, activities which were difficult to prosecute under preexisting involuntary servitude statutes and case law.

#### **Trafficking Victims Protection Reauthorization Act of 2003**

In 2003, the Bush Administration authorized more than \$200 million to combat human trafficking through the Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA).

TVPRA renews the U.S. government's commitment to identify and assist victims exploited through labor and sex trafficking in the United States.

The TVPRA provides resources and initiatives to assist the 18,000 - 20,000 victims of human trafficking who are trafficked into the United States every year. It augments the legal tools which can be used against traffickers by empowering victims to bring Federal civil suits against traffickers for actual and punitive damages, and by including sex trafficking and forced labor as offenses under the Racketeering Influenced and Corrupt Organization statute. It also encourages the nation's 21,000 state and local law enforcement agencies to participate in the detection and investigation of human trafficking cases. The U.S. Department of Health and Human Services has a significant role in implementing the law's victim-centered, compassionate approach to finding and aiding the victims of this modern-day slave trade.

If you think you have come in contact with a victim of human trafficking, call the **National Human Trafficking Resource Center at 1.888.3737.888**. This hotline will help you determine if you have encountered victims of human trafficking, will identify local resources available in your community to help victims, and will help you coordinate with local social service organizations to help protect and serve victims so they can begin the process of restoring their lives. For more information on human trafficking visit [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking).

## **1.2. Federal Efforts to Assist Victims of Human Trafficking (2003) United States Department of Health and Human Services**

### **FACT SHEET: FEDERAL EFFORTS TO ASSIST VICTIMS OF HUMAN TRAFFICKING**

The Trafficking Victims Protection Act of 2000 (TVPA) called for the creation of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons to coordinate anti-trafficking efforts among various U.S. Federal government agencies. The U.S. Department of Health and Human Services (HHS) is designated as the agency responsible for helping victims of human trafficking become eligible to receive benefits and services, critical to helping them regain their dignity and become self-sufficient.

#### **U.S. Department Health and Human Services**

The U.S. Department of Health and Human Services (HHS) is responsible for certifying victims of human trafficking once they are identified. This certification allows victims to receive Federally funded benefits and services to the same extent as refugees.

Victims of human trafficking in the U.S. who are non-U.S. citizens are eligible to receive a special visa and benefits and services through the TVPA to the same extent as refugees. Victims who are U.S. citizens do not need to be certified by HHS to receive benefits. As U.S. citizens, they may already be eligible for many benefits.

Through HHS, victims can access benefits and services including food, health care and employment assistance. Certified victims of trafficking can obtain access to services that provide English language instruction and skills training for job placement. Since many victims are reluctant to come forward for fear of being deported, one of HHS' most important roles is to connect victims with non-profit organizations prepared to assist them and address their specific needs. These organizations can provide counseling, case management and benefit coordination.

Only adult victims need to receive certification letters from HHS in order to be eligible to access benefits and services. Children under the age of 18 do not have to be certified by HHS to receive benefits, rather they will receive eligibility letters from HHS.

HHS has awarded more than \$8 million in grants to organizations throughout the U.S. to provide services to victims of human trafficking and exploitation. Those services include temporary housing and legal assistance as well as cultural and educational programs.

Other Federal government agencies playing a critical role in assisting victims of human trafficking include:

**U.S. Department of Justice: DOJ** investigates cases of trafficking and prosecutes the traffickers. DOJ has also contributed to the construction of a network of trafficking victims service providers via their grant programs, and facilitates the complaint process for persons wanting to report a case of trafficking.

**U.S. Department of Labor: DOL** offers programs such as job-search, job-placement assistance and job-counseling services as well as educational and training services and referrals to supportive services such as transportation, childcare and housing, through its One-Stop Career Center System – which victims can access after HHS certification. The Wage and Hour Division also investigates complaints of labor law violation, and is an important partner in the detection of trafficking victims.

**U.S. Department of State: State** is responsible for coordinating international anti-trafficking programs and efforts.

**U.S. Department of Homeland Security: U.S. Citizenship and Immigration Services (USCIS) and Bureau of Immigration and Customs Enforcement (ICE).** ICE investigates cases of trafficking, and is an important partner in victim identification. USCIS awards the T visa and continued presence status, which makes a victim eligible for HHS certification.

If you think you have come in contact with a victim of human trafficking, call the **National Human Trafficking Resource Center at 1.888.3737.888**. This hotline will help you determine if you have encountered victims of human trafficking, will identify local resources available in your community to help victims, and will help you coordinate with local social service organizations to help protect and serve victims so they can begin the process of restoring their lives. For more information on human trafficking visit [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking).

**1.3. Victim Assistance Fact Sheet (2003) United States Department of Health and Human Services**  
FACT SHEET: VICTIM ASSISTANCE

Human trafficking<sup>1</sup> is a modern-day form of slavery. Human trafficking is tied with arms as the second largest criminal industry in the world today – after drug dealing – and is the fastest growing.

Victims of human trafficking in the U.S. who are non-U.S. citizens are eligible to receive a special visa and other benefits and services through the Trafficking Victims Protection Act of 2000 (TVPA). Victims who are U.S. citizens may already be eligible to receive many of these benefits. These benefits and services include access to social service programs and immigration assistance needed to help victims safely and securely rebuild their lives in the United States.

**Assistance Available to Victims of Human Trafficking**

Adult victims of human trafficking (age 18 and over) who are certified by the U.S. Department of Health and Human Services (HHS) can receive federally funded services and benefits to the same extent as refugees. To receive certification, an individual must:

- Be a victim of human trafficking as defined by the TVPA;
- Be willing to assist with the investigation and prosecution of traffickers; and
- Have completed a bona fide application for a T visa; **or**
- Have received Continued Presence status from the U.S. Department of Homeland Security

Child victims of human trafficking (under age 18) are immediately eligible for benefits – they do not need to apply for a T visa or get Continued Presence status. For such victims, HHS issues – once it has received proof that the child is a victim of trafficking – a “letter of eligibility.” The victim or the victim’s advocate may then present the letter to social service providers as proof of eligibility. Certified and eligible victims of human trafficking can receive benefits and services necessary for the safety and protection of their lives including:

|                                 |                                     |
|---------------------------------|-------------------------------------|
| • Housing or shelter assistance | • English language training         |
| • Food assistance               | • Health care assistance            |
| • Income assistance             | • Mental health services            |
| • Employment assistance         | • Assistance for victims of torture |

See the reverse side for a list of some specific benefits available to certified-adult and eligible child victims of human trafficking.

**Immigration Status**

The TVPA signified a shift in the immigration law policy, which previously treated victims of human trafficking as illegal aliens subject to deportation. It established the T visa to give victims of human trafficking temporary status in the United States. The Act recognizes that returning victims to their country of origin is often not in the best interests of victims and that victims need the opportunity to rebuild their lives without facing the threat of deportation.

After three years, a T visa recipient can apply for permanent residence status. In certain situations, it enables victims of human trafficking to get T visas for family members.

Following are some of the specific benefit programs for which victims can apply:

| Program   | Description  |
|---|--|
| Temporary Assistance for Needy Families (TANF)    | A cash benefit and work opportunities program for needy families with children under age 18.   |
| Food Stamp Program                                | Used like cash to pay for food at most grocery stores.   |
| Supplemental Security Income (SSI)                | A monthly benefit for people who are blind, have severe disabilities, or are at least 65 years old and have limited income and resources.  |
| Torture Treatment Program                         | HHS-funded social, legal, health and psychological services for victims of torture.  |
| State Children’s Health Insurance Program (SCHIP) | The public health insurance program for low-income, uninsured children 18 years of age or younger who do not qualify for Medicaid.   |
| Unaccompanied Refugees Minor Program              | Assists unaccompanied minor refugees and trafficking victims in developing skills to enter adulthood and achieve economic and social self-sufficiency. Provides family reunification assistance where appropriate.   |
| Medicaid  | The public health insurance program for people with low income and limited resources.  |
| Health Screening                                  | Provided by the State Department of Public Health for diagnosis, treatment and prevention of any illness (includes screening for TB, parasites, and hepatitis and vaccinations for children).  |
| Refugee Cash and Medical Assistance (RCA & RMA)   | HHS program available to victims who are ineligible for other cash or medical assistance programs such as TANF, SSI and Medicaid. Victims may receive this assistance for the 8 months following issuance of the letter of certification/eligibility.                        |
| One-Stop Career Center System                     | Free job search and employment centers that provide information and assistance for people who are looking for a job, or who need education and training in order to get a job.   |
| Job Corps   | DOL residential and job education program for youth aged 16-24.  |
| Matching Grant                                    | HHS-funded self-sufficiency program administered by private agencies. Provides job counseling and placement, case management, cash and living assistance.  |
| Housing   | Eligibility for public housing authority assistance.   |
| State-specific Programs                           | Individual states offer additional programs. Contact the HHS Refugee Coordinator for a specific state for more information:<br><a href="http://www.acf.hhs.gov/programs/orr/partners/state_coordina.htm">http://www.acf.hhs.gov/programs/orr/partners/state_coordina.htm</a> |

For more information on human trafficking visit [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking).