

A Broken System: The Misclassification of Human Trafficking Victims as Criminals in the U.S.

By Chloe Diaz

Human trafficking is a pressing issue that takes the lives of many people. In fact, a staggering estimate of 20.9 million victims of human trafficking exist globally (Trafficking Resource Center). Of these millions of victims, 80% are sexually exploited, and half are children. At a more local level, an estimated 15,000 people are trafficked into the United States and coerced into labor or sexually exploited each year (Goldberg). In many instances, sexually exploited human trafficking victims are wrongfully charged as prostitutes (HG Legal Resources). The conflict between state and federal law, unfair scare tactics, and an uninformed law enforcement all contribute toward the failure to identify and rehabilitate human trafficking victims.

Trafficking victims are often mislabeled by the justice system as prostitutes, allowing for the responsible party, traffickers, to get away (HG Legal Resources). It is difficult to remove victims from the stigma that prostitutes are in search of their own monetary gain because the term prostitution is extremely broad in the legal sense. According to US Legal, prostitution is defined as, “the commission by a person of any natural or unnatural sexual act, deviate sexual intercourse, or sexual contact for monetary consideration or another thing of value.” Due to this general definition, it is easy to lump sexually exploited human trafficking victims under the label of prostitution, because it is easy to qualify as a criminal by this definition considering motives for prostitution are not taken into account to determine if one is innocent or guilty of the crime. Often frauded, forced, or coerced into situations, human trafficking victims have even less autonomy over their bodies than prostitutes because trafficking victims are forced to sell sexual services for the benefit of the trafficker

and not themselves (HG Legal Resources). Traffickers subject their victims to physical and psychological abuse “including violence, sexual assault, deportation threats, and debt bondage with fictitious amounts of living expenses used to keep the victims vulnerable, and dependent on the wishes of the trafficker” (Sheldon-Sherman). Therefore, while traditional prostitutes may possess more of a position to dictate their situation, human trafficking victims are left with no choice but to perform the acts that the trafficker commands as a way for the victim to temporarily halt the abuse they endure.

Recently, the U.S. Department of State has begun to monitor signs of trafficking. In 1994, human trafficking received coverage for the first time in the Department’s Annual Country Reports on Human Rights Practices. In 2003, the Trafficking Victims Protection Act (TVPA) was passed. It states that, “any person under [the] age [of] 18 who performs a commercial sex act is considered a victim of human trafficking,” and based on the U.S.

Department of Health's evaluation of the underage individual's psychological state, the TVPA requires the government to provide rehabilitation services to them.

Despite the government's efforts to protect and aid victims through the TVPA, it appears that there remains a failure to recognize the distinction between prostitution and the act of being prostituted. Labeling a minor as a child prostitute holds the negative connotation that the victim is choosing a life of sexual exploitation by will. Since the average citizen holds very little knowledge over the distinction between prostitutes and trafficking victims, their ignorance plays a key role in a jury's decision to incarcerate victims rather than aid them. Therefore, many victims fall to the fate of an ill-informed jury. A huge disconnect between the way the state and the federal government handle prostitution allows for the opportunity to falsely prosecute human trafficking victims. Although the Trafficking Victims Protection Act was set in place by the federal government to address these people as victims rather than as prostitutes, the conflict remains because states are the ones who traditionally address prostitution (Souther). Instead of following the federal government's act, states continue to pursue victims as criminals by "charging and sentencing the[m] on prostitution grounds" (Souther). In fact, according to the Texas Juvenile Probation Commission, "...throughout the nation, law enforcement efforts tend to focus on prosecuting the crimes committed by the victims of sex trafficking (prostitution, runaway) rather than crimes committed by the solicitor/trafficker (sexual assault of a minor)" (7). Significant lack of state support is attributed to the hardships that come with acquiring strong enough proof that the victim was truly subjected to severe trafficking by the guidelines of the TVPA (Sheldon-Sherman). Consequently, prosecutors assume an upper-hand in trafficking cases, because the state frequently views defendants' cases for the innocence of trafficking victims as poorly founded.

Scare Tactics in the Courtroom

It is contrary to our current justice system to assume that trafficking victims are not innocent until proven otherwise considering that the American justice system follows the presumption of innocence, meaning that "a defendant is innocent until proven guilty" (Legal Information Institute). The use of

scare tactics in the courtroom is another factor that contributes to trafficking victims suffering lengthy, undeserved consequences. Due to mandatory minimum sentences, prosecutors wield an upper hand in the court because they can choose from a wide range of sentences to pursue (Barkow). Prosecutors often use this advantage to threaten the defendant with the longest sentences in order for the defendant to accept the prosecutor's plea deal for a seemingly lesser sentence in jail (Barkow). Rachel Barkow, New York University law professor, explains how victims tend to plead guilty to crimes they did not commit as a result of scare tactics, which causes an unfavorable turnout for the victim.

In addition to the use of scare tactics, little emphasis is put on identifying traffickers and victims on behalf of the justice system. In the *Journal of Interpersonal Violence*, 3 researchers put forth a system to screen children within the Clark County Juvenile Court, and out of 535 kids, "47 reported risk factors of previously being sexually exploited...and 6 were confirmed commercially exploited sex victims." Without this newfound research-tested screening system, these children would not have been removed from the juvenile system and would continue serving time for a crime they did not perform. With this being said, identifying victims within the court should be a major priority.

The Miseducation of Law Enforcement

Another issue of poor identification is through local officers. Reportedly, local law enforcement comes into contact with traffickers and victims frequently because this is where traffickers operate and are apprehended for other crimes (Sheldon-Sherman). In fact, 68% of individuals previously apprehended were eventually linked and charged with trafficking (Sheldon-Sherman). A study done on human trafficking in the Tampa Bay region, where nearly one-fifth of human trafficking hotline calls come from, argues that "law enforcement agencies are spending too much money and resources focusing on prostitution" rather than funding additional training on human trafficking for local police (May). Evidently, training law enforcement to recognize and report signs of sexual exploitation and trafficking within the court and the outside world is a necessary

step needed to take action against human trafficking and bring victims to safety.

The Reform Necessary to Help Victims

Due to scare tactics, uninformed juvenile courts and juries, and untrained local officers, human trafficking victims are deprived of the opportunity to undergo rehabilitation, allowing for victims' mental instability to fester as they serve their undeserved sentences in a hostile environment: jail. Meanwhile, traffickers continue to remain under the radar with no repercussions. Trafficking victims are physically and mentally worn by the various forms of abuse they endure and often suffer from "post-traumatic stress disorder, depression, anxiety, and eating disorders" (Stop Violence Against Women). Without the proper psychological care, it is likely that human trafficking victims' existing mental issues will worsen. In fact, the "high-stress environment" of incarceration has proven to induce post-traumatic stress disorder and various other mental issues on women especially (Villines). Evidently, reform is necessary to help identify and provide mental and physical care for victims before they are criminalized and neglected.

In an attempt to the fight against human trafficking and prevent victims from false convictions, there are many different problem areas that need to be addressed. The general population should be more informed on the issue of human trafficking so that, in the event that an ordinary civilian is a jury member for a victim's trial, they can make a more informed choice concerning the victim's fate. Awareness of human trafficking can be spread throughout the general public by airing commercials that educate people on the signs of human trafficking, or even by posting fliers around commonly frequented areas such as university lounges or bus stations. Additionally, screening systems, like the one utilized in the Clark County Juvenile Court, should be placed in juvenile facilities, so that victims who are already in the system as criminals can be exonerated from their institution. Furthermore, the federal government should allocate money towards training programs that teach local law enforcement to recognize victims and perpetrators, not only so more traffickers can be put on trial for their crimes, but also so victims can receive proper care sooner rather than later. Lastly, while scare

tactics and plea bargains are used in cases outside of prostitution convictions as well, it is necessary to reexamine these acts and challenge them due to the negative effects they bring. To remedy the current unfair use of scare tactics, perhaps the government should consider requiring "that the prosecution's plea offers be presented to a jury or judge before sentencing. Jurors might then wonder why they are being asked to sentence a defendant to 20 years without parole when the prosecution was willing to settle for 5. 15 years in jail seems a rather stiff punishment for making the state undergo the bother of a trial" (Friedersdorf).

Ultimately, while there are numerous issues that contribute to victims' false convictions, such as ill-informed juries, disconnect between the federal government and state, overzealous prosecutors, lack of screening systems, and untrained police, this does not mean that progress cannot be made towards the liberation of trafficking victims. Future research should use the problem areas identified in this research to further explore potential solutions to help aid human trafficking victims.

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