

Caught in the Middle: Domestic Minor Sex Trafficked Persons

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Abstract

The United States has long paid attention to foreign persons trafficked into the country for illicit sexual purposes. Domestic minors who are sex trafficked have not had as much legal regard. At the heart of the matter, is the difference in legal positions federally and in states regarding the response to domestic minors who are sex trafficked. Federal law, namely, the Trafficking Victims Protection Act (TVPA) of 2000 has undergone reauthorizations to better serve domestic minor sex trafficked victims. Several states in the United States anti-trafficking laws however, conflict with the federal TVPA policy. The federal versus state legal inconsistency can harm as oppose to helping sex trafficked victims. Most local prosecutors do not understand how to identify sex trafficked victims. The misidentification of a minor victim causes setbacks for the victim. In addition, services for victims are inadequate, despite provisions in the TVPA. These points contribute to the criminalization of domestic minor sex trafficked victims.

Keywords: Trafficking Victims Protection Act (TVPA), domestic minor sex trafficking, sex trafficking, Illinois Safe Children Act

Laws prior to the Trafficking Victims Protection Act (TVPA) insufficiently did not combat human trafficking. The laws also did not provide safety measures or services to aid the victims. The implementation of new policies developed stronger avenues for protection and services for victims that were trafficked into the United States. The Trafficking Victims Protection Act implemented on October 28, 2000, provided these services and protections to foreign victims, but did not necessarily protect American trafficked victims (Finklea, Fernandes-Alcantara, & Siskin, 2015). Since the first approval by President Bill Clinton, the TVPA has undergone reauthorizations, in 2003, 2005, 2008, and 2013. The reauthorization of 2005 signed in 2006, 2008, and 2013 purposely focuses on “U.S. citizens and lawful permanent residents (LPR)” (Finklea et al., 2015, p. 3). Also, Congress implemented more services through these reauthorizations for minors who are sex trafficked in the U.S. (Finklea et al., 2015). The reauthorization eliminates the disparities between illegal citizens and legal citizen’s sex trafficked within the U.S.

Sex trafficked minors endure “headaches” and “stomachaches,” anxiety, despair, failing grades if they are in school, violence, drug or alcohol misuse, and suicide (Jones, 2010). Numerous sex trafficked victims are at risk of contracting HIV/AIDS and other sexually transmitted diseases. It is important that victims have services to combat many of these adverse effects relating to sex trafficking. While the TVPA’s objective is to establish services and protections for sex trafficked minors, to what extent does the Trafficking Victims Protection Act prevent the criminalization of child sex trafficked victims in states that adhere to prostitution laws for domestic minors involved in illegal sex work? Although federal policy is ground-breaking in commercial sexual exploitation, the language is sometimes difficult to understand. Federal policy does not necessarily describe sex trafficking. The language regarding “severe forms of trafficking in persons,” which is described in the TVPA, encompasses “sex trafficking” (Finklea et al., 2015, p. 5).

Finklea et al. (2015) Congressional Research Service Report states: Severe forms of trafficking in persons refer to, (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (p. 5).

Sex acts for profit, TVPA describes as: whatever is important or accepted by an individual. Sex acts for profit is different from other sexual criminal behavior such as “molestation, sexual assault, and rape” (Finklea et al., 2015, p. 5). Among professionals there is an agreement that commercial exploitation of minors corresponds to the definition of “severe forms of human trafficking” (Finklea et al., 2015, p. 5). In the United States and abroad there is a consensus that the sex trafficking label, no matter the youth’s activities, are considered to be coerced. State prostitution laws define illegal sex work differently from the TVPA which can cause victims to be criminalized at the state level.

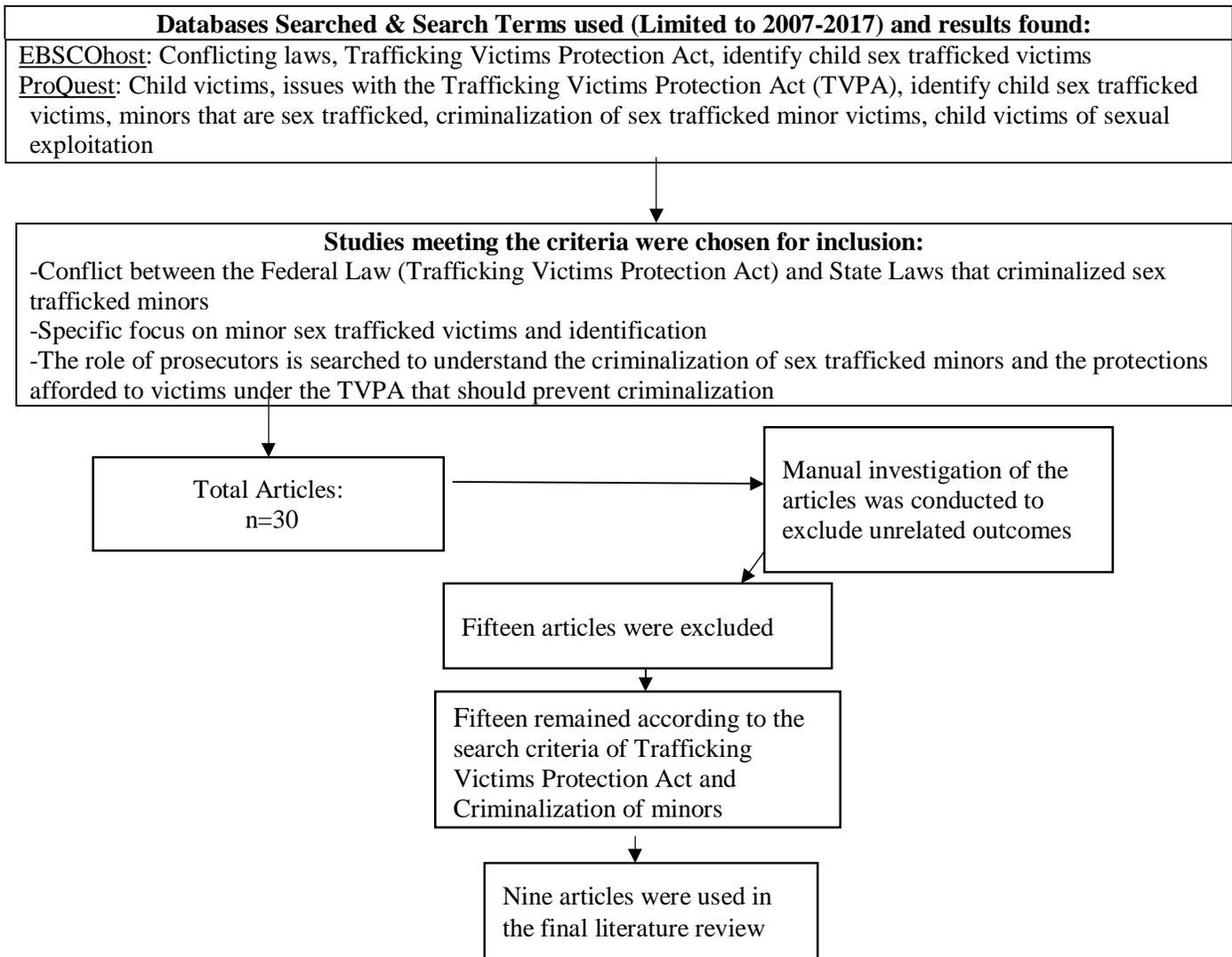
Criminalizing sex trafficked minors prevents them from receiving needed social and protective services for their mental and physical health. Although, the TVPA defines sex trafficked minors as too young to assent to sexual action with adults they are still charged with a crime relating to sexual activity (Finklea et al., 2015). State juvenile justice systems often “label” sex trafficked minors as sex workers or delinquents and considers them criminals as opposed to victims (Finklea et al., 2015). A sex trafficked minor victim might be detained and assigned to a juvenile facility with no help for his/her physical or mental state. Sex trafficked victims are arrested and grouped with criminal offenders who have committed violent offenses. Shared Hope International believes that the perception of law enforcement is to arrest the victim because there are no other choices for a response (Finklea et al., 2015). Unfortunately, this complicates the process for victims to receive adequate services. This action draws the sex trafficked minor victim further into the justice system. Although services are available in the juvenile detention center, they might be unproductive at dealing with issues confronting victims.

Method

EBSCOhost and ProQuest electronic library databases were searched to determine if there were prior systematic literature reviews on the Trafficking Victims Protection Act and its impact on preventing sex trafficked minors from victimization. Search terms used were “child victims,” “criminalization of sex trafficked victims,” “Trafficking Victims Protection Act (TVPA),” “conflicting laws,” “identify child sex trafficked victims,” “child victims of sexual exploitation,” “issues with the Trafficking Victims Protection Act,” “criminalization,” and “minors that are sex trafficked.” The time period was 2007 to 2017. The search generated 30 results although several were not specific to the topic of criminalization of minors and the Trafficking Victims Protection Act. The articles were reviewed and several excluded from the study.

Nine relevant studies were included. The first search focused on the conflict between the federal law (Trafficking Victims Protection Act) and state laws that led to criminalization of sex trafficked minors. The second search focused on minor sex trafficked victims and their identification. Last, the role of prosecutors was searched to understand the criminalization of sex trafficked minors and the protections afforded to victims under the TVPA that should prevent criminalization. Data removal and organization of the studies were carefully chosen for inclusion in this study if they met the search criteria.

The Systematic Search Process



Results

The nine articles indicate two major problems: 1. a conflict between federal and state laws 2. Problems identifying victims of domestic minor sex trafficking.

Summary of Findings

Bergam 2012 Crile 2012 Hasselbarth 2014	Domestic minor victims are criminalized when federal (TVPA) and state criminal prostitution laws conflict with each other. They must merge to change further harm to the victims.
Harlan 2012 Heltonf 2016 Gouty 2015	The language in the federal law (TVPA) confuses justice officials on how to correctly identify domestic minor sex trafficked victims. The must be clearer to help identify victims
Godsoe 2015 Kotrla 2010 Clawson and Goldblatt Grace 2007	Selective enforcement prevents services to victims, although law enforcement feels they are helping the victims. Services are not available for victims in states. When victims are criminalized through selective enforcement they are further traumatized.

Conflict between Federal and State Laws

There is a conflict between the federal policy that relates to the sex trafficking of minor victims and state criminal “prostitution” laws that treat minor victims as sex workers. Legislation that governs prostitution in states tend to not reflect age as an important factor. Minors forced into commercial sex, commit acts related to sex work under many states’ legal rules (Crile, 2012). For example, a 16-year-old female or male minor participating in commercial sex acts would legally be in violation of the state law. By state law, their delinquent behavior warrants punitive justice system response. Under the federal guidelines of the Trafficking Victims Protection Act of 2000 the 16-year-old female or male is considered a victim of sex trafficking (Crile, 2012). Therefore, the conflict between the federal law and state law poses a problem for sex trafficked minors in receiving protection from criminalization. Although the federal sex trafficking policy and state prostitution laws conflict with each other, the conflict should be resolved based on the “doctrine of federal preemption” (Crile, 2012, p. 1787).

Under the federal legislation, the TVPA “preempts” state laws from criminalization of minors for commercial sex acts. The “doctrine of federal preemption” affords this power to the TVPA given that it is federal legislation (Crile, 2012, p. 1787). “Preemption can be inferred from the existence of a conflict between federal and state laws; a conflict exists if state law frustrates the purpose of a federal law” (Crile, 2012, p. 1787). The preemptive doctrine is applied because the conflict amid the federal policies’ objectives and the execution of state criminal prostitution statutes are against minors as victims.

States might differ in their applied implementation of the laws to minors, but all states preserve a formal policy relating to minors during an arrest for illegal sex work, thus criminalizing the minor. Some states have enacted “safe harbor laws” to aid decriminalizing minors who are trafficked victims (Bergman, 2012). Safe harbor laws usually establish specific safeguards for individuals trafficked in the United States. If there is evidence that a person is intimidated or threatened into sex trafficking, then the safe harbor laws provide protection for these individuals. However, minors arrested several times for illegal sex work will not be protected under these laws. States often view the minor in this situation as a willing participant, not a victim (Bergman, 2012). This puts minor victims in the middle of the conflict. Girls that are arraigned on illegal sex work are more likely to receive harsher sentences than adult women. Adult women might encounter one day in jail, but for girls they are regularly indicted and confined for extensive periods for illegal sex work. Other charges include “loitering and disorderly conduct” (Godsoe, 2015, p. 1329). Sometimes girls will falsify their age in court to receive lesser sanctions. Even more disturbing, states prosecute girls, because there is a shortage of secure and caring residential facilities. Although, the TVPA has identified them as victim’s states are using “selective enforcement” as a service option.

Godsoe (2015) reported that throughout the nation, states are using “selective enforcement” which is another method of criminalizing minor victims of sex trafficking. Further, local justice systems practice “selective enforcement” as a form of service for the victims, but it does not meet the needs of the sex trafficked persons. This practice in the justice system punishes; it is haphazard or culturally biased to certain groups. Minor girls are punished based on their conduct, obedience, and other subjective situations. Minor females will endure further maltreatment if selective enforcement is used during their processing. Several law enforcement agencies, state attorneys, and courts are using this rationale to justify incarcerating minor sex victims (Godsoe, 2015). First, officials claim that victims are a danger to themselves. Second, confining victims protects them from their trafficker. Third, there are not enough services available for sex trafficked victims (Godsoe, 2015). Although, each justification is important, but not necessarily correct, the third reason is the most crucial.

Domestic and immigrant minors who are sex trafficked do not receive the same protective provisions in the United States. When Congress reauthorized the TVPA to eliminate these differences, states insistently arraigned and criminalized domestic minors of sex trafficking (Hasselbarth, 2014). State law reacting to sex traffic of minors’ procedures lies in the state court. The federal government is not attentive to the criminal proceedings of juvenile victims overall. Therefore, handling sex trafficked minors is at the discretion of the prosecutor or judge. This is the situation if the minor is already in custody, arraigned and under the control of the court. Hasselbarth (2014) expressed this type of procedural action is both lawfully unreliable and fundamentally prejudicial. An example of a state that exercises selective enforcement is Nevada. In the city of Las Vegas, the lead state attorney for youth offenders expressed that underage sex workers, obviously pose a hazard to themselves. They expose themselves to “physical assault, beatings, sexual abuse, venereal diseases, pregnancy, and psychological damage” (Godsoe, 2015, p. 1353).

Likewise, an agent from the Federal Bureau of Investigation admitted that detaining a few minors might be the best choice to secure him/her, even though it is far from the perfect solution. Justice officials use confinement as an intervention for the sex trafficked minor. This action prevents the objectives that pertain to protections, programs, and services defined in the TVPA for minor sex trafficked victims.

The “William Wilberforce Trafficking Victims Protection Reauthorization Act in 2008” (reauthorization to TVPA) established protections for U.S. sex trafficked persons (Hasselbarth, 2014, p. 407). The reauthorization permitted the Attorney General and Secretary of Labor and the Secretary of Health and Human Services to create services for sex trafficked minors that are U.S. citizens (Hasselbarth, 2014, p. 407). Hasselbarth (2014) stated that there are no federal policies that actually control prostitution, but there are various policies that correlate with trafficking in individuals that mainly consider prostitution as commercial sexual exploitation. The TVPA defines minors as individuals under 18 (Hasselbarth, 2014). To remedy state/federal inconsistencies there is a need for states to wholly and completely revise their criminal prostitution laws to adhere to the TVPA legislation.

Illinois is an example of a state where policymakers have adopted guidelines from the TVPA for the protection of minors. In 2010, their legislation stated that all minors (those under 18 years of age) would be exempt from criminal proceedings. The Illinois Safe Children Act (ISCA) is the first legislation by a state for completely exempting minors from adult prostitution laws (Bergman, 2012). This law allows for more options for police officers to help victimized minors who are sex trafficked. The ISCA affords comprehensive protections for minors involved in sex work. Thus, in Illinois, minors will be able to receive services. States should consider the age of individuals, but the majority of states do not.

Identification of Victims

Clarifying state and federal laws will help law enforcement to identify sex trafficked victims. The justice system in various states cannot require law enforcement to implement criteria that would identify victims without clear identification procedures. The TVPA does not set criteria for identification of victims. The terms “sex trafficking” and “severe sex trafficking” stated in the TVPA is a discrepancy that confuses most police agencies. The officer must determine if the minor is an illegal sex worker under the state criminal prostitution laws or a victim under federal law. A juvenile involved in sex trafficking is not agreeing to participate in commercial sexual activity as juveniles are too young to consent to sex legally. Conversely, a victim of “severe” sex trafficking (forced or manipulated) into carrying out sexual acts is a clearer victim (Harlan, 2012). The language confuses police officers. When making the arrest, the officers are not sure what to ask the minor. Often the wrong question is: Did this individual agree to the sexual act? As an alternative, police preliminary examination of the individual should give attention to how old the victim is upon arrest (Harlan, 2012). If the victim is a minor, then identifying the person as a criminal is non-existent. U.S. legislation, if revised should clearly state that there is no difference between a minor “sex trafficked” and a minor “severely sex trafficked” who is forced or manipulated into sexual acts. All illegal minor sex workers would be identified as victims as opposed to criminals.

The TVPA reauthorization in 2013, increased funding to local police agencies to help train officers in identifying minor victims. Unfortunately, police officers were trained to only recognize the most brutal cases of sex trafficked individuals. This action still allows for other victims that might not show severe forms of sex trafficking (Heltonf, 2016). At all levels of law enforcement, knowledge and strategies for preventing sex trafficking starts with identifying the victims. The department of Justice in 2007 and 2008 observed that state police agencies detained what they believed to be 68% of identified adult and minor sex trafficked victims (Heltonf, 2016). Consequently, guidance for police agencies is a crucial element in the attempt to combat this activity. Police agencies absence of communication with nongovernmental assistance workers also creates a deficit in identifying sex trafficked minors. Both sides would learn from each other how to improve their identification of domestic sex trafficked victims (Heltonf, 2016). This can work ever better when other first responders to crises such as fire fighters, emergency service workers and others who have reasons to visit homes and business (e.g. utility workers) are educated at identifying victims.

It understandable that sex trafficked victims need services when they break away from abuse. For domestic sex trafficked victims, adequate resources can be difficult to find. The lack of residential facilities is a concern. R. Jones a service specialist with the U.S. Department of Health and Human Services Trafficking in Persons Program stated that “the end result is that the best among worst choices is often being made when it comes to placement” (Kotrla, 2010, p. 184).

The “end result” that R. Jones is referring to is confinement, minors being forced to go back to their home from which they escaped, or retained in shelters with no security from their traffickers. The sex trafficked minor is thus in jeopardy of committing the same behaviors if returned to the same situation. Funding for sex trafficked victim services was implemented through the “William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008” (Kotrla, 2010, p. 184). About “\$5 million in 2009, \$7 million in 2010, and 7\$ million in 2011” was allocated to provide programs for domestic trafficked victims (Kotrla, 2010, p. 184). Wilberforce Act also revised the 2005 requirements to help develop safe havens for domestic victims, but the requirements did not get financial support. A study by Clawson and Goldblatt Grace (2007) on accommodations for sex trafficked minors revealed that the United States only had four that met the specific needs of domestic minor sex trafficked victims. The four shelters were: “Girls Educational and Mentoring Services’ Transition to Independent Living in New York City; Standing Against Global Exploitation Safe House in San Francisco; Children of the Night in Van Nuys, California; and Angela’s House outside of Atlanta” (Kotrla, 2010, p. 184). The number of beds amid all these facilities is 45. Domestic minor sex trafficked (DMST) victims with no shelter have been criminalized and placed in youth detention centers. Clawson and Goldblatt Grace (2007) also expressed that in numerous other accommodations, DMST victims are not identified.

Out of 50 states, four programs can adequately meet the needs of trafficked minor victim which is for females. Congress provided funding through the TVPA for prevention programs on three separate occasions, but resources to help are still lacking in many states. Justice officials believe the solution is confinement, because at least the female victims could not cause more harm to themselves and traffickers cannot continue to hurt the victim if confined. Confinement is not the answer. To understand why services are not readily available in all states, research should be conducted on these policy shortcomings.

During the intake process after a sex trafficked minor is arrested, identification of the juvenile is the most difficult process that delays services for that victim. Law enforcement, as well as other staff members, need training to assist in determining minor victims. Individuals who process minor victims also need to be more perceptive during this process. The capacity to accomplish the goal of identifying underage sex trafficked victims depends on various organizations operated by employees with appropriate guidance. Sex trafficked children when misidentified (“missing, separated unaccompanied, illegal immigrants” or criminals) hampers police and social work efforts to collect relevant information to deliver services (Gouty, 2015, p. 742). Failure to identify victims can also mean that often girls that are involved with illegal sex work receive severe punishment more so than adult women, often related to a falsification of their age. They are confined in detention longer which further diminishes the trust for the victim and exacerbates the minor female physical or mental issues (Godsoe, 2015). It appears that the federal law (TVPA) is not strong enough to ensure that legal protections are afforded to domestic minor sex trafficked victims.

Discussion

Victims of domestic minor sex trafficking need protection and services to escape from their traffickers. Girls, even more so than boys, need permanent solutions to exit commercial sexual exploitation. They need a place to live that will protect them from their pimp. These protections and services need not come from the criminal justice system. Unfortunately, the criminal justice system contributes in part to more harm being caused to victims upon initial arrest. Many states criminal prostitution laws tend to criminalize domestic minor sex trafficked victims. If states would adhere to the federal policy (TVPA) regarding domestic minors, sex trafficked victims should have more opportunities to receive the help that they need. As things stand, victims are often lost in the middle between federal and state law conflict. If the state criminal justice officials would follow the example of the Illinois Safe Children Act (ISCA) which states that children under 18 involved in sex trafficking are victims, there would be no conflict between the federal and state sex trafficking laws.

Conclusion

Despite the Trafficking Victims Protection of 2000 domestic minor sex trafficked victims are atrisk of harm in many states from state criminal prostitution laws which deny victim status and the receipt of adequate help. Many states are ignoring age as in their response to prostitution. Criminalized victims are exposed to more maltreatment and trauma once they are confined in the justice system. The federal law (TVPA) and state criminal prostitution laws must be consistent to protect victims from more harm.

The language “sex trafficked” and “severe sex trafficked” causes justice officials to interpret the TVPA’s language to the best of their knowledge which often is incorrect. What determines a “sex trafficked” victim from a “severe sex trafficked” victim? State officials must determine how to identify domestic minor sex trafficked victims when entering the criminal justice system. Since law enforcement are likely to encounter victims, it is crucial for them to be able to direct victims to the programs and services necessary for the victim. Training for law enforcement in this regard is important. Too many criminal justice officials in states are practicing selective enforcement to secure victims and prevent further harm. Selective enforcement is not a prevention program or service that should be used. Justice officials may perceive this as saving the victims when in reality they are re-traumatizing them. Several states have voiced that programs and services are lacking, although the TVPA has said that resources should be available through the policy; they are not. The federal and state governments must do better at ensuring that domestic minor sex trafficked victims receive legal protections from prosecutions and that victims are given the resources they need to escape this activity.

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