

COMMENT

ADDRESSING THE NEEDS OF OVERLOOKED VICTIMS: PROVIDING CHILD SUPPORT FOR CHILDREN OF HUMAN TRAFFICKING VICTIMS

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INTRODUCTION

“The great thought of captains, owners, consignees, and others was to make the most money they could in the shortest time possible. Human nature is the same now as then.”¹

- Frederick Douglass

When Frederick Douglass wrote these words in 1871, he could not have imagined that slavery would remain a prevalent problem through the twenty-first century. In fact, few realize that there are more men and women enslaved in the world today than during the entire transatlantic slave trade.² Human trafficking is modern day slavery, and the trafficker’s goal today is the same as the slave owner’s nearly 300 years ago—to make a substantial profit while investing as little money as possible into human labor.

Awareness and activism for victims of human trafficking has increased in the past decade, but one group of victims is consistently overlooked: the children of domestic sex-trafficking victims. No laws or resources are committed to specifically addressing the needs of children born to sex-trafficking victims.³ Traditional resources that many single mothers depend on to support their children are often inaccessible to mothers who are victims of human trafficking. The most prevalent of these resources is child support. Victims service an average of 10 to 15 people per day who pay for sex (“Johns”), making it nearly impossible to establish a child’s paternity, which is required to collect child support.⁴ Even in the unlikely event that

1. Frederick Douglass, *THE NEW NATIONAL ERA* (D.C.), August 17, 1871, as cited in KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND SLAVERY IN AMERICA TODAY* 3 (2009).

2. POLARIS PROJECT, *HUMAN TRAFFICKING TRENDS IN THE UNITED STATES: NATIONAL HUMAN TRAFFICKING RESOURCE CENTER 2007-2012*, at 4 (2013), available at https://na4.salesforce.com/sfc/p/#300000006E4S/a/600000004TLG/f7PldVCtt4Irtx_iljKxiGsERUTm6PUfmNxj9ijA6Sg; KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 9 (2004).

3. Cf. *2014 State Ratings on Human Trafficking Laws*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws> (last visited July 11, 2015) (categorizing all state laws and policies into 10 areas, none of which include or address the needs of victims’ children).

4. *Sex Trafficking: Common Myths*, WASH. STATE OFFICE OF THE ATT’Y GEN., <http://www.atg.wa.gov/sex-trafficking> (last visited June 30, 2015) (citing an investigation by Shared Hope International).

paternity is established, the probability that a victim will be able to enforce a court-ordered judgment against a John is slight.

This Comment addresses federal and state legislative acts with an emphasis on Florida's state laws. Reforming forfeited-asset legislation in Florida can create an accessible, viable, and self-sustaining resource for sex-trafficking victims with children. Part I examines human trafficking and its emergence as a prominent crime in the United States and provides an overview of the current remedies available to victims. Part II shows how current assistance programs fail to provide adequate relief to victim-mothers and offers a viable alternative to traditional assistance programs. In conclusion, this Comment advocates developing specific legal remedies that will better address the needs of human-trafficking victims and their children.

I. BACKGROUND

Although slavery was abolished in 1865 when the Thirteenth Amendment was ratified, slavery in the form of human trafficking is still rampant and is arguably worse today than any abolitionist could have predicted. While slaves in the 1800s had a life expectancy of 16 years once enslaved, human-trafficking victims are expected to live for only seven years once they enter the trafficking industry.⁵ Purchasing a slave in the 1800s cost the equivalent of \$40,000 today, while the current cost of purchasing a human-trafficking victim is only \$90.⁶ And while slavery in the 1800s targeted one specific racial group, modern human trafficking does not discriminate.⁷

There are currently over 100,000 people trafficked in the United States and an estimated twenty-seven million people trafficked worldwide.⁸ As Professor Stevie Swanson, who teaches law students about slavery and human trafficking, stated, "Awareness that the

5. *What Is Human Trafficking?*, CHILD RESCUE NETWORK, <http://childrescuenetwork.org/know-the-facts/human-trafficking/what-is-human-trafficking/> (last visited July 23, 2015).

6. *Slavery Today*, FREE THE SLAVES, <http://www.freetheslaves.net/about-slavery/slavery-today/> (last visited July 23, 2015).

7. BALES & SOODALTER, *supra* note 1, at 6.

8. Jill Dougherty, *State Department Report Ranks Countries on Human Trafficking*, CNN (June 27, 2011, 3:16 PM), <http://www.cnn.com/2011/POLITICS/06/27/human.trafficking/>.

problem exists is the first challenge.”⁹ Every U.S. state has reported some type of human trafficking within its borders,¹⁰ and yet the *2010 Human Trafficking Persons Report* indicated that less than 1% of victims are ever identified.¹¹ Each subsequent report has addressed how to overcome difficulties identifying victims.¹² While slavery in the 1800s was clearly visible, human trafficking rarely is identifiable; it is a covert crime that conducts its business in the shadows of society and outside the law. Inevitably, difficulty in identifying victims leads to an even greater challenge in prosecuting traffickers and buyers, leaving many traffickers “operating with impunity.”¹³

A. *Evolution of Federal Human Trafficking Legislation*

To understand the evolution of state human-trafficking laws, it is important to address the development of the federal legislation that influenced the states. The first legislative act that attempted to address human trafficking was the Mann Act of 1910.¹⁴ Its intent was to “outlaw the transportation of women across state lines for the purpose of prostitution.”¹⁵ But the expectation that this act would stifle commercial sex was idealistic at best. Courts focused primarily on one particular phrase in the Act—immoral purpose—and used a broad application of that phrase to conduct a moral and social crusade.¹⁶ For example, one of the most frequent uses of the law was to prosecute women in interracial relationships, which shifted the focus away from the law’s original intent.¹⁷ Ultimately, the Mann Act failed to deter human trafficking and the commercialization of sex.

9. Stevie Swanson, Assoc. Professor, W. Mich. Univ. Thomas M. Cooley Law Sch., Address at the W. Mich. Univ. Law Sch. Panel Discussion: FIGHT: Human Trafficking (Nov. 5, 2014).

10. POLARIS PROJECT, *supra* note 2.

11. See DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 4 (2010), available at <http://www.state.gov/documents/organization/142979.pdf>.

12. See DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 8 (2013), available at <http://www.state.gov/documents/organization/210737.pdf>.

13. *Id.*

14. DAVID A. LANGUM, CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT 117 (1994).

15. See Ariela R. Dubler, *Immoral Purposes: Marriage and the Genus of Illicit Sex*, 115 YALE L.J. 756, 787–88 (2006).

16. LANGUM, *supra* note 14.

17. *Id.*

For nearly 90 years after the enactment of the Mann Act, human-trafficking crimes were under-prosecuted, primarily due to a need for legislation that explicitly addressed the crime.¹⁸ Many who tried to prosecute human traffickers attempted to use existing laws that addressed rape, kidnapping, pandering, and smuggling.¹⁹ But unlike smuggling and kidnapping, which only address the forced movement of a person,²⁰ human trafficking involves the added element of severe sexual abuse. Human trafficking is distinctly different from smuggling and kidnapping.²¹

As part of an international initiative by the United Nations to combat human trafficking, the United States passed the Trafficking Victims Protection Act of 2000 (“TVPA”)²² and its subsequent revisions in 2003, 2005, 2008, and 2013.²³ The Act was signed into law by President Bill Clinton on October 28, 2000, and became the first legislation since the passage of the Mann Act in 1910 to

18. See BALES & SOODALTER, *supra* note 1, at 10.

19. See *id.* at 199; AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING: EXECUTIVE SUMMARY, 8 (2012), available at <http://www.in.gov/icw/files/412592-State-and-Local-Human-Trafficking-Cases.pdf>.

20. See FLA. STAT. ANN. § 787.01 (Westlaw 2015). Kidnapping means a person was moved “forcibly, secretly, or by threat, confining, abducting, or imprisoning another person against her or his will without legal authority.” The statute does not, however, address sexual battery of a victim, such as in trafficking.

21. HUMAN SMUGGLING & TRAFFICKING CTR., U.S. DEP’T OF STATE, FACT SHEET: DISTINCTIONS BETWEEN HUMAN SMUGGLING AND HUMAN TRAFFICKING 1-2 (2006), available at <http://www.state.gov/documents/organization/90541.pdf>. Human smuggling is a criminal transaction between two willing parties whereas human trafficking is profiting through exploitation of a victim. Unlike human smuggling, human trafficking does not involve consent. Victims are forced, coerced, or recruited by fraud. Moreover, unlike smuggling that has an element of movement, a human trafficking victim does not need to cross state lines. See *id.*

22. Kara C. Ryf, Note, *First Modern Anti-Slavery Law: The Trafficking Victims Protection Act of 2000*, 34 CASE W. RES. J. INT’L L. 45 (2002); Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, §§ 101-113, 114 Stat. 1466 (codified as amended at 22 U.S.C.A. §§ 7101-7113 (Westlaw 2015)).

23. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, tit. XII, 127 Stat. 54, 136–60.

specifically and comprehensively address the growing human-trafficking issue.²⁴

Claiming to “ensure just and effective punishment of traffickers, and to protect their victims,” the 2000 TVPA focused almost exclusively on international trafficking victims.²⁵ For example, the Act “require[d] the U.S. State Department to prepare a report evaluating foreign governments’ efforts to combat [human] trafficking.”²⁶ The Act sought to minimize “the appeal of trafficking by enhancing the economic opportunities available” in the victim’s home country.²⁷ It also allocated funds to create programs that increase trafficking awareness, and finally, it “establishe[d] minimum standards countries should implement to eliminate trafficking.”²⁸ But the 2000 TVPA did not address how to prevent and deter human trafficking within the borders of the United States.

Another major goal of the TVPA was to redefine the trafficked person as a victim, rather than an illegal alien.²⁹ But the TVPA did not redefine *domestically* trafficked persons as victims instead of criminals, which stifled identification and rescue efforts within the United States.³⁰ While the TVPA is a commendable effort to curb international human trafficking, it fails to address domestic human trafficking. Compared to the scope and size of the problem domestically, foreign victims get a much greater share of assistance, because the TVPA earmarks federal money for foreign victims only.³¹ As quoted in *The Slave Next Door*, Dorchen Leidholdt “suspects that there’s a higher incidence of domestic than international [trafficking] . . . largely because it’s become so hard these days to cross the borders—and I think it’s being largely ignored.”³² Although the TVPA did help raise awareness within the United States, it fell short of actually addressing the domestic trafficking problem.³³

24. Ryf, *supra* note 22, at 53.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 54.

29. *Id.* at 57.

30. *Id.*

31. BALES & SOODALTER, *supra* note 1, at 103.

32. *Id.* at 102.

33. *See id.* at 103.

B. *State's Call to Action: Florida's Response to a Trafficking Epidemic*

Since the passage of the TVPA and its subsequent reauthorizations, the focus has shifted from a federal approach to a state-centered method to combat human trafficking. Legislative efforts in Florida provide a good example of how states with a high volume of human trafficking have addressed the problem. Florida has the third-highest rate of human trafficking, preceded only by New York and Texas.³⁴ In 2004, Florida took its first legislative steps towards addressing human trafficking within its borders by expanding existing laws to offer victims more protection.³⁵ The Florida Legislature amended chapters 787, 796, and 895 of the Florida Statutes to directly address human trafficking.³⁶ The newly amended statutes made it a first-degree felony to engage in sex trafficking of minors but failed to address the prevention of future human trafficking.³⁷ Later, in 2006 and 2012, Florida amended these laws further to broaden the definition of human trafficking, which now includes all forms of coerced commercialization of sex and provides guidelines for deterring traffickers.³⁸ In addition, a 2007 amendment to section 787.06 included a new training requirement for law-enforcement officers. For initial certification, officers must now complete training on human-trafficking crime prevention and investigation.³⁹

Since its first step in 2004, Florida has also made significant strides developing stricter punishments that match the severity of the

34. Stevie Swanson, *Letter of the Day: More Needs to be Done for Victims of Human Trafficking*, THE TAMPA TRIB., July 27, 2014, <http://tbo.com/list/news-opinion-letterday/letter-of-the-day-more-needs-to-be-done-for-victims-of-human-trafficking-20140727/>.

35. Act of July 16, 2004, 2004 Fla. Laws ch. 2004-391 (codified in scattered sections of the Florida Statutes). Prior to the enactment of the 2004 legislation, older laws made forcing a person to become a prostitute punishable as a third-degree felony. *See* FLA. STAT. ANN. § 796.04 (Westlaw 2015).

36. Act of July 16, 2004 §§ 1–5.

37. *See id.* § 3.

38. *See* Act of June 12, 2006, sec. 1, § 787.06(2)(b), 2006 Fla. Laws ch. 2006-168 (defining “forced labor or services” to include obtaining labor or services, including sexual exploitation, by means of threats, isolation, unlawful confinement, unlawful lending or credit methods, confiscation of identity documents, and any other form of fraud or coercion).

39. *See id.* § 787.06(4).

crime. As first-degree felonies, all forms of human trafficking carry the possibility of imprisonment for 30 years and fines up to \$10,000.⁴⁰ Moreover, Florida's human-trafficking statute provides for forfeiture of any "real or personal property that was used, attempted to be used, or intended to be used" in the commission of the crime.⁴¹

C. *Resources and Remedies Available to Rescued Victims Other Than Criminal Prosecution of the Trafficker*

As legislation was developed to address human trafficking, it quickly became apparent that there was an equal need for post-rescue resources. Thus, the Palermo Protocol was born, advocating for the 3Ps: Prevention, Prosecution, and Partnership.⁴² The Palermo Protocol urged states to focus as fervently on providing protection through post-rescue resources for victims as they do on prosecutorial legislation.⁴³ Although some states have taken the initiative to create more resources and to provide greater access to those resources, the majority of states have failed to act, leaving many victims in the same vulnerable position as when they were trafficked.

Eradicating human trafficking and helping victims effectively transition to survivors requires the legal community, law enforcement, and social-services programs to work interdependently to provide victims with recovery resources.⁴⁴ The American Bar Association suggests that the best method of approaching human-trafficking cases is to take a "holistic approach."⁴⁵ This approach is suggested because these victims' needs are considered the "among

40. See FLA. STAT. ANN. §§ 787.06, 775.082(3)(b)(1), 775.083(1)(b) (Westlaw 2015).

41. FLA. STAT. ANN. § 787.06(7) (Westlaw 2015).

42. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transitional Organized Crime, Annex 2, Nov. 15, 2000, 2237 U.N.T.S. 319, 346–47, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

43. *Id.* at 345–46.

44. JEAN BRUGGEMAN & ELIZABETH KEYES, MEETING THE LEGAL NEEDS OF HUMAN TRAFFICKING VICTIMS: AN INTRODUCTION FOR DOMESTIC VIOLENCE ATTORNEYS AND ADVOCATES 6 (Amanda Kloer et al. eds., 2009).

45. *What We Do*, A.B.A. CENTER FOR HUMAN RIGHTS, http://www.americanbar.org/groups/human_rights/projects/task_force_human_trafficking/whatwedo.html (last visited August 4, 2015).

most complex of crime victims.”⁴⁶ They need medical and mental health care for severe trauma, a safe place to live, protection from their traffickers and economic empowerment. Furthermore, victims may require legal services to address family law, immigration, and public benefits concerns, as well as criminal defense.⁴⁷

For victims, accessing any type of help can be challenging for a number of reasons.⁴⁸ Victims may face obstacles when they try to prove essential elements of their legal cases against their perpetrators.⁴⁹ For example, traffickers often confiscate victims’ identification, such as a social security card, and their money.⁵⁰ By stripping victims of their identities, traffickers are able to keep their victims captive without necessarily restraining their freedom of movement. In some situations, a pimp will threaten a victim’s family rather than physically restrain the victim to ensure that the victim remains under the pimp’s control. Unfortunately, without physical restraint, proving force or coercion is challenging and makes prosecuting the trafficker very difficult. Without proving these essential elements of the crime, a victim will be barred from legal relief.

Under section 772.104 of the Florida Statutes, a victim can recover compensatory damages from her abuser if she can prove she is a victim of a human-trafficking crime.⁵¹ The statute allows a victim to recover three times the amount the trafficker gained by trafficking the victim.⁵² Considering that a victim is expected to service 10 to 15 Johns per day, grossing roughly \$500 to \$1000 a day, it would seem that a victim could recover as much as \$1 million.⁵³ But satisfying

46. *The Victims*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/international-trafficking/242-the-victims> (last visited July 14, 2015).

47. *Id.*; Dorchen A. Leidholt, *Human Trafficking and Domestic Violence A Primer for Judges*, 52 JUDGES’ J., no. 1, 2013, available at http://www.americanbar.org/publications/judges_journal/2013/winter/human_trafficking_and_domestic_violence_a_primer_for_judges.html.

48. *See id.*

49. BRUGGEMAN & KEYES, *supra* note 44, at 13.

50. *Id.*

51. FLA. STAT. ANN. § 772.104 (Westlaw 2015).

52. *Id.*

53. WASH. STATE OFFICE OF THE ATT’Y GEN., *supra* note 4; DOMESTIC SEX TRAFFICKING: THE CRIMINAL OPERATIONS OF THE AMERICAN PIMP 4, POLARIS PROJECT, <https://www.dcjs.virginia.gov/victims/humantrafficking/vs/documents/>

the burden of proof under the statute for recovering such damages is difficult because the victim must prove how much she earned when she was trafficked, typically without knowing this amount.⁵⁴ The large volume of men serviced, coupled with a trafficker striking down any attempt by a victim to keep an accounting of her work, make it nearly impossible for a victim to meet the burden of proof to recover damages.

Moreover, a victim's own criminal background resulting from forced prostitution or drug use makes it difficult for the victim to access social services or to obtain legal relief.⁵⁵ For the state to adequately enforce anti-trafficking laws, a person needs to be identified as a victim. Often, trafficked individuals do not recognize that they are victims of a crime until they are rescued from their trafficker. Denial of such abuse is common in women who are being trafficked by a "Romeo" pimp⁵⁶ who leads the victim to believe that she has an actual romantic relationship with her abuser.⁵⁷ Therefore, it is imperative for law enforcement and others who initially come into contact with these women to identify them as victims. Identification as a victim allows the state to pursue criminal charges against the victim's trafficker and enables a rescued person to access critical services.⁵⁸ Failure to identify a person as a victim or a misclassification of a victim as a criminal can result in a victim losing access to vital recovery resources like safe shelter, psychological help, and legal relief.

Lastly, even if the victim has a well-developed case, human-trafficking cases can be expensive and time consuming and will often

Domestic_Sex_Trafficking_Guide.pdf (last visited July 15, 2015) (discussing the monetary quota that pimps impose on their victims).

54. § 772.104(1)-(2).

55. SUZANNAH PHILLIPS ET AL., CLEARING THE SLATE: SEEKING EFFECTIVE REMEDIES FOR CRIMINALIZED TRAFFICKING VICTIMS 21 (2012), available at <http://www.law.cuny.edu/academics/clinics/iwhr/publications/Clearing-the-Slate.pdf>.

56. See Phil Shuman, *Romeo Pimps: What Can Be Done?*, KTTV FOX 11 (Feb. 12, 2014), <http://www.myfoxla.com/story/24710366/romeo-pimps-what-can-be-done>.

57. BALES & SOODALTER, *supra* note 1, at 104-05.

58. *Fact Sheet: Certification for Adult Victims of Trafficking*, OFFICE OF REFUGEE RESETTLEMENT, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Aug. 8, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-certification-for-adult-victims-of-trafficking>.

require a lawyer who is willing to take on the case pro bono.⁵⁹ And “[t]he existence of a criminal case may require that [the] civil action be stayed, once filed.”⁶⁰ A guilty verdict in a criminal case is admissible in the civil case; therefore, lawyers will usually stay the civil case until the criminal trial has been completed, delaying needed financial relief.⁶¹

Other options available for victims of human trafficking are crime-victim relief programs, including civil forfeiture of assets, restitution as part of sentencing, and victim-assistance services.⁶² Each of these programs allows the victim to receive compensation, either directly or indirectly, from the criminal case against her trafficker.⁶³ In many states, including Florida, programs like the Victim’s Assistance Fund extend the time limitations on filing claims to account for the obstacles faced by victims of trafficking.⁶⁴ But once again, identification of a person as a victim plays a critical role. A victim can only take advantage of the extended time limitations if she is able to prove that she is a human-trafficking victim; therefore, a misclassification as a criminal or a failure to identify a person as a victim can result in their ineligibility for these crime-victim services.⁶⁵

II. ANALYSIS

Although there are many criminal and civil remedies available to domestic victims of human trafficking, they are difficult to access.⁶⁶

59. See generally BRUGGEMAN & KEYES, *supra* note 44 (discussing the complexity of human trafficking cases and strategies for representing human trafficking victims).

60. *Id.* at 29.

61. *Id.*

62. *Id.* at 28.

63. *Id.*

64. See FLA. STAT. ANN. § 960.07(2) (Westlaw 2015); see also *Bureau of Victim Compensation Claim Form*, FLA. OFFICE OF THE ATT’Y GEN. (Oct. 2014), available at [http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9P7GFD/\\$file/VictimCompClaimFormEng.pdf](http://myfloridalegal.com/webfiles.nsf/WF/RMAS-9P7GFD/$file/VictimCompClaimFormEng.pdf). (explaining that the one-year limit on filing a claim may be extended under certain circumstances for victims of human trafficking).

65. See FLA. STAT. ANN. § 960.065(2)(b) (Westlaw 2015) (denying compensation to victims who were engaged in unlawful activity, but providing an exception for victims who engaged in prostitution as a result of human trafficking).

66. See BALES & SOODALTER, *supra* note 1, at 96.

Most of the remedies focus exclusively on victim recovery and compensation. But no state has yet specifically addressed how to handle the care and support of children born to trafficked women.⁶⁷ Even though creating resources to assist victims with children is not a traditional tool used to combat human trafficking, it is potentially one of the most powerful.

For example, one Tampa Bay survivor named Jennifer began dancing at a local strip club in order to pay for her infant's medical bills.⁶⁸ After being brutally beaten and raped for several hours, Jennifer was able to leave her trafficker's office, but not before he told her what time to return the next day.⁶⁹ Jennifer could have gone to the police to ask for help since she was not held in captivity; however, her trafficker used her infant's needs as leverage to control her.⁷⁰ After being severely beaten while her child slept in the same room, she finally decided to report her abuse to the police.⁷¹ Jennifer was lucky and was able to escape from her abuser, but she explained that she still does not know how to "live normally" and even worked for another pimp after her escape.⁷² Her escape and subsequent reentry into the trafficking life embodies what happens when a victim is unable to obtain compensation, has limited work skills, and is trying to care for a child with no reasonable means of support available.

Kinsey Neeson, Director of Outreach and Strategic Partnerships at Saleh Freedom, a non-profit organization that advocates for human trafficking victims, stated that victims with children are a more common occurrence than people assume.⁷³ She described one young woman who truly believed her trafficker was the father of her child until the baby was born, and she saw the child's dark complexion.⁷⁴

67. POLARIS PROJECT, *supra* note 3.

68. See Elaine Silvestrini, *Survivor Recalls Road from Strip Club to Sex Slavery*, TAMPA TRIB., Jan. 18, 2014, <http://tbo.com/news/crime/survivor-recalls-rape-sex-slavery-20140118>. Jennifer's name was changed to protect her identity. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. Kinsey Neeson, Director of Outreach and Strategic Partnerships at Saleh Freedom, Address at the W. Mich. Univ. Law Sch. Panel Discussion: FIGHT: Human Trafficking (Nov. 5, 2014).

74. *Id.*

This woman will probably never be able to determine who fathered her child since her pregnancy was most likely the result of a sexual encounter with one of the numerous men she serviced. Unable to establish paternity for her child, this victim is barred from receiving child support under the current system.⁷⁵

Situations like these identify why it is imperative to include child-support remedies when discussing how to expand the services available to human-trafficking victims. Although there is no perfect solution to any of the issues that arise from human trafficking, this is one way to alleviate the burden placed on victims to find viable financial assistance.

A. Development of a Child Support Program for Victims

For child-support assistance, amending the current forfeiture laws to include forfeiture of trafficking proceeds—rather than just property—would allow the state to generate revenue to fund a victim-only child-support program, while simultaneously deterring traffickers by dismantling their operations financially. While it is unclear why the Florida Legislature has not amended forfeiture laws to include proceeds, this action would provide Florida with a way to raise significant revenue to fund a child-support program without affecting the budget of existing welfare and victim’s assistance programs.

Forfeiture-of-assets laws allow law-enforcement agencies to seize any “real or personal property that was used, attempted to be used, or intended to be used” in the perpetration of a crime.⁷⁶ After the assets are seized, they are either sold or disbursed to law-enforcement agencies, usually to the agencies that assisted in finding and prosecuting the trafficker.⁷⁷ It is estimated that law-enforcement agencies receive about 80% of all seized assets.⁷⁸ From 2000 to 2003 alone, Florida law-enforcement agencies took in more than \$100

75. See *Establishing Legal Paternity*, FLA. DEP’T OF REVENUE, <http://dor.myflorida.com/dor/childsupport/paternity.html> (last visited July 8, 2015) (describing how to establish paternity in order to gain child support services).

76. FLA. STAT. ANN. § 787.06(7) (Westlaw 2015).

77. FLA. STAT. ANN. § 932.7055(4) (Westlaw 2015).

78. Robyn E. Blumner, *Police Are Addicted to Lure of Easy Money*, ST. PETERSBURG TIMES, Aug. 17, 2003, http://www.sptimes.com/2003/08/17/Columns/Police_are_addicted_t.shtml.

million in forfeited assets.⁷⁹ Although law-enforcement agencies deserve some of the proceeds from seized assets because they expend significant resources to stop traffickers, there have been numerous reports of misuse of these funds.⁸⁰ For example, “[i]n 2003 . . . it was reported that Tampa Bay police brass were keeping seized cars for their own [personal] use.”⁸¹ Some of the cars were valued at \$38,000 or more.⁸² This blatant misuse of funds is discouraging, especially with reports of the limited resources available for human-trafficking victims.

To prevent the misuse of money by law-enforcement agencies, a certain percentage of forfeited assets should be transferred to the State to provide financial support for the children of human-trafficking victims. But since most agencies would likely not be receptive to a budget cut, Florida’s legislature should increase the amount of assets taken from traffickers and reform its current forfeiture legislation to include proceeds derived from trafficking. Using the language suggested by Polaris Project,⁸³ section 787.06 should be amended to read, “Any person who violates Florida’s human trafficking law under section 787.06 shall forfeit to the State any *profits or proceeds* and any interest or real property that the sentencing court determines to have been acquired or maintained as a result of committing such offenses.”⁸⁴

Reforming Florida’s human-trafficking statute to include the forfeiture of proceeds would allow the state to generate substantial

79. MARIAN R. WILLIAMS ET AL., INST. FOR JUSTICE, POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE 53 (2010).

80. See Blumner, *supra* note 78.

81. WILLIAMS ET AL., *supra* note 79.

82. *Id.*

83. See generally *What We Do*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do> (last visited July 25, 2015). Polaris Project is the leading non-profit, non-governmental organization that works to combat and prevent modern-day slavery and human trafficking. In addition to partnering with post-rescue resource programs, Polaris also advocates for legislative reform to offer victims greater protection. It is also compiles information from all 50 states and drafts annual reports on each state’s legislation. After compiling all this information, Polaris makes annual suggestions to improve human trafficking legislation nationwide. See *id.*

84. See *Human Trafficking Legislative Issue Brief: Asset Forfeiture*, POLARIS PROJECT (2012), http://www.polarisproject.org/storage/documents/issue_brief_asset_forfeiture_september_2012.pdf (providing model language for states to incorporate in their asset-forfeiture statutes).

revenue to fund a child-support program without deducting the amount given to law enforcement. For instance, the Polaris Project estimates that sex traffickers in the United States can accrue more than \$500,000 a year in profits through the exploitation of just three victims.⁸⁵ As recently as September 2014, Orlando law enforcement raided a human-trafficking operation pimping 25 women.⁸⁶ Although the case is still under investigation, based on Polaris's estimations, this operation generated approximately \$5 million in just one year. Amending the current forfeiture laws to include forfeiture of proceeds would result in funding for more comprehensive state plans to combat human trafficking, such as the funding of a child-support program.

Administration of a child-support program could be most effectively accomplished by structuring the fund like the federal remission program.⁸⁷ The federal remission program allows victims to submit an application to recover pecuniary loss from the forfeited-assets fund.⁸⁸ After being notified by the Attorney General, the victim fills out a petition, and a program official unilaterally decides whether to award recovery under the Attorney General's supervision without any litigation by any parties.⁸⁹

A comparable state program can be modeled after the federal remission program, allowing women to recover some form of financial support for their children and providing multiple benefits to the state and the victim. The State could identify and contact victims more easily if, after rescue, each victim was required to obtain a letter from the Florida Department of Health certifying them as a victim of human trafficking. Under the federal program, once a person has been recognized as an international victim of human trafficking and agrees to assist in the continued investigation and prosecution of their

85. *Id.*

86. David Bodden, *75-Year-Old Man Among Suspects Charged in Orlando Human Trafficking Ring*, NEWS 13 (Sept. 18, 2014), http://www.mynews13.com/content/news/cfnews13/news/article.html/content/news/articles/cfn/2014/9/18/orlando_human_traffi.html.

87. *See generally* *Returning Forfeited Assets to Victims: An Overview of Remission and Restoration*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/criminal/afmls/pubs/pdf/victms-faqs.pdf> (last visited Aug. 30, 2015) (describing the federal program).

88. *Id.* at 2.

89. *Id.*

trafficker, they are able to apply for certification,⁹⁰ and upon approval, the Department of Health and Human Services issues the victim a certification letter that gives them access to benefits.⁹¹ By extending this service to include domestic-victim certification, Florida women would also be able to assert their status as victims. Moreover, the application should be revised to reflect whether the victim had a child during her captivity. In an effort to prosecute traffickers and Johns, women who believe they know the identity of the father should be required to disclose that information to the Florida Department of Health so that subsequent investigations may be conducted. By allowing domestic victims to obtain a certification similar to international victims, these women will have easier access to other resources, and the State can maintain a registry of victims.

Like the federal remission program, the State Attorney General's office would be responsible for notifying victims of their eligibility to petition for this child-support program. Delegating the notification process to the Attorney General's Office would not generate an excessive workload because the Attorney General's Office has a department that is already responsible for advocating and administering victim's compensation programs.⁹² Since all human-trafficking victims are victims of crimes under Florida statutes, the Attorney General's office is already responsible for assisting these women—whether they apply for traditional victim's compensation or the suggested child-support program. Moreover, the Attorney General's Office would simply request a copy of the registry to know which women to notify. Once a victim has been notified and her petition has been approved, the Florida Department of Revenue, the agency that typically enforces child-support obligations, should administer disbursement of the funds.⁹³

Ideally, the victim would receive support until she is self-sufficient; however, in some situations, a victim may never truly

90. *Id.*

91. *Fact Sheet: Certification for Adult Victims of Trafficking*, U.S. DEP'T OF HEALTH AND HUMAN SERVS.: OFFICE OF REFUGEE RESETTLEMENT (Aug. 8, 2012), <http://www.acf.hhs.gov/programs/orr/resource/fact-sheet-certification-for-adult-victims-of-trafficking>.

92. *See Crime Victims' Services*, FLA. ATT'Y GEN., <http://myfloridalegal.com/pages.nsf/Main/90514096788f88c085256cc50075acf7> (last visited Oct. 29, 2014).

93. *See Child Support Enforcement*, FLA. DEP'T OF REVENUE, <http://dor.myflorida.com/dor/childsupport/> (last visited Oct. 29, 2014).

recover from her experiences.⁹⁴ Therefore, the state must determine how long a victim will be eligible to receive support. To address this issue, guidance from social-service programs like Temporary Assistance for Needy Families (“TANF”) and state unemployment funds would be useful. Like the proposed child-support fund, TANF and state unemployment funds are meant to be temporary; they are offered as a crutch to people in need. Under these programs, a person is eligible for a specific period of time, usually six months, at which point the assistance is either terminated, or the agency reviews a person’s petition for extension of assistance.

The proposed child-support program should be administered similarly to temporary social-service programs like TANF and unemployment insurance. The initial grant of a petition would allow the victim to receive support for a limited time period, with an option to apply for an extension of assistance upon showing that the victim is still in the recovery process. Because the recovery rates and experiences for each trafficked woman vary, the decision to grant an extension should be made on a case-by-case basis. For example, child support could be offered to a woman until her child turns 16—the age at which a minor is eligible to work—or the woman could recover child support until the child is 18 upon submitting a petition showing undue hardship.

B. Addressing Legislative Qualms: Who, What, How, When?

With the development and implementation of any new assistance program, legislators will be understandably hesitant. But the benefits of providing victims with a viable alternative to support their children substantially outweigh any objections or fears the state may have. Nevertheless, in anticipation of a few obvious concerns legislators may have, the following section addresses why many of these reservations are misplaced.

One possible objection to developing such a fund is that there would be no way to calculate the child-support amount. Traditionally, child support is calculated based on the net income of the parent who does not live with the child or has minority time-sharing with the child.⁹⁵ Without establishing paternity, there is no viable way to impute income to an unknown father. But there is a

94. See Neeson, *supra* note 73.

95. See FLA. STAT. ANN. § 61.13 (Westlaw 2015).

sustainable alternative that can be used to determine child support: the amount of recovery could be calculated by determining what the required child support would be for a person earning minimum wage. Based on this alternative, the victim's mother could recover around \$373 per month for one child based on the average income of a minimum-wage employee in Florida.⁹⁶ The amount of support for any additional children could be calculated using the traditional child-support guidelines in Florida.⁹⁷

Since child support is usually based on the income of the non-custodial parent, it may seem that a victim is recovering significantly less than if she sought to enforce child support traditionally with a court order. But under traditional child-support laws, a woman would have to establish paternity as a prerequisite to recovery. And with a sex-trafficking victim averaging 10 to 15 Johns a night for seven years,⁹⁸ the likelihood of establishing paternity for a child born to a victim is highly improbable. Therefore, the most realistic and effective way for children of victims to receive some support is to ensure that their mothers are able to recover at least the minimum amount of support allowed under traditional child-support laws in Florida.

Another concern the State may have is whether trafficking proceeds will be sufficient to support all of the children of victims until the children reach the age of 16. Quantifying the exact number of children is challenging due to difficulty in victim identification.⁹⁹ The fund could, however, be limited to women who had children as a result of being trafficked and who were either rescued in Florida or who permanently reside in Florida. This limitation would ensure that the revenue generated by the State is serving the State's citizens.¹⁰⁰ By limiting the program to victims rescued in Florida or victims that are citizens of Florida, the number of women eligible for the program

96. FLA. STAT. ANN. § 61.30 (Westlaw 2015).

97. *How to Change a Support Order*, FLA. DEP'T OF REVENUE, <http://dor.myflorida.com/dor/childsupport/modification.html> (last visited Oct. 29, 2014).

98. WASH. STATE OFFICE OF THE ATT'Y GEN., *supra* note 4.

99. Neeson, *supra* note 73.

100. Although the proposed program is directed at Florida, every state should adopt a comparable child-support assistance program to ensure all victims with children are receiving some type of aid.

would be reduced without rendering the program useless because of complicated restrictions.

Another potential concern is that a woman could abuse the program by collecting from the recovery fund while already receiving child support, financial assistance, or other government support. But the federal remission program takes the possibility of double recovery into consideration and creates a limitation on a victim's eligibility by disqualifying any victim who has reasonable access to other compensation.¹⁰¹ The proposed Florida child-support fund could adopt a similar restriction.

CONCLUSION

There are unknowns in the size and financial impact of the program proposed by this Comment, but something must be done to respond to the needs of human-trafficking victims and their children. It is known this problem exists.¹⁰² It is known that women who have a child as a direct result of trafficking are typically barred from traditional child-support assistance.¹⁰³ It is known that traffickers prey on vulnerability, and there is arguably no person more vulnerable than a woman unable to financially support her child.¹⁰⁴

Women possess a primal instinct to protect their children at all costs. This instinct is simultaneously their greatest strength and their greatest vulnerability. Until a woman's need to care for her children is addressed, children will continue to be used as bait to lure vulnerable women back into human trafficking. Reforming forfeiture laws is not the only viable solution to this problem; civil-remedy reform and social-services reform also provide possible solutions, but are beyond the scope of this Comment. Human trafficking cannot be viewed through tunnel vision aimed only at prosecuting the perpetrator of the crime. State and federal lawmakers need to take a holistic approach to solving this problem and must consider factors that make a victim vulnerable to trafficking. Until legislators effectively address child support and other more specific issues, human trafficking and sexual exploitation of women will never be fully eradicated.

101. See U.S. DEP'T OF JUSTICE, *supra* note 87, at 2.

102. *Id.*

103. *Id.*

104. POLARIS PROJECT, *supra* note 46.