

Child Trafficking for Labor in the United States

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Child trafficking survivors¹ are among the most vulnerable and exploited people in the world. Startling numbers of children are forced to work each year. Children can be paid the least, exploited the most, and, because of their legal incapacity and invisibility as minors, often have little to no access to resources. Children’s vulnerability to human trafficking can also be magnified by their physical, emotional, and financial dependence on adults.

What is child labor trafficking?

Not all forms of child labor and exploitation constitute child trafficking. As the Department of Labor (DOL) points out, “Not all work is detrimental to children...But even when working children are not forced to endure harsh conditions, child labor entails sacrifice because children give up the opportunity to be engaged in other activities, such as furthering education.”² Child employment, which under certain circumstances is permissible, becomes trafficking when the employer uses force, fraud, and/or coercion to maintain control over the child and to cause the child to believe that he or she has no other choice but to continue with the work.

Under U.S. law, the Trafficking Victims Protection Reauthorization Act (TVPRA) defines “severe forms of trafficking” and both sex and labor trafficking through the following definition:

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 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.³

Thus, under the TVPRA, children under 18 years of age involved in commercial sex do not need to have experienced *force, fraud, or coercion* in order to be considered victims of a severe form of trafficking in persons.⁴ However, children under 18 years of age in labor trafficking situations are subjected to a higher legal standard, and must have been subject to *force, fraud, or coercion* in order to be considered labor trafficking victims.⁵

Children trafficked for labor are often victims of related or concurrent crimes, or may appear to be a victim of a crime other than trafficking. Some crimes that commonly occur with child labor trafficking, or which child labor trafficking may initially appear to be, are child employment violations, domestic violence, child sexual abuse, child pornography, and child abuse or neglect.

¹ For the purposes of this paper, we use the term “child trafficking survivor” but also recognized the terms “minor,” “youth,” and “juvenile” as terms that are also used for victims of trafficking that are under 18 years of age.

² Department of State, Bureau of International Labor Affairs. BY THE SWEAT AND TOIL OF CHILDREN. VOLUME IV: AN ECONOMIC CONSIDERATION OF CHILDREN 1 (2000), *available at* <http://www.dol.gov/ilab/media/reports/iclp/sweat6/sweat6.pdf>.

³ Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 (8). Prior to the enactment of the TVPA, child sexual exploitation through prostitution was primarily addressed on the federal level through the White Slave Traffic Act, currently known as the Mann Act. Mann Act of 1910, enactment repealed & provisions contained in 18 U.S.C. § 2421 et seq., which prohibits the transportation of an individual in interstate or foreign commerce with the intent that the person engage in prostitution or an unlawful sexual act.

⁴ Victims of Trafficking and Violence Protection Act of 2000, Pub L. No. 106-386, §103(8), 114 Stat. 1464 (2000).

⁵ It is important to note that state law may also define child labor and child trafficking, which may or may not be the same as federal law.

How are children trafficked for their labor?

Child survivors of labor trafficking can be found in many industries, and the profile of trafficked youth is diverse. The profile of trafficked children is diverse. At present, female child survivors of sex trafficking represent the most visible group of child trafficking survivors, meaning that trafficked boys as well as LGBT youth continue to remain an overlooked and under-resourced population. In our experience, many undocumented children are subject to debt bondage and peonage and forced to work to pay off smuggling debts levied by smugglers (such as coyotes and snakeheads), but are not identified as child labor trafficking survivors and are merely identified as smuggled children or unaccompanied minors.

It is important to remember that child sex trafficking and child labor trafficking cases often intersect. Many child survivors of labor trafficking experience sexual assault, abusive sexual contact, or even rape by their traffickers.⁶ Children trafficked into commercial sex industries may also be forced to perform other types of labor and services, such as selling drugs and domestic work.⁷

Challenges to identifying and serving child labor trafficking survivors

- **The overwhelming focus on child sex trafficking to the exclusion of child labor trafficking is harmful and leads to under-identification of, and under-funded assistance for, child survivors of labor trafficking.** Child survivors of sex trafficking represent the most visible group in mainstream media, academia, and, to a large extent, government policy. However, in our experience, child survivors of labor trafficking oftentimes suffer through longer periods exploitative and abusive conditions because criminal and civil law enforcement, social and legal service providers, and other first responders fail to identify them as trafficking survivors in a timely fashion.
- **It may be difficult to distinguish trafficked children from smuggled children.** In our collective experience, there are circumstances in which children are smuggled into the United States; subsequently, the smugglers charge them with paying off the debt for their passage and often add on exorbitant fees and interest. Faced with debt bondage, these children are relegated to working to pay off these debts or their families in their home countries are likely to face the consequences. If they were adults, they would probably be considered smuggled persons and face the legal consequences for their illicit migration. However, as children who do not have the legal capacity to make these types of agreements, they may qualify as trafficking victims.⁸
- **Child trafficking survivors of crime are even less able than adult survivors to self-identify and have difficulty providing information about the circumstances of their trafficking.**⁹ Children experience psychological traumatization at a deeper level and therefore may find it even harder than adults to confide in individuals regarding painful and intimate events.¹⁰ Children, especially

⁶ See Freedom Network. “Intersections Between Human Trafficking and Sexual Assault” (2012), *available at* <http://freedomnetworkusa.org/wp-content/uploads/2012/05/Sexual-Assault-FINAL.doc>.

⁷ Similarly, some children may be trafficked first into sexualized labor industries, such as strip clubs, “dancing,” or “hostessing,” and then later trafficked into the commercial sex industry. Trafficking into these sexualized labor industries generally falls under the legal definition of labor trafficking under the TVPRA. For case examples of the intersection between child sex trafficking and labor trafficking, see stories of “Yelena,” “Mia,” “Blanca” and “Patricia” supra note Freedom Network. “Child Trafficking for Labor in the United States.”

⁸ In particular, the recent influx of unaccompanied children to the United States represents a population of minors who are increasingly vulnerable to being trafficked. For more information and case profiles, see Freedom Network USA, “The Freedom Network’s Response to the Current Influx of Unaccompanied Children at the U.S.-Mexico Border,” August 2014, *available at* <http://freedomnetworkusa.org/wp-content/uploads/2012/05/FN-Statement-on-UACs.pdf>,

⁹ Klain, Eva and Amanda Kloer. MEETING THE LEGAL NEEDS OF CHILD TRAFFICKING VICTIMS: AN INTRODUCTION FOR CHILDREN’S ATTORNEYS & ADVOCATES. American Bar Association Commission on Domestic Violence 7 (2009), *available at* http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/Child_Trafficking_authcheckdam.pdf.

¹⁰ Heather Clawson, Nicole Dutch & Megan Cummings, *Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned*, NATIONAL INSTITUTE OF JUSTICE No. 21654 at 37 (2006).

undocumented minors, are even less likely than adults to disclose any information to any person of authority.¹¹ Undocumented children in particular may distrust authority figures due to their experiences in home countries with corrupt and violent authority figures, or they may fear authorities in the U.S. due to their immigration status. Traffickers also convince children that the authorities should be feared and will either not believe them or treat them like criminals. Because so many child labor trafficking cases are only assessed for physical or sexual abuse, patience and thorough screening of the root causes of a child's migration, extent of abusive conditions in the workplace, and potential victimization of other crimes need to take place.

- **Children face multiple, complex legal systems, and misidentification of child labor trafficking may lead to underutilization of available social services and legal remedies.** Besides navigating the family law and juvenile justice systems, child labor trafficking survivors may also have to interact with criminal and civil law enforcement on the local, state, or federal levels. They may also be eligible for civil remedies (e.g. employment and labor claims, protective orders) as well as immigration remedies (e.g. Special Immigrant Juvenile Status, VAWA, U-visa, T-visa, asylum, etc.).
- **Child welfare planning is especially complex and requires great flexibility.** Child welfare planning should emphasize permanency for children in addition to immediate and long-term safety. These plans must be flexible and take into account the child's individual needs. For example, some child labor trafficking survivors were trafficked because they were forced to leave home to generate income to support their family. Plans to go to school and to forgo work without addressing the child's concerns to financially support their family may put the child at risk of running away and being re-trafficked. Planning for appropriate and safe housing options is also complicated by lack of awareness of specific issues related to children who have been trafficked, as well as a lack of housing resources in general.
- **Children have complex relationships with different adults, and it is not always clear and straightforward who are appropriate adult supports for child labor trafficking survivors.** Children may have grown dependent on, or even emotionally attached to, their adult traffickers and regard them as protectors or *de facto* guardians, and therefore resist any attempts to criminalize or criticize them.¹² For identification purposes, it is not always clear whether the adults accompanying the children are actual caregiving parents, relatives, friends, employers, co-workers, traffickers, or complicit in some trafficking or exploitative scheme.

Recommendations

1. **Use a human rights-based approach that emphasizes the rights of children and their best interests by giving due consideration to their views.** A human rights-based approach promotes trafficking initiatives that empower children and conveys that, even though they are children, they are not helpless. It is encouraged to allow children to be an integral part in decision making. This approach to working with child trafficking survivors emphasizes that the priority should be to protect their interests rather than allowing law enforcement investigations to take precedence. This is further recognized in the TVPRA, where child trafficking victims are exempt from the T-visa requirement of cooperation with an investigation of trafficking. Law enforcement authorities should not engage in measures that have the potential to harm children or violate the rights of the child, such as detaining or deporting child migrants without appropriate screening for human trafficking or other crimes.
2. **Support policies, legislation, and services that protect all trafficked children equally.** The misconception that child survivors of sex trafficking are more “deserving” of attention, services, funding, and legislation not only hurts child survivors of labor trafficking but also limits the public's understanding of human trafficking as a whole.

¹¹ Klain & Kloer, *supra* note 8, at 15.

¹² Dottridge, Mike and Ann Jordan. *Children, Adolescents, and Human Trafficking: Making Sense of a Complex Problem*. RIGHTS WORK INITIATIVE. Issue Paper 5, at 12 (May 2012), available at <http://rightswork.org/wp-content/uploads/2012/05/Issue-Paper-5.pdf>.

3. **Expand access to services and protection for all child survivors of trafficking, and create training programs for relevant city and state agencies.** Expanded services should include counseling, mentoring, housing, education, job training, and legal services. Large numbers of children slip through the cracks of an underfunded services network. Trainings should include, but not be limited to, labor investigators, first responders, truancy officers, and hospital workers. School systems should have protocols in place to identify all trafficked youth, refer to services, and educate on prevention.
4. **Promote policies that provide education about the danger of child smuggling turning into severe form of trafficking in persons, as well as also provide a realistic picture of the reasons children flee their home countries.**¹³ Some parents genuinely believe that they are sending their children across international borders to provide them with educational or employment opportunities. Parents need to be educated about the dangers involved in such unsafe migration as well as about the possibility that the smugglers may subsequently subject the children to exploitative and harmful third parties.
5. **Promote placement with adults or family reunification, as appropriate.** Careful screening is required for assurance that families and other adults in the child's life were not complicit in trafficking the child and are also safe to reunite the child with. Family reunification is one of the primary goals of immigration laws. The Unaccompanied Refugee Minors (URM) Program, if taking child labor trafficking into account, can properly help place children with foster families as needed.
6. **Department of Health and Human Services should place greater importance in differentiating between "potential" child trafficking victims and minors actually deemed victims of a severe form of trafficking, especially amongst child labor trafficking victims.** Accurate assessment for "potential" child labor trafficking victims will serve to qualify more child labor trafficking victims for eligibility for interim financial assistance and qualification into the URM Program.
7. **Encourage and support the DOL, especially the Wage and Hour Division, in its efforts to screen for child labor trafficking in the course of enforcing child labor laws and the Fair Labor Standards Act.**¹⁴ The DOL attempted to implement rules to protect children working in the agriculture industry; it should be given the leeway to protect child workers who may be vulnerable to be exploited, trafficked, or abused.
8. **Create a mechanism that would monitor efforts to combat child labor in the United States similar to that of the DOL's Bureau of International Labor Affairs (ILAB), which monitors child labor internationally.** 2010 marked the first year the State Department's Trafficking in Persons (TIP) Report included a ranking of the United States. The government should also create a mechanism or body that would be responsible for reporting on child trafficking in the United States in upcoming TIP reports.¹⁵
9. **Request that Office of Refugee and Resettlement facilities for undocumented children and the Unaccompanied Refugees Minor Program screen all children in their care for child labor trafficking.** Many undocumented children are sent to these facilities and programs but are never screened, much less identified, as labor trafficking survivors.
10. **For child labor trafficking survivors, child welfare planning should include tailored plans that take into consideration the child's family circumstances, abusive home environments, need to support family and generate income, and education and work plans.**

¹³ Gozdzia, Elzbieta and Micah N. Bump, Victims No Longer: Research on Child Survivors of Trafficking for Sexual and Labor Exploitation in the United States. Institute for the Study of International Migration. (2008) at 54. *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/221891.pdf>.

¹⁴ United States Department of Labor. *Youth & Labor*, available at <http://www.dol.gov/dol/topic/youthlabor>.

¹⁵ The TVPRA 2005 required the Department of Labor, through the Bureau of International Labor Affairs (ILAB), to "carry out additional activities to monitor and combat forced labor and child labor in foreign countries," including, but not limited to provide information regarding trafficking in persons for the purpose of forced labor for inclusion in the Department of State's Trafficking in Persons (TIP) report. Department of Labor Bureau of International Affairs. *Trafficking Victims Protection Reauthorization Act*, available at <http://www.dol.gov/ILAB/programs/ocft/tvpra.htm>.