

CHILD PROSTITUTION AND HUMAN TRAFFICKING

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BIOGRAPHICAL INFORMATION

Geoff Barr is an Assistant Attorney General at the Office of the Texas Attorney General and a Special Assistant United States Attorney for the Western District of Texas. In both roles, Geoff investigates and prosecutes human trafficking cases, mostly comprising of domestic minor sex trafficking offenses committed by pimps against juvenile victims. Geoff constantly collaborates and engages in dialogue with state and federal officials across the state concerning issues in victim services, investigations, and prosecutions. Geoff also spends time raising awareness and training law enforcement in human trafficking.

Prior to arriving at the Texas Attorney General's office and after a very brief stint in the private practice of civil law, Geoff had the honor and privilege to serve as both an Assistant Criminal District Attorney and the elected Criminal District Attorney in Comal County, where he successfully prosecuted all types of offenses and served as the County's General Counsel. In this former capacity, Geoff also served as Faculty Instructor and Visual Trials Presenter at the 2010 National District Attorneys Association Trial Advocacy I Course and was appointed by Governor Perry to the Texas Violent Gang Task Force.

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CHILD PROSTITUTION AND HUMAN TRAFFICKING

I. INTRODUCTION AND OVERVIEW

This paper is intended to educate child welfare and juvenile justice professionals on what constitutes domestic minor sex trafficking in Texas and to create a general awareness of the current laws and issues that are associated with this crime.

Why do victims of human trafficking need to be protected and traffickers brought to justice? Human trafficking is, in essence, a form of modern-day slavery. At its root, this deplorable crime destroys a person's dignity and deflates the value of human life. Human trafficking offends our foundational notions of life, liberty and the pursuit of happiness – rights that were recognized as self-evident and inalienable truths by our nation's founding fathers through express recitation in the Declaration of Independence of the newly formed United States of America. DECLARATION OF INDEPENDENCE [¶ 2] (1776). The Preamble of the United States Constitution purposes to secure the “Blessings of Liberty,” and the Thirteenth Amendment prohibits slavery and involuntary servitude. U.S. CONST. pmb.; U.S. CONST. amend. XIII, § 1. This crime is an affront to our character of who we are and what we stand for as Americans and Texans.

Texas has and continues to develop a robust response through the enactment of stringent laws aimed at prosecuting the offenders and protecting victims. What remains is a continued campaign to develop resources to protect these young victims, and to raise awareness of this crime and the context from which it exists, while exposing myths of what it is not.

II. WHAT IS HUMAN TRAFFICKING?

Human trafficking is commonly referred to as modern-day slavery. POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview> (last visited Dec. 11, 2012). Both federal and Texas law recognize human trafficking as causing an individual to engage in labor, services, or commercial sex through force, fraud, or coercion. 18 U.S.C. § 1591(a) (West 2012); TEX. PENAL CODE ANN. §20A.02 (Vernon 2011). This crime flourishes all over the world, including the United States, victimizing an estimated 27 million men, women, and children. (U.S. Department of State, 2012). Despite the public's perception that human trafficking involves an international component and is another country's problem, the reality is that human trafficking offenses are committed domestically by and against United States citizens. Many of these cases include pimps exploiting minors to engage in prostitution and other forms of child sexual exploitation. (Banks & Kyckelhahn, 2011).

III. TEXAS PENAL LAWS

Texas criminalizes labor and sex trafficking of both adults and children pursuant to chapter 20A of the Texas Penal Code. This law defines a child as any person under the age of 18 years of age. TEX. PENAL CODE ANN. §20A.01(1) (Vernon 2011). Furthermore, the law imposes strict liability as to knowledge of the child's age. TEX. PENAL CODE ANN. §20A.02(b)(1). This means that a trafficker is liable regardless if he believes the child to be 18 years of age or older. These offenses are classified as “3g” first degree felonies. TEX. CODE OF CRIM. PROC. ART. 42.12, § 3g(a) (Vernon 2011). As such, a judge may not grant probation to a person convicted of human trafficking. *Id.* Child trafficking is a first degree felony punishable between 5 to 99 years or life in the Texas Department of Criminal Justice and/or up to a \$10,000 fine. TEX. PENAL CODE ANN. §12.32 (Vernon 2011); TEX. PENAL CODE ANN. §20A.02(b)(1).

A. Child Labor Trafficking Offense

A child is a victim of labor trafficking when a person traffics a child intending the child to engage in forced labor or services. TEX. PENAL CODE ANN. §20A.02(a)(5) & (6). Force is any use of force, fraud, or coercion that causes the child to engage in the labor or services. TEX. PENAL CODE ANN. §20A.01(2). It must be emphasized that transportation or movement of a victim is not required for trafficking to occur. TEX. PENAL CODE ANN. §20A.01(4). The definition of “traffic” is broad enough to encompass just about any type of conduct and means “transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means.” *Id.* Essentially, if the trafficker's conduct is linked to the causation of forced labor or services, then it can be considered trafficking. The child labor trafficking law criminalizes conduct in circumstances when (1) a person knowingly employs force, fraud or coercion to cause a child under the age of 18 years of age to engage in labor or services; (2) a person benefits from knowingly participating in a venture where a child under eighteen years of age is caused to provide labor or services by force, fraud or coercion; or (3) a person assists and is aware that another person(s) will employ force, fraud, or coercion to cause a child to engage in forced labor or services. These offenses are first degree felonies. *Id.* Trafficking can be found in construction, agriculture, restaurant, hotel and hospitality, massage service, and adult

entertainment industries. Victims include both vulnerable citizens and undocumented immigrants that have been smuggled into the United States through deception and false promises. They are then coerced to pay off their smuggling debt through forced debt-bondage. Besides the actual enforcers, human traffickers can be investors, recruiters, transporters, informers, and others. For example, a person who merely provides a child food in order to give him energy, albeit with the conscious objective or desire that the child will be forced to wash dishes in a restaurant, is a human trafficker. Another person may assist in a venture by recruiting a child to work through deceptive advertising. Yet, another person may be responsible for transporting a child to various job locations.

B. Child Sex Trafficking Offense

A child is a victim of sex trafficking when a person transports, entices, recruits, harbors, provides, or otherwise obtains a child (traffics) and causes, *by any means*, the child to engage in the following offenses:

- a. Continuous Sexual Abuse of Young Child or Children;
- b. Indecency with a Child;
- c. Sexual Assault;
- d. Aggravated Sexual Assault;
- e. Prostitution;
- f. Promotion of Prostitution;
- g. Aggravated Promotion of Prostitution;
- h. Compelling Prostitution;
- i. Sexual Performance by a Child;
- j. Employment Harmful to Children; or
- k. Possession or Promotion of Child Pornography.

TEX. PENAL CODE ANN. §20A.02(a)(7).

A person that benefits from this trafficking venture is also liable. TEX. PENAL CODE ANN. §20A.02(a)(8).

A material distinction between child labor trafficking and child sex trafficking is that no proof of force, fraud, or coercion is required to cause the child to engage in the conduct listed above. *Id.* Any conduct will suffice, notwithstanding its perception as good, bad, well intentioned, or otherwise. For example, a person who purchases a child condoms and who is aware that the child will commit prostitution is a human trafficker. Often times, pimps will purchase and/or provide clothes, alcohol, cigarettes, drugs, condoms, transportation, shelter, and food as a means to enable and assist a child to engage in prostitution activities. When evidence reveals that a “john” knows another individual assisted a child to engage in sexual conduct or that a “john” paid a third party to engage in sexual conduct with a child, then the “john” has committed an offense of human trafficking. So, even if no sexual assault or child indecency offenses occur with a child, a “john” can still be liable for an even higher first degree felony trafficking of persons offense by committing a prostitution offense (agreeing to sexual conduct for a fee) involving a child. This type of conduct, although not exhaustive, is what is contemplated by the clause *by any means*.

IV. MINOR SEX TRAFFICKING TYPOLOGIES AND METHODS

Due to a trafficker’s ability to control and restrain his victim both physically and psychologically, human trafficking can exist anywhere, in any industry, in the open or in secrecy. Sex trafficking can be found in homes, on the Internet, hotels, truck stops, brothels, massage parlors, bars, nude modeling studios, and nude dancing venues. (Estes & Weiner, 2001).

Human traffickers are typically motivated by an economy. “Johns” attempt to give money and other items of value in exchange for sex and pimps are motivated by financial gain, requiring their victims to give them all or a significant percentage of the proceeds earned from their sexual conduct. (Estes & Weiner, 2001). Their victims typically are considered nothing more than a commodity to be sold. In order to be successful, a human trafficker must employ various means and methods to acquire and maintain their human inventory and promote their business operations to get money or sex.

A. Recruitment through Exploitation of Vulnerabilities

A common perception that human traffickers acquire their victims only through force, slave sales, and kidnappings is incorrect. Human traffickers typically acquire humans by preying on the vulnerability of an individual or class of individuals. Factors that increase vulnerabilities include, but are not limited to, socio-economic, poverty, history of physical, sexual, and emotional abuse, drug dependency, immigration status, gang

membership, family dysfunction, school performance issues, depression, and poor self-esteem. (Estes & Weiner, 2001) (Finkelhor & Ormrod, 2004).

Individuals from other countries who desire to escape harsh government regimes, severe poverty, or dangerous environments may attempt to seek assistance by entering the United States illegally. (Clawson, Dutch Solomon & Grace, 2009). Thus, these individuals must wholly rely on a person or persons to ensure their transportation and arrival into this country. Such smuggling services, however, are rarely without cost. A human smuggler may become a human trafficker when he demands that the smuggled individual perform labor or commercial sex acts to pay off the smuggling services debt.

Runaway and troubled youth are a large category of vulnerable victims. A federal study published in 2002 estimated that 1.7 million children were classified as runaway or throwaway youth in 1999 alone. (Hammer & Sedlak, 2002). Of this number, 71 percent were considered to have been endangered. *Id.* A majority of runaway and troubled youth ranged in age between 15 and 17 and consisted equally of males and females. *Id.* Concerning is the fact that only 21 percent of these children were actually reported missing. *Id.* The study estimated that during this 12-month period, approximately 38,600 of these children were at risk for sexual endangerment or sexual exploitation, including prostitution. *Id.* Although statistics indicate that these runaways are typically female in the commercial sex trafficking context, they can be males too. (Banks & Kyckelhahn, 2011). “Nationally, the average age at which girls first become exploited through prostitution is 12-14 years old.” (Clawson, Dutch Solomon & Grace, 2009). These children may be looking to escape from an environment of physical, sexual, or emotional abuse. (Banks & Kyckelhahn, 2011). Even if domestic abuse does not legally exist, such children may suffer from family dysfunction. *Id.* Often, these children inquire about their desire for emancipation from their parents. Pimps are all too willing to fill in these emotional voids. Some experts indicate that within 48 hours of a child running away, that child will be presented with an opportunity to go with a pimp. (Clawson, Dutch Solomon & Grace, 2009). Furthermore, it is estimated that about 50 percent of girls in prostitution are controlled by a pimp. (Albanese, 2007). Whether recruited on the street or online through social media, runaways and troubled youth are particularly vulnerable emotionally and financially. (Clawson, Dutch Solomon & Grace, 2009). Due to their age, juveniles cannot lawfully find legitimate employment that will allow them the financial means to obtain shelter, food, provisions, and transportation. *Id.* Pimps provide an alternative option through subtle strategy. (Spangerber, 2001). For example, a pimp may approach a young girl who has run away from home and offer flirtatious friendship and affection. He may use social media such as Facebook.com or Tagged.com as a means to stay consistently engaged with her. He will attempt to exploit the child’s already fragile emotional state and earn her trust by pretending to be someone who cares for her. He will offer her a place to stay, clothes to wear, food to eat, and companionship. He may promise her love and make her believe that he is her boyfriend. This grooming period can last days or months, depending on the dynamics of the relationship and the personalities involved. Once the pimp believes he has secured her love and loyalty, he will tell her that he needs her help to make ends meet and to pay the bills. The child, invested in the relationship, may feel a sense of obligation to help. It is at this point that the pimp will initiate discussions concerning the child prostituting herself to make the needed money to pay for the rent, bills, food, etc. The pimp may have other girls working for him that he may also use to convey a sense of family, companionship, and legitimacy to her. Soon after, he may verbally, sexually, or physically abuse her or one of the other girls in her presence to reveal how he responds to disappointment. These tactics are intended to gain compliance, and unfortunately, may be consistent with the child’s pre-existing views of a normal relationship.

B. Maintenance through Manipulation

In order for the human trafficker to maintain his human commodity, he must employ a form of force, fraud, or coercion that will manipulate and cause the child to comply with his demands. Forms of force, fraud, or coercion take many forms and may consist of physical or sexual assaults to the child or others, deceptive psychological manipulation, promises of false love, threats of violence to the child or the child’s family, verbal abuse, physical restraint, confinement, confiscation of identifying information, tattooing, branding, false promises of a better life, and threats of deportation. (Clawson, Dutch Solomon & Grace, 2009).

C. Promotion of the Trafficking Enterprise

Once the trafficker has successfully obtained and maintained the child’s compliance to engage in the trafficking conduct, then the trafficker must find and market to a demand. The labor or services offered will depend on the location and type of demand. Demand for non-sexual labor and services are hidden within the secrecy of trusted relationships among traffickers providing human labor and traffickers using human labor. The secretive nature of this category makes it difficult to find, monitor, and detect. For example, these forms of exploitation may occur in migrant farms “consisting of transient men, women and children who are moved around the U.S. based on the scheduled harvesting season for agricultural products.” (Human Smuggling and Trafficking Center, 2008).

Commercial sex trafficking can be marketed by delivering girls to areas where there are high concentrations of potential buyers in close proximity. Examples where demand may be high include areas where transient males are likely to be found, including the military, truck stops, seasonal worker locations, conventions (Estes & Weiner, 2001), and temporary living compounds for workers in the oil and gas industries. In these contexts, a trafficker may work with an insider to help the girl approach and arrange meetings with buyers. The trafficker merely transports the child to the location of the demand and allows the law of probabilities to govern profits. The traditional method of the pimp-prostitute venture in which the victim solicits “johns,” or vice versa on street corners, is being replaced by the Internet. The Internet has become a useful tool for human traffickers. Pimps can structure promotion of prostitution through escort webpages. Almost any website can be used as a platform to commit this crime. Websites that cater to sexual content as well as general websites such as Backpage.com, Facebook.com, and Tagged.com, provide a forum for people to advertise, organize, and communicate the terms of trafficked sex. The Internet allows traffickers to greatly expand their networking and marketing opportunities, while at the same time, allowing them to benefit from obscurity resulting from the Internet’s sheer expansiveness.

V. HOW ARE THESE CASES DISCOVERED?

These cases may be brought to light in many ways. Referrals may be brought to criminal justice professionals by citizens, other law enforcement agencies, and victim service providers. For example, a citizen may suspect human trafficking based on observations of suspicious staff behavior at a restaurant or a massage clinic. Law enforcement may discover human trafficking by searching for the crime on the Internet. Or, a vehicular traffic stop may reveal a suspicious group of individuals with conflicting stories. Parents may file a report to seek help in finding their runaway child. Also, organizations such as the National Human Trafficking Hotline and the National Center for Missing and Exploited Children may forward tips to law enforcement. Police operations and stings may then be employed to interdict and rescue the victims, which may result in the victim being (1) detained for charges of prostitution, drug possession, runaway status, etc.; (2) returned to her parents; (3) transferred to Child Protective Services; (4) or transferred to a shelter equipped to rehabilitate victimized minors of prostitution. As juvenile justice professionals, you will likely encounter these victims through the legal procedures associated with their charged juvenile conduct.

VI. CHILD INTERDICTION, RESCUE, AND PROTECTION

A. Interdiction Generally

Rescuing and recovering a victim may be easy or difficult depending on whether the victim cooperates, and how readily the investigator can ascertain the identity of the victim. If a victim has out-cried for a rescue directly to law enforcement, family, friends, or some third party, then interdiction is easier because the investigator can concentrate on creating an operational plan that focuses on a safe interdiction for all parties. If the victim does not cooperate and does not self-identify as a victim, then the investigator must consider contingency plans for the victim upon recovery so that the victim does not voluntarily escape back into the same environment. In attempting to secure the safety of the child in the hours and days following interdiction, the officer must determine if the child should be transferred to the custody of Child Protective Services, her parents, or juvenile justice authorities. All hands must be on deck and the investigator should remain actively involved until the investigator is completely confident that the child is safe and stabilized. In order to protect and prevent the child from escaping back into the environment, the investigator may have no other option but to arrest the child for an offense. If no charges can be brought against the child, parental or legal guardian consent will be required to place the child in a residential facility to receive counseling and therapy. Sometimes, acquiring this consent is difficult. If this is the case, then the investigator should contact a Child Protective Services investigator to determine if circumstances might then exist for the child’s removal. Once the child is stabilized, the child will need to be assessed for medical, trauma, dietary, nutritional, hygienic, and provisional needs by qualified, licensed and trained individuals, to include Sexual Assault Nurse Examiners (SANEs), medical professionals, counseling professionals, etc. After the child’s emergency physical and psychological needs have been stabilized, the investigator can then begin to concentrate on building her investigation of the crime and the actors involved. Depending on the circumstances surrounding the child at the time of her interdiction, the officer should consider the following possibilities:

1. What if Child Protective Services cannot take custody of the child because they do not have jurisdiction under their policies for intervention and possession?
2. What if returning the child to her parents has the effect of returning her to an environment that caused her to run in the first place?
3. What if no charges of delinquent conduct or conduct indicating a need for supervision can be brought against the child to convey juvenile justice jurisdiction over her?

These questions become more problematic when framed in an emerging debate that these victims should never be charged, especially with prostitution, because doing so sends the wrong message by criminalizing them. As Texas continues to develop and refine comprehensive and systematic methods to respond to domestic minor sex trafficking, practitioners in juvenile justice and child welfare must proactively work together within the framework of existing laws to find the best resolution for each victim. The optimal resolution is to return the child to a safe and secure environment provided by the child's parents or legal guardians, with the notion that the child will receive counseling services. If returning the child to her home is likely to enable her to be trafficked again, then juvenile justice and child welfare professionals should attempt to obtain the consent of the child's parents to place her in a secured shelter that exclusively provides counseling and services aimed to rehabilitate, restore dignity, and empower these victims. Unfortunately, very few facilities like this currently exist in Texas and the United States.

B. Juvenile Justice Response

Juvenile justice and child welfare professionals may need to explore other legal options in an attempt to protect the child from being trafficked again. As such, law enforcement and juvenile justice professionals are challenged to make difficult choices. This may mean charging a child with delinquent conduct or conduct indicating a need for supervision. The Texas Family Code permits a law enforcement officer to take a child into custody: (1) if ordered to do so by a juvenile court; (2) through traditional laws of arrest; (3) if the officer has probable cause to believe the child has engaged in delinquent conduct or conduct indicating a need for supervision; or (4) if the child has violated a condition of probation. TEX. FAM. CODE ANN. § 51.03 (Vernon 2008). Examples of such conduct may include possession of drugs, intoxication related offenses, possession of alcohol, truancy, runaway status, failure to attend school, and prostitution. *Id.*

1. Issues Related to Charging Prostitution

Many of the domestic minor sex trafficking crimes center on prostitution conduct. Although professionals engaged in combating human trafficking agree that a cooperating victim should not be taken into custody on any charges, including prostitution, sometimes this is the only option. Charging a child with prostitution, however, has legal limitations. Section 43.02, Texas Penal Code, defines the offense of prostitution as the mere solicitation or agreement to engage in sexual conduct. TEX. PEN. CODE ANN. § 43.02 (Vernon 2011). The offense may be committed by both the individual seeking compensation for sex and the individual seeking sex for compensation, commonly known as a "john." *Id.* The actual commission of sexual conduct is not required for the offense to be completed. *Id.* Prostitution is considered both delinquent conduct and conduct indicating a need for supervision pursuant to section 51.03 of the Texas Family Code. TEX. FAM. CODE ANN. § 51.03(a)(1) & (b)(7). For purposes of juvenile justice, the Texas Family Code defines a child as a person who is at least 10, but younger than 17 years old, or a person who is between 17 and 18 years old and who committed the delinquent conduct or conduct indicating a need for supervision before she turned 17. TEX. FAM. CODE ANN. § 51.02(2). The Texas Supreme Court held, however, that children under the age of 14 cannot legally consent to sex as a matter of law and thereby cannot commit prostitution. *In re B.W.*, 313 S.W.3d 818 (Tex. 2010). Furthermore the court implied that a child who is 14, but younger than 17 also cannot consent to sex as a matter of law, unless the other person is their spouse or their age is within three years of the child's. *In re B.W.*, 313 S.W.3d 818 at 821; TEX. PEN. CODE ANN. § 22.011(e). Under this interpretation, practically few circumstances will arise in which a child under age 17 can be charged with prostitution as delinquent conduct or conduct indicating a need for supervision, considering most "johns" will be more than three years older than the child. Furthermore, it is a defense to a charge of prostitution that the defendant is a victim of sex trafficking. TEX. PEN. CODE ANN. § 43.02(d).

C. Child Welfare Response

The juvenile justice system is not the only avenue to provide security and services to child victims of sex trafficking. Title 5 of the Texas Family Code defines when the state's interest in protecting a child rises above the sanctity of the parent-child relationship. The state through its Department of Family and Protective Services ("DFPS") has a clear interest in protecting a child when the child is a victim of abuse or neglect. DFPS, with the assistance of law enforcement, has a duty to make a "prompt and thorough investigation of a report of child abuse or neglect allegedly committed by a person responsible for a child's care, custody, or welfare." TEX. FAM. CODE ANN. §261.301 (Vernon 2008). Such persons are traditional caregivers and include: parents, guardians, foster parents, possessory conservators, school personnel, and personnel at child-care facilities." TEX. FAM. CODE ANN. § 261.001 (Vernon 2008). Initially it may appear that section 261.301 does not mandate an investigation if a report of abuse or neglect does not explicitly involve these traditional caregivers. So then, what is DFPS's duty to investigate under section 261.301 when a young girl is reported to be engaged in prostitution that does not appear to be promoted by her traditional caregiver? DFPS's jurisdiction to investigate abuse or neglect of a traditional caregiver is not only

implicated by overt acts committed by a traditional caregiver, but includes their omissions or failure to act as well. Section 261.001(1) of the Texas Family Code defines abuse as a list of various acts or omissions by a person, which includes:

- “(E) sexual conduct harmful to a child’s mental, emotional, or physical welfare . . .;”
- “(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;”
- “(G) compelling or encouraging the child to engage in sexual conduct,” including engaging in offenses of prostitution, compelling prostitution, and trafficking of persons;” or
- “(L) knowingly causing, permitting, encouraging in, or allowing a child to be trafficked . . ., **or the failure to make a reasonable effort to prevent a child from being trafficked.**” [emphasis added].

TEX. FAM. CODE ANN. § 261.001(1).

Section 261.001(4)(B) defines neglect as a list of various acts or omissions by a person, which includes:

- “(i) placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child’s level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child...;”
- “(iv) placing a child or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
- “(v) placing a child or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute sexual abuse and offenses related to prostitution and human trafficking.”

TEX. FAM. CODE ANN. § 261.001(4).

Arguably, DFPS may have a duty to investigate reports of child prostitution to determine if the child’s traditional caregiver has knowledge of the child’s history or proclivities to engage in prostitution conduct and failed to make reasonable efforts to prevent it. These provisions make clear that both parents and DFPS have affirmative obligations and duties, upon receiving knowledge that a child has been trafficked, to attempt to protect and further prevent exploitation. At a minimum, an investigation will document an encounter for which the child’s parents were made aware of their obligation to take necessary and reasonable measures to ensure their child’s future safety. Or, an investigation may reveal that the child’s parents are already complicit or neglectful in allowing their child to be exploited in this manner.

Another way that the state may further protect a child is by taking possession of the child by removing her from the possession of her parents or legal guardians. TEX. FAM. CODE ANN. §§ 262.101 – 309. It is an important policy in the State of Texas that before taking such drastic steps, however, the state must first make reasonable efforts in “preventing or eliminating the need to remove a child from the child’s home or to make it possible to return a child to the child’s home.” TEX. FAM. CODE ANN. §262.101(3). This policy is conditioned, however, on the child’s health and safety, which is of “paramount concern.” TEX. FAM. CODE ANN. §§ 262.001(b). Practically, this may mean that the state allows a child to remain in the possession of their parents, but requiring the parents to agree to a set of conditions or safety plan designed to protect and monitor the child, including insuring that the child receive appropriate counseling and related services. (Texas Department of Family and Protective Services, 2012). However, if the parents have been given an opportunity to protect their child, yet the child continues to be exploited in prostitution, then the state may have an interest in taking immediate possession of a child. Specifically, chapter 262 of the Family Code allows the state to take immediate possession of a child when:

1. There is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse and that continuation in the home would be contrary to the child’s welfare;
2. There is no time, consistent with the physical health or safety of the child, for a full adversary hearing . . . ; and
3. Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

TEX. FAM. CODE ANN. §§ 262.101 & 262.104.

One method to obtain quick possession of a child is by the state filing a lawsuit requesting temporary orders to take possession of the child. TEX. FAM. CODE ANN. §§ 262.101. If there is no time to file suit and obtain temporary

orders before taking possession of a child, then section 262.104 of the Texas Family Code allows an authorized representative of DFPS, a law enforcement officer, or a juvenile probation officer to take immediate possession of a child without a court order only:

1. “on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
2. “on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that there is an immediate danger to the physical health or safety of the child;
3. “on personal knowledge of facts that would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse; or
4. “on information furnished by another that has been corroborated by personal knowledge of facts and all of which taken together would lead a person of ordinary prudence and caution to believe that the child has been the victim of sexual abuse”

TEX. FAM. CODE ANN. § 262.104.

In *In re B.W.*, the Texas Supreme Court stated, “presumably a thirteen-year old girl walking the streets offering sex for money would meet this standard.” See *In re B.W.*, 313 S.W.3d 818 at 825 (applying the context of child prostitution directly to section 262.104). If a child is taken into custody pursuant to section 262.104, then the person taking possession shall “without unnecessary delay” do the following:

1. “File a suit affecting the parent-child relationship;
2. Request the court to appoint an attorney ad litem for the child; and
3. Request an initial hearing to be held by no later than the first working day after the date the child is taken into possession.”

TEX. FAM. CODE ANN. § 262.105.

After taking possession of the child, a law enforcement officer or juvenile probation officer may release the child to:

1. A child-placement agency licensed by DFPS and authorized to take possession;
2. DFPS; or
3. Any person authorized by law to take possession.

TEX. FAM. CODE ANN. § 262.1041.

Regardless, DFPS must be notified. *Id.* The court “shall hold an initial hearing on or before the first working day after the date the child is taken into possession . . . or the first working day after the court becomes available,” and render necessary orders to protect the child. TEX. FAM. CODE ANN. § 262.106(a). If the hearing is not held within the time frame, the child must be returned to her parents. TEX. FAM. CODE ANN. § 262.106(c). If the court is satisfied that the child can return home safely without continuing danger, then the court shall order the return of the child. TEX. FAM. CODE ANN. § 262.107. If the court is not so satisfied and believes that (1) despite reasonable efforts to provide for the safety of the child in order to prevent removal of the child from possession of her parents; (2) a continuing danger of abuse or a substantial risk of sexual abuse exists; and (3) continuation of the child in the home would be contrary to the child’s welfare, then the court shall order appropriate placement in accordance with Title 5. TEX. FAM. CODE ANN. § 262.201.

VII. PROACTIVE RESCUE READINESS

Assuming rescue and placement is a success, the juvenile justice professional will be challenged in gaining the trust of a trafficked child. It may take considerable time to get the victim to cooperate. Human trafficking cases can be resource intensive. High caseloads and little time will frustrate even the most passionate individual’s efforts to invest in merely one victim. No single agency or individual can effectively provide for the victim’s needs for restoration. Despite these challenges, law enforcement officers, child welfare professionals, juvenile probation officers, prosecutors, and victim service providers must come together as competent multi-disciplinary teams and create protocols designed to define the participation of each team member in providing the child the following services:

1. Temporary emergency shelters
2. Medical provisions
3. Food and clothing
4. Forensic interviewing procedures
5. Counseling services
6. On-call officers, prosecutors and judges; and
7. DFPS role
8. Juvenile justice's role;
9. The role of local non-governmental organizations; and
10. Consistent victim services throughout interdiction, rehabilitation, and prosecution.

VIII. CONCLUSION

The traits associated with child victims of human trafficking that fail to arouse our sympathies or cause us to categorize these cases in a lower priority, are the same vulnerabilities that human traffickers target to exploit. Human traffickers gamble on the notion that that juvenile justice and child protection professionals, judges, and juries will not find their victims credible or sympathetic, but rather part of the problem. They operate confidently that we will fail to see these victims as worth saving. By our failure to recognize and properly protect these children as victims, we not only verify the human trafficker's business model, but we reveal our susceptibility to their manipulation as well. When viewed in this context, we begin to appreciate how insidious this crime is and why we need to make it a priority now.

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