



SAFE HOUSE PROJECT

Position of Preservation of TVPA Definitions

Introduction

In 2000, the Trafficking Victims Protection Act (TVPA) laid out, for the first time, how human trafficking was to be defined. In addition, it set forth the criterion for how government agencies respond to the global travesty that is trafficking in persons. The law laid out a three-pronged approach to combating this crime – Protection of victims, Prevention of trafficking, and Prosecution of traffickers, commonly referred to as the “3 Ps”.¹ The TVPA was crafted with very specific language and definitions which were intended to guide the development of programs and policies implemented by the federal government. Some of these definitions are now being called into question and could result in irreparable damage to current efforts to eradicate trafficking in persons, as well as cause more harm to those that are being victimized.

Background

The TVPA defines “sex trafficking” as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act”. The law then goes on to define involuntary servitude and debt bondage. These three terms – sex trafficking, involuntary servitude and debt bondage – are then used to appropriately define the term “severe forms of trafficking in persons”.

“The term severe forms of trafficking in persons means –

- A. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- B. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”²

There is a critical distinction between *sex trafficking* and *severe forms of trafficking in persons* and it is important that the original language of the law be preserved. Recently there have been many discussions within the anti-human trafficking field around these definitions, particularly in the context of the issue of “decriminalization”. Some stakeholders advocating for full decriminalization are calling for the definition of “sex trafficking” and the related definition of “victim of trafficking” be removed from the law, relying solely on the definition of “severe forms of trafficking in persons” and “victim of a severe form of trafficking” as the guiding terminology to drive all efforts to combat human trafficking. Not only would this change undermine the original intent of the bill, but it would further jeopardize the rights, health, and safety of victims.



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Issue

The critical distinction is around the use of “force, fraud, or coercion” in furtherance of the commercial sex enterprise or labor scheme. When one of those three methods are used to induce or subject someone into one of these scenarios, then the situation becomes a “severe form of trafficking in persons.” Specific to sex trafficking and the commercial sex industry, if the original definitions remain – those not requiring force, fraud, or coercion – they serve two key purposes – 1) they act as a barrier to the legalization and legitimization of commercial sex work in the United States under the policy of “full decriminalization”; and 2) they protect victims from being required to disclose the full extent of their trauma in order to access services.

Full decriminalization, often times referred to as “full decrim”, calls for the decriminalization of both the act of selling sex and the act of buying sex from consenting adults. The argument is made that fully decriminalizing sex work means those who solicit sex, and/or whose income is a result of the earnings from sex work, become increasingly likely to exist without stigma, social exclusion, and fear of violence; wherein eliminating prosecution and acknowledging sex work as work, the rights, health, and safety of sex workers is preserved. However, this argument is flawed and not supported by the evidence. Furthermore, full decriminalization neglects that sex work, as a whole, is an act of violence against a person, therefore sex work is incompatible with gender equity and human rights. Whether someone chooses to sell sex or not, full decriminalization ignores that there is still the likelihood that the individual has been victimized before and/or during their career as a sex worker. Adoption of full decriminalization would create additional barriers for survivors to access equitable care following their exit from an exploitative situation.

Position

The Trafficking Survivor Equity Coalition believes that “partial decriminalization” not only preserves the original intent of the TVPA but furthers its purpose to both *protect* and *prosecute*. Partial decriminalization is essential to guide trafficked individuals in leaving the industry on their own terms, interrupts the market, and decreases the demand for sex work. This approach, formerly referred to as the “Nordic Model,” focuses on decriminalizing acts attributed to those performing the commercial sex acts and increases penalties and enforcement efforts for those facilitating commercial sex through recruiting, harboring, transporting, provisioning, obtaining, patronizing, or soliciting. Revising existing state laws and adopting policies which are built on the partial decriminalization model ensure victims’ rights and access to equitable care. It further recognizes the trauma they have experienced. Partial decriminalization is foundational to ensure a victim-centered, trauma informed approach by recognizing the needs of survivors and connecting them to necessary services as soon as they are identified,



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reducing the risk of them being criminalized as well as protecting them from having to fully disclose their trauma to access those services.

Altogether, meeting the needs of the victim before, during, and after they have been removed from their trafficking experience is a victim-centered approach to human trafficking. First responders, service providers, and communities who focus on a victim-centered, trauma-informed approach will better understand the signs and effects of trauma and be more effective at responding and putting this knowledge into practice. Nevertheless, this can all be taken away if the definition of sex trafficking is not upheld in the bill. If the law relies only upon severe forms of trafficking, formed by force, fraud, or coercion, not only do individuals who have escaped trafficking face re-traumatization from being forced to recall their experiences, but often times their trauma prevents them from fully being able to recall or articulate any force, fraud, or coercion. When victims are re-traumatized, it becomes more likely that they return to sex trafficking, and this cycle of abuse continues. Re-traumatizing victims is not victim-centered or trauma-informed, causing significantly more harm than good.

It is also important to note that changing the definitions would not align with several states who have adopted criminal laws which do not require *force, fraud, or coercion*. Virginia's sex trafficking statute (Va. Code 18.2-357.1) states:

Any person who, with the intent to receive money or other valuable thing or to assist another in receiving money or other valuable thing from the earnings of a person from prostitution or unlawful sexual intercourse in violation of 18.2-346, solicits, invites, recruits, encourages, or otherwise causes or attempts to cause a person to violate 18.2-346 is guilty of a Class 5 felony.

States such as Virginia have codified the original intent and meaning of the TVPA in their own statutes. Changing the federal definition would further complicate coordination and collaboration between federal resources and state initiatives to combat trafficking in persons.

Conclusion

Much has been learned throughout the anti-human trafficking community over the past two decades, including what is working and what is not working. The definitions, as originally drafted, are working. There is a common saying, "if it ain't broke, don't fix it." Efforts to change the definitions of *sex trafficking* and *victim of trafficking* serve no benefit to the anti-trafficking movement, stakeholders and others working in the field, nor to victims and survivors. In fact, changing the definitions or removing certain definitions from the Trafficking Victims Protection Act would make effectively preventing trafficking, protecting trafficking survivors through equitable and inclusive services, and prosecuting trafficking even harder and introduce unnecessary barriers.