

TRAFFICKING PEOPLE WITH DISABILITIES: A LEGAL ANALYSIS

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I. INTRODUCTION

In 2014, a young woman known in state and federal court records as D.P., moved, with her mother, into the home of their distant relatives, the Knopes.¹ Due to severe autism, D.P. was unable to live on her own without assistance, so when her mother died in 2015, the Knopes became D.P.'s custodial guardians and the recipients of her Social Security Supplemental

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¹ Kim Chatelain, *Horrid Details Emerge on Autistic Woman Caged in Amite*, THE TIMES-PICAYUNE (July 9, 2016, 2:50 AM), https://www.nola.com/news/crime_police/article_d05f30a8-1f59-526d-92d8-ea2bcacb057e.html.

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Income (SSI) payments.² The heads of the family, Raylaine and Terry Knope immediately began confiscating the money for themselves.³ D.P. was forced to reside in a six-by-eight-foot chicken wire cage in the Knope's shed.⁴ During the time she lived in the shed, the Knope family treated her as a slave, forcing her to perform house and yardwork all day each day.⁵ They strangled and beat her with hammers and boards if it was not performed to their satisfaction.⁶ She was also subject to psychological torture while being held captive by the family.⁷ According to police reports, the Knope family forced D.P. her mother's ashes and, on a separate occasion, dog feces.⁸ D.P. was subject to sexual abuse by several of the older Knope males. The family had begun making plans to sell D.P. for sex when a raid by local law enforcement ended her ordeal.⁹ Police found D.P. nearly 60 pounds underweight, malnourished, covered with insect bites and traumatized.^{10, 11}

Disability advocates and experts in human trafficking know that stories like D.P.'s, while almost certainly underreported, are not uncommon.¹² People with disabilities (PWD) and, especially those with intellectual disabilities (ID), are overrepresented in trafficking-victim populations.¹³ One survey of sex trafficking in Florida found that, of the 54 cases reported to law enforcement between 2007 and 2014, one-third of the cases involved girls with ID.¹⁴ Though the exploitation and abuse of people with disabilities (PWD) has been well-documented in other areas,¹⁵ their unique vulnerability

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Emma Discher, *5 Charged for Holding Autistic Amite Woman in Cage, Accused of Beating Her and Other Heinous Acts*, THE ADVOCATE (July 26, 2018, 5:26 PM), https://www.theadvocate.com/baton_rouge/news/crime_police/article_fl1a5395a-9122-11e8-b819-33860076b559.html.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See id.* (stating that four minor children were removed from the Knope's home along with D.P.).

¹² *Sex Traffickers Target Girls with Intellectual Disabilities*, ATLAS OF SCIENCE (Apr. 9, 2016), <https://atlasofscience.org/sex-traffickers-target-girls-with-intellectual-disabilities/>.

¹³ *Id.*

¹⁴ Joan A. Reid, *Sex Trafficking of Girls with Intellectual Disabilities: An Exploratory Mixed Methods Study*, 30 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 107, 131 (2019).

¹⁵ *See* Wilson, C., Seaman, L., & Nettelbeck, T. *Vulnerability to Criminal Exploitation: Influence of Interpersonal Competence Differences Among People with Mental Retardation*. 40 J. OF INTELL. DISABILITY RES. 8 (1996) (illustrating that there is a significantly higher risk of criminal victimization among people with ID than same-age, same-sex peers without ID); Patricia Sullivan & John Knutson, *Maltreatment and Disabilities: A Population-Based Epidemiological Study*, 24 CHILD ABUSE AND NEGLECT 1257, 1261 (2000) (Of children studied in an educational setting, 31% of children with a recorded disability experienced maltreatment, versus 11% of their cohorts without documented disabilities.); M. A.

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as victims of trafficking has only recently come into clearer focus for state and federal law enforcement partners.¹⁶

The perpetrators of human trafficking seek out victims who are particularly vulnerable and easily cut off from larger society.¹⁷ People with disabilities often rely on others to meet their everyday needs.¹⁸ Sometimes PWD, have trouble communicating their circumstances to others and, if they do, they are not always believed.¹⁹ The general culture of prejudice towards PWD can contribute to a feeling of isolation and hopelessness among the disabled, making them more susceptible to traffickers who promise friendship or sexual relationships.²⁰ Those with significant disabilities are often financially compensated by the government through the Social Security Administration.²¹ This provides a further economic impetus to traffickers who claim they are (or are, in fact) the victim's custodial caretaker.²² The disabled person is then kept in horrific conditions of sexual or labor-oriented servitude while the trafficker confiscates their benefits.²³ The exploitation of PWD is rooted in multiple systems of oppression.²⁴

Americans tend to view human trafficking as an international problem—a symptom of economic duress in underdeveloped countries, connected to organized crime or the drug trade.²⁵ This common cultural

Verdugo & V. G. Bermejo, *The Mentally Retarded Person as a Victim of Maltreatment*, 2 *AGGRESSION AND VIOLENT BEHAV.* 143, 150 (1997) (Argues that children with ID are at much higher risk of parental abuse, neglect or maltreatment than neurotypical children); Gary Byrne, *Prevalence And Psychological Sequelae Of Sexual Abuse Among Individuals With An Intellectual Disability: A Review Of The Recent Literature*, 22 *J. INTELL. DISABILITIES* 294, 307 (2017).

¹⁶ THE NATIONAL DISABILITY RIGHTS NETWORK, *DISABILITY RIGHTS ADVOCATES TAKE AIM AT HUMAN TRAFFICKING OF PEOPLE WITH DISABILITIES* (2017), <https://www.ndrn.org/resource/disability-rights-advocates-take-aim-at-human-trafficking-of-people-with-disabilities/>.

¹⁷ Marley S. Weiss, *Human Trafficking and Forced Labor: A Primer*, 1 *A.B.A. J. LAB. & EMP. L.* 1, 52 (2015).

¹⁸ Polaris Project, *Individuals with Disabilities May Face Increased Risk of Human Trafficking*, (Aug. 15, 2018) <https://polarisproject.org/blog/2018/08/individuals-with-disabilities-may-face-increased-risk-of-human-trafficking/>.

¹⁹ *ATLAS OF SCIENCE*, *supra* note 12, at 108.

²⁰ OFFICE FOR VICTIMS OF CRIME TRAINING AND TECHNICAL ASSISTANCE CENTER, *HUMAN TRAFFICKING TASK FORCE E-CENTER* (2019), <https://www.ovcttac.gov/TaskForceGuide/eguide/> (last visited Feb. 11, 2020).

²¹ Polaris Project, *supra* note 18.

²² *Id.*

²³ *Id.*

²⁴ Reid, *supra* note 14, at 109-10

²⁵ See Meg Donohue, *Sex Trafficking Rumor Revealed Public Myths About Human Trafficking*, *THE MISSOURIAN* (Oct. 8, 2018), https://www.columbiaindian.com/news/local/sex-trafficking-rumor-revealed-public-myths-about-human-trafficking/article_ed4ea424-c681-11e8-b8ea-6f89b2d940b3.html (quoting Nanette Ward, a Victim's Advocate who helps to investigate human trafficking cases, who told a reporter that the "whole country's been on a learning curve" and that Hollywood's portrayal of

frame may aid in allowing us to ignore the smaller-scale human trafficking crimes that occur within our borders. These forms of modern-day slavery include forced labor and intra-family abuse. This note will serve as a primer on law and precedent pertaining to the trafficking of PWD in the United States. It will also highlight some of the problems inherent in prosecuting domestic traffickers. These issues make it difficult for law enforcement to address trafficking crimes against PWD and for researchers to track data on the scope of this crime. Lastly, we will discuss the need for further research to address the unique difficulties and susceptibilities of PWD. People with disabilities cannot be lost in the legal and policy debates surrounding human trafficking. They deserve our attention.

II. BACKGROUND

A. Pertinent Federal Laws

Federal laws against involuntary servitude have existed since the passage of the 13th amendment to the Constitution in 1789.²⁶ Human trafficking overlaps with other federal crimes like kidnapping, rape, and forced labor but it is a crime that requires specialized legislation.²⁷ The cornerstone of federal human trafficking law in the United States is the Trafficking Victims Protection Act (TVPA) of 2000.²⁸ This law defines *human trafficking* as 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.²⁹ Before this legislation, the United States Supreme Court (SCOTUS) ruled that psychological coercion was not an element of involuntary servitude and that children and “mental incompetents” were not

trafficking in films such as *Taken* (2008) has contributed to the miseducation of the masses. Ward further noted that “[h]uman trafficking rarely looks the way it does in Hollywood films”).

²⁶ U.S. CONST. amend. XIII, § 1

²⁷ Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 942-43 (2007) (The author discusses subtle and often-undefined differences in the methods used by human traffickers today versus the traditional legal notions of chattel slavery outlawed by the 13th amendment).

²⁸ Each reauthorization added important aspects to the law including reporting requirements, block grants for research, and efforts to publicize the National Human Trafficking Resource Center Hotline. See Trafficking Victims Protections Act, H. R. 2620, 108th Cong. (2003); The Trafficking Victims Protections Reauthorization Act, H. R. 972, 109th Cong. (enacted); The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H. R. 7311, 110th Cong. (enacted); The Trafficking Victims Protections Reauthorization Act of 2013, H.R 898, 113th Cong. (enacted).

²⁹ THE U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT (2016), <https://2009-2017.state.gov/documents/organization/258876.pdf>.

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entitled to any special protections.³⁰ The TVPA was enacted, in part, to override the Court's decision.³¹

While it is true that many trafficking crimes could be prosecuted under other statutes, the TVPA addresses the particular harms of human trafficking by extending protections to the victims of the crimes rather than assuming their complicity as other statutes, particularly prostitution laws, do.³² The text of the TVPA explicitly outlines "fraud," "coercion" and "abuses of power" as elements of human trafficking.³³ Since traffickers commonly seek out vulnerable people (sometimes even convincing their victims to help recruit others or to protect the trafficker to avoid being put into state care), the TVPA is particularly helpful in prosecuting traffickers who exploit PWD.

The TVPA established the Office to Monitor and Combat Trafficking in Persons,³⁴ the President's Interagency Task Force to Monitor and Combat Trafficking (PITF)³⁵, and the "T-visa" or "U-visa," which allow victims of human trafficking and their families to become temporary U.S. residents.³⁶ In 2003, the TVPA established a civil right of action allowing victims to sue their traffickers for damages.³⁷ This amendment can be a boon to disabled

³⁰ *United States v. Kozminski*, 487 U.S. 931 (1988). In this case, a dairy farmer, Kozminski, used threats and psychological coercion to force two intellectually disabled men to work 17-hour days on his property for no pay. *Id.* A unanimous Court ruled that the Thirteenth Amendment protected only against legal or physical coercion. *Id.*

³¹ Kim, *supra* note 27, at 944.

³² Reid, *supra* note 14, at 108

³³ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§ 7103, 7102(9) (2000).

³⁴ 22 U.S.C. § 7103(105)(e).

³⁵ 22 U.S.C. § 7103(105)(a).

³⁶ The Trump administration is currently making it much more difficult for victims who've been trafficked over borders to obtain these visas. In FY 2017, out of 5,000 available visas, only 672 were granted. *See, e.g.,* Julie Dahlstrom, *Trump's Harsh Immigration Policies are a Gift for Human Traffickers*, THE HILL (July 12, 2018, 6:30 PM), <https://thehill.com/opinion/civil-rights/396781-trumps-harsh-immigration-policies-are-a-gift-for-human-traffickers>; Yael Schacher, *Victims of Human Trafficking are Being Denied at a Higher Rate*, Refugees International (June 8, 2019), <https://www.refugeesinternational.org/new-blog/2019/5/30/victims-of-human-trafficking-are-being-denied-visas-at-a-higher-rate-2zy3t> (Schacher writes that, in June of 2018, the office of U.S. Citizenship and Immigration Services (USCIS) issued a memorandum stating that any survivor of human trafficking who is denied a T-visa will be immediately placed in deportation proceedings. Congress had previously loosened the requirements needed to obtain a T-visa in both 2016 and 2017 in an effort to reduce drug cartel kidnappings and border crime. However, fewer and fewer have been granted since the liberalized process went into effect. The first quarter of 2019 shows that T-Visa denials went from 17%, in 2017, to 46%. Though this note is focused on victims who have been trafficked within the borders of the United States, the author notes that some scholars have posited that Trump administration's policies regarding human trafficking have had an overall "chilling effect" on the reporting of exploitative behavior); Judith Teruya, *Human Trafficking Victims Are Facing Longer Delays For Visas*, SHARON & KÁLNOKI IMMIGRATION L. (Aug. 7, 2019), <http://visaskk.com/2019/08/07/article-human-trafficking-victims-are-facing-longer-delays-for-visas-by-judith-teruya/> (last visited 11, 2020).

³⁷ The Trafficking Victims Protection Reauthorization Act of 2004, H. R. 2620, 108th Cong. (enacted).

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trafficking victims who may not be able to care for themselves without the help of hired caretakers.³⁸ It also expanded the Racketeering Influenced Corrupt Organizations (RICO) law to include human trafficking, a tool to aid federal prosecutors.³⁹

In 2005, the reauthorization of the TVPA focused some of its added provisions on international human trafficking by including funding to fight sex tourism and requiring oversight of government contracts with countries or companies known to participate in human trafficking.⁴⁰ Three years later, under the Obama administration, many of the TVPA's re-authorization amendments were prevention-focused.⁴¹ Alien minors appearing alone at ports of entry were screened for signs of having been trafficked.⁴² Statistical databases were put in place to track instances of trafficking⁴³ and additional protections were added to the 5,000 available T-visas.⁴⁴

Importantly, the definition of trafficking was clarified in the Trafficking in Persons (TIP) report issued immediately following the 2008 reauthorization. In the report, the U.S. State Department wrote that it was important not to conflate human trafficking with "movement."⁴⁵ The report emphasizes that neither "the international definition of trafficking in persons, as defined in the 2000 UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, nor the U.S. definition of severe forms of trafficking in persons, as defined in federal law, requires the movement of the victim". People may be considered trafficking victims "...regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked".⁴⁶ The change in emphasis from *movement* to *exploitation* is particularly salient in many cases involving PWD because the disabled are often exploited by their custodial caretakers.

³⁸ 18 U.S.C. § 2259(b)(3) (This section describes the elements that may accompany the calculation of economic losses suffered by the victim of a crime. Among these are medical and psychiatric treatment, occupational therapy, temporary housing and transportation, particularly useful for those who need daily or constant care due to a disability.).

³⁹ 22 U.S.C. § 7101(5)(b) (2000).

⁴⁰ H.R. 972, 109th Cong. (enacted).

⁴¹ The William Wilberforce Trafficking Victims Protection Reauthorization Act Of 2008, 22 U.S.C. § 7101 (Titles I-IV made substantive provisions for prevention, screening and research on efficacy.)

⁴² See § 7101(4).

⁴³ See § 7105(b)(2)(B).

⁴⁴ § 7102(9).

⁴⁵ U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2008).

⁴⁶ Office to Monitor and Combat Trafficking in Persons, *What is Modern Day Slavery?* N.D., <https://www.state.gov/what-is-modern-slavery/> (last accessed Apr. 22, 2020).

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The most recent re-authorization of the TVPA passed in January of 2019.⁴⁷ This renewal increases criminal penalties for trafficking and provides funding to expand training of judges and other federal justice partners on the intricacies of human trafficking law.⁴⁸ Lastly, this reauthorization holds domestic air carriers accountable by requiring a certain number of their employees to be trained in recognizing signs of human trafficking and mandating that they report suspicious activity to the National Human Trafficking Hotline or to other law enforcement.⁴⁹

Because our focus is on people with disabilities, the Americans with Disabilities Act of 1991 (ADA) is germane, most commonly in the area of labor trafficking.⁵⁰ Titles I and V of the act are especially pertinent.⁵¹ Title I prohibits employers from discriminating against people with disabilities, including those people with ID.⁵² Title V prohibits coercion, threats and intimidation in employment situations.⁵³ When PWD are trafficked for their labor, offenders frequently argue that their victims have given their consent to work for free or to live in unsuitable or confining accommodations.⁵⁴ Title V allows victims and their advocates to bring into evidence any threats or coercion that may have been used to lure them into the trafficking situation.⁵⁵ Because the ADA allows victims the right of civil action, it offers many of the same benefits to disabled victims of trafficking that the TVPA offers. The ADA, however, allows only for civil penalties and remediation.

Lastly, in 1988, people with disabilities became a protected class of people under federal hate crime statutes.⁵⁶ These laws make it illegal to “use, or threaten to use, force to willfully interfere with any person because of ... disability”.⁵⁷ Threats of force are a common element in trafficking crimes against the disabled and hate crime legislation allows for severe criminal penalties.⁵⁸ However, jurisdictional issues can be complicated. The Civil

⁴⁷ Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2018, H.R. 2200, 115th Cong. (enacted).

⁴⁸ H.R. 2200, 115th Cong. § 301(1).

⁴⁹ H.R. 2200, 115th Cong. § 111.

⁵⁰ Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213 (2012).

⁵¹ 42 U.S.C. §§ 12112, 12201.

⁵² Equal Opportunity for Individuals with Disabilities, 42 U.S.C. § 12101 (2009).

⁵³ *Id.*

⁵⁴ U.N. OFFICE ON DRUGS AND CRIME, EVIDENTIAL ISSUES IN TRAFFICKING IN PERSONS CASES 104-12 (2017) https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf (last accessed Apr. 22, 2020).

⁵⁵ *Id.*

⁵⁶ Hate Crime Acts, 18 U.S.C. § 249(2) (2009).

⁵⁷ 18 U.S.C. § 249(2) (2009).

⁵⁸ Violent Crime Control and Law Enforcement Act, 28 U.S.C. § 994(h) (This act requires the U.S. Sentencing Commission to increase penalties for hate crimes. Kidnapping and sexual assault, if prosecuted as a hate crime, can result in the death penalty.).

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Rights Division of the Department of Justice (DOJ) prosecutes hate crimes.⁵⁹ Before they are able to do so the Attorney General must “certify, in writing, that (1) the state does not have jurisdiction; (2) the state has requested that the federal government assume jurisdiction; (3) the verdict or sentence obtained pursuant to state charges did not demonstratively vindicate the federal interest in eradicating bias-motivated violence; or (4) a prosecution by the United States is in the public interest and necessary to secure substantial justice.”⁶⁰ Consequently, even though states often hand trafficking cases off to the federal government, there are a further series of bureaucratic steps that need to be taken before hate-crimes or bias-crimes can be prosecuted by the DOJ.⁶¹

Of the pertinent federal laws, only the TVPA⁶² and the ADA⁶³ provide services to the victims of the crime. Additionally, only a small portion of criminal offenses are prosecuted at the federal level.⁶⁴ State and local law enforcement are the most likely to make first contact with traffickers and victims, often in the course of investigating another crime.⁶⁵ Consequently, state law enforcement often decide whether to investigate a crime as one of human trafficking and local District Attorneys decide whether to prosecute the perpetrator for trafficking.⁶⁶ Further, if the trafficking lacks movement across state lines (as is often the case with the custodial abuse found in cases where the victims have physical or intellectual disabilities) local law enforcement must actively decide whether to involve federal-level justice partners. In essence, “local police and prosecutors are the gatekeepers to the criminal justice system.”⁶⁷

As shown below, states have several structural, cultural and institutional incentives for *not* involving federal authorities. Any assistance offered to victims by state trafficking laws varies wildly and is largely dependent on regional politics and budgets. Consequently, the decisions of state law

⁵⁹ U.S. DEP’T OF JUSTICE, HATE CRIMES LAWS (2019), <https://www.justice.gov/crt/hate-crime-laws>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² H.R. 2200, 115th Cong. (enacted); see TRAFFICKING IN PERSONS REPORT, *supra* note 45, at 5.

⁶³ 42 U.S.C. §§ 12101-12213 (2012).

⁶⁴ Amy Farrell et al., *Identifying Challenges to Improve the Investigation and Prosecution of State and Local Human Trafficking Cases*, 2012 NAT’L INST. FOR JUSTICE 1, 2-3 (2012) (“Despite the TVPA’s focus on federal prosecution of human trafficking, the federal criminal justice system cannot effectively prosecute all incidents of human trafficking occurring throughout the U.S.” and “as an illustration of this division of responsibility, the federal courts handle only a small proportion of all criminal offenses. In 2008, approximately 80,000 criminal cases were filed in U.S. federal courts compared to over 21 million criminal cases filed in state courts.”).

⁶⁵ Amy Farrell, Rebecca Pfeffer and Katherine Bright, *Police Perceptions of Human Trafficking*, 38 J. OF CRIME AND JUSTICE 315, at 321 (2015).

⁶⁶ Farrell et al., *supra* note 64, at 9.

⁶⁷ *Id.*

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enforcement as to whether to involve federal justice partners directly impact disabled victims of trafficking who are sometimes left homeless or without appropriate care once their traffickers are arrested.

B. State Laws

State courts are the only forums of justice for many victims of domestic human trafficking, but they have lagged well behind national justice partners with respect to implementing the training, tracking and procedural structures needed to address such a vast problem with so many manifestations.⁶⁸ Since 2013, all 50 US states have had statutes outlawing human trafficking.⁶⁹ However, these laws vary a great deal as to the definitions of human trafficking, the elements needed for the state to charge and prosecute the crime (including differing rules of evidence and jury instructions) and the penalties enacted against traffickers.⁷⁰ For instance, the median prison sentence given to traffickers convicted by the federal government under the TVPA is around 15, but can stretch to life sentences based on the age of the victim or other aggravating circumstances.⁷¹ In Montana, it is possible for human traffickers to receive a fine and serve no prison time at all.⁷²

The history of the implementation of state trafficking laws is in some ways emblematic of the problems inherent in translating complex federal crime statutes to the state level. In 2004, the DOJ released model human trafficking legislation to the states.⁷³ The model law's language linked trafficking with both "labor" and "services," which term was to include prostitution. Many states were unable to reconcile the definitions of "services" and "prostitution" in relation to uniform administration.⁷⁴ Moreover, state law enforcement had little interest in sussing out victims

⁶⁸ Farrell et al., *supra* note 65, at 321.

⁶⁹ In 2003, Washington became the first state to enact human trafficking legislation while Wyoming was the last state, enacting its legislation in 2013. See NAT'L CONFERENCE STATE LEGISLATURE, *Human Trafficking Laws* (2019), <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>.

⁷⁰ *Id.*

⁷¹ U.S. DEP'T OF JUS. BUREAU OF JUST. STAT., FEDERAL PROSECUTION OF HUMAN TRAFFICKING CASES, 2015 12 (2018), <https://www.bjs.gov/content/pub/pdf/fphtc15.pdf>.

⁷² Michelle Lillie, *States with the Weakest Human Trafficking Laws*, HUMANTRAFFICKINGSEARCH.ORG (2013), <https://humantraffickingsearch.org/states-with-the-weakest-human-trafficking-laws/> (last accessed Apr. 29, 2020).

⁷³ SENIOR POLICY OPERATING GROUP ON TRAFFICKING IN PERSONS, ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2005, JUSTICE.GOV (2006), https://www.justice.gov/archive/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf.

⁷⁴ Moira Heiges, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 450-451 (2009).

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from perpetrators when it came to sex crimes.⁷⁵ Prostitutes were guilty of prostitution, regardless of how they came into the sex industry.⁷⁶

Largely, the DOJ's proposed legislation also failed to provide services or a means of recompense for the victims of trafficking.⁷⁷ Victims' services are of particular importance to PWD, as they are sometimes unable to care for themselves.⁷⁸ Many of the victims will have suffered trauma in addition to losing their homes when their traffickers are prosecuted.⁷⁹ Even when victims with disabilities are able to collect restitution, they may be unable to manage those funds on their own.⁸⁰ Which is all to say that while support for victims is important in any trafficking case, it may be critical in cases involving the disabled.⁸¹ Eventually, non-governmental organizations (NGOs) like Polaris, elaborated on the DOJ model legislation, adding needed comprehensive elements like victims' protections and training for law enforcement.⁸²

Many states, unfortunately, still lack comprehensive trafficking laws⁸³ and 11 states have failed to make minimal efforts to pass laws that support the victims of trafficking.⁸⁴ The differences between the respective states and between the federal and state definitions of trafficking are vast.⁸⁵ It is no wonder, then, that state law enforcement officers are frequently unaware or mistaken about the elements of a crime that should induce them to investigate an incident as one of human trafficking. The overwhelming majority of state police and prosecutors do not have experience in this area of law nor in the overlapping nature of human trafficking with other areas of criminal behavior like prostitution, peddling, child pornography and other offenses.⁸⁶ Consequently, traffickers "are more likely to be charged for violations under

⁷⁵ Farrell et al., *supra* note 65, at 323.

⁷⁶ *Id.*

⁷⁷ Farrell et al., *supra* note 64, at 3-4.

⁷⁸ Polaris Project, *supra* note 18.

⁷⁹ Kimberly Mehlman-Orozco, *What happens after a human trafficking victim is 'rescued'?* THE HILL (Jul. 29, 2016) <https://thehill.com/blogs/congress-blog/judicial/289709-what-happens-after-a-human-trafficking-victim-is-rescued>.

⁸⁰ Polaris Project, *supra* note 18.

⁸¹ Polaris Project, *supra* note 18."

⁸² Farrell et al., *supra* note 64, at 3-4.

⁸³ Erin Marsh et al., *State Report Cards: Grading Criminal Record Relief Laws for Survivors of Human Trafficking*, POLARIS PROJECT 1, 13, 28 (Mar. 1, 2019), <https://polarisproject.org/wp-content/uploads/2019/03/Grading-Criminal-Record-Relief-Laws-for-Survivors-of-Human-Trafficking.pdf>.

⁸⁴ *Trafficking Laws*, RNCEUS.COM (Feb. 11, 2020), <http://www.rnceus.com/trafficking/laws.html> (last visited Apr. 29, 2020).

⁸⁵ Farrell et al., *supra* note 64, at 4.

⁸⁶ Human Trafficking and the State Courts Collaborative, *A Guide to Human Trafficking for State Courts* (Jul. 2014), http://www.htcourts.org/wp-content/uploads/00_EntireGuide_140726_v02.pdf.

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long-standing state codes governing health standards, restaurants, housing, or state laws addressing prostitution, pimping, or pandering.”⁸⁷

By trying traffickers under familiar statutes, prosecutors may be more comfortable with the elements needed to obtain a conviction, but the penalties for the offenders are often less severe.⁸⁸ In Michigan, for instance, prohibitions against forced labor and the statute pertaining to human trafficking give identical definitions of “forced labor.”⁸⁹ However, those convicted of forced labor will be sentenced to no more than 10 years in prison, or alternatively, a fine not exceeding \$10,000.⁹⁰ In comparison, those convicted of one count of human trafficking must serve a minimum of 20 years in prison.⁹¹ Additionally, many states’ trafficking laws have provisions which mandate harsher penalties for traffickers when their victims are minors or have disabilities, but these elements may not be considered if the perpetrator is charged under more established statutes.⁹²

In interviews, many police officers asserted that trafficking was a federal crime and not something they were ever likely to encounter in their jurisdiction.⁹³ Worryingly, police are often wrongly convinced that trafficking requires movement, such as forceful kidnapping or smuggling of the victim.⁹⁴ This misunderstanding is especially problematic for PWD because they are often exploited by their caretakers, hired through a seemingly consensual process or move, willingly, into their traffickers’ homes to avoid homelessness or to receive help meeting their daily needs.⁹⁵

The barriers to enforcement of human trafficking statutes at the state level result in a loss of information on the scope of this problem overall. According to the State Department, there is no formal mechanism for the

⁸⁷ *Id.*

⁸⁸ *Id.* at 184.

⁸⁹ Both laws take their definitions of forced labor from MCL 750.462a(g), Michigan’s forced labor statute, passed in 1931, where forced labor is defined as “labor or services that are obtained or maintained by force, fraud, or coercion.”

⁹⁰ M.C.L.A. § 750.462j(1a) (2014).

⁹¹ M.C.L.A. § 750.462 et seq. (2002), [https://www.legislature.mi.gov/\(S\(ytba44jhqx14gkywxotdydid\)\)/documents/mcl/pdf/mcl-328-1931-LXVIII.pdf](https://www.legislature.mi.gov/(S(ytba44jhqx14gkywxotdydid))/documents/mcl/pdf/mcl-328-1931-LXVIII.pdf).

⁹² Farrell et al., *supra* note 65.

⁹³ See, e.g., Amy Farrell & Stephanie Fahy, *The Problem of Human Trafficking in the US: Public Frames and Policy Responses*, 37 J. CRIMINAL JUSTICE 617-26 (2009); Amy Farrell, Jack McDevitt & Stephanie Fahy, *Understanding and Improving Law Enforcement Responses to Human Trafficking: Final Report*, WASH. D.C. NAT’L INST. JUSTICE (Dec. 2008); Amy Farrell, Jack McDevitt & Stephanie Fahy, *Where Are All the Victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents*, 9 CRIMINOLOGY AND PUB. POL. 201, 201-33 (2010); Amy Farrell et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME L. SOC. CHANGE 139, 154 (2013).

⁹⁴ Farrell et al., *supra* note 65.

⁹⁵ Polaris Project, *supra* note 18.

federal government to track prosecutions of trafficking at the state level⁹⁶ and 18 states do not participate in collecting incident-based data for the Uniform Crime Report (UCR) database.⁹⁷ However, available statistics showed an increase in the use of human trafficking laws by state law enforcement, for a time.⁹⁸ In 2015, the UCR showed 387 human trafficking offenses resulting in arrest.⁹⁹ In 2016, that number was 654.¹⁰⁰ The 2019 TIP report states that there were about 100 fewer state prosecutions of human trafficking again in 2017.¹⁰¹ Even so, information provided by police officers and state prosecutors indicate enormous gaps: a lack of information, legal uniformity, funding, training of justice partners and reporting of statistics.

III. CASES

Variations in the law and rivaling jurisdictional commitment to confronting human trafficking are two structural problems that allow victims to fall through the cracks. This is especially true for people with disabilities.¹⁰² Even if states make a good-faith effort to prosecute human traffickers and support the recovery of trafficking victims, they are in an inescapable conundrum if those victims have disabilities that prevent them from caring for themselves.¹⁰³ The problem is that foster care, group homes and other state-run facilities that minister to the disabled are the same places where human trafficking victims are frequently recruited.¹⁰⁴

These facilities, already beleaguered by yearly budget cuts and forced outsourcing, lack the safeguards needed to prevent the exploitation of their charges by would-be human traffickers. Below is an overview of trafficking cases involving people with disabilities. It illustrates the particular type of harm PWD are subjected to and the range of ways it is dealt with in the legal system. Though many of the cases conclude with a monetary judgement or prison time for the trafficker, very little is known about whether victims ever

⁹⁶ U.S. STATE DEP'T, 2019 TRAFFICKING IN PERSONS REPORT: UNITED STATES (2019), <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/united-states/> (Report states that there "is no... formal mechanism for the federal government to track prosecutions at the state and local levels.") [hereinafter 2019 TRAFFICKING IN PERSONS REPORT].

⁹⁷ UNIFORM CRIME REPORT, NIBRS PARTICIPATION BY STATE, 2012, <https://ucr.fbi.gov/nibrs/2012/resources/nibrs-participation-by-state> (last visited Apr. 28, 2020).

⁹⁸ 2018 National Crime Victims' Rights Week Resource Guide: Crime and Victimization Fact Sheets (2018), https://ovc.ncjrs.gov/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_Trafficking_508_QC.pdf

⁹⁹ U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT JULY 2015, <https://20092017.state.gov/documents/organization/245365.pdf>.

¹⁰⁰ *Crime and Victimization Fact Sheets*, *supra* note 98.

¹⁰¹ 2019 TRAFFICKING IN PERSONS REPORT, *supra* note 96.

¹⁰² Polaris Project, *supra* note 18.

¹⁰³ *A Guide to Human Trafficking for State Courts*, *supra* note 86.

¹⁰⁴ *Id.*

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receive their monetary awards or where victims end up in the common event that they lose their home when their traffickers are arrested.¹⁰⁵

A. Labor Trafficking

People with disabilities suffer from another structural disadvantage pertaining to their ability to make use of trafficking laws. Many PWD are exploited for their labor. In fact, the International Labour Office (ILO) has found that there are over three-times as many non-sexual labor victims of human trafficking as there are sex-trafficking victims.¹⁰⁶ However, of the criminal cases opened by the DOJ against traffickers in 2016, 95 of them dealt with sex trafficking.¹⁰⁷ Though some criminal cases pertaining to labor trafficking[†] will be discussed below, the overwhelming majority of labor trafficking cases are tried in civil court.¹⁰⁸ This is due to the fact that labor-oriented exploitation is often adjudicated under the umbrella of the ADA or Title VIII of the 1964 Civil Rights Act, both of which center around civil litigation.¹⁰⁹ The monetary judgements available to victims through civil court settlements can be an important element of their recovery, however, many of them will fail to collect from their insolvent traffickers.¹¹⁰ Civil

¹⁰⁵ THE HUMAN TRAFFICKING CTR., FEDERAL HUMAN TRAFFICKING CIVIL LITIGATION: 15 YEARS OF THE PRIVATE RIGHT OF ACTION 26 (2018)

¹⁰⁶ *Forced Labour, Modern Slavery and Human Trafficking*, ILO (2017), <https://www.ilo.org/global/topics/forced-labour/lang-en/index.html>.

¹⁰⁷ U.S. STATE DEP'T, TRAFFICKING IN PERSONS REPORT JULY 2015, *supra* note 99.

¹⁰⁸ Farrell et al., *supra* note 65. [†] The authors want to acknowledge the many difficulties of separating labor trafficking from sex trafficking. Sex work is, of course, labor. Many of the distinctions made between sex and labor trafficking are based less on legal reasoning and more on moral conditioning. *See, e.g.*, Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY L. REV. 83 (2009) (some researchers argue that there is no need to differentiate between sex and labor trafficking, as the crime of trafficking itself is about control of an individual, regardless to what end it is applied); *Id.* at 86 (In the United States, forced prostitution accounts for 46% of known human trafficking cases). Indeed, when women are trafficked, even for domestic labor, some element of sexual abuse is nearly always an element of the crime. *Id.* at 91-92; Kevin Bales, *What Predicts Human Trafficking?*, 32 INT'L J. OF COMP. & APPLIED CRIM. JUST. 269, 279 (2007); Siddharth Kara, *Supply and Demand: Human Trafficking in the Global Economy*, 33 HARV. INT'L. L. J., 66, 71 (2011); Sheldon Zhang, *Measuring Labor Trafficking: A Research Note*, 58 CRIM. L. & SOC. CHANGE 469, 482 (2012).). Ultimately, the authors have separated sex trafficking crimes from labor trafficking crimes because they are treated as distinctly different by many law enforcement officials and by most state laws. *Id.* Though the division is arbitrary in many ways and even, arguably, harmful, it is a distinction with procedural and legal consequences. *Id.*

¹⁰⁹ Farrell et al., *supra* note 65, at 152-54.

¹¹⁰ *See* cited cases below. For example, *E.E.O.C. v. HILL COUNTRY FARMS, INC.* 899 F.Supp.2d 827 (2012) where the jury awarded the plaintiffs \$240 million. The companies involved in the case immediately filed for bankruptcy Clark Kauffman, *Register Investigation: Millions in Fines, But Will Henry's Turkey Service Ever Pay?*, DES MOINES REGISTER (Mar. 8, 2014), <https://www.desmoinesregister.com/story/news/investigations/2014/03/07/register-investigation-millions-in-fines-but-will-henrys-turkey-service-ever-pay/6193901/>.

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court judgements also mean, of course, that perpetrators are largely able to avoid criminal penalties and prison sentences.¹¹¹

One of the most well-known examples of trafficking PWD for their labor occurred in Iowa and took place over the course of decades. Intellectually disabled boys were shipped from state homes in Texas to an Iowa farm to eviscerate turkeys. They were kept in subhuman conditions, locked in basements, beaten and left without medical care. The Des Moines Iowa Register detailed these abuses in a 1979 front-page story, which caused a local stir but little else.¹¹² The trafficking victims housed at Hill Country Farms were not rescued until 2009. Trafficked as teenagers, some were elderly men by the time law enforcement intervened.

A federal civil case was brought on behalf of the victims by the United States Equal Employment Opportunity Commission (EEOC),¹¹³ but only after first attempting to settle the dispute through its conciliation process.¹¹⁴ The resultant case, *EEOC v. Hill Country Farms, Inc.* 899 F.Supp.2d 827 (2012) was argued under the Americans with Disabilities Act.¹¹⁵ The ADA prohibits discrimination on the basis of disability, including intellectual disabilities, in the terms and conditions of employment along with wages.¹¹⁶ The disabled workers at the turkey farm were paid \$62 per month, a wage that had not increased in 20 years.¹¹⁷ Other workers at the same company earned closer to \$12 per hour.¹¹⁸

Hill Country Farms became a landmark employment discrimination case. When the jury awarded the disabled men \$240 million in 2013, it became the largest settlement the EEOC had ever received.¹¹⁹ Though this

¹¹¹ 2019 TRAFFICKING IN PERSONS REPORT, *supra* note 96, at 8 (A recommendation from the 2019 report says “governments should prosecute human trafficking crimes as such and not under other criminal provisions—or, worse, civil laws—that may come with weaker or no criminal penalties”).

¹¹² A 2016 book by Dan Barry titled *The Boys in the Bunkhouse: Servitude and Salvation in the Heartland* has been written about the men’s long-lasting ordeal. DAN BARRY, *THE BOYS IN THE BUNKHOUSE: SERVITUDE AND SALVATION IN THE HEARTLAND*, FIRST ED., HARPER, AN IMPRINT OF HARPERCOLLINS PUBLISHERS, (2016).

¹¹³ The EEOC is an office that was first created to adjudicate and enforce Title VII of the 1964 Civil Rights Act. The creation of the ADA established additional protections under Title VII for people with disabilities. Consequently, the EEOC may also adjudicate alleged violations of the ADA.

¹¹⁴ *Jury Awards \$240 Million for Long-Term Abuse of Workers with Intellectual Disabilities*, U.S. E.E.O.C., (May 1, 2013), <https://www.eeoc.gov/eeoc/newsroom/release/5-1-13b.cfm>.

¹¹⁵ 42 U.S.C. § 12101.

¹¹⁶ 42 U.S.C. § 12101(101).

¹¹⁷ U.S. E.E.O.C., *supra* note 114.

¹¹⁸ *Id.*

¹¹⁹ Hill Country Farms and Henry’s Turkey Company are both out of business. See Clark Kauffman, *Register Investigation: Millions in Fines, But Will Henry’s Turkey Service Ever Pay?*, DES MOINES REGISTER (Mar. 8, 2014), <https://www.desmoinesregister.com/story/news/investigations/2014/03/07/register-investigation-millions-in-fines-but-will-henrys-turkey-service-ever-pay/6193901/>. A spokesperson for the state labor

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case contained many of the elements of human trafficking and has been reported as a “human trafficking” case in the media,¹²⁰ the TVPA did not guide the case, nor were any criminal charges brought.¹²¹ This highlights the importance of the ADA to labor trafficking victims with disabilities. It also provides some basis for understanding why so many labor trafficking disputes are adjudicated in civil court. A robust and longstanding law like the ADA may provide an easier path to victory.

A rare instance of criminal prosecution for forced labor under the TVPA illustrates the role of advocates in seeking justice on behalf of people with disabilities. A South Carolina man, Bobby Edwards, is, as of this writing, awaiting sentencing after pleading guilty to one count of felony forced labor under 18 U.S.C. § 1589 which was passed as a part of the TVPA.¹²² Edwards, the manager of J & J Cafeteria, kept John Christopher Smith, in bondage, forcing him to work more than 100 hours per week in his restaurant without pay.¹²³ Smith has a severe intellectual disability and had been living on a mattress in the restaurant, where he’d been working since age 12.¹²⁴ Edwards habitually beat Smith, subjecting him to verbal and racial abuse while falsely claiming he was holding Smith’s pay in a bank account for Smith’s use in the future.¹²⁵

On one occasion, Edwards burned Smith on his neck with deep-fryer tongs for working too slowly.¹²⁶ His scar caught the eye of a local woman who contacted state social services along with the National Association for the Advancement of Colored People (NAACP).¹²⁷ This group was instrumental in making sure Edwards’ crime was prosecuted under federal anti-trafficking statutes.¹²⁸ When Edwards was first charged, it was with misdemeanor assault. The local NAACP chapter president, Abdullah

commissioner told a reporter that “There doesn’t appear to be any money to get ... Because of the bankruptcy filing, it is likely none of the penalties will be collected.” *Id.* State regulators told The Des Moines Register that they have no plans to pursue the collection of the \$1.1 million in penalties the state of Iowa imposed against the company in 2013. *Id.*

¹²⁰ See, e.g., Yuki Noguchi, *A ‘Wake Up Call’ to Protect Vulnerable Workers from Abuse*, NPR (May 16, 2013), <https://www.npr.org/2013/05/16/184491463/disabled-workers-victory-exposes-risks-to-most-vulnerable>; Barry, *supra* note 112.

¹²¹ U.S. E.E.O.C., *supra* note 114.

¹²² Victims of Trafficking and Violence Protection Act of 2000, § 1589.

¹²³ Camila Domonoski, *S.C. Man Pleads Guilty To Enslaving Mentally Disabled Man*, NPR (June 7, 2018), <https://www.npr.org/2018/06/07/617911813/s-c-man-pleads-guilty-to-enslaving-mentally-disabled-man>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Faith Karimi, *A restaurant manager gets 10 years in prison for beating and torturing a black employee*, CNN (Nov. 8, 2019), <https://www.cnn.com/2019/11/08/us/sc-restaurant-worker-forced-labor-trnd/index.html>.

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Mustafa, pushed for a stronger charge while also bringing the case to the attention of the press and federal law enforcement.¹²⁹ After an investigation by the Federal Bureau of Investigation (FBI), Edwards was prosecuted by an attorney from the DOJ's Civil Rights Division.¹³⁰

State statutes against labor trafficking have yet to be commonly employed. Labor trafficking crimes—unlike sex trafficking investigations—are typically handed over to federal investigators by state police.¹³¹ For example, Ohio's human trafficking statute was passed in 2011¹³² In 2013, Ashland police discovered a developmentally disabled woman, S.E., and her young daughter who was also disabled.¹³³ They were being held by Jordie Callahan, Jessica Hunt and Daniel Brown in a padlocked room. S.E. had moved in with the group voluntarily, with an understanding that it would be a typical roommate arrangement.¹³⁴ The relationship deteriorated quickly, and S.E. was forced to provide round-the-clock domestic labor while being deprived of food and wages.¹³⁵ She was not allowed outside of her room at night and was, consequently, forced to use a corner of her room as her toilet.¹³⁶

During the day, S.E.'s daughter was locked away while S.E. worked, collateral to prevent her from escaping.¹³⁷ S.E.'s SSI payments were stolen and the group regularly beat her with belts, hammers and rocks.¹³⁸ They would send her to the emergency room with those injuries in hopes of later confiscating any prescribed pain medication.¹³⁹ If S.E. took too long to run an errand, she was threatened at gunpoint.¹⁴⁰ The group told her that if she left, her daughter would be taken away.¹⁴¹ Two years after S.E. had been enslaved, police arrested her on one of her errands because she had stolen a

¹²⁹ Camila Domonoski, *S.C. Man Pleads Guilty To Enslaving Mentally Disabled Man*, NPR (June 7, 2018), <https://www.npr.org/2018/06/07/617911813/s-c-man-pleads-guilty-to-enslaving-mentally-disabled-man>.

¹³⁰ U.S. DEP'T OF JUSTICE, *SOUTH CAROLINA MAN PLEADS GUILTY TO FORCED LABOR FOR COMPELLING MAN WITH INTELLECTUAL DISABILITY TO WORK AT RESTAURANT* (2018), <https://www.justice.gov/opa/pr/south-carolina-man-pleads-guilty-forced-labor-compelling-man-intellectual-disability-work> [hereinafter *SOUTH CAROLINA MAN PLEADS GUILTY*].

¹³¹ Farrell et al., *supra* note 64, at 2.

¹³² OHIO REV. CODE ANN. § 2905.32 (LexisNexis 2013).

¹³³ *United States v. Callahan*, 801 F.3d 606, 627 (6th Cir. 2015).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

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candy bar.¹⁴² When she told them she'd rather go to jail than back to her home, police investigated her living conditions.¹⁴³

Once the extent of the torture she'd been through became evident, Ashland police sought the help of the FBI.¹⁴⁴ Ashland County Prosecutor Ramona Rogers said, "We are pleased to cooperate with federal authorities, particularly when it provides for a more severe punishment for these defendants."¹⁴⁵

The defendants were convicted of conspiracy, in violation of 18 U.S.C. § 371, forced labor, in violation of 18 U.S.C. § 1589(a) and acquiring a controlled substance by deception, in violation of 21 U.S.C. § 843(a).¹⁴⁶ In addition, the jury found that each forced labor violation included the offense of kidnapping or attempted kidnapping within the meaning of 18 U.S.C. § 1589(d).¹⁴⁷ All of these sections are provided by the TVPA. Defendant Hunt's sentence was enhanced for having inflicted "serious bodily injury" in the course of the involuntary servitude and for the use of a "dangerous weapon," in this case, a fencepost.¹⁴⁸ The willingness of Ohio's justice partners to ask for federal assistance¹⁴⁹ likely allowed for a better chance of conviction given the newness of Ohio's human trafficking statute.¹⁵⁰

States, as illustrated above, may turn to federal law enforcement in trafficking cases, especially when pushed by activists into doing so. However, some crimes are punished under a patchwork of state *and* federal laws.¹⁵¹ The following case illustrates this. A couple, Lisa and Guy, are both intellectually disabled.¹⁵² In 2004, when Walter Strong married Lisa's sister, he also became the couple's conservator.¹⁵³ In 2011, after a tip from a neighbor, Strong was removed as conservator by the Tennessee Department of Human Services.¹⁵⁴ During the six years he lived with Guy and Lisa, he

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ U.S. ATT'Y'S OFFICE N. DIST. OF OHIO, THREE ASHLAND RESIDENTS ARRESTED FOR HUMAN TRAFFICKING (2013), <https://www.justice.gov/usao-ndoh/pr/three-ashland-residents-arrested-human-trafficking>.

¹⁴⁵ *Id.*

¹⁴⁶ Callahan, *supra* note 133, at 630.

¹⁴⁷ *Id.* at 628-29.

¹⁴⁸ *Id.* at 606, 627.

¹⁴⁹ *Three Ashland Residents Arrested For Human Trafficking*, *supra* note 144.

¹⁵⁰ Amy Farrell et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61(2) CRIME L. SOC. CHANGE 142 (2013).

¹⁵¹ See *Frankenfield v. Strong*, 2014 U.S. Dist. LEXIS 39155, at *1-7 (M.D. Tenn. Ne. Div. Mar. 25, 2014).

¹⁵² *Id.* at *1.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

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forced Guy to perform free labor on his farm.¹⁵⁵ He subjected Lisa to sexual abuse and housed the couple in a dilapidated trailer while confiscating over \$100,000 of the couple's SSI benefits for his personal use.¹⁵⁶ In 2012, the Grand Jury for Clay County, Tennessee issued two indictments against Strong charging him with sexual battery by an authority figure¹⁵⁷ and theft of property valued in excess of \$60,000.¹⁵⁸ He pleaded guilty to theft and a lesser charge of sexual battery and was ordered to pay restitution in the amount of \$105,480.84 along with court costs.¹⁵⁹

In 2014, the same year that Tennessee enacted its human trafficking legislation, Lisa and Guy's state-appointed conservator brought a federal civil claim against Strong alleging violations of 18 U.S.C. § 1589.¹⁶⁰ The defendant did not respond to the complaint and the victims were awarded \$700,000 in restitution.¹⁶¹

There is a near absence of criminal prosecution under state trafficking law for victims of labor trafficking.¹⁶² It is evident that established federal law packages like the ADA are a more comfortable area for law enforcement.¹⁶³ Despite the ADA, many PWD faces barriers to legitimate employment which is why the dearth of labor-trafficking cases at both the federal and state levels is concerning.¹⁶⁴ The judgements won by victims in civil courts, however, are unlikely to be paid by the offenders.¹⁶⁵ Absent public pressure by organized advocates, it's possible that labor traffickers may avoid criminal liability entirely. In either instance, extant cases show that federal assistance is key in investigating and adjudicating labor trafficking. This stands in striking opposition to how state officials handle sex trafficking offenses.

¹⁵⁵ Walter F. Roche, Jr., *Ex-conservator's Control Over Couple Fed 'Evil Desires'*, TENNESSEAN (Mar. 26, 2014, 8:03 PM), <https://www.tennessean.com/story/news/crime/2014/03/26/ex-conservators-control-couple-fed-evil-desires/6926457>. As this article explains, the chances of the victims collecting their judgement are minimal as Strong already has liens against his minimal holdings. *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ TENN. CODE ANN. § 39-13-527 (2006).

¹⁵⁸ TENN. CODE ANN. § 39-14-103 (2016).

¹⁵⁹ Frankenfield, 2014 U.S. Dist. LEXIS 39155, at *1.

¹⁶⁰ *Id.*

¹⁶¹ Walter F. Roche, Jr., *Ex-conservator Must Pay Abuse Victims*, TENNESSEAN (Mar. 26, 2014, 12:13 AM), <https://www.tennessean.com/story/news/crime/2014/03/26/ex-conservators-control-couple-fed-evil-desires/6926457>. As this article explains, the chances of the victims collecting their judgement are minimal as Strong already has liens against his minimal holdings. *Id.*

¹⁶² See Frankenfield, 2014 U.S. Dist. LEXIS 39155, at *1-7.

¹⁶³ *Id.*

¹⁶⁴ Polaris Project, *supra* note 18.

¹⁶⁵ Jeltsje Cusveller, *Compensation for Victims of Human Trafficking: Inconsistencies, Impediments and Improvements*, YU UNL. AMSTERDAM 21-22 (2015).

2020] *TRAFFICKING PEOPLE WITH DISABILITIES* 489*B. Sex Trafficking*

Sex trafficking is more commonly prosecuted in both federal and state criminal courts than labor trafficking. However, this realm of law is much more complicated and fraught for the bulk of trafficking victims. At the state level, sex trafficking is often prosecuted under sexual assault, abuse, or prostitution statutes, laws that are more familiar to prosecutors but do not, in most cases, provide victims with assistance. State prostitution statutes are especially tough on trafficking victims, often treating them as perpetrators or co-conspirators regardless of how they became enmeshed in the trafficker's crimes.¹⁶⁶ Consequently, sex trafficking victims sometimes face further victimization by state and local law enforcement officials.¹⁶⁷ They must frequently testify against their traffickers in court while awaiting their own prosecution.¹⁶⁸

In some respects, people with disabilities who are victims of sex trafficking, are sheltered from the "victim blaming" phenomenon.¹⁶⁹ The vulnerability of PWD may be more apparent to law enforcement officials and juries, making the exploitation and lack of consent involved in sex trafficking more evident to those who might otherwise be inclined to chastise victims for their poor decisions or "moral failings."¹⁷⁰ In a 2017 interview, a Connecticut State's Attorney specializing in trafficking lamented the public's desire to look away from or blame victims for prostitution.¹⁷¹ He said "When it's minors, it's not prostitution. It's the systematic abuse and rape of kids."¹⁷²

This statement may illuminate how prosecutors conceive of PWD as well, particularly those with ID that may seem more child-like to those working on their case. There is, additionally, a particularly egregious element to the trafficking of disabled people, something prosecutors may take into account when deciding whether to try a case under relatively new anti-trafficking statutes.¹⁷³ Since 2014, all 50 states have had some form of legislation prohibiting human trafficking.¹⁷⁴ In 2017 and 2018, state

¹⁶⁶ See *State v. Swindle*, 915 N.W.2d 795 (2018).

¹⁶⁷ Discher, *supra* note 5.

¹⁶⁸ Amy Farrell et al., *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME L. SOC. CHANGE 156, 162 (2013).

¹⁶⁹ *State v. Swindle*, 915 N.W.2d 795 (2018).

¹⁷⁰ Farrell et al., *supra* note 65; Heiges, *supra* note 74.

¹⁷¹ Jenifer Frank, *As State Steps Up Efforts to End Child Sex Trade, Experts Say Public's Ignorance Is Impediment*, THE HARTFORD COURANT (Nov. 15, 2017, 8:15 AM), <https://www.courant.com/news/hc-news-fighting-sex-trafficking-in-connecticut-20171115-story.html>.

¹⁷² *Id.*

¹⁷³ Melynda H. Barnhart, *Sex and Slavery: An Analysis of Three Models of State Human Trafficking Legislation*, 16 WM. & MARY L. REV. 83, 90, 94 (2009).

¹⁷⁴ NAT'L CONF. OF STATE LEGIS., *Human Trafficking State Laws*, <https://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-laws.aspx>.

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prosecutors began to try their first cases, and, in several instances, the inaugural human trafficking case involved a victim or victims with disabilities.¹⁷⁵

Douglas County in Nebraska prosecuted its first trafficking case when Anthony Swindle was tried for two counts each of rape and human trafficking.¹⁷⁶ He had begun pimping his girlfriend, Lisa Villanova-White, when she confided to him that she had, in the past, worked as a prostitute.¹⁷⁷ In 2015, hoping to expand his enterprise, Swindle eventually convinced a 21-year-old homeless woman, A.R., to be his “girlfriend.”¹⁷⁸ A.R. had been physically and sexually abused for the bulk of her life and had been diagnosed with intellectual disabilities.¹⁷⁹ Swindle told A.R. that she could live with him but that she must “pay rent” in the form of sex work.¹⁸⁰ He began pimping her out and keeping the profits for himself.¹⁸¹ In July of 2015, A.R. escaped by convincing her mother (who had also sold her for sex in the past) to pick her up while she was on an “out call” at a motel.¹⁸²

In September of 2015, Swindle met a runaway, 15-year-old M.M.¹⁸³ She had been diagnosed with schizoaffective disorder and mood dysregulation disorder.¹⁸⁴ She was low-functioning and needed assistance with nearly all aspects of daily living.¹⁸⁵ Swindle began selling M.M. for sex, posting her picture on the internet to lure johns.¹⁸⁶ When law enforcement matched her picture online to one from a missing-persons report her mother

¹⁷⁵ Between 1-3% of the general population have ID (all aforementioned cases involve ID rather than physical disabilities) but one study found that around 28% of trafficking victims displayed ID. Reid, *supra* note 14, at 14. Even given this, the number of states that chose to prosecute trafficking when the victim had ID is disproportionate to the number of trafficking cases in their jurisdictions with “typical” victims (meaning victims who do not display clinical signs of disability). See Robert Bock, *Intellectual and Developmental Disabilities*, NAT’L INSTS. OF HEALTH (June 30, 2018), <https://archives.nih.gov/sites/report/09-092019/report.nih.gov/nihfactsheets/ViewFactSheet34ef.html?csid=100&key=I#I>; see also Polaris Project Blog, *Individuals with Disabilities May Face Increased Risk of Human Trafficking*, POLARIS PROJECT BLOG (Aug. 15, 2018) <https://polarisproject.org/blog/2018/08/individuals-with-disabilities-may-face-increased-risk-of-human-trafficking/>; Reid, *supra* note 14.

¹⁷⁶ *Swindle*, 915 N.W.2d at 795-815.

¹⁷⁷ *Id.*

¹⁷⁸ Reid, *supra* note 14. Reid studies trafficking victims with ID. *Id.* She emphasizes that victims with ID frequently refer to their traffickers as “boyfriends” due to an inability to distinguish between a trafficker, a boyfriend or someone purchasing sex. *Id.*

¹⁷⁹ *Swindle*, 915 NW 2d at 802.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 803.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

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had filed, a raid was conducted on the motel where Villanova-White and M.M. had been staying under strict instructions from Swindle.¹⁸⁷

Swindle was arrested, along with Villanova-White.¹⁸⁸ After a 7-day trial (at which Villanova-White testified) Swindle was found guilty of sexual assault of a child in the first degree, in violation of Neb. Rev. Stat. §§ 28-319.01(1)(b) and sex trafficking of a victim under 16 years of age, in violation of Neb. Rev. Stat. § 28-831(1) and sex trafficking by inflicting or threatening serious personal injury, in violation of § 28-831(2).¹⁸⁹ The district court determined Swindle was a habitual criminal and sentenced him to consecutive sentences of imprisonment which totaled 180 years.¹⁹⁰ Though he appealed the length of his sentence, in 2018 the Nebraska Supreme Court upheld the lower court's ruling.¹⁹¹

Mercer County in New Jersey won its first criminal conviction for human trafficking in 2018 when Breion Turner pleaded guilty to kidnapping a 17-year-old girl with intellectual disabilities.¹⁹² Turner approached his victim at a bus stop. Once she'd entered his car, he threatened to kill her if she did not cooperate with him.¹⁹³ Turner held his victim for four days at his residence where he forced her to have sex with multiple men, earning about \$400 in the process.¹⁹⁴ The victim testified that Turner drugged her with what he told her was cold medicine. Turner's guilty plea resulted in an eight-year sentence with 42 months of parole ineligibility.¹⁹⁵ He is also required to pay \$25,000 to the state's Human Trafficking Survivor's Assistance Fund.¹⁹⁶ The Mercer County Prosecutor assigned to the case articulated the premise that

¹⁸⁷ *Id.* at 802.

¹⁸⁸ Villanova-White was charged with pandering despite the fact that Swindle had abused her, stolen her money – leaving her houseless and dependent upon continued prostitution to live in a motel. Alia Conley, *Teen testifies in Omaha human trafficking trial, says man raped her in car and hotel*, OMAHA WORLD HERALD (May 20, 2017) https://www.omaha.com/news/crime/teen-testifies-in-omaha-human-trafficking-trial-says-man-raped-her-in-car-and-hotel/article_9a46a3dc-cc1a-5418-9372-99cbd31cd815.html (last visited Apr. 29, 2020). He would also threaten her with a gun in order to convince her to work for him and to keep her from leaving. *Swindle*, 915 NW 2d at 737. Though she participated in creating online profiles for A.R. and M.M. along with monitoring them while they worked, her description of Swindle's treatment closely mirrored that of the other victims. *Id.* When she testified against Swindle, she was facing one to 50 years in prison for her role in the trafficking.

¹⁸⁹ *Swindle*, 915 NW 2d at 761.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 762.

¹⁹² N.J. REV. STAT. § 2C:13-8 (2013).

¹⁹³ David Chang, *Man Kidnaps Teen Girl with Mental Disability, Sells Her for Sex: Officials*, NBC 10 (Oct. 24, 2016, 9:51 PM EST), <https://www.nbcphiladelphia.com/news/local/breion-turner-new-jersey-kidnapping-sex-trafficking-mental-disability-teen-girl/61798/>.

¹⁹⁴ *Id.*

¹⁹⁵ Page Gross, *Man pleads guilty to sex trafficking teen, holding her hostage*, NJ.COM (Feb. 27, 2018) https://www.nj.com/mercer/2018/02/trenton_man_plead_guilty_to_sex-trafficking_holdin.html.

¹⁹⁶ *Id.*

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the trafficking of the disabled is a more grievous crime than many others.¹⁹⁷ In his press release, he wrote, “This plea will ensure the defendant serves a lengthy prison sentence and pays for exploiting such a vulnerable victim.”¹⁹⁸

Similarly, Boone County prosecutors, in Missouri, have charged Renee M. Collins with sex trafficking under their state statute—the first human trafficking charge on record in the state.¹⁹⁹ Collins has been accused of pimping out her disabled daughter, a teenager with cerebral palsy who has the mental functioning of a two or three-year-old child.²⁰⁰ In a somewhat rare occurrence, this case moved from federal to state law enforcement when the FBI tipped off state police to the presence of a young girl at a motel who appeared to be drugged.²⁰¹ The FBI said informants had reported to them that she appeared to live in the motel and had many male visitors.²⁰² State police investigated and took the girl into custody.²⁰³ Collins and her boyfriend, who was charged with rape and attempted rape, have entered “not guilty” pleas and are currently awaiting trial.²⁰⁴

Connecticut was an early adopter of human trafficking legislation, passing its law in 2006.²⁰⁵ Between 2006 and 2016, zero cases were prosecuted under the law, which had been broadened by the legislature numerous times in an effort to make it more effective.²⁰⁶ Federal prosecutors had managed to close 28 of the 432 cases of trafficked minors reported in the ten years after the legislation, but the state had never been successful.²⁰⁷ However, 2018 saw the first conviction of traffickers under Connecticut’s legislation when Robert King pleaded guilty to conspiracy to commit human

¹⁹⁷ OFFICE OF THE MERCER COUNTY PROSECUTOR, TRENTON MAN PLEADS GUILTY TO HUMAN TRAFFICKING (2018), <http://mercercountyprosecutor.com/wp-content/uploads/2018/03/Breion-Turner-plea.pdf>.

¹⁹⁸ *Id.*

¹⁹⁹ Other trafficking crimes stemming from events in Missouri have been prosecuted by U.S. Attorneys in federal court. See Emily Younker, *Report: Missouri Active in Prosecuting, Convicting Trafficking Crimes*, THE JOPLIN GLOBE (Jul. 6, 2019), https://www.joplinglobe.com/news/local_news/report-missouri-active-in-prosecuting-convicting-trafficking-crimes/article_6ab08da3-58cf-5ac4-990a-643634adfc7e.html.

²⁰⁰ Meg Donohue, *Columbia Woman Pleads Not Guilty to Sex Trafficking Daughter*, MISSOURIAN (Oct. 9, 2018), https://www.columbiamissourian.com/news/local/columbia-woman-pleads-not-guilty-to-sex-trafficking-her-daughter/article_57058e80-cbf7-11e8-8cf2-df45e87675e3.html.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ OFFICE OF LEGIS. RES., CONNECTICUT’S RECENT HUMAN TRAFFICKING LEGISLATION I (2017), <https://www.cga.ct.gov/2017/rpt/pdf/2017-R-0336.pdf>.

²⁰⁶ Ray Hardman, *Human Trafficking Convictions Elusive for Connecticut Prosecutors*, CT PUB. RADIO (Apr. 1, 2016), <https://www.wnpr.org/post/human-trafficking-convictions-elusive-connecticut-prosecutors>.

²⁰⁷ *Id.*

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trafficking.²⁰⁸ In 2019, his co-conspirator, local businessman and millionaire Bruce Bemer was convicted of criminal liability for trafficking a person along with three other criminal counts.²⁰⁹ King and Bemer ran a prostitution ring that preyed upon vulnerable men, at least two of whom were low-functioning and developmentally disabled, a point repeatedly emphasized in the press and at trial.²¹⁰ King recruited men outside of drug treatment centers and group homes, providing them drugs and shelter for which they were later presented with a bill.²¹¹ They were then forced to work as prostitutes to pay their bill while Bemer and King profited.²¹² Bemer was sentenced to ten years in prison but is out on bail while he appeals on the basis of an error in jury instructions.²¹³ The attached civil case—which the Connecticut trafficking law allows victims to file—was settled out of court.²¹⁴

The willingness of states to prosecute sex-related crimes under their trafficking statutes appears to depend, at least in part, on how vulnerable or sympathetic the victims will appear to a jury. A vastly inordinate number of cases prosecuted under state sex-trafficking laws have been committed against the disabled, especially those with ID. When children or people with disabilities are the victims, prosecutors may be able to avoid the tendency of people to think of victims of rape as immoral or otherwise complicit in the violation against them. Unfortunately, state trafficking laws vary a great deal in whether and how they provide for the victim. So, while more trafficking victims with disabilities may see justice at the local level, they have no guarantee of any state services or considerations they may have received if their case had been prosecuted at the federal level.

C. Captivity for Profit

The least-prosecuted category of human trafficking is the one that PWD are most uniquely vulnerable to – captivity for profit. The extant captivity for profit cases show that the investigation and prosecution of the cases is extremely complicated, as the enterprises are typically wide-ranging and in violation of numerous state and federal laws. An illustrative example is the case of Linda Weston, who, along with members of her family and other

²⁰⁸ David Owens, *A Third Victim of Danbury Sex-Trafficking Ring Describes How He Was Compelled to Work as Prostitute*, THE HARTFORD COURANT (Apr. 4, 2019, 9:03AM), <https://www.courant.com/news/connecticut/hc-bruce-bemer-trial-0404-20190403-bda7m4zkdne37f6lctem5do6em-story.html>.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

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associates, lured numerous people with disabilities into captivity between 2001 and 2010.²¹⁵

She and her associates targeted PWD who were estranged from their families and needed a place to live.²¹⁶ Once they agreed to move into one of the Weston family homes and signed over their SSI benefits to one of the perpetrators, they were beaten and sedated, locked in attics, crawl spaces, and closets.²¹⁷ The victims were underfed and not allowed access to running water or toilets.²¹⁸ If they protested, they were beaten with fists, boards and, on one occasion, the butt of a pistol.²¹⁹ Many of the victims lived this way for years while Weston collected their Social Security payments.²²⁰

In 2005, one victim identified as D.S. died as the result of her treatment.²²¹ In 2008, another victim, M.S. was severely beaten and locked inside a kitchen cupboard.²²² She, too, died.²²³ In 2011, Philadelphia police officers received a call reporting abuse.²²⁴ They subsequently rescued six disabled adults and four children from the sub-basement of one of Weston's apartment buildings.²²⁵

The Weston's had properties in multiple states, which necessitated that the federal government takes over jurisdiction. Ultimately, the matriarch Linda Weston pleaded guilty to a laundry list of crimes including, racketeering conspiracy, kidnapping resulting in the death of the victim, forced human labor, involuntary servitude, multiple counts of murder in aid of racketeering, hate crimes, violent crime in aid of racketeering, sex trafficking, kidnapping, theft of government funds, wire fraud, mail fraud, use of a firearm in furtherance of a violent crime, and false statements.²²⁶ The investigation of these crimes was carried out by local, state and federal authorities including the Alcohol, Tobacco and Firearms department and the FBI.²²⁷

²¹⁵ U.S. ATT'Y'S OFFICE E. DIST. OF PA., GUILTY PLEA IN CASE OF DISABLED ADULTS HELD CAPTIVE IN SUBHUMAN CONDITIONS (2015), <https://www.justice.gov/usao-edpa/pr/guilty-plea-case-disabled-adults-held-captive-subhuman-conditions>.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ United States v. Weston, No. 13-025-1, 2016 Westlaw 7034712, Indictment at 24, <https://disabilityjustice.org/wp-content/uploads/US-v-Weston-et-al-Indictment.pdf> [hereinafter Indictment].

²²² *Id.* at 4-5.

²²³ *Id.*

²²⁴ SOUTH CAROLINA MAN PLEADS GUILTY, *supra* note 130.

²²⁵ Indictment at 24, *supra* note 221, at 5.

²²⁶ SOUTH CAROLINA MAN PLEADS GUILTY, *supra* note 130.

²²⁷ *Id.*

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Another recent case is instructive of the way victims may not always be organized into discrete groups.²²⁸ Brian “Chris” Bold was arrested and charged in Augusta, Georgia with trafficking a disabled adult in violation of Georgia’s human trafficking law, GA Code § 16-5-102.1 (2018).²²⁹ Bold, who was a handyman for an elderly woman diagnosed with dementia, stands accused of attempting to steal \$2.5 million of her assets.²³⁰ Bold was able to gain the woman’s power of attorney, helping himself to a trust in her name and renting out her home without her knowledge.²³¹ Bold needed to visit several banks with his victim before one would allow the transfer of funds to take place.²³² Several banks alerted the state’s law enforcement, provoking an investigation by the state’s Crimes Against the Vulnerable and Elderly task force. Bold will be tried in state court for human trafficking and the violation of five other state statutes.²³³

Elder abuse crime involves strikingly similar fact patterns when compared to domestic human trafficking cases—especially those involving PWD who are, most often, exploited at the hands of their guardians or caretakers.²³⁴ According to the National Council on Aging (NCOA), elder abuse is rampant with more than 1 in 10 elderly adults suffering at the hands of their custodians.²³⁵

Much of this abuse is motivated by or contains elements of financial abuse, like the confiscation of SSI benefits.²³⁶ However, the vast majority of elder abuse crimes are not, in fact, prosecuted as trafficking cases.²³⁷ Georgia’s prosecutor in the Bold case appears to be unique in using the state’s trafficking law, which was passed the same year Bold was indicted, to address what many states would instead prosecute as elder abuse.²³⁸

When an elderly victim has diminished mental capabilities, it can be difficult to know whether those symptoms are the result of old age or of ID. With respect to the ADA, any major impairment—whether caused by age,

²²⁸ Sandy Hodson, *Bond Granted to Augusta Man Accused of Trafficking Disabled Adult*, THE AUGUSTA CHRONICLE (Nov. 16, 2018, 10:38 PM), <https://www.augustachronicle.com/news/20181116/bond-granted-to-augusta-man-accused-of-trafficking-disabled-adult>.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id.*

²³⁴ ELDER ABUSE FACTS, NAT’L COUNCIL ON AGING, <https://www.ncoa.org/public-policy-action/elder-justice/elder-abuse-facts/> (NCOA’s 2019 report notes that as few as one in 14 cases are ever reported).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ This assertion is based on a search for other cases of a similar type in any U.S. state via Google, LexisNexis, and FindLaw 2019.

genetics, accident or other reason—provides a person with protected status. Which is to say that, when a person loses cognitive ability through dementia or Alzheimer’s Disease as the result of their age, they are entitled to the ADA’s protections—they have a “disability”.

As is the case with most legally-protected groups, intersectionality is only sporadically addressed, especially in criminal law.²³⁹ The high number of financial abuse crimes associated with significantly impaired, elderly people and the near-zero number of trafficking indictments associated with the same group illustrates the notion that elder abuse, though involving coercion, threats and abuse of power is considered much apart from the crime of human trafficking.²⁴⁰ The Centers for Disease Control laments that elder abuse is so infrequently detected, in part, because no single, precise, legal definition of the crime exists.²⁴¹ If it did, it may look remarkably similar to the crime of human trafficking.

IV. CONCLUSION

At the federal level, great strides have been made by advocates for PWD. The ADA and the expansion of hate crime statutes during the Obama administration have made people with disabilities a better-protected group overall, most notably with respect to architectural accommodations and employment discrimination. However, there is still a long way to go. Practitioners (e.g. social workers, health providers and researchers) are just beginning to recognize the unique vulnerabilities of PWD to human traffickers and while federal laws like the TVAP have sought to provide protections for victims, the bulk of trafficking cases will be prosecuted at the state level.

The differences between state and federal anti-trafficking statutes have left gaps consisting of legislative, educational and jurisdictional mismatches. People with disabilities are all too likely to fall through these gaps. A lack of access to legitimate employment means that PWD are disproportionately represented among victims of labor trafficking – the most common form of human trafficking. At the same time, labor trafficking is the least-prosecuted type of trafficking and PWD are often shunted to civil court where they may or may not receive any recompense for the violations against them.

When PWD are the victims of sex-trafficking is when states appear most eager to make use of their trafficking statutes. These statutes, however, vary greatly in whether they offer any protections to the victims or might, in

²³⁹ See, e.g., Nura Taefi, *The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child*, 17 INT’L J. CHILD RTS. 345, 345-76 (2009).

²⁴⁰ DEFINITIONS OF ELDER ABUSE, CDC (May 28, 2019), <https://www.cdc.gov/violenceprevention/elderabuse/definitions.html>.

²⁴¹ *Id.*

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the end, leave them vulnerable to another unsafe situation in the future. Adult foster care and group homes are major recruiting grounds for human traffickers, so a lack of funding for social services affects PWD at both the state and federal levels. Lastly, it appears that only the most egregious cases of trafficking for profit are prosecuted under trafficking statutes.