

HUMAN TRAFFICKING:
Child Victims Accused of Crimes
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Child Victims of Human Trafficking Who Are Accused of Crimes Against Their Traffickers

By Mark Chutkow

There's a human trafficking crisis in our country that many of us don't recognize or appreciate. Neglected teens, often young girls of color with no money or family support, are forced to trade access to their bodies for food, shelter, or drugs. And the people who profit off them — human traffickers — take advantage of these children's vulnerabilities and limited options. They prey on their victims through violence, intimidation, threats, and manipulation, as well as the children's own legal exposure for committing offenses like prostitution, theft, drug sales, or immigration violations. Because of the substantial profits derived from this exploitation, human trafficking is one of the fastest-growing criminal enterprises in the U.S. and here in Michigan.

With nowhere to turn, desperate child trafficking victims occasionally take matters into their own hands, striking back at their tormenters, sometimes violently, to escape their predicaments. Unfortunately, in what has been called the “abuse-to-prison pipeline,” some victimized children get punished further when law enforcement authorities finally encounter them. Rather than being placed into safe and secure homes and given treatment for their traumatic experiences, they’re thrown into jail and prosecuted as adults without consideration of the context underlying their crimes. The result can include long sentences in adult prisons, where the children often won’t receive the treatment they need to heal from their trauma.

THE CASE OF ALEXIS MARTIN

I’ve seen the toll of human trafficking from both sides of the legal system. In my previous role as a federal prosecutor, I brought and oversaw cases against organized crime rings of human traffickers who forced young women and girls to perform commercial sex acts or to produce graphic sexual images through fraud, threats, and violence. Now, in partnership with my colleagues at Dykema and students at the University of Michigan Law School’s Human Trafficking Clinic and Lab, I represent Alexis Martin, a young woman who is seeking to overturn her 21-years-to-life sentence in Ohio for participating in a robbery-turned-murder of a 36-year-old man she called “Daddy” — a man who physically and sexually abused her and trafficked her to other men.

Alexis was only 15 years old when the crime occurred. She could have remained in juvenile court or been diverted from prosecution altogether under Ohio’s “Safe Harbor” law, which was enacted to help victims of human trafficking like her. But, as a traumatized young girl from a broken home, with no resources or community support, she was failed by our system of justice. Her defense attorney at the time, although well meaning, was inexperienced in juvenile matters and in over his head. The other members of the justice system didn’t adequately consider Alexis’s youth or extreme victimization. As a result, Alexis was bound over to adult court despite the statutory and discretionary protections available to her.

The case eventually drew the attention of national news organizations, media celebrities, and officials in the state’s capital. The governor of Ohio released Alexis early from prison. Without appropriate treatment for her extensive trauma, Alexis let a man move in with her who, unbeknownst to her, possessed a gun and drugs among his belongings; she

returned to prison on a parole violation. Despite this setback, outside groups continued to recognize the injustice of Alexis’s imprisonment. They saw in her someone who was more than merely an offender, but a resilient young woman who’d faced substantial adversity and who had much to give back to society through her poetry, her deep commitment to education, and her desire to start a family and help other victims of human trafficking. Alexis’s petition to overturn her conviction and sentence because of ineffective assistance of counsel is pending in the Ohio courts.

OTHER TRAFFICKING VICTIMS IMPRISONED FOR CRIMES AGAINST THEIR TRAFFICKERS

Alexis is not the only child who’s been prosecuted for crimes against her trafficker. Studies reveal that girls of color like Alexis are far likelier to be victims of sexual assault and human trafficking than the general population, and also likelier to be prosecuted for crimes related to that trafficking. Here are just a few examples of such girls who faced prosecution and lengthy prison sentences without adequate consideration of the trauma they endured as trafficking victims or the role that victimization may have played in their crimes:

- **Sara Kruzan** was sentenced to life in prison without parole for killing a 36-year-old man who was attempting to sexually assault her. Kruzan, who was 16 years old at the time of her offense, was prohibited from introducing evidence at trial that she’d been sexually abused and trafficked for years by the decedent. In 2013, the governor of California released Kruzan from prison after she’d served 18 years. She was pardoned in 2022.
- **Cyntoia Brown-Long** was sentenced to 51 years in prison for killing a 43-year-old man who paid her for sex. At the time of the offense, Brown-Long was a 16-year-old runaway who’d been forced into prostitution by an abusive pimp. In 2019, the governor of Tennessee granted her clemency, releasing her after she’d served 15 years in prison. Brown-Long now runs a nonprofit foundation that mentors girls at risk of sexual exploitation.
- **Keiana Aldrich** was sentenced to eight years in prison in California for kidnapping and robbing a man who offered her money to produce sexually explicit images. At the time of the offense, Aldrich was 17 years old. The man who was robbed didn’t serve any

time in prison. Aldrich was released from prison in 2020 after her attorney petitioned the court for resentencing, arguing that her prosecution and sentence failed to account for her status as a sex trafficking victim, as well as her history of abuse. The prosecutor concurred, and she was released.

- **Chrystal Kizer** was convicted of intentional homicide for robbing and killing a 34-year-old man she said was sexually abusing her when she was 17 years old. In 2022, the Wisconsin Supreme Court remanded the case for a new trial so Kizer could raise an affirmative defense that her crime was a direct result of her being trafficked. The matter is currently pending in the trial court.

FEDERAL REFORMS TO HELP TRAFFICKING VICTIMS

If there’s a positive takeaway from these tragic stories, it’s that judges, prosecutors, and government authorities are becoming more receptive to reconsidering past prosecutions of trafficking victims who committed crimes related to their trafficking. This corresponds with an increased recognition in the broader legal community that children should be treated differently from adults in our criminal justice system. Over the past two decades, for example, the U.S. Supreme Court has expanded protections for children convicted of serious crimes, including eliminating the death penalty and mandatory life sentences without parole.

In 2018, Congress passed the Juvenile Justice Reform Act, which helps reduce prosecution of human trafficking victims by requiring states to develop procedures to identify whether juvenile offenders are victims of trafficking and to refer them for services to address their trauma. Congress recently has considered legislation that would further help child trafficking victims avoid being (1) transferred to adult court, (2) charged with felony-murder offenses, and (3) placed in adult prisons. Other proposed federal legislation would allow courts to consider child trafficking victims’ age and trauma history when deciding whether to sentence the children below the mandatory minimum for offenses against their traffickers. As part of the Victims of Trafficking and Violence Protection Act of 2000, Congress created a new nonimmigrant status (known as a “T visa”) so human trafficking victims could remain in the U.S. for up to four years and potentially obtain a green card if they assisted law enforcement authorities in the investigation or prosecution of human

trafficking offenses.

In published guidance, the U.S. Department of Justice, the nation's chief federal law enforcer, also recognizes the vulnerabilities of minors that make them especially susceptible to traffickers, including poverty, lack of family and community support, household abuse and neglect, social isolation and censure, and emotional fragility. These factors not only make children attractive targets of traffickers but also may influence crimes in which these children might participate.

STATE REFORMS TO HELP TRAFFICKING VICTIMS

Many states are following the lead of the federal government in recognizing that children who commit crimes related to human trafficking should be considered victims in need of help rather than offenders in need of punishment. A majority of states have passed safe harbor laws limiting or diverting charges against children for prostitution and other related offenses and offering treatment for their underlying trauma. Michigan, too, is developing a more victim-centered approach to human trafficking victims in lieu of traditional law enforcement methods. Under Michigan's "Safe Harbor" for trafficking victims, the Legislature has enacted laws restricting or shielding minor and adult victims of sex trafficking from criminal liability for prostitution-related crimes committed as a direct result of human trafficking and giving courts discretion to expunge past prostitution-related convictions. See MCL 712A.18e, 750.448, 750.449, 750.451, 750.451c, and 780.621.

Over the past several years, the Michigan Human Trafficking Commission, residing in the Michigan Department of Attorney General, has proposed legislation that would further enhance protections for human trafficking victims caught up in the legal system, including (1) expanding the scope of expungement of convictions to *all* crimes committed as a result of human trafficking (not just prostitution-related offenses), and (2) adding a new affirmative defense for victims if their crimes were a direct result of being trafficked (similar to the defense Chrystal Kizer is now advancing in Wisconsin). It remains to be seen whether these and other reform measures will be enacted.

While these reform efforts are a positive step, much work still needs to be done to educate the various players in the criminal justice system about the laws currently in place to protect human trafficking victims from further traumatization. After all, when Alexis Martin was charged with felony murder in the death

of her trafficker, Ohio had a "Safe Harbor" law addressing her exact situation, but it wasn't raised by her attorney, the prosecutor, or the juvenile judge before Alexis was bound over to adult court.

WHAT TO DO IF YOU ENCOUNTER A VICTIM OF HUMAN TRAFFICKING

If you encounter someone you believe may be a victim of human trafficking, you should call 911 and ask for the police. The National Human Trafficking Resource Center — call (888) 373-3788 or text 233733 — is another important resource if you need guidance on what to do. In addition, Michigan has a number of agencies and federal/state/local task forces that combat human trafficking, including:

- the FBI's Southeast Michigan Trafficking and Exploitation Crimes Task Force;
- the FBI-led Child Exploitation and Human Trafficking Task Force;
- the Homeland Security Investigations (HSI) national tip line, (877) 4HSITIPS;
- the National Center for Missing and Exploited Children;
- the Michigan Internet Crimes Against Children Task Force;
- the Michigan Human Trafficking Commission, residing in the Department of Attorney General, which works with experts inside and outside of government to counter human trafficking;
- the Michigan Department of Health and Human Services (MDHHS), which develops guidance, protocols, and screening tools for child welfare professionals to identify and assist child victims of human trafficking; and
- the Human Trafficking Health Advisory Board, residing in MDHHS, which ensures human trafficking victims have appropriate services available to them.

To reach the National Human Trafficking Resource Center, call (888) 373-3788 or text 233733.

If you're asked to represent a victim of human trafficking, make sure you get the whole story from them regarding any neglect or abuse they've suffered, not only from the traffickers but from family members and others. This includes collecting records of such abuse, where available. Also determine their immigration status. Make sure you understand the laws designed to protect the victim's rights. Review all safe harbor laws that protect

trafficking victims by diverting them from the criminal justice system or that offer treatment for their trauma. Many safe harbor laws also authorize the appointment of a guardian ad litem to protect the interests of child victims. If the court or prosecutor declines to divert the case from prosecution, consider, where appropriate, advocating that the case remain in juvenile court, where the majority of such cases belong.

There are numerous nonprofit organizations in Michigan and other states that provide counseling, treatment, housing, and other services for at-risk youth to prevent them from falling prey to human traffickers and to address the trauma of those who've been victimized. Of particular note is the University of Michigan Law School's highly regarded Human Trafficking Clinic and Lab, comprising law students and nationally renowned faculty who provide legal assistance to human trafficking victims. They can be reached at (734) 615-3600.

LOOK IT UP

- Yasmin Vafa and Rebecca Epstein, *Criminalized Survivors: Today's Abuse to Prison Pipeline for Girls* (2023).
- Violence Against Women Reauthorization Act, 137 S. 3623, 117th Cong. § 813 (2022).
- Juvenile Justice Reform Act of 2018, Pub. L. No. 115-385, 132 Stat. 5123 (2018).
- U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, *Special Issues Facing Juvenile Victims of Human Trafficking in the United States* (2015).
- Malika Saada Saar, Rebecca Epstein, Lindsay Rosenthal, and Yasmin Vafa, *The Sexual Abuse to Prison Pipeline: The Girls' Story* (2015). ⁴¹



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