RESOLUTION

RESOLVED, That the American Bar Association urges state, tribal, and territorial legislatures to aid minors who are victims of human trafficking by:

a) Permitting their immediate protective custody as dependent children in suitable residential environments and, except in extreme and compelling circumstances, not charging children under the age of 18 with the crimes of engaging in prostitution or soliciting themselves, loitering with the intent to engage in prostitution, or status offenses that are incident to their trafficking situation;

b) Amending juvenile dependency laws by:
   1) Making suspicion of trafficking victim status a basis for mandated reporting to child protective services agencies and requiring their services, for both citizen and non-citizen children, through specialized child trafficking victim units; and
   2) Requiring screening and risk assessment for trafficking victimization whenever a youth enters a runaway or homeless youth facility, juvenile justice system, or child welfare agency custody;

c) Establishing programs of specialized short and long term safe housing, residential care facilities, and other services for prompt access by law enforcement, public health officials, and child protective services;

d) Authorizing courts to issue and enforce protective orders prohibiting harassment or intimidation of child trafficking victims; and

e) Providing a civil cause of action for child victims to receive compensation and services.

FURTHER RESOLVED, That the American Bar Association urges state, tribal, territorial and local governments to ensure:

a) Law enforcement, child protective services, and family and juvenile court training to address identification and risk assessment of child trafficking victims and the process of obtaining aid for the victims;

b) Prompt health, mental health, substance abuse treatment, educational and vocational training, residential care, and other victim services;

c) Those providing health, mental health, substance abuse treatment, education and vocational training, residential care, and other victim services report aggregate data on victims served to a designated state agency;

d) When a child is missing from foster care or residential placement, immediate notification to federal, state, and local law enforcement, with annual aggregate reporting of this data; and

e) Special attention in the development of programs to provide services for the unique needs of girls, boys, and gay and transgendered youth.
FURTHER RESOLVED, That the American Bar Association urges Congress to enact legislation that:

a) Enhances state, tribal, territorial, and local efforts to combat trafficking of minor children through supporting legal services to victims, shelter and rehabilitative care, and prosecution of adults who are trafficking in minor children; and

b) Helps assure all non-citizen children who have been exploited for labor, services or commercial sex acts are properly identified as “victims of a severe form of trafficking in persons” as specifically authorized in federal law and:

1) Permits their immediate protective custody as dependent children in suitable residential environments and, except in extreme and compelling circumstances, not charging children under the age of 18 with the crimes of engaging in prostitution or soliciting themselves, loitering with the intent to engage in prostitution, or status offenses that are incident to their trafficking situation;

2) Mandates, and financially supports, data collection and reporting on their immigration relief eligibility and status;

3) Requires their prompt referral to local child protective services and other suitable provider(s) for services and support, identification of immigration relief options, and the right to communicate promptly with their national consulate;

4) Reimburses government entities, pursuant to existing authorization granted in federal law, for foster care costs related to services to children who are victims of human trafficking; and

5) Assures that their cross-border repatriation should only be accomplished through application of best practices developed by experts.

FURTHER RESOLVED, That the American Bar Association urges the education of lawyers, judges and other justice system professionals regarding the legal issues pertaining to the trafficking of minor children, and urges state, tribal, and territorial legislatures, and bar associations, to improve laws addressing the trafficking of children, including the development and adoption of model or uniform anti-trafficking laws.
The trafficking of children is a form of human trafficking and is the recruitment, transportation, transfer, harboring, or receipt of minors who are exploited for their labor or services or forced to engage in commercial sexual activity.\textsuperscript{1} Given the clandestine nature of domestic and international trafficking, definitive statistics are not available, but the International Labor Organization estimates that at any given time 2.4 million people are victims of forced labor as a result of human trafficking, and the U.S government estimates that between 14,500 and 17,500 people are trafficked into the United States every year.\textsuperscript{2} While these numbers are startling, they fail to account for the many individuals who are trafficked within the United States; of which experts estimate least 100,000 are child victims of prostitution every year.\textsuperscript{3}

Trafficked children endure horrific and inhumane treatment. They frequently are raped, beaten, denied food and sleep, and isolated from the outside world. Given the lasting physical, emotional, and psychological effects of such treatment, it is imperative that state and federal legislation be enacted to support and encourage legal and social services for minor victims of human trafficking.

Prohibiting Arrest or Charging Children Under 18 with Crimes or Status Offenses Incident to Their Trafficking Situation

This resolution encourages state legislatures to treat exploited children as victims rather than criminals. Specifically, the recommendation calls for the prohibition of the arrest or charging of children under 18 with the crimes of prostitution, solicitation, or loitering (as well as other offenses, including status offenses) that are incident to their trafficking situation. These children have been exploited for their labor and services or have been forced into commercial sexual activity, and thus should be placed in immediate protective custody, as dependent children, in a suitable residential environment. This resolution builds upon approved Recommendation 105B from the 2010 Midyear Meeting of the ABA House of Delegates meeting, which stated that laws and policies should be assisting, “victims of crime, instead of arresting, children who have engaged in prostitution or other forms of commercial sexual exploitation.”

One of the greatest vulnerabilities to exploitation is age. The average age that a pimp recruits an individual into prostitution is 12 to 14 years old. These pimps are traffickers who know how

to target individuals who are the most vulnerable. Youth have less life experience, fewer coping mechanisms, and smaller social support mechanisms. This works to the trafficker’s favor in implementing different recruitment and control tactics.\textsuperscript{4} Traffickers purposely place their child victims in situations of crimes or delinquency during exploitation in an attempt to damage the child’s image and make them less credible as a witness against the trafficker within the justice system. Additionally, traffickers systematically distance themselves from the risk of detection and prosecution by law enforcement by using “bottom girls,” who are forced to recruit, supervise, and impose punishment on fellow child victims.\textsuperscript{5}

The tendency to treat minor victims of human trafficking as criminals rather than victims stems from a conflict in human trafficking laws at the state level. Under such laws, children are generally subject to arrest and prosecution for prostitution, solicitation, loitering, and juvenile “status offenses” (e.g., runaways, delinquents or “incorrigible” children), despite their status as trafficking victims. In contrast, federal law, child welfare and anti-trafficking advocates, and service providers recognize these children’s unique vulnerability and approach these children as victims of human traffickers and their exploiters.\textsuperscript{6} Under federal law, the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent reauthorizations explicitly state that the United States should “protect rather than punish the victims of such offenses.”\textsuperscript{7} Further, the Act’s history suggests it was intended to preclude child victims from receiving a “criminal” categorization.\textsuperscript{8}

Notably, a few states have begun to shift their legal paradigm to ensure that trafficked children are treated as victims rather than criminals. Connecticut, Illinois, Michigan, New York, and Washington have passed some form of “Safe Harbor” law, which provide alternative models for a diversion approach,\textsuperscript{9} and this type of legislation has been proposed in seven other states.\textsuperscript{10} For example, New York’s Safe Harbor for Exploited Children Act treats children under 16 as victims, provides a mandate for their treatment, and allows a petition for their consideration in family court as a “person in need of supervision.”\textsuperscript{11} Michigan has ensured that youth under 16 years of age cannot be charged with prostitution, although Michigan does not require services, does not authorize alternative family court petitions, and allows youth to be charged with such offenses as disorderly conduct and/or trespassing when incident to an act of prostitution.\textsuperscript{12}

\textsuperscript{4} Id. at 30 (footnotes omitted).
\textsuperscript{5} Id. at 38 (footnotes omitted).
\textsuperscript{6} ECPAT International, \textit{supra} note 4.
\textsuperscript{11} See Birkhead, \textit{supra} note 8 at 14.
\textsuperscript{12} See id.
Although the TVPA states that children should not be held accountable for crimes committed as a direct result of their trafficked condition (recognizing they were under the control of a trafficker), states are still charging these child victims not only with prostitution, but with curfew violations, runaway status, and drug possession. The arrest of a child trafficking victim for a crime committed as a direct result of his or her trafficked condition is the arrest of a victim for a crime committed against the child. However, if a prostituted minor commits a serious offense incident to their trafficking situation, such as assaulting or robbing a customer or another trafficked child, this is not the type of offense for which this resolution is suggesting impunity.

**Avoiding the Placement of Trafficked Children in Locked Detention Settings**

In addition to reconciling sex trafficking and prostitution laws where children are involved, states must better provide for their care. Minor victims should be placed in immediate protective custody as dependent children, in appropriate and residential environments. Providing care for minors in specialized foster homes or appropriately staffed group residences would provide safe shelter and enable the provision of the legal and social services they need. Children who receive such services are more likely to recover to the point of being able to assist in the prosecution of their abusers. Additionally, treating exploited children as victims and providing them with care will prevent the re-traumatization of child victims, which often occurs when they are treated as juvenile offenders.

A report from several years ago on juvenile detention reform found that a significant number of female teen prostitutes were detained with juvenile offenders. For example, in San Francisco in March 2002, 11.4% of girls in detention were charged with prostitution and many more likely were involved with prostitution but detained for other offenses. In one Georgia county the juvenile court reported it saw 35–40 girls involved in prostitution each month, and seventeen judges reported that because they feared for the girls’ safety on the street and had no alternative to detention, they felt compelled to detain prostituted minors, even though they knew those girls posed no community risk and were better served elsewhere.

In some urban “magnets” for prostitution, for example Las Vegas, as many as half of all girls in juvenile detention are estimated to have been arrested for prostitution or a related offense. One major problem with this is that there are few, if any, services in detention facilities for trafficked children. Within the juvenile justice system as a whole there is simply a lack of specialized programs and services that address the issue of sexual victimization. This resolution stands for the proposition that with the right kind, and number, of protective shelters and other residential resources these children can be kept safe within an environment conducive to breaking the cycle of the destructive trauma of the victim-trafficker relationship, actually making them more likely to assist in the prosecution of their traffickers.

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13 Shared Hope International, *supra* note 3, at 50, 60.
Without question, these prostituted youth (many of whom are homeless) need to be placed in safe housing, with intensive therapeutic services, away from the influences of pimps, gangs, and other negative forces. These facilities do need “high security”, but it should be focused on keeping traffickers “out”, not on locking youth “in”. This resolution cannot endorse locking these victims up because data has indicated that this practice too often becomes the default option in responding to their identification and apprehension. Rather, what these child victims need, and what we call for, is a special form of stable, well-staffed, “witness protection” resources away from and safe against negative influences, in a setting that provides the close personal support victims require to alleviate any need to “run” back to the streets. Laws must support the growth of those resources.

**Amending Juvenile Dependency Laws to Protect and Identify Victims of Human Trafficking**

This resolution calls for the juvenile dependency (child abuse and neglect) laws to be amended to 1) make suspicions of trafficking victim status a basis for mandated reporting to child protective services agencies and requiring their services, for both citizen and non-citizen children, through specialized child trafficking victim units, and 2) require screening and risk assessment for trafficking victimization whenever a youth enters a runaway or homeless youth facility, juvenile justice system, or child welfare agency custody.17

Scholars have stressed that accurate and proficient identification of trafficking victims is necessary to confront the legal barriers that trafficking victims face before they can obtain relief.18 Mandatory reporting laws were enacted to identify and combat child abuse and neglect. Given the abusive and neglectful treatment that accompanies human trafficking, it follows that suspicions that a child has been trafficked should also trigger a mandatory report. Mandatory reporting laws should identify professionals who have a duty to report victimized children, and these professionals ought to be capable of identifying youth who have been exposed to human trafficking, in particular professionals working in health care settings and child advocacy centers.

The majority of trafficked children who currently come into contact with law enforcement or child welfare providers are placed in group homes, traditional foster care placements, or juvenile correctional facilities without being detected as victims of human trafficking by the staff.19 Identifying victims of human trafficking and reporting them to Child Protective Services (CPS) agencies will provide youth with the opportunity to take advantage of CPS services that are

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18 Birckhead, *supra* note 8, at 23.


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available to abused and neglected children.\textsuperscript{20} Despite the large number of children estimated to be trafficked into and within the United States each year, few minor victims of human trafficking receive services through CPS, as few child victims have been so identified.\textsuperscript{21}

Research shows that those minors deemed to be at greatest risk include children who fall into one or more of fourteen categories, including runaways, victims of sexual abuse, drug users and addicts, homeless youth, female gang members, transgender street youth, and unaccompanied minors who enter the United States on their own.\textsuperscript{22} One study estimates that of the 450,000 children who run away from or are excluded from their homes annually, one out of every three will be lured into prostitution with in forty-eight hours of leaving home;\textsuperscript{23} 75\% of runaway and sexually exploited girls are controlled by sex traffickers, 70\% of street youth are victims of commercial sexual exploitation, and 30\% of shelter youth are victims of commercial sexual exploitation.\textsuperscript{24} While less research is available on children trafficked for labor or services, runaway and homeless youth are also vulnerable to this form of human trafficking. For example, traveling sales crews target homeless youth by going to areas where the homeless youth are known to be present (ex. homeless shelters) and use coercion to exploit youth into working long hours in poor conditions.\textsuperscript{25} Due to the young person’s increased safety risk, prompt and effective screening for trafficking victimization is necessary whenever a young person enters a runaway or homeless youth facility, the juvenile justice system, the custody of a child welfare agency, or receives care through a health provider, including a child advocacy center.\textsuperscript{26}

\textbf{Establishing and Funding Programs of Specialized Short and Long Term Safe Houses, Residential Care Facilities, and Other Services for Prompt Access by Police or CPS}

This resolution calls upon lawmakers to establish programs for specialized short and long term safe houses, residential care facilities, and other services for prompt referral by police or child protective services. Once a victim is identified, it is imperative that law enforcement and/or CPS be able to immediately provide them with appropriate services and accommodation. In a 2007 study, shelter providers, residential facility staff, law enforcement and child protective service workers spoke of the importance of and priority need for more residential and non-residential programs uniquely tailored to child victims of human trafficking.\textsuperscript{27}

\textsuperscript{20} There are a variety of red flags and indicators that mandated reporters should be aware of in order to aid them in the identification of exploited children. See Polaris Project, Intersections of Human Trafficking & Homeless Youth slide show (entitled RHY presentation), [hereinafter Polaris Project RHY Presentation] available at http://www.polarisproject.org/resources/resources-by-topic/intersections-with-other-issues; see also Birckhead, supra note 8, at 46; Shared Hope International, supra note 3 at 31-32.
\textsuperscript{21} ECPAT International, supra note 1 at 28.
\textsuperscript{22} Birckhead, supra note 8, at 46.
\textsuperscript{23} Id. at 5-6.
\textsuperscript{24} See Polaris Project RHY Presentation, supra note 20.
\textsuperscript{26} Examples of screening questions for sex trafficking include: Did your boyfriend ever take photos of you and what did he use them for? Were you ever forced to do something physically or sexually that you didn't feel comfortable with? Screening questions for labor trafficking may include: What were your expectations about the job before you started, and did your experiences match up? See Polaris Project RHY Presentation, supra note 20.
\textsuperscript{27} Clawson & Grace, supra note 19, at 3.
Child sexual exploitation and human trafficking is not a victimless crime. Children who have been trafficked typically experience significant and lasting physical and psychological repercussions from the trauma of continued sexual exploitation. Victims are likely to be repeatedly raped and beaten, leading to an increase in the likelihood of contracting sexual transmitted diseases, hepatitis, and HIV, in addition to suffering broken bones and other physical trauma. Statistics indicate that female prostitutes are raped by their male customers on average thirty-one times each year. Psychologically, prostituted youth are at an increased risk for depression, suicide, Post-Traumatic Stress Disorder (PTSD), drug and alcohol abuse, and dissociative disorders. Prostituted youth are in dire need of a variety of services, including rehabilitative care, counseling, and medical and legal services. Residential treatment may be critical, and long-term models, such as transitional living programs followed by supervised independent living programs, can be ideal for these youth. However, according to specialists in the area of child sexual exploitation, there are very few programs in the United States that currently offer residential treatment or “safe houses” for prostituted children. Labor trafficked youth are also in dire need of services and shelter. Additionally, youth exploited for labor purposes are often wholly dependent on their trafficker for their basic needs and these youth are at serious risk for severe physical injuries, malnourishment, and untreated mental illnesses.

Specific funding to serve trafficked children and youth is limited, making it difficult for non-governmental organizations to address the needs of these individuals. A number of organizations, such as Girls Educational and Mentoring Services (GEMS), the Transition to Independent Living (TIL) program, the Children of the Night program, Angela’s House, CAST, Safe Horizons, Polaris Project and others piece together funding from a variety of sources to serve these youth. Traditional runaway and homeless programs also serve these children, but do so using existing and limited funding that may not be specifically allocated to services for trafficking victims.

Funding specifically designated to serve trafficked youth should include an improvement in data collection of all child trafficking victims. Improved data collection will empower social service providers and state legislatures to give appropriate attention to the development of

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28 Kate Brittle, Child Abuse by Another Name: Why the Child Welfare System is the Best Mechanism in Place to Address the Problem of Juvenile Prostitution, 26 Hofstra L. Rev. 1339, 1368 (2008).
29 Clawson & Grace, supra note 29, at 1.
30 Brittle, supra note 29, at 1368. See also Clawson & Grace, supra note 19, at 1.
32 Clawson & Grace, supra note 19, at 1.
33 Birckhead, supra note 8, at 47.
34 Stephanie L. Mariconda, Breaking the chains: Combating Human Trafficking at the State Level, 29 B.C. Third World L.J. 151, 162 (2009).
35 Id.
36 Clawson & Grace, supra note 19, at 3.
37 Clawson & Grace, supra note 19, at 3.
38 Liani Sun Wyler & Alison Siskin, Trafficking in Persons: U.S. Policy and Issues for Congress (Congressional Research Service) at 27 (Aug. 4, 2010), available at http://fpc.state.gov/documents/organization/147256.pdf (describing two recent studies (Shared Hope International and Ohio Trafficking in Persons Study Commission), which measured the problem of child sex trafficking in specific geographic areas. Research locations ranged from areas as diverse as Salt Lake City, Utah to Clearwater, Florida and Las Vegas, Nevada); Irazola et al., supra note 19, at 4.
effective and specialized treatment facilities and programs (ex. male, gay, and transgender youth). Police and CPS should have knowledge of and prompt access to safe residential settings and treatment facilities because traffickers and pimps can target them. However, it must be noted that such access should take the form of the least intrusive approach possible, as the need for police presence must be balanced with the need to avoid re-traumatizing victims.

The effects of human trafficking weigh heavily on the physical and mental stability of its child victims. Medical and legal services, shelter, food, should be immediately available. Ultimately, victims fortunate enough to break free from their traffickers have only made a first step; they are still in need of rehabilitation and appropriate services. In the absence of specialized programs for these victims, their suffering will continue needlessly.

**Authorizing State Courts to Issue and Enforce Protective Orders and a Civil Cause of Action for Victims**

This recommendation urges state legislatures to authorize state courts to issue and enforce protective orders prohibiting harassment or intimidation of child trafficking victims. State legislatures should also provide a civil cause of action to help child victims receive compensation and services. In so doing, lawmakers can ensure that child victims of human trafficking are protected from their traffickers and those associated with their trafficking experience. The widespread threat of human trafficking experienced in the United States will remain so long as traffickers are able to prey upon vulnerable children. If state courts have the explicit authority to issue protective orders, even in the absence of a criminal proceeding, then they will be able to help keep the child victim safe.

This proposed authorization is analogous to protective orders provided in the domestic violence context. If children are victims of domestic violence, their attorney, guardian ad litem, or other protective adult can seek protective orders on their behalf. To protect a child’s well being, most states allow a party other than the child to petition for a protective order on a child's behalf, while other states permit a child to petition on his or her own behalf for a protective order. Given the similarities between mental and physical abuse in trafficking situations combined with parallels often seen in DV cases, it would be logical that states should afford trafficked children at least the same protections from the judicial system.

Additionally, states should create an explicit civil cause of action against traffickers, so that child victims can seek and be awarded damages. Providing restitution to victims is necessary to

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39 Shared Hope International, supra note 3, at 35.
40 Mariconda, supra note 35, at 162.
42 Mariconda, supra note 35, at 166.
43 Mariconda, supra note 35, at 162.
44 Id. at 163
46 Id.
compensate them when a trafficker has benefited at their expense and they have been forced to work without pay in demeaning, abusive and dangerous conditions. In cases of human trafficking, it is important to provide assistance to the victim and hold the traffickers accountable.47

California was one of the first states to have civil remedies for trafficking victims. Under the California Trafficking Victims Protection Act, a human trafficking victim is permitted to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, or any other appropriate relief.38 An award of attorney’s fees is also available to the victim, and the victim may be awarded up to three times his or her actual damages. An award of attorney’s fees is also available to the victim, and the victim may be awarded up to three times his or her actual damages.49 The statute also provides for an extended statute of limitations.50 The use of civil remedies for trafficked victims has proven successful.51

Similar to California’s statutory scheme, civil remedies should focus on the trafficked individual and the specific types of harm that trafficking victims have suffered. Furthermore, the statute of limitations must be extended to fit particular needs of this young victim population (i.e., the limitation period should not start running until the victim has reached the age of majority), and an award of attorney’s fees should be included. In drafting these new civil restitution statutes, state legislatures must also take into consideration the burden of proof that is placed on victims.52

Providing Training for Law Enforcement and Child Welfare Providers to Aid in Victim Identification and Service Referral

This resolution urges government entities to ensure that police, child protective services, and juvenile and family court staff training includes education regarding the identification of domestic and international child trafficking victims and the process for obtaining victim aid. In doing so, state legislators must acknowledge that child trafficking is not a problem confined to large, urban areas. Although young people in urban areas and from impoverished backgrounds particularly are vulnerable, trafficking affects children from all geographic and socioeconomic backgrounds. There is a severe lack of appropriate services in the juvenile justice and child protective service systems for the rising number of young victims.55

47 Payne, supra note 42, at 61.
49 Id.
50 Id.
52 Payne, supra note 42, at 62.
53 Wyler & Siskin, supra note 39, at 1, 27.
55 Shared Hope International, supra note 3, at 15.
Children are uniquely vulnerable to traffickers, who can compel them to commit crimes such as prostitution and purchasing, selling or transporting drugs. Without proper training, those charged with enforcing the law may view trafficked children as criminals rather than as victims. Failure to identify a non-citizen child as a victim of human trafficking can result in a devastating re-victimization of that child. Proper training of police officers, child protective case workers and juvenile and family court judges can ensure that exploited children receive treatment, services, and rehabilitation instead of incarceration; and that these children are no longer given a “one way ticket” back to a life of abuse.\(^{56}\) Upon recognition that these youth actually are child victims of human trafficking instead of “criminals” or “prostitutes,” public child protective services working with health care and adolescent service providers will be able to provide them with the specialized treatment services they require and deserve.\(^{57}\) However, this can only occur through proper training and cooperative efforts from the legislature, law enforcement, health providers, and social service agencies.\(^{58}\)

Trafficked children deserve the protection and services provided to children by Child Protective Services and juvenile and family courts, including diversion, crisis intervention, counseling, and emergency and long-term housing services.\(^{59}\) The training of law enforcement and child welfare personnel on how to identify child victims of human trafficking is necessary to ensure that these children receive all available and necessary protection and services.

**Ensuring Immediate and Appropriate Attention to Children Who Go Missing from Care**

Group and foster care homes are targeted by traffickers/pimps who take advantage of the concentration of vulnerable youth and systematically recruit from these locations.\(^{60}\) This resolution calls for immediate notification to law enforcement, the child’s caseworker, the child’s attorney and guardian ad litem whenever a child goes missing from foster care or residential placement.\(^{61}\) This notification is intended to ensure that time not be lost before efforts are made to locate and protect potentially endangered children. In some instances, children walk away from a placement due to issues the child is dealing with or because of problems at the placement itself. However, in all cases of children missing from care, it is important to quickly involve the child’s caseworker, attorney, and guardian ad litem, as well as law enforcement. Moreover, these individuals and their entities should coordinate and be in close communication to enable all of the interests and concerns of the child or youth to be part of the response; not simply ensuring a

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57 Clawson & Grace, *supra* note 19, at 1-2.
58 Clawson & Grace, *supra* note 19, at 1-2.
61 Senator Wyden has proposed a bill that would require the Attorney General to implement changes to the National Crime Information Center (NCIC) database: 1) ensure that a child entered into the database will be automatically designated as an endangered juvenile if the child has been reported missing not fewer than three times in a one-year period, 2) NCIC database be programmed to cross-reference newly entered reports with historical records, and 3) the NCIC database be programmed to include a photograph on the record of a child designated as an endangered juvenile. Sen. Wyden, S.2925, Section 5 (111th Congress) (September 22, 2010) (proposed legislation).
prompt search for the child, but also crafting an appropriate and non-punitive response, as well as needed support for the child, when the child is located.62

When children go missing or run away from foster care or residential placement they are at their most vulnerable, subject to a multitude of dangers, including crime, substance abuse, homelessness, and trafficking.63 Children missing from care generally fall into three groups: those who run away, those who are abducted, and those whose whereabouts are unknown to an agency. Children who run away are the most researched of these three groups.64 According to Child Welfare League of America (CWLA), children under the care of the child welfare system are twice as likely to run away as are children of the same age in the general population.65 The U.S. Department of Health and Human Services reported that for the year 2001, 2% of the 542,000 children in foster care were runaways; 2% of the 263,000 children exiting foster care exited as runaways; and 437 of the 126,000 children waiting for adoption were runaways.66

Many states are now paying closer attention to the issue of children missing from foster care creating task forces and improvement plans to explore ways to utilize technology, training, communication and cooperation.67 This resolution recommends that all states require the immediate notification to law enforcement, the child’s caseworker, the child’s attorney and guardian ad litem whenever a child goes missing from foster care or residential placement.

Amending Federal Law to Support State and Local Efforts to Combat Domestic and International Trafficking of Minors

The 2000 TVPA was the first comprehensive federal law to address trafficking in persons.68 The TVPA has a three-pronged approach of prevention, protection, and prosecution and was reauthorized through the Trafficking Victims Protection Reauthorization Acts (TVPRA) of 2003, 2005, and 2008.69 Despite the authority and scope of these provisions, child victims of human trafficking face a lack of appropriate service provision across the country. In order to adequately address the needs of this at-risk population, Congress should enact legislation that incentivizes state and local agencies to provide legal and social services to all child victims of human trafficking, and simultaneously take steps to better identify and protect non-citizen child victims of human trafficking who have been trafficked both to and within the borders of the United States.

63 See Michael, supra note 63.
64 Id.
65 Id.
66 Id.
67 Id.
U.S. citizen children who are victims of trafficking should be explicitly entitled to the same
treatment and service provision as U.S. citizen children who are abused, neglected, or
abandoned.\textsuperscript{70} It is critical that federal legislation promote not only rehabilitative care for child
victims of human trafficking, but also encourage the expansion of shelters available to child
victims that are properly equipped to handle children of all ages and all trafficking experiences.
In so doing, the federal government can maximize the chances that all child victims of human
trafficking have the opportunity to live healthy and productive lives and obtain needed social and
legal services in the United States.

The brutality of human trafficking is well documented. Victims of human trafficking are
frequently threatened, beaten, sexually assaulted, starved, imprisoned, and psychologically
influenced and controlled. In addition to taking measures to rehabilitate child victims who have
experienced such horrific abuse, Congress should enact legislation that enhances state efforts to
prosecute human traffickers and those who assist them, with a special focus on prosecutions
against those who commercially sexually exploit minors.

Enhancing Federal Services for Non-Citizen Immigrant Child Victims of Human
Trafficking

Victims of human trafficking may be U.S. citizens trafficked within the boundaries of the
United States, or they may be foreign nationals trafficked into and within the county. Studies
suggest that a significant number of trafficking victims are non-citizen immigrants,\textsuperscript{71} and that
thousands of those immigrant victims are children.\textsuperscript{72} Non-citizen immigrant child victims of
human trafficking are a particularly vulnerable population. They frequently do not speak English,
lack understanding of U.S. culture and customs, and may distrust law enforcement; this distrust
may be exacerbated by threats or claims made by their traffickers. Non-citizen children may also
fear for the safety of their families in their home countries, who are often threatened by
traffickers. Services such as local shelter, education access, and legal assistance, should be
available to non-citizen child trafficking victims because they give the child victim a chance to
heal from the physical, mental and emotional wounds of human trafficking.

Often, non-citizen child victims of human trafficking may not self-identify as victims and
may even blame themselves for their trafficking experience. They are generally unaware of their
rights, or their traffickers may have intentionally misinformed them about their rights. Without
being properly identified as a victim of human trafficking, non-citizen children are often left to
fend for themselves as undocumented adolescents and eventually adults, and are continually
exposed to criminal and immigration sanctions. For a non-citizen child victim, a juvenile
adjudication or criminal conviction may result in the inability to obtain immigration relief; the
child may be deported and forced to return to a place where he or she is at risk of being re-

\textsuperscript{70} “Certification and Eligibility are terms used to describe a process that the Department of Health and Human
Services, Office of Refugee Resettlement (HHS or ORR) uses to officially declare that a foreign national is eligible
to receive benefits. A child does not have to be formally certified but the child must obtain an eligibility letter from
HHS to receive a wide range of benefits.” \textit{Legal Best Practices Guide for the Protection of Child Victims of Human
\textsuperscript{71} Free the Slaves and Human Rights Center (University of California, Berkeley), \textit{Hidden Slaves: Forced Labor in
\textsuperscript{72} 2006 TIP Report, \textit{supra} note 72, at 6.
trafficked. To avoid this disturbing result, Congress should enact federal legislation that prohibits charging non-citizen minor trafficking victims with crimes incident to their trafficking situation and supports child victims of human trafficking through identification, service provision and legal protection.

In 2000 the TVPA created a new visa, the T-Visa, which provides immigration relief for victims of human trafficking. In order to receive a T-Visa, an applicant must be physically present in the United States, must be threatened by extreme hardship involving unusual and severe harm upon removal from the U.S., and must be willing and able cooperate with any requests for assistance in the investigation or prosecution of any acts of trafficking.\footnote{HUMAN TRAFFICKING: Modern Enslavement of Immigrant Women in the United States, supra note 1.} In addition to this form of relief, there are other types of immigration relief that may be available to child victims of human trafficking, including Special Immigrant Juvenile Status (SIJS).\footnote{See INA § 101(a)(27)(J), 8 USC § 1101(a)(27)(J), which states in part that a special immigrant juvenile is: (a) an immigrant who is present in the United States – (i) who has been declared dependent on a juvenile court located in the United States or whom such court has legally committed to, or placed under the custody of, an agency or department of a state, and who has been deemed by the court eligible for long-term foster care due to abuse, neglect or abandonment, (ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien’s best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence.} Due to the complex nature of these legal claims, federal law should mandate data collection and reporting on trafficked children’s immigration relief eligibility and status, ensuring that trafficked children with legitimate immigration claims are identified and the appropriate immigration relief is promptly obtained on their behalf. This data collection may also enable the calibration of services based upon the volume of children who have been identified as trafficking victims.

Once a child is identified as a victim of human trafficking, federal law should require that non-citizen child victims be promptly referred to a local Child Protective Services (CPS) agency so that they may receive legal and social services and be screened for immigration relief eligibility. Federal law should also require prompt notification of their national consulate. The Vienna Convention on Consular Relations provides that all persons in the legal custody of a government not their own have the right to notification of their consulate.\footnote{A Child Alone and Without Papers: A report on the return and repatriation of unaccompanied undocumented children by the United States, Center for Public Policy Priorities (Sept. 2008), available at: http://www.cppp.org/repatriation/A%20Child%20Alone%20and%20Without%20Papers.pdf.} In the case of an unaccompanied child,\footnote{“An unaccompanied alien child is a minor child who has no lawful U.S. immigration status and has either no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide for his care and custody.” Linda Kelly Hill, The Right of Safe Repatriation for Unaccompanied Alien Children: Advancing the Intent of the Trafficking Victims Protection Reauthorization Act, 12 LOY. J. PUB. INT. 1 85 (2010).} the Convention states that the country must notify the child’s consulate immediately, though this is not uniformly followed. Contact with a child victim’s national consulate is necessary to initiate investigatory efforts, to facilitate immigration efforts and, in some cases, to aid in repatriation. Thus Congress should enact legislation mandating prompt notification of a child victim’s national consulate upon that child’s identification as a victim of human trafficking.

Federal law should enact legislation that will reimburse states and counties for providing foster care to non-citizen victims ofhuman trafficking, and funding should be specifically
appropriated for that purpose. Reimbursement to states and counties caring for non-citizen victims of human trafficking will enable continued care and more effective service provision to non-citizen children. Sec 235(d)(4)(B) of the TVPRA of 2008 provides that “subject to the availability of appropriations,” the federal government shall reimburse the state for state foster care funds expended on behalf of children granted Special Immigrant Juvenile Status. While this is a promising and positive step, the federal government should further expand this potential reimbursement to states and counties who care for child victims of human trafficking, regardless of their immigration status or the potential immigration relief available to them.

Nearly three years ago, the TVPRA of 2008 recognized the need for development of proper repatriation practices for unaccompanied children, and a concurrent study conducted by Center for Public Policy Priorities (CPPP) highlighted the absence of effective and safe procedures for repatriation of children. Repatriation refers to the return of a child to that child’s country of origin and often requires extensive collaboration between two countries. Repatriation is generally considered appropriate in cases where the home country is capable of meeting both the immediate and long-term safety, physical, mental, emotional and medical needs of the child. Though not wholly uniform, best practices for repatriation generally include thorough investigation of the proposed placement of the child in another country, the creation of a reintegration plan for the child, appropriate departure and arrival arrangements, and monitoring of the reintegration plan. The paramount consideration in determining if repatriation is appropriate is the child’s safety. Many children who have been trafficked are at considerable risk of being re-trafficked. Retaliation from their trafficker or traffickers is particularly likely if the child has cooperated or continues to cooperate with authorities. Investigation of the placement in another country should include a risk assessment to address such safety concerns. In addition, the ability of the child’s family members to care and provide for the child, to adequately provide for the child, and the level of community support available to the child should also be considered when investigating the potential placement country.

This thorough investigation is the first and most basic step in ensuring the child’s safety upon return to their home country. A reintegration plan typically provides both short-term and long-term plans for the safety, physical and mental well being of the child, and provisions for education or career training and legal support. A reintegration plan can offer a child and his or her caregivers with a realistic plan for the child’s future. Prior to departure from the country in which the child currently resides, best practices for repatriation encourage the provision of mental health services to aid the child in what may be a difficult transition. To facilitate the child’s return, administrative preparation should occur well in advance of departure. Travel arrangements pertaining to both the country of departure and arrival must be made, the required legal documentation must be obtained, and the child should have appropriate adult accompaniment. Upon arrival in the placement country, the child should be received in a non-threatening environment and in the presence of professionals trained to work with child victims.

77 The TVPRA of 2008 is considered the first statutory effort to address the safe repatriation of unaccompanied children. Id.
78 Id.
79 Id.
81 Id.
of human trafficking. After arrival, the child should begin his or her life in their new home according to the provisions of their reintegration plan.

For those minors who are victims of human trafficking and who are able to return to their home country or an alternate placement country, repatriation must be accomplished through safe and appropriate measures. Having already been victimized in brutal and terrifying ways, these children deserve the dignity of a safe and well-planned return to the selected placement country. Recognizing this right, Congress should help fulfill the need for establishing best practices in the repatriation of trafficked children and should ensure that such best practices are identified and followed when assisting child victims of human trafficking in repatriation.

Respectfully submitted,

Laura Viviana Farber, Chair
Commission on Youth at Risk

August 2011
GENERAL INFORMATION FORM

Submitting Entities: Commission on Youth at Risk
               Center for Human Rights
               Rule of Law Initiative
               Section of Labor and Employment Law

Submitted By: Laura Viviana Farber, Chair, Commission on Youth at Risk

1. Summary of Resolution(s).

   This resolution encourages state and federal authorities to treat exploited children as victims rather than criminals, and to help assure they receive the services they need. The recommendation calls for the prohibition of the arrest or charging of children under the age of 18 with the crimes of prostitution, solicitation, or loitering as well as other offenses, including status offenses that are incident to their trafficking situation. These children are exploited for their labor and services, or forced into commercial sexual activity, and thus should be placed in immediate protective custody, as dependent children, in a suitable residential environment.

2. Approval of Submitting Entity.

   This Resolution was approved by the Commission on Youth at Risk through an e-mail vote of its members the week of May 2, 2011.

3. Has this or a similar Resolution been submitted to the House of Delegates or the Board of Governors previously?

   See 4 below

4. What existing Association policies are relevant to this proposed Resolution, and would they be affected by the adoption of this Resolution?

   This resolution builds upon approved Resolution 105B from the 2010 Midyear Meeting of the ABA House of Delegates, which stated that laws and policies should be assisting, “victims of crime, instead of arresting, children who have engaged in prostitution or other forms of commercial sexual exploitation.”

5. What urgency exists that requires action at this meeting of the House?

   Bi-partisan federal legislation was introduced in this Congress on March 29, 2011, the “Domestic Minor Sex Trafficking Deterrence and Victims Support Act of 2011” (S. 596). That bill addresses many of the recommendations included in this resolution, and it is hoped that ABA approval of this resolution would give the Association the opportunity to help influence passage of this bill.
6. **Status of Legislation.**

   See 5 above

7. **Cost to the Association. (Both Direct and Indirect Costs).**

   No ABA funds are necessary for the implementation of this Resolution.

8. **Disclosure of Interest.**

   No conflicts of interest are known.

9. **Referrals.**

   This Resolution was referred to the following ABA entities on May 6, 2011:

   Center for Human Rights; Rule of Law Initiative; Criminal Justice Section; Family Law Section; Individual Rights and Responsibilities Section; Commission on Homelessness and Poverty; Commission on Domestic Violence; Judicial Division; Administrative Law Section; State and Local Government Law Section; GP Solo Division; Litigation Section; Commission on Immigration; Tort and Insurance Practice Section; International Law Section

   Discussions with the Criminal Justice Section have already led to redrafting certain elements of the resolution.

10. **Contact Person (Prior to Meeting).**

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11. **Contact Person (Who Will Present the Report to the House).**

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EXECUTIVE SUMMARY

1. Summary of the Resolution:

This resolution encourages state and federal authorities to treat exploited children as victims rather than criminals, and to help assure they receive the services they need. The recommendation calls for the prohibition of the arrest or charging of children under the age of 18 with the crimes of prostitution, solicitation, or loitering as well as other offenses, including status offenses that are incident to their trafficking situation. These children are exploited for their labor and services, or have been forced into commercial sexual activity, and thus should be placed in immediate protective custody, as dependent children, in a suitable residential environment.

2. Summary of the issue which the Resolution addresses:

“Trafficking of children” is the recruitment, transportation, transfer, harboring, or receipt of minors who are exploited for their labor or services or forced to engage in commercial sexual activity. Although more public policy attention has been given to women and children brought to the United States for the purposes of trafficking, many individuals, including citizen children, are trafficked within the United States, and experts estimate at least 100,000 annually are child victims of prostitution. Trafficked children endure horrific and inhumane treatment. They are frequently raped, beaten, denied food and sleep, and isolated from the outside world. Given the lasting physical, emotional, and psychological effects of such treatment, it is imperative that state and federal legislation be enacted to support and encourage legal and social services for minor victims of human trafficking.

3. Explanation of how the proposed policy position will address the issue:

This resolution would have the ABA encourage states and the federal government to treat exploited children as victims rather than criminals. Specifically, the recommendation calls for the prohibition of the arrest or charging of children under the age of 18 with the crimes of prostitution, solicitation, or loitering as well as other offenses, including status offenses that are incident to their trafficking situation. This policy also seeks to ensure that minor child victims of trafficking are placed in immediate protective custody as dependent children, in appropriate and residential environments. In addition to urging policy change that would help better identify these child victims, the resolution seeks establishment of programs for specialized short and long term safe houses, residential care facilities, and other services for prompt referral of these child trafficking victims by law enforcement and child protective services. Finally, this policy would help call attention to the non-citizen child victims of trafficking who need to receive improved treatment and services by both federal and state authorities.

4. Summary of any minority views or opposition which have been identified:

We are unaware of any minority views or opposition to this Resolution.