

POLICY FORUM

Mandatory Reporting of Human Trafficking: Potential Benefits and Risks of Harm

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Abstract

Human trafficking, including both sex and labor trafficking, has profound consequences for the safety, health, and well-being of victims and survivors. Efforts to address human trafficking through prevention, protection, and prosecution are growing but remain insufficient. Mandatory reporting has the potential to bring victims and survivors to the attention of social service and law enforcement agencies but may discourage trafficked persons from seeking help, thereby limiting the ability of health care professionals to establish trust and provide needed care. States' experience in implementing child abuse laws can be useful in assessing the potential risks and benefits of mandatory reporting of human trafficking.

Introduction

Human trafficking, which includes both sex and labor trafficking, has profound consequences for the health, safety, and well-being of victims and survivors [1-4]. Human trafficking has been defined as:

the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs [5].

Public recognition of the scope and severity of human trafficking has grown since the late 1990s both globally and in the United States, while public and private sector responses—to deter and punish traffickers and assist trafficked persons with targeted and improved services—have increased [6, 7]. There is a pressing need for effective approaches to prevent trafficking, prosecute traffickers, and protect trafficked persons. From an ethical perspective, protection of trafficked persons involves both beneficence

(providing assistance or benefit) and nonmaleficence (avoiding harm). Ultimately, health care responses to the needs of trafficking victims and survivors, who are at risk for or have already suffered profound harm, must be guided by a key tenet of medical ethics: do no harm [8].

In assessing the contribution that health care professionals can make to broader anti-trafficking efforts, two recent developments are important to consider. First, responses to human trafficking are incorporating medical and public health perspectives to a greater degree than in the past [9]. Second, mandatory reporting of human trafficking by health care professionals is incorporated into the law in a growing number of jurisdictions in the United States [10, 11]. Health care professionals are already mandated reporters under existing laws that require reporting of child abuse, domestic violence, and physical injuries such as knife and gunshot wounds [10, 11]. Mandatory reporting laws generally are designed to identify and connect victims to protective services and to bring perpetrators to the attention of authorities [10]. Although requiring health care professionals to report human trafficking is intended to help trafficking victims, it may also create ethical dilemmas because mandatory reporting entails risks as well as benefits [1, 10-12]. This article explores these risks and benefits by examining the evolution and implications of the growing trend to include human trafficking in [child abuse reporting](#) laws.

Human Trafficking and Strategies for Its Prevention

Prevalence and health effects. The prevalence of human trafficking is not known, but it is estimated to affect millions of people globally [1, 7]. Trafficking victims and survivors are diverse in terms of age, income, gender, race, and other factors, although members of vulnerable groups are almost certainly at increased risk [1-4, 7]. In the US, for example, at-risk youth include those who have been sexually abused; youth who lack stable housing; sexual and gender minority youth; youth who have used or abused drugs and/or alcohol; and youth who have experienced homelessness, foster care placement, or juvenile justice involvement [1]. Trafficked children, adolescents, and adults experience adverse social, legal, and health consequences [1-4, 9-15]. Health consequences are both physical—sexual and reproductive health problems, injuries from physical abuse, and chronic medical conditions—and mental—posttraumatic stress disorder (PTSD), anxiety disorders, depression, substance use, suicidal ideation and attempts, and homicide risk [14]. For children and adolescents, the adverse social and developmental impacts of trafficking are of comparable significance to the physical and mental health effects [1].

A reporting system that could spare trafficking victims these consequences or connect them with services would be desirable. However, the development of such a system is complicated by many factors, including the fact that the terminology used to define and describe human trafficking is sometimes unclear or inconsistent and categories often

overlap, making it difficult to identify who should be reported and what services they need. For example, sexual exploitation and sex trafficking frequently are used interchangeably and without precision in research studies, service delivery programs, and governmental policies, even though they are not coextensive [1].

Responses to human trafficking. Initial responses to human trafficking over the past two or three decades in international protocols, US laws, and funding programs emphasized a criminal justice approach—prosecuting traffickers—over preventing trafficking and protecting trafficked persons [1]. Beginning in the late 1990s, prevention and protection have been increasingly prioritized alongside prosecution; there is also an increased recognition that diverse strategies implemented by multiple sectors—journalism and the media, human rights agencies and nongovernmental organizations (NGOs), social service and medical providers, the public health sector, and small businesses and large corporations—are essential complements to a law enforcement approach [1, 10]. In the past few years the medical and public health communities have become involved in raising the visibility of human trafficking, developing responses to the [health needs](#) of trafficked persons, and advocating for necessary services and improved human trafficking policies [2-4, 9-11]. This involvement is reflected in the development of new protocols for identification and treatment of trafficked persons in health care settings, policy statements by organizations of health care professionals, and legislation to require [training](#) of health care professionals in human trafficking and trauma-informed care (i.e., care that is grounded in and directed by a thorough understanding of the neurological, biological, psychological, and social effects of trauma) [16-18]. Recently, the involvement of health care professionals in human trafficking has expanded to encompass the role of mandated reporter.

Mandatory Reporting Laws to Address Human Trafficking

In the US, various laws might require a health care professional to make a report either to law enforcement or child protection agencies as a result of an interaction with a victim or survivor of human trafficking: mandatory child abuse reporting laws, domestic violence reporting laws, and laws requiring reports of knife or gunshot wounds [10]. Each of these laws could benefit trafficked persons, but they also entail potential risks: reporting laws generally entail risks, but requirements to report human trafficking may involve heightened risks due to the vulnerability of trafficked persons related to their mistrust of authorities and fear of their traffickers. Recent developments with respect to US child abuse reporting laws and their incorporation of human trafficking provide a useful illustration of the advantages and the perils of mandatory reporting as a strategy for responding to human trafficking.

Mandatory reporting laws for child abuse. Child abuse reporting laws exist in all 50 US states and the District of Columbia [10, 19]. These child abuse reporting laws require various individuals, including health care professionals, to notify child welfare and/or law

enforcement authorities when they know or [suspect](#) that a child has suffered physical, emotional, or sexual abuse or neglect [1, 10]. The federal Child Abuse Prevention and Treatment Act of 1974 (CAPTA) requires states to have child abuse reporting laws as a condition of receiving federal funds for child abuse and neglect prevention and treatment programs [20]. The 2010 reauthorization of CAPTA includes important definitions. For example, the definition of “sexual abuse” does not explicitly include the term trafficking but encompasses conduct involved in trafficking, such as:

(A) the employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct ... or (B) the rape, and in cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children [21].

A 2015 amendment to CAPTA further specifies, effective May 2017, that “a child shall be considered a victim of ‘child abuse and neglect’ and of ‘sexual abuse’ if the child is identified ... as being a victim of sex trafficking ... or a victim of severe forms of trafficking in persons” as described in the Trafficking Victims Protection Act [22]. The 2015 CAPTA amendment also gives states the option of treating young adults up to age 24 as victims of “child abuse and neglect” or “sexual abuse” [22]. These recent amendments to CAPTA have significant implications for states’ child abuse reporting laws. Consistent with CAPTA, every state includes sexual abuse or sexual exploitation in its definition of reportable child abuse and neglect, although specific definitions vary [1]. State laws also vary with respect to who is required to report; whether reports are made to child welfare, law enforcement, or both; which types of abuse are reportable; and whether extra-familial abuse (by third parties) is reportable [1]. The significance of these variations would depend on numerous factors specific to conditions in different states. One variation, however, is particularly important: if extra-familial abuse is not currently reportable, a state’s law would likely need to be amended to extend its reach to incorporate reporting of children who have been victimized and trafficked by third parties.

Incorporating trafficking into mandatory child abuse reporting laws. Over the past few years, several states have amended their child abuse reporting laws to include some or all forms of human trafficking. One legal review of the child abuse reporting laws of all 50 states found that, as of December 2015, 14 states covered at least some forms of human trafficking, with 10 including both sex and labor trafficking and 4 addressing only sex trafficking [10]. A medical-legal review of child abuse reporting laws conducted in the same time period found that at least 7 states require reporting of sex and/or labor trafficking of minors [11]. The numerical discrepancy between these two studies may result from the inconsistencies in terminology and definitions mentioned earlier.

Moreover, both studies identified Illinois as a state whose updated child abuse reporting law requires reporting of both sex and labor trafficking to the state child welfare agency, and a recent report analyzing this law's implications for child protection policy and practice found that the state's child welfare agency was encountering significant obstacles in implementing the updated reporting law [12]. Implementation challenges included the need to build capacity to identify, track, and respond to trafficked children; limitations in the scope of the state's child abuse reporting law to cover only abuse by guardians and caretakers; and conflicting agency policies and priorities [12]. All three of these studies identified risks as well as benefits of incorporating human trafficking into state child abuse reporting laws [10-12].

Risks and benefits of mandatory reporting of trafficking. Expansion of child abuse reporting laws to encompass human trafficking could result in significant benefits. Because child abuse reporting laws are mandatory, they should provide an incentive for health care professionals to heighten their awareness of human trafficking and look for signs that their patients may be trafficked or at risk for trafficking. Health care professionals may be the only professionals with whom trafficked children come into contact in a setting that is sufficiently confidential to provide an opportunity for identification. Identification of trafficked children ideally provides both a mandate and an avenue for them to be referred to services that could meet their specific needs. Appropriate investigation by child welfare and law enforcement officials can and should result in protective measures for at-risk or trafficked children as well as prosecution of perpetrators. A growing number of states—up to 20, depending on the criteria used in counting—have enacted “safe harbor” laws designed to treat trafficked children not as criminals and prostitutes but as victims in need of trauma-informed health care and other supportive services [23, 24]; well-designed and implemented mandatory reporting laws might help provide access to these resources.

However, risks to trafficking victims associated with a mandatory reporting system, especially one that fails to achieve its intended purposes, are significant. Although this discussion focuses on the example of child abuse reporting, there are other reporting mandates that might affect trafficked persons, including adults—such as laws requiring reports of domestic or intimate partner violence and those requiring reports of injuries such as knife or gunshot wounds [25]. Mandates for reporting by health care professionals override the confidentiality protections that otherwise apply in health care settings [1]. If trafficking victims and survivors—youth or adults—are aware of a reporting requirement, it could possibly deter them from seeking care or disclosing sensitive information, because they fear reprisal by their traffickers, prosecution by law enforcement (e.g., for prostitution), or deportation by immigration authorities. If reporting resulted in access to real protections and meaningful services, knowledge of that might overcome the reticence of trafficked persons to reveal their situation and have it disclosed. However, in the context of child abuse reporting, states' child welfare

systems have long been overburdened and often lack resources to provide essential care for the children they are charged with protecting [26]. Even when resources are adequate, children and youth in the foster care and juvenile justice systems are at increased risk for being victims of sexual exploitation and human trafficking [1]. Ironically, reporting children to protective services that may not have mechanisms in place to prevent trafficking or to address the needs of those who have been trafficked might not be beneficial. Also, when reports are made to law enforcement rather than, or in addition to, child welfare, the law enforcement agencies may be similarly ill-prepared to connect trafficking victims and survivors to the most appropriate services. These factors have contributed to reluctance on the part of some health care and other professionals to submit mandated reports [27-29].

For the benefits of mandatory reporting to be realized and the risks to be mitigated, several specific measures are essential. Laws must be drafted to include definitions of both sex and labor trafficking that cast the net wide enough to reach trafficked persons, while at the same time including provisions to ensure that the victims and survivors are connected to services that can meet their needs [10, 11]. Mandated reporters and the child welfare and law enforcement officials who receive and investigate the reports must be appropriately trained to identify trafficked persons and to provide, refer, or connect trafficking victims and survivors to specialized services [9-12]. Identified victims and survivors must have access to specialized [trauma-informed care](#) to address their physical and psychological health needs and be aware that those services are available to them [2-4, 13-15]. Perhaps most importantly, child welfare systems must have sufficient resources to protect and support trafficked children brought to their attention and delivered into their care [10, 12].

Conclusion

Health care professionals are moving to the forefront of efforts to prevent human trafficking and to address its harms through identification, trauma-informed care, and advocacy. Mandatory reporting laws—including careful incorporation of sex and labor trafficking into definitions of reportable child abuse—might facilitate the protection of trafficking victims and survivors. To achieve this goal, health care, child welfare, and law enforcement professionals must be trained in trafficking, trafficking victims and survivors must have access to trauma-informed care, and child welfare systems must have the necessary resources to provide meaningful prevention and protection. With measures in place to ensure that the risks of mandatory reporting laws are mitigated, health care professionals can assume the role of mandatory reporters of human trafficking while meeting their ethical obligation to “do no harm.”

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