

COMMENT

WISCONSIN'S IDEAL AFFIRMATIVE DEFENSE STANDARD FOR HUMAN SEX TRAFFICKING SURVIVORS

COURTNEY S. STEFFENS*

Human sex trafficking is a business model that operates in nearly every community. Human sex trafficking victims endure long-term adverse effects because of the coercive and manipulative victimization from their trafficking, one effect being a criminal record. However, even though the exploitation suffered is consistent, the protections provided by jurisdictions differ substantially.

The Wisconsin Legislature paved the way for an effective, complete affirmative defense available to any victim who can show their criminal behavior is a direct result of their sex trafficking. Therefore, no offense is off the table, including homicide. The Wisconsin Supreme Court confirmed the Legislature's intent with its statutory interpretation, both that "direct result" is a logical connection between the charged crime and sex trafficking and concluding that no crime is off limits.

Victims outside of Wisconsin do not have such an ability. Instead, victims in other jurisdictions may be limited to relief only from prostitution offenses or nonviolent misdemeanors. Other jurisdictions focus solely on whether the victim was *indeed* a victim rather than the causal relationship.

This Comment argues that Wisconsin's approach is balanced, effective, and carefully crafted *for* human sex trafficking victims and therefore the best choice. Wisconsin's approach to a logical causation requirement, regardless of the crime, is ideal for a human-trafficking affirmative defense. Finally, this Comment identifies pitfalls in other states' approaches and explains why those states should take action to follow Wisconsin's approach.

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INTRODUCTION

Human sex trafficking survivors like Cyntoia Brown, Zephi Trevino, and Chrystul Kizer all have something in common: criminal records as a result of their sex trafficking victimization.¹ While what constitutes human sex trafficking varies on a case-by-case basis, a general definition is soliciting a person for sex acts in exchange for money or another good.² Until 2019, Cyntoia Brown was serving a life sentence

1. Katie Reilly, *Sex-Trafficking Victim Cyntoia Brown Released from Prison After Receiving a Life-Sentence at 16*, TIME (Aug. 7, 2019, 10:41 AM), <https://time.com/5646049/cyntoia-brown-released-from-prison/> [https://perma.cc/R8WM-U6PB]; Kim Bellware & Kyle Melnick, *Alleged Sex Trafficking Victim Sentenced to 12 Years in Prison*, WASH. POST (Aug. 23, 2023), <https://www.washingtonpost.com/nation/2023/08/23/zephaniah-zephi-trevino-sentenced-prison/>; *State v. Kizer*, 2022 WI 58, ¶¶ 1, 3, 976 N.W.2d 356, 358.

2. See OFF. OF CRIME VICTIM SERVS., WIS. DEP’T OF JUST., 2019 LAW ENFORCEMENT ASSESSMENT OF SEX TRAFFICKING IN WISCONSIN 7–8 (2019) (noting that

for first-degree murder and aggravated robbery after she killed a man who solicited her for sex and who she believed was reaching for a gun.³ Zephi Trevino was sixteen when her parents realized she was being victimized only after she was arrested for a murder that occurred during a robbery with her traffickers.⁴ She was convicted and is currently serving a twelve-year prison sentence.⁵ Finally, Chrystul Kizer killed her thirty-four-year-old trafficker, whose illegal behavior was known to the police.⁶ On May 9, 2024, Chrystul entered a guilty plea and was later sentenced to eleven years of initial confinement and five years of extended supervision.⁷

It is not shocking that these three survivors' trafficking came to light by way of the criminal justice system because "[g]enerally, the first time trafficking survivors come into contact with law enforcement are as offenders, not victims."⁸ As Monique Minkens, Executive Director of End Domestic Abuse Wisconsin, explained in her statement on Chrystul's case: "Trafficking survivors . . . are among the most vulnerable and underserved in our society."⁹ The impacts of the endured trauma affect survivors long after the abuse ends and are only

there are different definitions that vary from state to state as well as at the federal level but all include patronizing or soliciting and commercial sex acts—receiving money or a good in exchange for sex).

3. Reilly, *supra* note 1.

4. Rebecca Lopez, *Zephi Trevino Didn't Pull the Trigger, but This Teen Girl Is Charged with Capital Murder*, WFAA (July 30, 2020, 8:31 PM), <https://www.wfaa.com/article/news/local/zephi-trevino-teen-jail-charged-capital-murder-attorney/287-edad30ed-f2a4-4f50-8f2b-f6c023cda2b2> [https://perma.cc/SUP7-QDPB].

5. Bellware & Melnick, *supra* note 1.

6. Todd Richmond, *Wisconsin Woman Who Argued She Legally Killed Sex Trafficker Pleads Guilty to Homicide*, AP (May 9, 2024, 1:20 PM), <https://apnews.com/article/sex-trafficking-guilty-plea-homicide-defense-kizer-6bf9c7ef2e0de3a9c9e32e5ae2368018>.

7. *Id.*; *Wisconsin Woman Who Said She Legally Killed Sex Trafficker Gets 11 Years in Prison*, AP (Aug. 19, 2024, 5:51 PM), <https://apnews.com/article/chrystul-kizer-sex-trafficking-homicide-sentence-2e54c186635f282d9acd0b55d751241e>.

8. *The Importance of Criminal Record Relief for Human Trafficking Survivors*, POLARIS: BLOG (Mar. 20, 2019), <https://polarisproject.org/blog/2019/03/the-importance-of-criminal-record-relief-for-human-trafficking-survivors/> [https://perma.cc/8N3U-56D3].

9. Elise Buchbinder, *Wisconsin Supreme Court Decision Allowing Chrystul Kizer To Use Trafficking Affirmative Defense Paves Way for Other Trafficking Survivors To Seek Justice*, END DOMESTIC ABUSE WIS. (July 8, 2022, 10:17 AM), <https://www.endabusewi.org/wisconsin-supreme-court-decision-allowing-chrystul-kizer-to-use-trafficking-affirmative-defense-paves-way-for-other-trafficking-survivors-to-seek-justice/> (noting "especially [for] those already marginalized by racialized and economic violence").

exacerbated by criminalization.¹⁰ Chrystul brought her case to the Wisconsin Supreme Court and successfully obtained the ability to raise an affirmative defense that could abrogate all her charges—and while that was not the end result for her, she paved the way for others. On the contrary, Zephi and many other survivors live with criminal records that prolong the negative and traumatic ramifications without options for relief.

Human sex trafficking is horrifying, but it is a business model that continues to survive in Wisconsin and nationwide because “trafficking is considered a low-risk, high-reward endeavor.”¹¹ Human sex trafficking is a well-crafted, profitable criminal enterprise, which explains why it has not disappeared from the nation at a macro or micro level.¹² So much so that “pimps in one city earned an average of \$32,833 per week.”¹³ Therefore, the business model will likely continue until the risks to traffickers outweigh the advantages.

To that extent, in *State v. Kizer*,¹⁴ the Wisconsin Supreme Court took critical steps towards eradicating human sex trafficking by providing victims protection and relief. The court held that a victim may raise a complete affirmative defense to any crime as long as there is a logical connection between the trafficking and the crime committed.¹⁵ This approach is flexible and demonstrates a commitment to both harm reduction and trauma-informed justice.¹⁶ The *Kizer* decision also stands out from approaches in other states, particularly Iowa and Oklahoma, that require a crime to be rigorously connected to a strict definition of trafficking or lack a causal element entirely.¹⁷

As a result, the Wisconsin Supreme Court ensured that the state’s approach to the human-sex-trafficking affirmative defense recognizes the realities of sex trafficking. Specifically, Wisconsin’s approach acknowledges that the majority of human sex trafficking victims have been arrested, and the vast majority of those are convicted of the crimes

10. *See id.*

11. OFF. OF ATT’Y GEN., WIS. DEP’T OF JUST., HUMAN TRAFFICKING: A GUIDE FOR CRIMINAL JUSTICE PROFESSIONALS 1 (2018); POLARIS, SEX TRAFFICKING IN THE U.S.: A CLOSER LOOK AT U.S. CITIZEN VICTIMS 1 (2015) [hereinafter POLARIS, SEX TRAFFICKING].

12. OFF. OF ATT’Y GEN., *supra* note 11, at 1.

13. POLARIS, SEX TRAFFICKING, *supra* note 11, at 1.

14. 2022 WI 58, 976 N.W.2d 356.

15. *Id.* ¶ 2, 976 N.W.2d at 358.

16. *Id.* ¶ 15, 976 N.W.2d at 362 (relying on OFF. OF ATT’Y GEN., *supra* note 11, at 17–18, to conclude that human trafficking is a crime that warrants unique treatment).

17. Compare WIS. STAT. § 939.46(1m) (2023–24), with IOWA CODE § 710A.3 (2025), and OKLA. STAT. tit. 21, § 748 (2024); *see also infra* Section II.B.

they are charged with.¹⁸ Unsurprisingly, almost all of those trafficking victims who are arrested identify a logical connection between their trafficking and the arrest.¹⁹ Common behaviors victims are arrested for include theft, domestic violence, drug possession, drug sales—and even homicide is not inconceivable.²⁰

This Comment argues that Wisconsin's affirmative defense for human sex trafficking victims is the best in the nation and that other state legislatures should adopt the same framework. Specifically, Part III argues that Wisconsin's statutory interpretation of "direct result" in *Kizer* is the most balanced, flexible, and advantageous and is supported by policy. Moreover, Part III argues that Wisconsin's approach to include any crimes is supported by the text of the affirmative defense²¹ as well as the Wisconsin Legislature's intent and policy. Part IV identifies pitfalls in other state approaches—both too restrictive and too broad—and explains why Wisconsin's approach is more suitable for victims. Finally, this Comment identifies how states could, and should, adopt Wisconsin's flexible, efficient standard for affirmative defenses available to human sex trafficking victims.

I. THE TRAFFICKING EXPERIENCE AND CHRYSTUL KIZER'S STORY

Human sex trafficking impacts every community.²² However, it flies under the radar of many Americans, including police officers, because of the stealthy nature of its operation and its exploitation of vulnerable populations.²³ Due to the prevalence of trafficking, it is essential to

18. NAT'L SURVIVOR NETWORK, NATIONAL SURVIVOR NETWORK MEMBERS SURVEY: IMPACT OF CRIMINAL ARREST AND DETENTION ON SURVIVORS OF HUMAN TRAFFICKING 3 (2016).

19. Survivors were detained *during* their trafficking and reported that their criminal records were directly related to the exploitation they experienced. POLARIS, IN HARM'S WAY: HOW SYSTEMS FAIL HUMAN TRAFFICKING SURVIVORS 41–42 (2023) [hereinafter POLARIS, IN HARM'S WAY]. Others reported being charged with "masking charges," or charges adjacent and related to the trafficking experience, but without assistance in exiting the victimization. SHARED HOPE INT'L, SEEKING JUSTICE: LEGAL APPROACHES TO ELIMINATE CRIMINAL LIABILITY FOR JUVENILE SEX TRAFFICKING VICTIMS 53 (2018).

20. POLARIS, SEX TRAFFICKING, *supra* note 11, at 9; *see Kizer*, 2022 WI 58, ¶¶ 21, 26, 29, 976 N.W.2d at 364–67.

21. WIS. STAT. § 939.46(1m) (2023–24).

22. AM. PSYCH. ASS'N, REPORT OF THE TASK FORCE ON TRAFFICKING OF WOMEN AND GIRLS 3, 20 (2014).

23. *See* POLARIS, IN HARM'S WAY, *supra* note 19, at 43. Even police agencies report a lack of understanding of what human sex trafficking *actually* looks like in day-to-day life. *See* OFF. OF CRIME VICTIM SERVS., *supra* note 2, at 26–31 (explaining that police agencies lack training and comprehension on how to deal with sex trafficking or flat out disregard its possible existence in their jurisdiction).

understand the nuances of the trauma and exploitation victims face.²⁴ It is equally important to understand how survivors are affected both during and after their trafficking experience.²⁵ Chrystul Kizer's story is an example of such a traumatic experience ending in criminal charges. Understanding victims is the first step, but it is further necessary to examine how state courts and legislatures respond to such victimization through the crafting and interpretation of affirmative defenses made available to sex trafficking victims.

A. Susceptible Nature of Sex Trafficking

Human sex trafficking carries on and succeeds as a business operation because commonalities of its structure are present in everyday life. For example, human sex trafficking-rich environments have tourist attractions, like hotels, and are near major highways that connect states or large cities.²⁶ In addition, the most susceptible victims are persons who exist in every community—namely adolescents, juvenile runaways, and persons who struggle with substance use.²⁷

It is nearly impossible for victims to escape human sex trafficking because of its coercive and manipulative nature.²⁸ The impossibility stems from the tactics traffickers use to keep their victims under their control, such as fear, violence, intimidation, psychological abuse, deception, forced substance use, threats to the victim's family, and more.²⁹ Traffickers' coercive and manipulative measures result in trauma that alters the long-term livelihood of victims.

Traffickers also seek out vulnerable populations, such as runaways, victims of child abuse and neglect, estranged youth, and people experiencing homelessness.³⁰ This combination of coercion and exploitation puts victims at an increased risk for severe physical and

24. AM. PSYCH. ASS'N, *supra* note 22, at 20 (explaining that the prevalence of trafficking cannot be accurately determined, but it is certainly more common than statistics report).

25. *See* POLARIS, SEX TRAFFICKING, *supra* note 11, at 19.

26. OFF. OF CRIME VICTIM SERVS., *supra* note 2, at 29.

27. *Id.*

28. OFF. OF ATT'Y GEN., *supra* note 11, at 9.

29. *See id.* at 9–10; AM. PSYCH. ASS'N, *supra* note 22, at 3. Coercion is also an element of the human sex trafficking criminal statute in Wisconsin and across the nation. *See, e.g.*, WIS. STAT. § 940.302(2)(a)2.j. (2023–24).

30. *See* OFF. OF CRIME VICTIM SERVS., *supra* note 2, at 29.

mental health problems.³¹ The long-term traumatic response manifests as distorted decision-making and substance abuse.³²

B. Effects of Trafficking on Victims

Trafficking victims' lives and behavior are erratic and unpredictable because of the intense trauma they endure while being trafficked.³³ Because sex trafficking and mental illness are inextricably linked, one cannot understand victims without understanding mental illness.³⁴ "Sex trafficking yields traumatic responses in victims and trauma can drastically alter a victim's perception of reality."³⁵ The overwhelming majority of sex trafficking victims suffer from "anxiety disorder, depression or, posttraumatic stress disorder" as well as "poor sleep, social stigmatization and feelings such as those of hopelessness."³⁶ Depression is a significant contributor to impaired decision-making, and post-traumatic stress is an exacerbating factor.³⁷ Specifically, victims commonly suffer adverse behavioral outcomes such as "hostility, aggression, social withdrawal, [and] altered behaviour in front of men."³⁸

C. Forced Crimes Perpetuated by Traffickers and Long-Term Criminalization

Aside from the long-term mental-health effects, another critical part of the coercive and manipulative trafficking measures is traffickers forcing victims to commit crimes as part of their trafficking.³⁹ Given the

31. James A. Levine, *Mental Health Issues in Survivors of Sex Trafficking*, COGENT MED., 2017, at 1, 4–5.

32. See AM. PSYCH. ASS'N, *supra* note 22, at 3; LYNN LANGTON, MICHAEL G. PLANTY, DUREN BANKS, AMANDA R. WITWER, DULANI WOODS, MICHAEL J. D. VERMEER & BRIAN A. JACKSON, SEX TRAFFICKING AND SUBSTANCE USE: IDENTIFYING HIGH-PRIORITY NEEDS WITHIN THE CRIMINAL JUSTICE SYSTEM 12 (2022).

33. Levine, *supra* note 31, at 4.

34. *Id.* at 2.

35. Shea M. Rhodes & Gina Dietz, *Trauma and the Trafficking Victim: A Barrier to Assistance*, DEL. LAW., Summer 2016, at 18, 18.

36. Levine, *supra* note 31, at 4.

37. Hyu Jung Huh, Kwangyeol Baek, Jae-Hyung Kwon, Jaeseung Jeong & Jeong-Ho Chae, *Impact of Childhood Trauma and Cognitive Emotion Regulation Strategies on Risk-Aversive and Loss-Aversive Patterns of Decision-Making in Patients with Depression*, 21 COGNITIVE NEUROPSYCHIATRY 447, 448–49 (2016); Levine, *supra* note 31, at 4.

38. Padam Simkhada, E. van Teijlingen, A. Sharma, P. Bissell, A. Poobalan & S.P. Wasti, *Health Consequences of Sex Trafficking: A Systematic Review*, 4 J. MANMOHAN MEM'L INST. HEALTH SCIS. 130, 137 (2018).

39. See NAT'L SURVIVOR NETWORK, *supra* note 18, at 5.

nature of sex trafficking, it is obvious that these forced crimes include prostitution.⁴⁰ However, crimes stemming from trafficking go far beyond prostitution, so much so that one should *expect* that a trafficking victim will commit an additional crime separate from prostitution.⁴¹

Two studies highlight the criminalization rates of human sex trafficking victims. A study published in 2016 found that more than half of the eighty-one sex trafficking victims who participated in the study were convicted of at least one crime as a juvenile.⁴² And 90.8% of these victims reported being arrested.⁴³ The victims' arrests were not outliers; 40% of arrested victims reported being arrested more than nine times.⁴⁴ Additionally, 65.3% of victims reported being arrested for prostitution, 42.7% reported being arrested for solicitation, 25.3% reported arrests for intent to solicit, 40% reported being arrested for drug possession, 18.7% reported arrests for drug sales, and 60% of victims reported being arrested for some other offense.⁴⁵ Moreover, a study published in 2023 found that 62% of survivors interviewed were arrested, detained, or cited by law enforcement, and 81% of those arrests occurred during the victimization.⁴⁶ Of those arrested, 71% were later convicted, and 90% of those with criminal records attributed their record directly to their exploitation.⁴⁷ An additional victim, who was never arrested, but detained by law enforcement, was later returned to her trafficker.⁴⁸ The studies demonstrate an indisputable connection between criminal records and trafficking. Therefore, the likelihood that a victim will commit a crime due to coercion from their trafficker, coupled with the trauma inflicted by victimization, is exceptionally high.⁴⁹

40. *Id.*; see OFF. OF CRIME VICTIM SERVS., *supra* note 2, at 9–10; see also WIS. STAT. § 944.30(1m) (2023–24) (defining prostitution as when “[a]ny person . . . intentionally . . . [h]as or offers to have or requests to have nonmarital sexual intercourse for anything of value”).

41. SHARED HOPE INT’L, *supra* note 19, at 53 (noting that victims face “masking charges” or crimes alongside the trafficking experience that are not prostitution but end in conviction); see also POLARIS, SEX TRAFFICKING, *supra* note 11, at 9; cf. *State v. Kizer*, 2022 WI 58, ¶¶ 20–30, 976 N.W.2d 356, 364–67.

42. NAT’L SURVIVOR NETWORK, *supra* note 18, at 1, 3.

43. *Id.* at 3.

44. *Id.* at 3–4.

45. *Id.* at 4.

46. POLARIS, IN HARM’S WAY, *supra* note 19, at 41.

47. *Id.* at 41–42.

48. NAT’L SURVIVOR NETWORK, *supra* note 18, at 3.

49. See *id.* at 3–5.

D. Chrystul Kizer and the Wisconsin Supreme Court

The story of Chrystul Kizer shows an example of a victim's continued trauma and coercion, and how it can rise to the level of homicide.⁵⁰ Chrystul met her trafficker when she was sixteen on a website which has since been shut down by the federal government because of its connection to human sex trafficking.⁵¹ Her trafficker molested her in exchange for money and exploited her to other men.⁵² At times, her trafficker pimped her out multiple times per day.⁵³ Law enforcement was aware of her trafficker's criminal involvement, yet he was never charged.⁵⁴ When Chrystul was seventeen, she went to her trafficker's home and shot him in the head twice.⁵⁵ Afterwards, Chrystul set fire to the residence and stole her trafficker's vehicle.⁵⁶ She was charged with first-degree intentional homicide with the use of a dangerous weapon and other related charges, including auto theft and arson.⁵⁷

In court, Chrystul raised the affirmative defense for human trafficking victims.⁵⁸ Chrystul's ability to raise the defense turned on whether her crimes were causally sufficient under section 939.46(1m) of the Wisconsin Statutes.⁵⁹ Specifically, Chrystul was required to show that her behavior in the charged offenses was "a direct result" of her trafficking.⁶⁰ Therefore, the court's analysis required an examination of Wisconsin's criminal human trafficking statute. This statute defines

50. See *State v. Kizer*, 2022 WI 58, ¶ 3, 976 N.W.2d 356, 358 (explaining that Chrystul Kizer, tired of being sexually assaulted, shot her trafficker). And as mentioned earlier, Chrystul is not alone. Zephi Trevino and Cyntoia Brown also faced the same traumatic ending due to their trafficking. See *supra* notes 3–5 and accompanying text.

51. Jessica Contrera, *He Was Sexually Abusing Underage Girls. Then, Police Said, One of Them Killed Him.*, WASH. POST (Dec. 17, 2019), <https://www.washingtonpost.com/graphics/2019/local/child-sex-trafficking-murder/>.

52. *Id.*

53. *Id.* A "pimp" is a third-party exploiter, and "to pimp out" is to solicit trafficking victims for the pimp's gain. Evelina Giobbe, *An Analysis of Individual, Institutional, and Cultural Pimping*, 1 MICH. J. GENDER & L. 33, 45 (1993).

54. A fifteen-year-old reported Chrystul's trafficker to the police, but he was never detained. Contrera, *supra* note 51. Chrystul's trafficker was suspected of having victims as young as age twelve, and the state collected photo and video materials of her trafficker filming sexual encounters with minors. *Id.*; Reply Brief of Defendant-Appellant at 1, *State v. Kizer*, 2021 WI App 46, 963 N.W.2d 136 (No. 2020AP192-CR).

55. Brief & Supplemental Appendix of Plaintiff-Respondent at 3, *Kizer*, 2021 WI App 46, 963 N.W.2d 136 (No. 2020AP192-CR).

56. *Id.* at 1.

57. See *State v. Kizer*, 2022 WI 58, ¶ 3, 976 N.W.2d 356, 358.

58. *Id.*; see also WIS. STAT. § 939.46(1m) (2023–24).

59. § 939.46(1m); *Kizer*, 2022 WI 58, ¶ 1, 976 N.W.2d at 358.

60. § 939.46(1m); *Kizer*, 2022 WI 58, ¶ 1, 976 N.W.2d at 358.

human trafficking as “recruiting, enticing, harboring, transporting, providing,” or attempting any of the foregoing for the purposes of a commercial sex act.⁶¹ A commercial sex act includes any sexual contact or intercourse “for which anything of value is given to, promised, or received, directly or indirectly, by any person.”⁶² A separate but paramount wrinkle to the court’s analysis was whether the defense could completely absolve Chrystul of the charges, or simply mitigate first-degree intentional homicide to second-degree homicide.⁶³

The circuit court concluded that Chrystul could not raise the affirmative defense because first-degree homicide was not within the acts listed in section 940.302(2), Wisconsin’s statute criminalizing a wide range of human trafficking offenses.⁶⁴ Both the State and Chrystul agreed that this interpretation was incorrect but disagreed on what the correct interpretation was.⁶⁵ On appeal, the State argued that to raise this defense, a trafficking victim must demonstrate that the trafficking was a direct result (*i.e.*, but-for and proximate cause) of the charged criminal offense, not just that the charge has a “close relationship” to the trafficking.⁶⁶ Further, even if the victim could raise this defense, the State argued, it would merely mitigate an intentional first-degree homicide charge to second-degree.⁶⁷

Upon interlocutory review, the Wisconsin Supreme Court first focused on the meaning of “direct result” within section 939.46(1m), as the phrase is left undefined in the statute.⁶⁸ After examining the ordinary usage of “direct” and “result,” along with the usage of the phrase “direct result,” the court concluded that there is a direct result between the offense and the trafficking where “there is a logical, causal connection between the offense and the trafficking.”⁶⁹ Moreover, the court rejected the State’s argument that the trafficking needs to be the sole cause of the offense, concluding that an offense can still be a direct result “even if

61. § 940.302(1)(d).

62. § 940.302(1)(a).

63. *Kizer*, 2022 WI 58, ¶¶ 27–30, 976 N.W.2d at 366–67.

64. The circuit court essentially decided the affirmative defense applied only to human trafficking, which was incorrect as held by the Court of Appeals and Wisconsin Supreme Court. *See State v. Kizer*, 2021 WI App 46, ¶¶ 1, 3, 963 N.W.2d 136, 137–38; *Kizer*, 2022 WI 58, ¶¶ 2, 4–5, 976 N.W.2d at 358.

65. *Kizer*, 2021 WI App 46, ¶ 4, 963 N.W.2d 136, 138.

66. Brief & Supplemental Appendix of Plaintiff-Respondent, *supra* note 55, at 19–24.

67. *Id.* at 12–19.

68. *Kizer*, 2022 WI 58, ¶ 12, 976 N.W.2d at 361.

69. *Id.* ¶¶ 13–15, 976 N.W.2d at 361–62.

there are other causes at play,” as long as other causes are not more significant.⁷⁰

The court also concluded that the statute did not require only mitigating the first-degree homicide charge to second-degree homicide.⁷¹ The court agreed with Chrystul that the defense is complete because there is no mitigatory language, while other similar affirmative defenses explicitly state whether there is mitigation or not.⁷² The court looked to canons of construction, including lenity,⁷³ to further support its decision that section 939.46(1m) is a complete defense to all offenses, including first-degree homicide; therefore, Chrystul could raise the defense.⁷⁴ The court therefore affirmed the decision of the court of appeals, which remanded her case to the circuit court for reconsideration.⁷⁵ Chrystul has since been sentenced to prison time after pleading guilty to second degree reckless homicide.⁷⁶ However, the end result does not negate the Wisconsin Supreme Court’s interpretation and future victims’ ability to raise the defense.⁷⁷ More importantly, Chrystul’s story carves out the ability to *raise* the affirmative defense so long as the direct result bar is met.

E. Comparison of Affirmative Defense Standards and Efficacy

Chrystul’s case would have looked vastly different if she had committed her crimes outside of Wisconsin. For example, in Oklahoma, Chrystul’s affirmative defense would have been relatively straightforward. Oklahoma provides a broad affirmative defense “for . . . criminal . . . offense[s] that, during the time of the alleged commission of the offense, the defendant . . . was a victim of human

70. *Id.* ¶ 17, 976 N.W.2d at 363.

71. *Id.* ¶¶ 26–29, 976 N.W.2d at 365–67.

72. *Id.* ¶ 26, 976 N.W.2d at 365–66.

73. The “rule of lenity provides generally that ambiguous penal statutes should be interpreted in favor of the defendant.” *State v. Cole*, 2003 WI 59, ¶ 67, 663 N.W.2d 700, 714–15.

74. *Kizer*, 2022 WI 58, ¶¶ 26–29, 976 N.W.2d at 365–67.

75. *Id.* ¶ 2, 976 N.W.2d at 358.

76. *Kenosha County Case Number 2018CF000643 State of Wisconsin vs. Chrystul D. Kizer*, Wis. CIR. CT. ACCESS, <https://wcca.wicourts.gov/caseDetail.html?caseNo=2018CF000643&countyNo=30&index=0&mode=charges> (last visited Mar. 17, 2025); Richmond, *supra* note 6.

77. Therefore, the door to abrogate any criminal charge, including homicide, is open. The outcome does not negate the important step in human sex trafficking defense law.

trafficking.”⁷⁸ Thus, the victim’s sole burden is to show that they were being trafficked at the time of the offense. Oklahoma does not have a nexus requirement, *i.e.*, an element that requires the offense and trafficking to be connected.⁷⁹ There is also no crime limitation; any criminal offense falls under the affirmative defense.⁸⁰ While the crux of Oklahoma’s statute sounds desirable, an almost-limitless affirmative defense opens the door to the abuse of the affirmative defense—which creates instability and a lack of respect for victims.⁸¹

In contrast, Chrystul would have had little to no ability to raise any affirmative defense under Iowa law. Like Wisconsin, Iowa limits its trafficking affirmative defense to victims whose criminal offense “directly resulted” from their victimization.⁸² However, the affirmative defense confines protection to a limited number of listed offenses, including false representation of their identity and prostitution.⁸³ Notably, there is no protection for the possession or sale of drugs or for theft—let alone homicide.⁸⁴ Such a narrow defense does little to assist trafficking survivors in any meaningful way.⁸⁵

Ineffective affirmative defenses only exacerbate the issues identified in the previously described studies analyzing the effects of human sex trafficking on victims.⁸⁶ Without a viable exit from the criminal justice system, human sex trafficking victims remain stuck in a cycle of victimization—a cycle that allows the business model of sex trafficking

78. OKLA. STAT. tit. 21, § 748(D) (2024); Meghan Hilborn, *How Oklahoma’s Human Trafficking Victim Defense Is Poised To Be the Boldest Stand Against Human Trafficking in the Country*, 54 TULSA L. REV. 457, 467 (2019). This conclusion assumes that the trafficking was contemporaneous, however, since given the procedural posture of Chrystul’s case, those facts were not yet adjudicated. Reply Brief of Defendant-Appellant, *supra* note 54, at 1. However, the State did not dispute that Chrystul reported a sexual relationship with her alleged trafficker when she was seventeen and he was thirty-four. Brief & Supplemental Appendix of Plaintiff-Respondent, *supra* note 55, at 5. The State also considered him, at minimum, a “john” who was a “customer” of sex from Chrystul when she was seventeen. *Id.* For a definition of “john,” see Brief & Supplemental Appendix of Plaintiff-Respondent, *supra* note 55, at 5.

79. Hilborn, *supra* note 78, at 472.

80. *Id.*

81. See *infra* Section III.B.

82. IOWA CODE § 710A.3 (2025).

83. *Id.*; see also §§ 152C.5C(2)(b), 157.4B(2)(b), 710A.2A.

84. See § 710A.3.

85. See *infra* Section III.A.

86. See NAT’L SURVIVOR NETWORK, *supra* note 18, at 6; POLARIS, IN HARM’S WAY, *supra* note 19, at 11. Without protective measures, such as an affirmative defense, the issues identified in such surveys will continue.

to continue.⁸⁷ Further, the cycle ensures victims are affected far beyond the circumstances of their trafficking, often unable to find jobs and stable housing.⁸⁸

Aside from collateral consequences that impede survivors' ability to secure food and shelter, traffickers also financially control victims.⁸⁹ Namely, the previously discussed 2023 study found that fifty-three percent of victims stated their expenses were paid by their trafficker.⁹⁰ After criminal convictions, it is even more difficult for survivors to find employment, locate stable housing, and become financially independent.⁹¹ This continued financial strain, accompanied by a lack of adequate resources, ultimately forces survivors to remain dependent on their trafficker, which results in continued criminal behavior, such as theft or substance use—therefore making repercussions for survivors everlasting.⁹² Likewise, this compounded cycle of victimization and lengthy criminal records creates a treacherous outcome for survivors even after victimization ends.⁹³ As a result, without an effective affirmative defense, human trafficking survivors continue to suffer after breaking free from their trafficker.⁹⁴ Therefore, it is imperative that states implement a broad, flexible affirmative defense to aid victims in avoiding criminal records.

II. WISCONSIN'S HOLISTIC APPROACH TO HUMAN-TRAFFICKING AFFIRMATIVE DEFENSES

The *Kizer* decision cemented Wisconsin as the front-runner state-level approach to a human-trafficking affirmative defense. The

87. Allison L. Cross, *Slipping Through the Cracks: The Dual Victimization of Human-Trafficking Survivors*, 44 McGEORGE L. REV. 395 (2013); Derrick Howard, *Twenty-First Century Slavery: Reconciling Diplomatic Immunity and the Rule of Law*, 3 ALA. C.R. & C.L. L. REV. 121, 137 n.73 (2012) (citing and quoting *Trafficking in Human Beings*, INTERPOL (Mar. 5, 2010), <https://web.archive.org/web/20101212113749/http://www.interpol.int/Public/THB/default.asp>, for the claim that “human trafficking and illicit migration is a \$28 billion enterprise, ‘steadily catching up with drug and arms trafficking’”).

88. POLARIS, SEX TRAFFICKING, *supra* note 11, at 4.

89. POLARIS, IN HARM'S WAY, *supra* note 19, at 37.

90. *Id.*

91. See POLARIS, SEX TRAFFICKING, *supra* note 11, at 4, 9.

92. *Id.* at 4–6; see Buchbinder, *supra* note 9. The lack of post-conviction relief is also an alarming reason for a suitable and effective affirmative defense. POLARIS, IN HARM'S WAY, *supra* note 19, at 43.

93. See POLARIS, IN HARM'S WAY, *supra* note 19, at 29–42.

94. INT'L WOMEN'S HUM. RTS. CLINIC, CITY UNIV. OF N.Y. L. SCH. & TRAFFICKING VICTIMS ADVOC. PROJECT, LEGAL AID SOC'Y OF N.Y., CRIMINALIZATION OF TRAFFICKING VICTIMS: SUBMISSION TO THE UNITED NATIONS UNIVERSAL PERIODIC REVIEW OF THE UNITED STATES OF AMERICA 2 (2015).

affirmative defense's causation element and the applicability to any crime sets Wisconsin's approach apart from its counterparts. Specifically, in *Kizer*, the Wisconsin Supreme Court concluded that a "direct result" of human trafficking means there is a logical causal connection between the offense and the trafficking.⁹⁵ Also, so long as there is some evidence of all the elements in the affirmative defense statute, the offense can apply to any crime, even first-degree intentional homicide.⁹⁶

A. Deciphering "Direct Result": Wisconsin's Logically Grounded Approach to Human Trafficking

The causation element is crucial to the flexibility of an affirmative defense available to human trafficking victims. If the causation element is too narrow, it bars victims from even trying to apply the defense. If an affirmative defense's causation element is too broad, it opens the door to necessitating amendment because of the potential abuse. The *Kizer* court found an ideal balance in its logical causation requirement, which requires a meaningful relationship between the charged offense and trafficking victimization. The meaningful relationship that flows from the causation element can function efficiently and is supported by both statutory interpretation and public policy.

1. The Balancing Act of Wisconsin's Approach

A human trafficking victim meets the "direct result" element of Wisconsin's affirmative defense when they demonstrate a logical connection between the crime committed and their trafficking experience.⁹⁷ A logical connection exists when there is some evidence of a logical, causal connection between the crime and the trafficking or, more so, when the crime is not the result "in significant part, of other events, circumstances, or considerations apart from the trafficking."⁹⁸ This is not a stringent burden for the victim to meet. The logical connection does not have to be the only cause of the crime nor does it

95. *State v. Kizer*, 2022 WI 58, ¶ 17, 976 N.W.2d 356, 363.

96. *Id.* ¶¶ 27–29, 976 N.W.2d at 366–67.

97. *See id.* ¶ 2, 976 N.W.2d at 358.

98. *Id.* ¶ 20, 976 N.W.2d at 364.

need to be foreseeable.⁹⁹ The person raising the defense must only show that their imposition to human trafficking is logically related to the crime they committed.¹⁰⁰ For example, a human trafficking victim whose trafficker forced them to drive the getaway car in a robbery would have some evidence that their participation in that crime was a logical result of being a human trafficking victim.

The logical causation requirement is like Goldilocks's ideal bowl of porridge; it is not too hot because it does not open the door to countless meritless claims, and it is not too cold because the element is not ineffectively restrictive. This requirement is efficient and productive because the affirmative defense is one carefully crafted and tailored to a victim's human trafficking experience.¹⁰¹ The causation requirement requires a victim to show through evidence that the connection is not out of thin air but instead directly related to the human trafficking experience.¹⁰² In essence, victims hold the key to such an affirmative defense—the evidence of *their* sex trafficking. One cannot conflate that just because a showing of such evidence may be *simple* for a victim to produce, that it also opens the door to unlimited superfluous claims.¹⁰³ The logical causation requirement may be simple to meet *because* a defendant is a human trafficking victim. Contrarily, it would be *impossible* to show such evidence if the defendant was not a human trafficking victim.

Moreover, the nature of the logical causation requirement functions like a but-for causation test specifically for human trafficking victims. The Wisconsin Legislature crafted this affirmative defense *for* human trafficking victims.¹⁰⁴ Therefore, an interpretation in favor of tying the requirements to the human trafficking experience is far from implausible.¹⁰⁵ The but-for nature of the logical causation requirement does more than require a victim to show evidence of a “close” relationship between their offense and their trafficking experience, and it

99. See *id.* ¶ 15, 976 N.W.2d at 362.

100. See *id.* ¶ 17, 976 N.W.2d at 363.

101. See *id.* ¶ 15, 976 N.W.2d at 362 (stating that foreseeability is not required because that element would not fit with the human trafficking experience).

102. *Id.*

103. For an example of an argument like this, see Brief & Supplemental Appendix of Plaintiff-Respondent, *supra* note 55, at 26 (arguing that a lenient standard “would immunize trafficking victims from all crimes committed *while* they are being trafficked”).

104. See WIS. STAT. § 939.46(1m) (2023–24) (stating that this defense is specifically for victims of a criminal human trafficking offense).

105. See *id.* If the statute carves out an exception for human trafficking victims, it is sensible that the evidence would come from their trafficking experience.

is more than simply a contemporaneous relationship.¹⁰⁶ The logical causation requirement is not a convenient connection; instead, it allows the victim to show the relationship between the trafficking experience and charged offense.¹⁰⁷ Further, the victim must show that the offense is not the result, significantly, of other events, circumstances, or considerations that are not the trafficking. The two requirements together create a meaningful relationship between the victimization of trafficking and the charged offense. The relationship in this showing aligns with the Legislature's intent in crafting an affirmative defense tailored to sex trafficking victims—being that the results are that *only* human sex trafficking victims can show such a relationship.¹⁰⁸ In other words, a trafficking victim should not be punished by way of more rigorous statutory elements because the evidence that shows a legitimate logical causal connection to their traumatic trafficking experience is easily identifiable and closely related to the criminal offense.

A more stringent proximate causation-like element is not better suited for the human trafficking defense; *Kizer's* logical causation requirement is broader, trauma-informed, and not unnecessarily restrictive. Proximate causation is most well-known in negligence cases. The application in negligence cases makes sense because the injury should not be too remote, out of proportion, extraordinary, unreasonable, or open the floodgates to meritless litigation.¹⁰⁹ However, the criminal human trafficking statute—which the affirmative defense flows from—is distinct from negligence because of an intent requirement.¹¹⁰

The victim should not be required to show whether the relationship between the charged crime and trafficking experience is too remote, out of proportion, extraordinary, or unreasonable. Rather, requiring a showing that the charged crime and trafficking experience are logically connected to the human trafficking victim is more suitable because it implements the meaningful relationship intended by the Legislature and general protection specific to human trafficking victims.¹¹¹ The logical causation requirement sufficiently meets section 939.46(1m)'s "direct result" language because it ensures something else is not a significant factor other than the trafficking,¹¹² but also takes into account the specific

106. See *Kizer*, 2022 WI 58, ¶ 17, 976 N.W.2d at 363.

107. See *id.* The logical, causal connection is far above convenience.

108. See § 939.46(1m).

109. See *Fandrey v. Am. Fam. Mut. Ins. Co.*, 2004 WI 62, ¶¶ 14–15, 15 n.12, 680 N.W.2d 345, 353–54, 354 n.12.

110. § 939.46(1m).

111. Because the Legislature carved out the defense to apply specifically to trafficking victims, it should be tailored to them.

112. *Kizer*, 2022 WI 58, ¶ 17, 976 N.W.2d at 363.

experience trafficking victims endure.¹¹³ Therefore, a proximate causation requirement would only add an unnecessary legal hurdle for human trafficking victims raising this defense.

2. Applicability of *Kizer*'s Requirement to Other Jurisdictions

The logical causation requirement aligns with other jurisdictions' human-trafficking affirmative defenses. For example, in *In re D.C.*,¹¹⁴ a man was charged with carrying an illegal knife and raised California's defense, stating that he carried the knife out of fear of his trafficker.¹¹⁵ That state's human-trafficking affirmative defense applies when the victim shows some evidence that the crime was a "direct result" of the trafficking status.¹¹⁶ Due to the conflicting evidence from the defendant and the State, the California appellate court did not make a ruling on the merits. Instead, the court stated:

If, on remand, the juvenile court finds by a preponderance of the evidence that minor was a trafficking victim at the time he committed the . . . offense, and that he concealed the knife on his person on account of a reasonable fear that [his trafficker] would find him and once again force him into the trunk of the care, then the trafficking defense must be applied.¹¹⁷

The California court's reasoning aligns with *Kizer*'s logical causal connection approach to the "direct result" statutory language.¹¹⁸ Like in Wisconsin, California's approach correctly accounts for the trauma involved in the experience of being trafficked—and creates a meaningful relationship between the trafficking and charged offense.¹¹⁹ Also, both California's and Wisconsin's affirmative defenses give victims the power to show a connection between a charged offense and their victimization.¹²⁰ Finally, like in Wisconsin, California implements a standard that is only attainable by victims through its reasonable

113. See AM. PSYCH. ASS'N, *supra* note 22, at 2–3.

114. 275 Cal. Rptr. 3d 191 (Ct. App. 2021).

115. See *id.* at 192–93.

116. See CAL. PENAL CODE § 236.23(a) (West 2024); *In re D.C.*, 275 Cal. Rptr. 3d at 194.

117. See *In re D.C.*, 275 Cal. Rptr. 3d at 194–95.

118. The Wisconsin Supreme Court discussed *In re D.C.* in its *Kizer* decision, viewing its statutory interpretation as "consistent with" the California appellate court's. *State v. Kizer*, 2022 WI 58, ¶ 18, 976 N.W.2d 356, 363.

119. Compare *In re D.C.*, 275 Cal. Rptr. 3d at 195, with *Kizer*, 2022 WI 58, ¶ 2, 976 N.W.2d at 358.

120. Compare *In re D.C.*, 275 Cal. Rptr. 3d at 194, with *Kizer*, 2022 WI 58, ¶ 18, 976 N.W.2d at 363.

connection standard.¹²¹ Therefore, California exemplifies another jurisdiction that relies on an approach that tailors its affirmative defense to the trafficking experience.

Taking the approach a step further, other jurisdictions could also adopt the logical causation requirement for elements that are not explicitly worded “direct result.” Even though the Wisconsin Supreme Court was interpreting the meaning of “direct result” in *Kizer*, the understanding behind the causal requirement can be applied to other statutory language of a similar nature. For example, Kansas’s affirmative defense applies as long as “the defendant committed the violation of [the prostitution statute] because such defendant was subjected to human trafficking.”¹²² The logical causation requirement could easily be applied to the statutory language “because such defendant was subjected to” as it is applied to “direct result.” Even though the two phrases are different in their plain text, the meaning and structure of the phrases are not far apart. The two phrases accomplish the same goal of creating a meaningful relationship between the trafficking and charged offense. In doing so, both approaches are effectively tailored to human trafficking victims. Therefore, the ideal *Kizer* approach could be applied in states like Kansas and others with similar language to achieve Wisconsin’s result of a balanced logical causation requirement.

3. An Approach Supported by Policy

Wisconsin’s logical causal requirement strikes the most critical balance with a trauma-informed approach because it accounts for a realistic understanding of the trafficking experience. The *Kizer* decision recognized that human trafficking is a unique crime because it sucks a victim into a cycle that is nearly impossible to get out of due to the coercive, manipulative relationship between trafficker and victim.¹²³ Hence, the Wisconsin Supreme Court discerned the relationship between trauma and being a human trafficking victim, articulating that the defense is meant to protect victims who can show a logical causal relationship between the two.¹²⁴ The court’s reasoning resonates with the true nature of the human trafficking experience, which exists on a broad spectrum varying from a manipulative relationship exchanging sex for drugs to a

121. See *In re D.C.*, 275 Cal. Rptr. 3d at 195; see also *supra* Section II.A.1.

122. KAN. STAT. ANN. § 21-6419(c) (2025) (noting that the statute only applies to prostitution, which is still an inherent fault discussed *infra* Section II.B.2).

123. See *Kizer*, 2022 WI 58, ¶ 15, 976 N.W.2d at 362 (citing OFF. OF ATT’Y GEN., *supra* note 11, at 17–18).

124. See *id.*

full-blown elaborate criminal enterprise.¹²⁵ The manipulative, coercive nature of human trafficking across that spectrum alters victims' decision-making abilities.¹²⁶ Under any standard more demanding than a logical causal connection, victims at the "low" end of this spectrum could be readily excluded from protection because the legal standard would be so high. Therefore, the logical causation requirement best protects *all* victims—regardless of the specifics of their trafficking—instead focusing primarily on the fact that they were indeed trafficked.

Further, the logical causal requirement is best for an affirmative defense to human trafficking victims because it creates a reasonable distance between the criminal trafficking statute and the affirmative defense. This distance focuses on the victim—who requires the affirmative defense—more than sex trafficking perpetrators. Victims fall under the criminal human trafficking statute *because* they are victims of the crime of trafficking.¹²⁷ However, the elements of the human-trafficking affirmative defense provided to victims and the human trafficking criminal offense used against traffickers need not align like a puzzle. For example, an affirmative defense that requires a victim to show they were in fear of imminent harm of their trafficker at the time of the charged offense *in addition to* a direct result between the offense and their trafficking would be an undue burden to victims.¹²⁸ The logical causation requirement *protects* victims after the immense trauma they face. It makes sense for trafficking victims to have their own reasonable, efficient, yet productive bar to meet. Along the same lines, traffickers have committed heinous crimes against their victims, which come with high penalties.¹²⁹ Therefore, the elements of the criminal sex trafficking offense, such as intent and other required elements, make sense to ensure fair prosecution. However, it is not necessary for those elements to bleed

125. See AM. PSYCH. ASS'N, *supra* note 22, at 2–3, 34–35.

126. See Amici Curiae Brief of Legal Momentum & Harvard Law School's Gender Violence Program in Support of Defendant Appellant at 5, *State v. Kizer*, 2021 WI App 46, 963 N.W.2d 136 (No. 2020AP192-CR).

127. See WIS. STAT. §§ 939.46(1m), 940.302 (2023–24).

128. ERIN MARSH, BRITTANY ANTHONY, JESSICA EMERSON & KATE MOGULESCU, POLARIS, STATE REPORT CARDS: GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING 17 (2019). To not concretely differentiate between human trafficking *victims* and perpetrators only fails victims because victims are held to a higher standard than their traffickers. *See id.*

129. See, e.g., WIS. STAT. § 940.302(2)(a) (2023–24) (making human trafficking a "Class D felony"); § 939.50(3)(d) (defining the penalty for Class D felonies as "a fine not to exceed \$100,000 or imprisonment not to exceed 25 years, or both"); OKLA. STAT. tit. 21, § 748(C) (2024).

into the human trafficking defense meant to protect victims, and Wisconsin's approach is correct in separating the elements of both.¹³⁰

4. Addressing Criticisms of Wisconsin's Human-Sex-Trafficking Affirmative Defense

Contrary to possible concerns, the logical causation requirement is not flawed because of its broadness or subjectivity. First, the affirmative defense is deliberately broad, and a broad affirmative defense is not inherently negative. For example, Wisconsin's general coercion affirmative defense¹³¹ and its self-defense statute are both inherently broad.¹³² Meaning, many types of behaviors fit in the statutes' "buckets." To that notion, the broadness of the self-defense statute has been litigated, and the statute upheld.¹³³ In reality, however, litigation regarding these statutes will continue not because of their broadness, but because of the sensitivity related to the offenses, victims, and offenders involved. It follows that the same is true for sex trafficking victims and the affirmative defense available to them. Nonetheless, the broadness of the affirmative defense's "bucket" is not a flaw because the logical causation requirement acts as a protection in such litigation to require a specific relationship, resulting in only meritorious uses of the defense. At the end of the day, the causation requirement and whether a defendant meets that standard is the filter and not the "bucket" of behaviors that can fall into the defense. Therefore, the presence of litigation surrounding claims does not inherently sway the effectiveness of an affirmative defense.

Second and relatedly, the subjectivity of the human-trafficking affirmative defense is equally as purposeful and not a negative quality. Courts commonly deal with moral conflict, which requires subjectivity in interpreting criminal statutes.¹³⁴ However, subjectivity does not weaken an affirmative defense.¹³⁵ For example, Wisconsin's approach to the human trafficking defense—the logical causation requirement—

130. The separation comes from different causation elements for the criminal statute and affirmative defense, but also the structure and requirements of the criminal statute itself. *See supra* Section II.A.1.

131. WIS. STAT. § 939.46(1) (2023–24) (applying to any person with the reasonable belief that their act is the only means of preventing death or great bodily harm).

132. § 939.48(1) (applying to any person who reasonably believes to have an unlawful inference with his or her person by another).

133. *See e.g., State v. Head*, 2002 WI 99, ¶¶ 1–3, 648 N.W.2d 413, 418–19 (relating to the self-defense statute).

134. *See* John Shepard Wiley Jr., *Not Guilty by Reason of Blamelessness: Culpability in Federal Criminal Interpretation*, 85 VA. L. REV. 1021, 1073 (1999).

135. *See* V.F. Nourse, *Self-Defense and Subjectivity*, 68 U. CHI. L. REV. 1235, 1239 (2001).

allows for flexibility, encompassing the complexity of the trauma human sex trafficking victims face.¹³⁶ This approach's flexibility mirrors the defense available to domestic violence victims in Wisconsin.¹³⁷ Specifically, persons who have experienced domestic violence can provide evidence of their abuse in a criminal proceeding related to an affirmative defense.¹³⁸ The ability to provide such evidence allows the flexibility to paint a picture for a factfinder of the specific and nuanced trauma suffered.¹³⁹ Here, too, the logical causation requirement provides flexibility yet reliability. Factfinders therefore have information regarding the distinctive trauma experienced while ensuring there is an evidenced connection between the trafficking and the crime committed. As a result, the broad and subjective nature of Wisconsin's human-sex-trafficking affirmative defense does not affect its effectiveness.

The information necessary to effectively meet Wisconsin's logical causation requirement and raise the defense ensures that meritorious claims are brought rather than a wide swath of unnecessary false claims. Chrystul Kizer is paving the way for trafficking victims: She is the first to raise the defense and her case has illuminated its scope.¹⁴⁰ Pushed to its logical extreme, the carved-out defense could be a justification for homicide that lasts a victim's entire life. However, given the safeguards in the Wisconsin Supreme Court's decision, those feared outcomes are far-fetched.¹⁴¹ There must still be a link between the trafficking and the offense which cannot have been caused in significant part by other events.¹⁴² That link protects against the logical extreme that people would commit murder under the veil of the affirmative defense.¹⁴³ The same is true for the argument that this affirmative defense applies to any survivor for the rest of time. The logical connection bar is a *meaningful* link because it demonstrates that other events are not contributing significantly to the charged offense.¹⁴⁴ The more time between the

136. See *State v. Kizer*, 2022 WI 58, ¶ 17, 976 N.W.2d 356, 363 (describing the logical causation requirement).

137. See § 939.48.

138. See Madeline Weston, *Committing Crimes Kept Her Alive: United States v. Dingwall and the Criminalization of Domestic Violence Victims*, 37 WIS. J.L. GENDER & SOC'Y 241, 241–42 (2022).

139. *Id.* at 242.

140. See Buchbinder, *supra* note 9.

141. *Kizer*, 2022 WI 58, ¶ 2, 976 N.W.2d at 358 (interpreting the human trafficking statute's "direct result" requirement to be satisfied only if "there is a logical, causal connection between the offense and the trafficking").

142. *Id.*

143. Therefore, an attempt to use this defense could theoretically fail if the State is able to prove a survivor's actions were the "result, in significant part" of something other than their trafficking. See *id.*

144. *Id.* ¶¶ 17–18, 976 N.W.2d at 363.

charged crime and trafficking experience, the more attenuated the logical connection becomes, and the more likely other events are contributing to the behavior, which would factor into a court's causation analysis. Therefore, the carefully fine-tuned scope the Wisconsin Supreme Court implemented protects against murder under the guise of self-defense and everlasting defense.

B. A Limitless Crime Approach Recognizes the Varied Trauma Responses of Victims of Human Sex Trafficking

The *Kizer* court could have cut the Wisconsin Legislature's intent short if it had interpreted the affirmative defense only to mitigate first-degree intentional homicide to the second degree.¹⁴⁵ The Wisconsin Legislature intended the affirmative defense to operate as a complete defense, and as a result, mitigation would have undermined this legislative intent.¹⁴⁶ The Legislature's approach is supported and articulated through statutory interpretation and public policy.

1. The Statutory Text

The *Kizer* court was correct to interpret the absence of mitigating language in section 939.46(1m) to create a complete defense to offenses including first-degree intentional homicide.¹⁴⁷ Across the nation, one of the staple differences among human-trafficking affirmative defenses is the scope of crimes covered.¹⁴⁸ For example, certain defenses apply only to misdemeanors, others to misdemeanors and nonviolent felonies, some impose no limitations, and finally, some only apply to prostitution.¹⁴⁹ It seems unlikely that the Wisconsin Legislature would not have taken the minimal time necessary to impose limitations that existed in counterpart statutes if it had wanted to. Therefore, it is more than reasonable to

145. The human-trafficking affirmative defense falls under the Wisconsin coercion affirmative defense. WIS. STAT. § 939.46(1m) (2023–24). Human trafficking has a specific section in the statute, however. Other crimes that fall under the coercion affirmative defense simply mitigate first-degree homicide to second-degree homicide. *See* § 939.46(1)–(1m).

146. Reply Brief of Defendant-Appellant, *supra* note 54, at 5–9.

147. *See Kizer*, 2022 WI 58, ¶ 26, 976 N.W.2d at 365.

148. *See, e.g.*, IOWA CODE § 710A.3 (2025) (solicitation only); CAL. PENAL CODE § 236.23(a) (West 2024) (nonviolent felonies only); N.D. CENT. CODE ANN. § 12.1-41-13 (2024) (certain nonviolent felonies only); OKLA. STAT. tit. 21, § 748(D) (2024) (no crime limitation).

149. *See* sources cited *supra* note 148.

conclude that when the Legislature left out the crime requirement, it was a purposeful action.¹⁵⁰

Furthermore, there is clarity that the Wisconsin Legislature purposely excluded the crime limitation from section 939.46 because the Legislature made the distinct linguistic choice to apply the human trafficking defense to “*any* offense committed as a direct result.”¹⁵¹ Moreover, section 939.46(1) does not limit Wisconsin’s general coercion defense to certain crimes.¹⁵² There are clear differences between the general coercion statute and the human-trafficking affirmative defense statute, such as the mitigation of homicide in the general statute,¹⁵³ but both apply to *any* crime.¹⁵⁴ Therefore, the Wisconsin Legislature intentionally carved out a unique provision for human trafficking victims to apply to any offense without limitation, including first-degree intentional homicide.

2. The Policy

Wisconsin’s decision not to impose a crime limitation is correct because crime limitations do a disservice to human trafficking victims. A commonality among states is to provide an affirmative defense to trafficking victims against at least prostitution.¹⁵⁵ However, crime limits—or protecting only against prostitution, or a minimal number of other offenses—are an arbitrary cut at the knees to human trafficking victims. Because the human trafficking experience varies so greatly, crime limitations inevitably exclude victims who should have a valid claim under the defense.¹⁵⁶ A victim who can show a logical causal connection to an armed robbery with their trafficking experience, for example, should not be excluded because the crime is too severe. The crimes that are covered are not what safeguard meritless litigation. A statute’s causation element is the hurdle that weeds out frivolous claims.¹⁵⁷ A victim who commits a worse offense because of their trafficking experience deserves protection just as much, if not more, than

150. See *Kizer*, 2022 WI 58, ¶¶ 15–16, 976 N.W.2d at 362–63.

151. WIS. STAT. § 939.46(1m) (2023–24) (emphasis added).

152. § 939.46(1).

153. Compare *id.*, with § 939.46(1m).

154. See § 939.46(1), (1m).

155. See, e.g., ALA. CODE § 13A-6-159 (2024); IOWA CODE § 710A.3 (2025); LA. STAT. ANN. § 14:46.2(F)(1) (2024); N.Y. PENAL LAW § 230.01 (McKinney 2024).

156. See AM. PSYCH. ASS’N, *supra* note 22, at 2–3.

157. See *State v. Kizer*, 2022 WI 58, ¶¶ 15–16, 976 N.W.2d 356, 362–63 (because if a victim cannot demonstrate causation, the claim fails, leaving no reason to exclude any crime once that element is met).

a victim charged with prostitution.¹⁵⁸ Therefore, crime limitations provide no supplemental benefit and only exclude victims with valid claims.

Any type of crime committed by a victim can be logically and causally connected to the human trafficking experience because of the level of trauma that accompanies the victimization. Consequently, there should be no one-size-fits-all crime limitation because there is no one-size-fits-all trafficking experience. Removing the crime limits in the affirmative defense creates a trauma-informed response to the heinous crime of human trafficking. In addition, that trauma-informed response is a proactive measure towards eliminating human trafficking as a criminal enterprise because it eliminates a potential supply of victims for traffickers.¹⁵⁹

An absence of a crime limitation does not result in unjust outcomes for more serious offenses. Rather, what the intentional lack of a crime limit does in effect is not take any situation experienced by a trafficking victim off the table.¹⁶⁰ To remove or put in place “categories” of offenses—such as applying to only misdemeanors, or anything but homicide—is arbitrary because such an approach loses sight of the true purpose of the affirmative defense, which is to protect victims.¹⁶¹ These arbitrary categories, in effect, could punish the most traumatized victims. The more traumatized a victim is, the more affected they are, and the more likely they are to take extreme measures, *i.e.*, commit a worse crime.¹⁶² If any crime is taken off the table because of its severity, that punishes the most severely affected victims, who are most likely to commit more serious crimes. Moreover, it loses sight of the types of crimes victims are likely to commit, *i.e.*, domestic violence, drug possession, and drug sales, which can be felonies on their own.¹⁶³ The idea that victims are only protected from low-level crimes is the antithesis of the legislative goal to protect victims.¹⁶⁴ Therefore, the absence of a crime limit does not create unjust outcomes but rather considers the realities and nuances of sex trafficking victimization.

158. See Cross, *supra* note 87, at 397–98.

159. See OFF. OF ATT’Y GEN., *supra* note 11, at 1. And the criminal enterprise cannot continue without victims to exploit.

160. See Kizer, 2022 WI 58, ¶¶ 27–29, 976 N.W.2d at 366–67; see also Wis. STAT. § 939.46(1m) (2023–24).

161. See Amici Curiae Brief of Legal Momentum & Harvard Law School’s Gender Violence Program in Support of Defendant-Appellant, *supra* note 126, at 10.

162. See Huh, Baek, Kwon, Jeong & Chae, *supra* note 37, at 448–49; Simkhada, Teijlingen, Sharma, Bissell, Poobalan & Wasti, *supra* note 38, at 137, 145.

163. POLARIS, SEX TRAFFICKING, *supra* note 11, at 9.

164. See Amici Curiae Brief of Legal Momentum & Harvard Law School’s Gender Violence Program in Support of Defendant-Appellant, *supra* note 126, at 10.

To that notion, the idea that a trafficking victim could commit homicide (being the most severe crime in law generally) is not out of the question when considering the trauma endured.¹⁶⁵ This is all the more explained by Chrystul Kizer and other similarly situated victims. Chrystul was afraid and likely traumatized by repeatedly being forced to perform sexual acts, and she resorted to murder.¹⁶⁶ In a vacuum, the facts may merely portray a cold-blooded crime. However, when examined through a harm-reductive trauma lens, her actions are explainable.¹⁶⁷ Chrystul was an adolescent, her brain chemistry and decision-making were altered, and she had been manipulated and coerced for a prolonged period.¹⁶⁸ Therefore, with a viewpoint of the facts, an understanding of the significant trauma endured by trafficking victims, and the safeguard logical causation requirement, crime limits would only produce an unnecessarily restrictive element that would bar merited claims. What is more, Chrystul's acceptance of a plea deal does not shake the solid ground of the affirmative defense. Chrystul was able to *raise* the affirmative defense, as all survivors should be able to as long as they meet the statutory requirements, and this is true for all criminal offenses. Altogether, even though the logical causation requirement likely results in a broader application than stricter requirements, the procedural safeguard ensures a sufficient bar that is effective and not subject to potential abuse.

III. THE PITFALLS OF OTHER APPROACHES TO HUMAN-TRAFFICKING AFFIRMATIVE DEFENSES

States differ in their approaches to human-sex-trafficking affirmative defenses. Many have a stricter approach than Wisconsin. For example, Iowa has a highly narrow approach.¹⁶⁹ At the other end of the spectrum, Oklahoma's statute is extremely expansive in a way that causes more harm than good to victims.¹⁷⁰ Considering the consequences of both extremes, Wisconsin's balanced approach to the human trafficking defense avoids pitfalls that plague these other approaches, and it is the most effective because of its potential and flexibility. Wisconsin's approach is Goldilocks's ideal porridge: It does not exclude any meritorious claims but still ensures that the claims satisfy the logical

165. *Id.* at 4–7.

166. *See* Contrera, *supra* note 51.

167. Simkhada, Teijlingen, Sharma, Bissell, Poobalan & Wasti, *supra* note 38, at 137, 145; *see also* Huh, Baek, Kwon, Jeong & Chae, *supra* note 37, at 448–49.

168. *See* Rhodes & Dietz, *supra* note 35, at 19; Levine, *supra* note 31, at 2–3.

169. *See* IOWA CODE § 710A.3 (2025).

170. *See* OKLA. STAT. tit. 21, § 748 (2024).

causation requirement.¹⁷¹ As a result, Wisconsin’s approach is flexible, balanced, and not at risk for abuse.

A. Overly Restrictive Affirmative Defense Policies—Iowa’s Law

Iowa’s affirmative defense is unnecessarily restrictive because it requires too many legal hurdles for victims and restricts the applicable crimes to a point where no protection is provided to victims. The Iowa affirmative defense only protects against minimal crimes, such as giving an invalid driver’s license to an officer and prostitution.¹⁷² The short list of crimes functions as a hindrance to human trafficking victims and results in little to no protection. The likelihood of victims committing crimes *beyond* prostitution is undeniable.¹⁷³ Therefore, such a narrow defense provides only narrow protection. In turn, victims are still being forced to commit crimes as a part of their trafficking experience and have almost no legal recourse in states like Iowa.

Secondly, the Wisconsin and Iowa affirmative defenses might appear similar in their statutory language, but any comparison would be inadequate without looking at how they function.¹⁷⁴ The two statutes produce drastically different results. Iowa’s statute states that the affirmative defense is available if the criminal offense “directly resulted from the defendant’s status as a victim” under the Iowa criminal human trafficking statutes.¹⁷⁵ As explained, in Wisconsin, the victim must only show a direct result, or a logical causal connection between the crime and trafficking.¹⁷⁶ Iowa’s “directly resulted from” is too stringent of a requirement. Such a stringent causation requirement, even if applied to any crime, is unnecessarily burdensome for a traumatized human trafficking victim.¹⁷⁷ Therefore, even though two of the three words look quite similar, they function in vastly different ways. Iowa’s affirmative defense burdens human trafficking victims, while Wisconsin’s provides broad, flexible, and productive protection to victims.

However, Iowa’s affirmative defense has seen positive legislative change. Previously, for the defense to apply, the victim must have experienced human trafficking as a serious physical injury or threat

171. See *State v. Kizer*, 2022 WI 58, ¶ 17, 976 N.W.2d 356, 363; see also WIS. STAT. § 939.46(1m) (2023–24).

172. See IOWA CODE § 710A.3 (2025).

173. See NAT’L SURVIVOR NETWORK, *supra* note 18, at 3–5; POLARIS, IN HARM’S WAY, *supra* note 19, at 29–42.

174. Compare IOWA CODE § 710A.3 (2025), with WIS. STAT. § 939.46(1m) (2023–24).

175. IOWA CODE § 710A.3 (2025).

176. WIS. STAT. § 939.46(1m) (2023–24).

177. See *State v. Kizer*, 2022 WI 58, ¶¶ 15–17, 976 N.W.2d 356, 362–63.

thereof.¹⁷⁸ In 2021, the Iowa Legislature amended the affirmative defense to include that the “violation directly resulted from the defendant’s status as a victim of *any human trafficking* crime under chapter 710A.”¹⁷⁹ Iowa’s legislative change aligns with public policy: It is well-understood that many victims are not threatened with physical injury, but that does not mean they are any less victimized.¹⁸⁰ An affirmative defense statute should be drafted with a completely independent set of requirements or work alongside the criminal statute in a way that does not negatively affect victims in this way. For example, trafficking in Wisconsin can take many forms—such as “threatening to cause financial harm” or “threatening to control any individual’s access to an addictive controlled substance.”¹⁸¹ Thus, legislatures must not exclude victims by unnecessarily restricting both the affirmative defense and human trafficking statutes. Altogether, Iowa’s human-trafficking affirmative defense is flawed because it applies to a limited number of minor offenses, and the direct causation element is difficult to attain due to the nature of the criminal sex trafficking statute.

An illustrative example of the Iowa affirmative defense’s flaws is the story of Pieper Lewis, who was fifteen years old when she stabbed her trafficker more than thirty times.¹⁸² Pieper was a runaway who, having escaped her abusive mother, was staying in apartment hallways when her twenty-eight-year-old trafficker took her in.¹⁸³ Pieper’s trafficker forced her to have sex with him and other men; some forced encounters were at knifepoint.¹⁸⁴ After one of the sexual assaults, Pieper stabbed her “john” with a knife on the bedside table.¹⁸⁵ Pieper was initially charged with first-degree murder.¹⁸⁶ Pieper’s history of abuse was not disputed. Still, she was unable to utilize an affirmative defense because the prosecution argued she was not in imminent danger, and the

178. See IOWA CODE § 710A.3 (2020).

179. See IOWA CODE § 710A.3 (2025) (emphasis added).

180. See OFF. OF ATT’Y GEN., *supra* note 11, at 6–7.

181. WIS. STAT. § 940.302(2)(a)2.b., 2.i. (2023–24).

182. *An Iowa Teenager Who Killed Her Accused Rapist Is Sentenced and Ordered To Pay \$150K*, NPR (Sept. 14, 2022, 8:39 AM) [hereinafter *Iowa Teenager*], <https://www.npr.org/2022/09/14/1122904939/iowa-teenager-pieper-lewis-killed-accused-rapist-ordered-pay-150000>.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

defense did not apply to the violent crime.¹⁸⁷ Instead, Pieper accepted a plea of involuntary manslaughter and willful injury and was placed on probation for five years.¹⁸⁸

Pieper exemplifies exactly the vulnerable population that human traffickers exploit, and in Iowa, she could not use the affirmative defense. However, in Wisconsin, she likely would have been able to show some evidence of the elements in the human-trafficking affirmative defense.¹⁸⁹ For example, Pieper would not have been barred because there is no crime limitation.¹⁹⁰ Therefore, the offense itself would be irrelevant. Most importantly, Pieper would have been able to successfully show that the stabbing was a direct result of her trafficking through *Kizer*'s logical causation requirement.¹⁹¹ Pieper's trafficking experience was undisputed. She was a minor being exploited by an adult man, pimped out to other adult men, and acted out in violence toward one of the men who assaulted her as a result.¹⁹² Her actions were not caused in significant part by anything but her victimization. Therefore, under the more suitable Wisconsin standard, Pieper would, at the very least, have been able to present the complete affirmative defense to a jury.

Pieper's story is an example of how Iowa's more restrictive approach neither ensures accountability nor prevents the abuse of the affirmative defense. Iowa's approach is undoubtedly more restrictive than Wisconsin's.¹⁹³ However, the consequence is that victims who commit violent crimes, such as Pieper Lewis and Chrystul Kizer, are categorically barred from presenting the affirmative defense in Iowa.¹⁹⁴ Moreover, even victims charged with less severe crimes than Pieper and Chrystul are still barred from bringing any affirmative defense, even though both could meet Wisconsin's logical causation requirement. For example, a trafficking victim whose trafficker forces her to drive at gunpoint to and from a robbery is barred in Iowa because the charged

187. *Id.* See IOWA CODE § 710A.3 (2020). Note that given Iowa's legislative change to the affirmative defense, Pieper would not have been required to show this element if the event happened today.

188. *Iowa Teenager*, *supra* note 182. She was also ordered to pay \$150,000 to the John's family. Restitution was mandated by law. The judge took issue with Pieper's "poor choices" that led to the murder. *Id.*

189. See WIS. STAT. § 939.46(1m) (2023–24).

190. See *supra* Section II.B.1.

191. See § 939.46(1m); *State v. Kizer*, 2022 WI 58, ¶ 15, 976 N.W.2d 356, 362.

192. *Iowa Teenager*, *supra* note 182.

193. Compare IOWA CODE § 710A.3 (2025), with WIS. STAT. § 939.46(1m) (2023–24).

194. See IOWA CODE § 710A.3 (2025) (excluding Pieper and Chrystul's claims because of the limited applicable offenses which do not include any sort of homicide).

robbery does not fit in Iowa's small box of allowed crimes.¹⁹⁵ And a woman whose trafficker coerced her into an addiction to narcotics is equally barred for the same reason. These examples vary significantly in severity, but the connection between the trafficking and the offense itself is consistent. That being the case, Wisconsin's logical causation requirement is a more accountable and balanced approach. The requirement is flexible enough not to bar any of these examples on the sole basis of their charged offense.¹⁹⁶ Rather, it ensures the consideration of the nuanced experiences that stem from victimization without compromising accountability. Therefore, the logical causation requirement establishes a meaningful link, provides accountability, and is more advantageous than a restrictive crime-limited approach.

*B. Overly Broad Approaches Can Undermine Affirmative
Defenses—Oklahoma's Law*

While Iowa's affirmative defense for human trafficking victims is overly restrictive, Oklahoma's largely broad affirmative defense is equally problematic. Comparatively, Wisconsin's balanced, comprehensive, and productive approach is the most effective framework. Oklahoma's affirmative defense statute is unnecessarily ambiguous and raises concerns regarding floods of meritless litigation. For one, there is no causation requirement in Oklahoma's affirmative defense.¹⁹⁷ Rather than a causal requirement, the victim must only prove a temporal requirement, showing that they were a human trafficking victim when they committed the offense.¹⁹⁸ This sounds similar to Wisconsin's logical causation requirement, but it functions vastly different and creates unique problems. Oklahoma's statutory language requires the victim to show that they were, in fact, being trafficked and had not "escaped 'the life'" when the crime was committed.¹⁹⁹ In reality, though, the timing is irrelevant to the functionality of a human-trafficking affirmative defense because of the complexity and long-term duration of trauma.²⁰⁰ Trauma has long-term effects on decision-making and results in behaviors, such as substance use, which can lead to committing crimes even after the trafficking itself has ended.²⁰¹ Therefore, the time of the

195. *See id.*

196. *Kizer*, 2022 WI 58, ¶ 15, 976 N.W.2d at 362 (ensuring rather than there is a logical causal relationship).

197. OKLA. STAT. tit. 21, § 748(D) (2024); Hilborn, *supra* note 78, at 471.

198. *See* § 748(D); Hilborn, *supra* note 78, at 471–72.

199. Hilborn, *supra* note 78, at 471; *see also* § 748(D).

200. *See* AM. PSYCH. ASS'N, *supra* note 22, at 3.

201. *See supra* Section I.B.

offense and whether the victim is suffering at that exact time should not be a critical element in being able to raise the affirmative defense.

Conversely, Wisconsin's logical causation requirement is more suitable because it creates a bar to ensure meritorious applications of the defense without relying on a purely contemporaneous relationship. Further, Wisconsin's lack of a time limit does not make its standard any less worthwhile. Courts are experienced in adjudicating unreasonable claims. In this sense, the logical causation requirement, which demands a meaningful relationship between the trafficking and criminal offense, acts as a safeguard to the temporal issue exemplified in the Oklahoma statute. What is more, courts still retain the power to determine the defense is unavailable in the event of an extreme temporal disparity.²⁰²

Oklahoma's exceedingly broad affirmative defense creates a counterintuitive exclusion of meritorious claims and minimizes the trafficking experience. The defense increases the likelihood of a flood of meritless litigation because the statutory requirements of the affirmative defense are so few, particularly due to its lack of a causation requirement.²⁰³ On the flip side, the contemporaneous requirement and omission of a causation requirement pigeonhole trafficking victims. Essentially, the defense is too broad for *non*-trafficking victims and too narrow for trafficking victims. Without a causation requirement, persons who are *not* trafficking victims can much more easily try to raise the defense. Oklahoma's omission of a causation element can potentially minimize the human trafficking experience and, as a result, minimize human sex trafficking victims. Given the sensitive nature of sex trafficking victims, the possible abuse of the affirmative defense would result in undermining the respect sex trafficking victims have long worked to gain.²⁰⁴ Where non-victims could attempt to use the defense as a get-out-of-jail-free card, victims are at risk of their claims and experiences losing credibility. Quantity of claims raised under the affirmative defense does not equal quality, and the Oklahoma statute wrongly prioritizes the former at the latter's expense.

As demonstrated, an affirmative defense can be *too* broad and subjective. Unlike Wisconsin's approach, Oklahoma puts subjectivity and interpretation in the wrong places. The subjectivity here should focus

202. *State v. Nollie*, 2002 WI 4, ¶¶ 20–27, 638 N.W.2d 280, 285–86 (affirming the trial court's decision to not allow a defendant to invoke the privilege of self-defense because he did not show that he faced a threat was "imminent and specific"). Therefore, if a court determined that an extreme temporal disparity undermined the logical causal connection, it could not allow the defendant to raise the affirmative defense.

203. *See* § 748(D).

204. Such respect is demonstrated through the continued efforts of law enforcement agencies and advocacy agencies bringing awareness and education. *See generally* OFF. OF ATT'Y GEN., *supra* note 11; Buchbinder, *supra* note 10.

on how the trafficking *experience* informs the crime and not just whether they were a trafficking victim at the time of the crime. The affirmative defense should broadly include trafficking victims who can *show* a meaningful relationship between their trafficking and charged criminal offense.²⁰⁵ This is not the same as showing that one is a victim. The difference is that Oklahoma's subjectivity opens the door to both frivolous uses of the defense and abuse of the defense for uses not intended by the legislature, *i.e.*, a get-out-of-jail-free card. Wisconsin's logical causation requirement strikes the better balance between accommodating a wide swath of claims while simultaneously sifting out meritless ones.

CONCLUSION

Wisconsin's approach to the human-trafficking affirmative defense—which requires a logical, causal connection between the charged crime and victimization—is the correct standard and should be adopted by state legislatures. Human sex trafficking is a profitable business that will not be eradicated without drastic changes on the ground, including by law enforcement and social justice agencies.²⁰⁶ While this regrettably remains unlikely to happen anytime soon, state courts and legislatures have the capacity to aid victims through the construction and adjudication of affirmative defenses to human trafficking. Wisconsin's standard is ideal. It strikes a balanced approach that considers the actualities of trafficking victimization, demonstrating a realistic trauma-informed approach that supports human sex trafficking victims.²⁰⁷ Moreover, the Wisconsin standard has sufficient safeguards to prevent it from becoming a get-out-of-jail-free card by ensuring there is a meaningful relationship between the trafficking experience and the charged crime.²⁰⁸ This meaningful relationship is an inclusive bar, which is easy to reach for victims but not easy to abuse by others. Rather, the victim-tailored approach works in tandem with the necessary facts required to establish a legitimate claim. And as demonstrated, state courts can adopt Wisconsin's approach to affirmative defenses they already have in place. Kansas is a prime example where *Kizer*'s statutory interpretation using the logical, causal connection could be applied to an existing statute.²⁰⁹ State courts, therefore, will experience few impediments to

205. See *State v. Kizer*, 2022 WI 58, ¶¶ 19–20, 976 N.W.2d 356, 364.

206. See OFF. OF ATT'Y GEN., *supra* note 11, at 1.

207. See *id.* (identifying that law enforcement officials should treat victims based on their unique experience).

208. See *Kizer*, 2022 WI 58, ¶¶ 19–20, 976 N.W.2d at 364.

209. See KAN. STAT. ANN. § 21-6419(c) (2024).

adopting a similar approach as the *Kizer* court, even where no new legislation rewriting the affirmative defense statute exists.

Further, the Wisconsin Legislature deliberately—and correctly—excluded a crime limitation for the human-trafficking affirmative defense. Similar to the logical causation element, the absence of a crime limitation also considers the traumatic experience of trafficking victimization. A restrictive affirmative defense that only applies to low-level crimes does no service for victims and, in turn, is effectively useless for its true purpose of responding to trafficking victims' extreme traumatization. The bar of certain crimes likely excludes the most harmed victims, directly antithetical to the nationwide legislative intent to protect human sex trafficking victims. Therefore, Wisconsin's approach to the human-trafficking affirmative defense, which includes the logical causation requirement and is available for any crime, is the correct approach and should be adopted by state legislatures.

Perhaps most importantly, Wisconsin's approach to the application of the human-trafficking affirmative defense protects every victim who has committed a valid crime and simultaneously avoids the continued victimization of such a vulnerable population. No victim deserves to be left behind if they can meet the elements of the defense consciously drafted to protect those who can show a meaningful relationship between their charged offense and trafficking victimization.

The likelihood that human sex trafficking will disappear from society is concerningly low. However, courts' and legislatures' hands are not tied in their ability to protect victims. Adopting Wisconsin's balanced approach offers a legitimate way for sex trafficking victims to defend against prosecution for crimes committed during their victimization. At the same time, the Wisconsin approach safeguards abuse of the defense and bars illegitimate claims. The criminal justice system should not revictimize victims. Adopting Wisconsin's approach is a meaningful step to protect human sex trafficking victims.