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STATE GOVERNMENTS

# Human Trafficking: Preventing, Prosecuting and Protecting

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July 2009

“Neither slavery nor involuntary servitude...shall exist within the United States, or any place subject to their jurisdiction.”

~ Thirteenth Amendment of the U.S. Constitution

## Introduction

Every year, the global \$10 billion dollar human trafficking industry deprives individuals of their human rights and freedoms, increases global health risks and fuels the growth of organized crime. Centering around the most vulnerable, exploited and dehumanized people in the world, human trafficking affects women and children, as well as men and boys, and is carried out for a variety of purposes, most notably forced labor and sexual servitude. It is a problem that has endured for centuries, despite modern efforts by countries throughout the world to thwart the heinous practice. While the United States has, in many ways, been an international leader in this regard, the problem persists. Individual states are now taking up the responsibility of assessing how this practice affects people who live within their own borders and what they can do to further combat this problem.

Many questions revolve around the topic of human trafficking. How widespread is it? Who are the victims? Is the problem getting better or worse? State policymakers may wonder if federal regulations are enough to stifle this problem and, if not, what more can be done at the state level. Such questions are valid but not without poignant, efficacious answers. However, like any good policy decision, “what more can be done” must be evidence-based. So the difficulty in attempting to answer this final question is rooted in the

perplexities that exist in answering the first three. Although evidence for the scope and magnitude of this problem traditionally has been sparse, the volume of knowledge regarding who, how many, for what means, and by whom people are trafficked within or across borders has grown considerably in recent years. In order to know how to address this problem at a global, national and state level, the severity and significance of the problem must first be assessed.

## The Problem

Human trafficking is defined by the United Nations (UN) as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the 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.”<sup>1</sup> Human trafficking is now considered to be the second largest (only behind the transfer of arms) and fastest growing illegal activity in the world.<sup>2</sup> According to the Administration for Children and Families, a division of the U.S. Department of Health and Human Services, there are approximately 600,000 to 800,000 victims trafficked across international borders every

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# SERVING THE SOUTH

year.<sup>3</sup> However, this does not include people trafficked within their own borders. According to the International Labour Organization (ILO), the agency within the UN charged with addressing labor standards, employment and social protection issues throughout the world, approximately 12.3 million people worldwide are being trafficked for the purposes of forced labor or sexual exploitation at any given time.<sup>4</sup> Other estimates range from as few as 4 million to as many as 27 million individuals. Most victims are from poverty-stricken areas of Africa, Asia and Latin America, whose vulnerability is exploited for profit. However, more than 350,000 women and men are trafficked in industrialized countries every year as well.<sup>5</sup> Although the practice of importing slaves into the United States was officially outlawed more than two centuries ago, the clandestine practice of trafficking human beings for the purposes of enslavement, either for labor and sexual services, has persisted on American soil.

The most common reason for trafficking an individual is for the purpose of sexual exploitation. According to the UN's *Global Report on Trafficking in Persons*, which is based on data collected from 155 countries regarding current efforts to assess the extent of trafficking practices, 79 percent of all trafficking victims are forced into the sex industry.<sup>6</sup> The second commonest form of human trafficking is for the purposes of forced labor, making up 18 percent of total people trafficked throughout the world.<sup>7</sup> However, many experts contend that this number may be drastically underestimated, due mainly to statistical biases. Until recently, most countries did not include trafficking for the purposes of forced labor in their criminal statutes. In some countries today, under criminal law, there is only the crime of trafficking for the purpose of sexual exploitation, i.e., trafficking for the purpose of forced labor is not prosecutable as a trafficking crime.

Second, it oftentimes is the case that law enforcement personnel, as well as the general public, view trafficking in persons only in the context of sexual exploitation. In other words, the perception is that trafficking for forced labor is concomitant to trafficking for sexual exploitation. Trafficking for forced labor, when detected, would not be treated as a trafficking charge, even if such a provision existed in a country or state's criminal statutes.

Finally, cases involving trafficking for forced labor are more difficult to discover. Quite literally, trafficking for forced labor often is overlooked. Criminal enter-

prises that involve sexual services, such as prostitution, inevitably entail a certain degree of visibility, because these activities take place on streets, in bars, or in other public places. Forced labor, conversely, involves victims that often work in hidden locations such as agricultural fields in rural areas, or closed environments like factories, warehouses, or private homes that are less visible to the general public. In many ways, the more insidious nature of trafficking for forced labor is cause for greater concern on the part of lawmakers, simply because the extent to which it affects workers, as well as the business environment in which these practices occur, is for the most part unknown.

Although the fiscal affects of human trafficking are not fully known, the practice undoubtedly has economic repercussions in the community. A recent case in Oklahoma illustrates the economic effects human trafficking can have. In 2001, a Tulsa-based parts manufacturer recruited 50 workers from India, promising high-paying jobs. However, when the workers arrived, their passports and other identifying documents were confiscated. They were forced to live in the factory, working between 12 and 16 hours a day, six days a week, for only a few dollars a day. The following year, many of the workers escaped and alerted authorities to the situation. The workers, along with the U.S. Equal Employment Opportunity Commission, successfully pursued civil action against the company. The district court that heard the case ordered the company to pay \$1.24 million damages, holding them liable for subjecting the workers to fraud and deceit, sub-standard living conditions, false imprisonment, supervision by an armed guard, phone monitoring, food rationing, degrading job assignments, ethnic slurs, intimidation and non-payment of wages. The Tulsa manufacturing plant closed down.

Not only are there ethical and moral concerns surrounding such cases, but economic ones as well. During this time of particularly high unemployment rates, these positions should be filled by workers who are properly compensated for their labor. Every trafficking victim represents a service that is performed without compensation, monetary or otherwise. Likewise, loss of productivity—contributions that victims would otherwise be making to society—is incalculable.

Poverty and the lack of economic opportunities are the most common circumstances that contribute to the practice of human trafficking, according to United States Agency for International Development

(USAID), an organization that has worked tirelessly to provide educational information about trafficking throughout the world, as well as establish programs that provide services for victims of human trafficking. However, it is not only persons from other countries who fall prey to these types of exploitative practices. Thousands of women and children within the United States are in danger as well. Although it is difficult to discern the degree to which trafficking affects children within the United States, a 2001 study at the University of Pennsylvania estimated that as many as 300,000 children in the United States are at risk of becoming victims of human trafficking at any given time.<sup>8</sup>

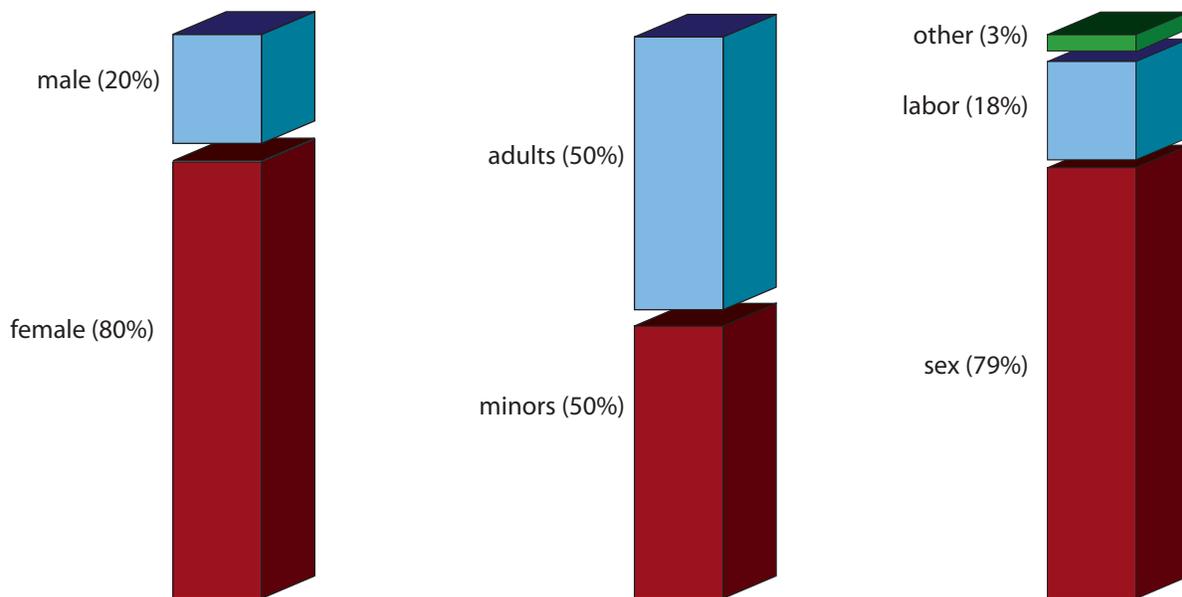
## The Victims

**H**uman trafficking generally involves people who have lost control of their lives. Through the commoditization of people, victims are merely pieces of property to their handlers. Statistically, the majority of these victims are women and children. Of the 600,000 to 800,000 persons who are trafficked across international borders every year, approximately 80 percent are women or girls.<sup>9</sup> Even though this is the case, very few countries—including ones with basic anti-human trafficking laws—have specific laws that address the gender or age of the victim.

The majority of transnational victims are females trafficked for the purpose of sexual exploitation. Again, this does not include the millions of male and female victims around the world who are trafficked within their own national borders, the majority of whom are trafficked for forced or bonded labor. Up to 50 percent of all persons trafficked across international borders are children. They are exploited for sex as prostitutes, for child pornography, and as child brides in many countries. Also, the demand for sex with virgins in some regions means that younger children are being targeted for prostitution. According to the ILO, at any given time approximately 166 million children ages five to 14 are exploited as child laborers, and approximately 74 million participate in hazardous work that can have adverse effects on the child's health, safety or moral development.<sup>10</sup>

Environments that promote severe gender inequalities are primary locations for human trafficking. Cultures that do little or nothing to dissuade gender-based violence exacerbate the potential for vulnerability and control of victims. The commoditization of women and girls can create great psychological and emotional harm that can better enable traffickers who wish to lure victims into servitude.<sup>11</sup> The issue of gender can be damaging for males as well. A recent article in The New York Times explored the troubles that China cur-

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rently is facing regarding the trafficking of young boys within the country. These boys are purchased domestically by families who are seeking a male heir. The demand for a male beneficiary is particularly strong in rural areas in the southern part of the country, the article points out, where there is a strong tradition of favoritism for boys over girls. Since it is customary for a married woman to join her husband's family, couples without sons fear they will be left to take care of themselves in old age. This, in combination with the country's strict family planning policies, has enabled the business of stealing and selling children to become a lucrative pursuit.<sup>12</sup>

Most people trafficked into the United States are those living in impoverished environments throughout the world. Many of these individuals are deceived about the job opportunities available to them in the United States and coerced into accepting bogus arrangements regarding employment and living conditions. Once they are transported into the country, these individuals are forced into the sex industry, used as domestic workers in private homes or put to labor in sweatshops or the agricultural industry. Many of these individuals do not speak English and are unfamiliar with the various labor laws in the United States, increasing the potential for manipulation and abuse. Estimates on the number of forced laborers working in the United States at any given time range from 10,000 to 17,000. Excepting "forced labor" for sexual purposes, The Human Rights Center at the University of California, Berkeley, estimates that approximately 59 percent of these individuals are exploited for the purposes of domestic servitude; 22 percent in agricultural employment; 11 percent in sweatshops and factories; and 8 percent in hotel jobs.<sup>13</sup>

The dangers associated with trafficking are not limited to emotional ones. The threat of contracting HIV or other sexually transmitted diseases also is among the potential repercussions of this practice. Although it is difficult to estimate to what extent trafficking contributes to the global spread of HIV and AIDS, and although in many parts of the world the link between these two scourges is denied, the potential impact is certainly reason for concern.

## The Traffickers

Since most trafficking is carried out at a national or regional level, statistically, traffickers typically are citizens of the country in which they are arrested. Therefore, the nationality of the perpetrators more often than not is the same as the victims. This information also suggests that local criminal networks play a key role in transporting and managing victims. It often is the case that local criminals attempt to win the trust of victims or threaten retaliation against family members if victims resist, due to the fact that they are better situated to carry out such threats and methods. Likewise, the commonest destination for victims is their own country. There are exceptions. Depending on the region of the world, many countries are destinations for a wide variety of places from which people are being trafficked. Eastern Europe is the destination for the widest range of origins, while victims from Asia are trafficked to the greatest variety of destinations. Also, in high-income destination countries such as the United States, offenders are more likely to be foreign, meaning that the majority of victims are trafficked into these countries by outsiders. In addition, it oftentimes is the case that diaspora populations from source regions are used as a conduit for transporting victims into the countries where they are exploited. In other words, victims are implicated in the processes and then used to carry out further trafficking.<sup>14</sup>

In most circumstances throughout the world, men are the major contributors to criminal activity, particularly through involvement in organized crime. Men comprise approximately 90 percent of the world's prison population and commit a disproportionate number of serious, violent crimes. For this reason, it often is assumed that the majority of violence and threats made against victims of human trafficking are perpetrated by men. This is not the case. Although percentages are not entirely exact, it is suspected that women, not men, are responsible for the majority of trafficking cases involving sexual exploitation. In approximately one-third of the countries that provided information on gender, women made up the largest percentage of traffickers. In many regions, including Central Asia and Eastern Europe, women trafficking women is not an uncommon practice. In Europe, for instance, women make up a larger percentage of those convicted of human trafficking offences than most other crimes. Even former victims become traffickers, for a variety of psychological, financial and coercive reasons.

Moreover, it is not only individuals, or a group of individual actors, who carry out these crimes. Corporations, other private agencies, or even governments themselves have been implicated in trafficking of human beings. This is particularly common in cases involving trafficking for forced labor. According to a report issued by the ILO, of the estimated 12.3 million trafficking cases carried out worldwide, approximately 9.8 million (80 percent) are by private agencies, and as many as 2.5 million (20 percent) are conducted by state, rebel or military groups.<sup>15</sup>

All these elements point to the fact that human trafficking is no everyday crime. It is perpetrated by unlikely offenders in unlikely parts of the world, and affects people of all walks of life. This complexity makes addressing the practices and circumstances associated with human trafficking that much more daunting.

## The Solution

There is a global movement to properly address the serious problem of human trafficking, particularly through the implementation of proper legal instruments that apprehend and prosecute offenders. To some extent, these efforts have been a success. For instance, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons* was passed in December 2003. Since that time, according to the UN, the number of countries that have structured their laws to coincide with the recommendations made by the Protocol has more than doubled.

The United States Congress has enacted three major pieces of legislation that have profoundly affected trafficking crimes within our borders and assisted in combating human trafficking and slavery in the international community: the Trafficking Victims Protection Act of 2000 (TVPA), the Trafficking Victims Protection Reauthorization Act of 2005, and the Trafficking Victims Protection Reauthorization Act of 2008. The Trafficking Victims Protection Act, which was passed by the U.S. Congress and enacted in October 2000, recognized that human trafficking was the fastest growing source of income for organized crime. It sought to prevent human trafficking overseas; protect victims of trafficking in the United States, regardless of their citizenship status, and help them rebuild their lives through federal and state support; and prosecute traffickers through strict federal criminal penalties. It also established the President's Interagency Task Force to Monitor and Combat Trafficking in Persons

to assist in the coordination of anti-trafficking efforts. Prior to the passage of this Act, there were no comprehensive federal laws to protect potential victims of human trafficking and prosecute those who perpetrated such crimes. The subsequent reauthorizations of the Act went further to protect victims and ensure that their employers were properly punished.

It often is the perception that state anti-trafficking legislation is unnecessary, because such crimes can be prosecuted under federal laws or existing state criminal codes, or because human trafficking is not a pervasive enough problem to warrant such action. However, there is a great need for state anti-trafficking legislation for a variety of reasons. First, federal resources alone are not sufficient for addressing the volume of cases that exist in the United States. The prevalence of trafficking alone justifies additional legislation at the state level. Second, it can be argued that existing federal criminal laws do not adequately address all forms of trafficking. They also do not sufficiently protect individual victims of human trafficking, nor do they offer proper services for these victims. The victim-centered paradigm found in many state laws is vitally important, since it supplements existing laws that may address related crimes that lack such provisions. These laws also increase public awareness and training, which often can lead to greater levels of victim identification, further investigations, and increase the number of prosecutions for these crimes. Also, such laws provide a succinct, centralized standard for guiding local prosecutors in their indictments against offenders in their state.

It has been suggested that state human trafficking laws can adversely affect immigrants, or that illegal immigrants could use such laws to remain in the country. Given concerns surrounding illegal immigration and public safety in the United States, these are legitimate concerns. However, if human trafficking laws are properly written and implemented to address these very specific activities, while adequately defining what constitutes a victim of such crimes, there should be little room for manipulation or insidious distortion of such statutes.

Although state laws can more accurately and efficaciously address human trafficking crimes, this does not mean that states should not make use of existing federal resources. States should work with the federal government in developing mechanisms to combat trafficking. The U.S. Department of Justice (DOJ) an-

nounced in September 2008 that almost \$10 million in additional funding to supplement existing task forces and to expand the number of task forces working with community-based organizations to combat human trafficking would be available to states. Much of that money was allocated to task forces in Florida and North Carolina, as well as other victims' services organizations in a variety of SLC states. Since 2002, the DOJ has partnered with state and local law enforcement, as well as victim organizations, to convict 342 traffickers and assist 1,300 victims from 80 countries. In 2007 alone, the DOJ opened 154 new trafficking investigations.

The U.S. Department of State is required by law to submit a report, *Trafficking in Persons Report (TIP)*, each year to the U.S. Congress regarding the efforts of foreign governments to eliminate the practice of human trafficking. The intent of this report is to raise global awareness about the issue and to emphasize current efforts being made by the international community. Also, it has the effect of encouraging foreign governments to continue the fight against this problem. The report emphasizes the "three P's"—prosecution, protection and prevention. Also, a victim-centered approach requires the DOS to address the "three R's"—rescue, rehabilitation and reintegration.

States have taken different approaches to how the problem of human trafficking should be addressed. Laws typically do one of four things: create a task force or research commission to study trafficking within the state, to disseminate and develop a state plan to combat trafficking, and suggest criminal penalties; revise existing state criminal code to include human trafficking; pass comprehensive legislation that allows the state to prosecute offenders under criminal code revisions, initiate preventive programs and measures, or protect victims of the crime; and revise a previously passed law with additional legislation to fill in the gaps or add provisions.

According to the most recent information, 14 of the 16 SLC states have enacted legislation that addresses human trafficking, and 13 of these states have statutes that specifically criminalize human trafficking.<sup>16</sup> While the statutes themselves vary in language and degree of punitive measures, all make it a felony to engage in human trafficking both for purpose of forced labor and for sexual purposes, such as prostitution and pornography.<sup>17</sup> Texas was the first state in the region to pass

such a law, which went into effect in 2003, followed by Florida and Missouri in 2004.

In addition to criminalizing the general practice of human trafficking, half of the SLC states (Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, and Texas) have enhanced penalties for trafficking crimes perpetrated against children. For instance, Louisiana and Mississippi have laws that sentence traffickers of children from 20 to 25 years in prison. Florida allows a sentence of up to 30 years for such offenses and has loosened the standard of proving "force, fraud, or coercion" for an adult trafficking conviction, if the victim is a minor. The reasoning behind this elimination is that any behavior that produces a situation where a child is exploited should be punishable under the law; whether or not the behavior is perceived as coercive or using force or fraud should be irrelevant. Also, Texas allows for an imprisonment of up to 99 years when the victim is under the age of 14 and if the "offense or commission of the offense results in [the] death of [the] person trafficked."

Several SLC states have begun requiring services be provided to victims of human trafficking. Florida, for instance, requires its Department of Children and Family Services to provide trafficked persons the same state and local dispensations that are afforded to refugees, such as medical and social services. The provision specifically includes those who are not citizens of Florida but who have a visa application under review. The trafficking victim is required to provide a sworn statement, as well as one additional piece of evidence that supports this statement, such as police or court records, documentation from a professional agency, physical evidence, or a statement from another individual.

Oklahoma passed a law in 2008 that provides mandatory restitution for victims, and allows victims to file civil action suits against perpetrators for actual and punitive damages. The Oklahoma law also provides guidelines for victims' rights and services, which include appropriate shelter, access to state legal assistance, translation and other language services, access to information regarding the full scope of their rights, as well as proper protection from their traffickers. Finally, the Oklahoma law guarantees that trafficked persons will not be jailed or fined for actions carried out while they were engaged in trafficking activities. For instance, a woman who is trafficked into the

United States and forced into prostitution cannot be prosecuted for her actions associated with the trafficking. This is particularly important because it alleviates any fears victims may have about coming forward or fleeing from their traffickers. While difficult to assess how influential this fear is in inhibiting victims from coming forward, it is suspected that this reluctance, along with cultural and linguistic barriers, is quite formidable when it comes to victims fleeing their captors. Tennessee law also allows similar provisions for victims.

At least three SLC states (Kentucky, Tennessee, and Texas) allow stiffer penalties for cases in which victims suffer profound physical injuries associated with the crime. Tennessee law, for instance, increases the penalty for trafficking from a class C felony, which carries a sentence of not less than three or more than 15 years in prison, to a class B felony, which carries an eight to 30-year sentence. In addition, Tennessee allows civil penalties against perpetrators of trafficking. Specifically, juries may assess a fine of no more than \$25,000, unless otherwise provided by statute, against those convicted of trafficking.

Several SLC states also allow corporations to be prosecuted for trafficking crimes perpetrated by employers of the corporation. For instance, Tennessee law states that if an agent of the corporation, acting in an employment capacity on behalf of the corporation, violates human trafficking laws, then the corporation can be sanctioned as participating in the pattern of illegal activity. Also, several states allow stiffer penalties for crimes that involve a large number of victims. For instance, Tennessee law raises the penalty for trafficking from a class C to a class B felony if there are more than 10 victims involved in the crime.

Many SLC states have begun addressing threats against illegal immigrants who are exploited based on their illegal status. In many situations, kidnappers search for children of migrant workers in order to capitalize on the prospect of the worker fearing local authorities, or whose grievances may not be treated with high priority by those authorities. Several states, including Florida, Mississippi, Missouri and North Carolina, specifically address the destruction or misuse of immigration documentation in order to exploit individuals. Also, Virginia has made it a crime to threaten to report illegal immigration status for the purpose of extortion. Many SLC states are considering laws that would mandate

certain places of employment, or places where activities associated with human trafficking transpire, post information regarding state services pertaining to trafficking. Texas, for instance, requires that a “hotel, motel, or similar establishment” that is involved in certain common nuisance suits must provide telephone access to and information regarding referral hotlines for victims of human trafficking. These establishments are required to post in each room information pertaining to human trafficking that contains a working, nationally recognized, toll-free telephone number for victims of human trafficking. A separate statute in Texas requires similar information to be posted on the premises of alcoholic beverage retailers. The information must be displayed in English and Spanish; must state that obtaining forced labor or services is a crime under state law; must display a toll-free human trafficking hotline; and must relay to the reader that he or she may retain anonymity if the number is called.

Various SLC states require international marriage brokers (IMBs)<sup>18</sup> to provide information to foreign recruits. For instance, Texas law ensures that IMBs make information available to recruits regarding the criminal history and marital history of their clients, and pay all costs associated with translating the information into the recruit’s native language. In addition, basic rights information must be provided to recruits in their native language. The IMB will incur criminal penalties if they continue to provide further services to the client or the recruit without providing this information.

Due to the complex nature of the issue, many states have found it advantageous to create task forces for the purpose of assessing the severity of the trafficking problems in the state and to discern how best to address these problems. The states of Maryland and Virginia both have created task forces for these purposes. The task forces also work to identify the best ways for effectively implementing existing state plans for preventing human trafficking and prosecuting perpetrators. In addition, the Maryland task force has indicated that it is working to establish programs for educating the public about this issue, noting that ignorance of how pervasive human trafficking is in the United States is, in part, to blame for the lack of action to prevent it. Although Texas has not established a formal task force to address human trafficking, it has installed a similar mechanism to accomplish the same goals. Texas law requires the state attorney general, in

consultation with the state Health and Human Services Commission, to prepare and issue an annual report that outlines the success of existing laws and rules addressing the needs of trafficked person. The report must also assess the effectiveness of the interplay of state programs with federally funded victim service programs, as well as recommend any necessary improvements or modifications to such programs.

Many states have focused on awareness campaigns for businesses as well as the general public. Florida, for instance, requires the state Department of Children and Families to develop awareness programs about human trafficking for state employees and other organizations that conduct business in the state, ensuring that individuals and businesses must be more aware of what products and services might support forced labor or sexual exploitation. Various resources exist for achieving these practices. For instance, the U.S. Department of Labor’s Office of Child Labor, Forced Labor, and Human Trafficking issues regular reports regarding foreign labor trends and how they affect products purchased in the United States.

The chart below illustrates the variety of provisions in each of the 16 SLC states. The chart indicates whether or not there is a basic criminalization statute and if state law specifically addresses forced labor; trafficking for purposes related to sexual services; if there are stiffer penalties for trafficking of children; whether or

not the state has an established task force or similar commission; if state law provides for restitution of victims; and if there are restrictions on IMBs in the state.

The passage of laws, coupled with effective enforcement and implementation, is the most effective means for combating human trafficking, prosecuting traffickers, and protecting victims. The establishment of a public policy through legislation is also an avenue for creating an energized public movement on this particular issue. While it may be difficult to assess the scope of the human trafficking problem in a given state and, correspondingly, create legislation that affectively and thoroughly addresses the problem, it oftentimes is the case that such legislation mobilizes law enforcement and sets up mechanisms for assessing the problem. In other words, delaying legislation until a long-term formally-commissioned study group can assess the extent of the problem is not always necessary or preferable.

There are a variety of policy resources for state legislators who seek to implement legislation that addresses the problem of human trafficking. The U.S. Department of Justice has produced model legislation for states to follow, which is based on federal experience investigating and litigating these cases. It provides precise definitions for seemingly straightforward terms like “blackmail” and “trafficking victim,” to more nuanced terms like “forced labor or services,”

## SOUTHERN STATE HUMAN TRAFFICKING LEGISLATION

State	Criminalization	Forced Labor	Sexual Activities	Minors	Task Force	Restitution	IMO/IMB Laws
Alabama							
Arkansas	√	√	√				
Florida	√	√	√	√	√	√	
Georgia	√	√	√	√			
Kentucky	√	√	√	√			
Louisiana	√	√	√	√			
Maryland	√	√	√	√	√	√	
Mississippi	√	√	√	√			
Missouri	√	√	√	√		√	√
North Carolina	√	√	√	√		√	
Oklahoma	√	√	√	√		√	
South Carolina	√	√					
Tennessee	√	√	√			√	
Texas	√	√	√	√			√
Virginia					√		
West Virginia							

and “commercial sexual activity.” It details criminal provisions, including suggested sentencing for involuntary servitude and sexual servitude of a minor, as well as sentencing considerations for statutory maximums and determinations for crimes that involve larger numbers of victims and servitude for extensive periods of time. The model legislation also provides suggested language regarding laws that provide restitution and protection needs of victims. The legislation is based partly on language derived from the TVPA, which provides tools for combating the trafficking of persons worldwide as well as domestically.

There also are a number of groups that can assist state legislators in developing laws to combat human trafficking. Local advocacy groups, the media, victims, as well as non-governmental organizations (NGOs) and victim service providers can be very helpful. The Polaris Project, for instance, one of the largest anti-trafficking organizations in the United States that operates at international, national and local levels, produced comprehensive model state legislation in 2006. It focuses on exhaustively addressing the “three Ps” of combating trafficking: prosecution, prevention and protection of victims, and draws on language from TVPA as well as the Prosecutorial Remedies and other Tools to End the Exploitation of Children Today (PROTECT) Act, passed by the U.S. Congress in 2003, a multipurpose law intended to prevent child abuse in the United States. The model law provides definitions, outlines criminal provisions, and suggests provisions for victims, such as restitution and immunity from prosecution.

Some common problems with existing state laws regarding human trafficking include: deviations from the federal framework; incomplete definitions of trafficking (some laws define “trafficking” as only involving foreign nationals); requiring “force, fraud, or coercion” for convictions involving sex acts and minors; limiting the definition of “force” to bodily harm; requiring the transportation of victims for conviction; requiring the transportation of victims across state lines; having low penalties that are not commensurate with the severity of the crime; or having non-comprehensive laws that enact only criminal code revisions, without providing protection for victims or for civil restitution.

Properly defining terms is imperative for state laws. As an example, when determining what constitutes trafficking in persons, it is important for states to re-

member that the actual transportation of a person is a secondary concern. In other words, the definition of “trafficking,” and the corresponding criminal provisions associated therewith, should focus on the coercive nature of the service, rather than the mere movement of the victim or the type of underlying service that is being rendered. For instance, in cases of forced labor, it is not the labor itself that is illegal, but the coercion involved that qualifies the crime as trafficking. Whether or not the services provided by the victim are legal is irrelevant. Involuntary servitude, on the other hand, implies that a victim’s liberty has been denied, and service is compelled by the trafficker. This would apply to all persons, regardless of age, type of service, or whether or not the victim had been transported. Also, the person’s nationality or the underlying morality of the service, while important, is not relevant. All persons coerced into service would be protected under this provision.

Similarly, the definition of “financial harm” should differentiate between a debt that has the inadvertent effect of coercion and one that’s intended effect is coercion. For instance, a debt that is the result of a bad bargain that produces stress on the part of the buyer would not necessarily qualify as financial harm for the purpose of trafficking. In other words, the extortionate nature of the potential for financial harm is imperative. Again, the emphasis is placed on the intent of the trafficker, as opposed to mere behavior that may or may not be illegal.

Another example would be defining “services” as activities that are akin to an employment relationship, but are in market sectors outside the traditional definition of “labor.” This would include commercial sexual activity, which already is criminalized in almost every jurisdiction in the United States. Non-sexual forms of “services” can include rings that hold children for street begging or petty theft. “Services” that are sexual in nature but do not involve sex would include explicit performances like exotic dancing. Unlike prostitution, which typically is illegal and involves commercial sexual activity, sexually explicit performances, such as exotic dancing, may be legal, absent any coercion. Nevertheless, these activities can have an impact on victims similar to sexual abuse. (Perhaps due partly to its legality in many parts of the world, including the United States, this type of trafficking is on the rise.)

It oftentimes is the case that crimes similar to trafficking are codified in seemingly unrelated parts of the

state code, such as in sections pertaining to kidnapping and prostitution. For states where this is the case, it may be difficult for prosecutors to discern whether or not a crime is a trafficking crime. Research shows that these laws are often archaic, unknown or underutilized, and fail to reflect the current understanding of slavery and trafficking in persons.

It also is important for states to evaluate to what extent statutes are counter-productive to a victim-centered paradigm. Laws that could potentially criminalize children, who are prostituted, for instance, can stand in the way of expedient and just prosecution for traffickers, as well as obstruct delivery of restitution and other services to the victim.

Additionally, states must ensure that laws currently in place are being effectively utilized. For instance, it is common for states to adopt involuntary servitude laws. However, ensuring that police and prosecutors are informed about the nuances of such laws is equally important. Oftentimes, new laws that pertain to obscure subjects are not fully utilized by law enforcement personnel or state prosecutors, simply due to lack of communication between those making the laws and those enforcing them.

State laws also might focus on punishing attempts as well as completed offenses. Laws that criminalize attempts allow prosecutors to focus on the trafficker's objectively observable intent to use coercion for compulsory service rather than simply on the victim's subjective response to the coercion. In instances where the victim escapes a captor, the trafficker still can be prosecuted even though the intended behavior was not completed. From a public safety standpoint, this eliminates the need for the victim to actually be enslaved or feel coerced. The attempt alone is enough to prove wrongdoing.

Mandatory restitution is important because it allows prosecutors to recover money that the victims can use to assist in their recovery. States that require this provision either calculate it according to the value of the victim's labor or services to the trafficker, or by a minimum wage calculation. The former is used mostly in cases involving sexual exploitation and avoids assign-

ing a wage valuation to instances of forced prostitution. The second method is most common in cases involving forced labor, where the victim was not paid for their work.

Minors in sexually related activities present a different set of circumstances for lawmakers and, therefore, must be evaluated differently. As mentioned earlier, many states have decided that the standard of coercion in cases involving minors should be eliminated, or at least lessened. This movement recognizes that sexual activities are conceptually different when minors are involved. This is analogous to statutory rape laws, in which the need to prove coercion is obviated when the victim is under the age of legal consent. This provision is important because it would allow prosecution in cases where a victim is prostituted as a result of their circumstances, where overt force is not used. This situation is common in cases involving runaway youth who may be given food or shelter and thereby forfeited into slavery. In these cases of sexually-explicit performance, child pornography, or other sexual acts, sexual exploitation is the standard, regardless of the coexistence of coercion.

Ensuring that services are provided to victims is perhaps the most important component of any good human trafficking law. Prosecution of traffickers without victim protection is both unworkable and dangerous. At the federal level, there are a variety of benefits and services available to trafficking victims. However, state programs are better situated to recognize and meet the needs of trafficking victims.

More comprehensive trafficking statutes would address the range of coercive tactics employed by traffickers in order to illegally obtain and maintain the labor or services of their victims. From a regional perspective, uniformity in definitions and concepts across state lines would minimize confusion for trafficking victims as they seek protections available through various federal or state agencies. From a national perspective, overlap in federal and state laws only allows for more prosecutions to be brought and allows local law enforcement and prosecutors to choose the most appropriate response to crimes committed in their own jurisdictions.

## Recommendations

There are a variety of trends that many lawmakers throughout the United States and around the world have recognized as helpful practices regarding the most effective methods for preventing human trafficking, prosecuting traffickers, and protecting those who become victims of this crime. These are summarized as follows:

- » Pass legislation that specifically criminalizes the practice of human trafficking as it pertains to forced labor and for purposes of sex trafficking.
- » Strengthen penalties for crimes against minors, thereby limiting the potential for these egregious acts to be perpetrated against children.
- » Strengthen existing laws relating to similar crimes as an alternative for prosecutors (e.g., tax laws, pandering laws).
- » Strengthen existing laws that regulate the business practices of international marriage brokers, and similar organizations.
- » Increase training for law enforcement and local prosecutors regarding the scope, extent, and methods used by traffickers.
- » Increase training for law enforcement and local prosecutors pertaining to other enforcement options for prosecuting traffickers.
- » Work to improve communications and cooperation among local law enforcement and NGOs, as well as other service providers.
- » Work to combat the demand for trafficking (corporate liability, demand reduction).
- » Survey existing criminal codes to determine if prohibitions for involuntary servitude, kidnapping, false imprisonment, or similar behaviors already exist, and discern how these measures can be used to help formulate or alter human trafficking laws.

## Endnotes

- <sup>1</sup> United Nations Convention against Transnational Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (November, 2000), p2.
- <sup>2</sup> The Polaris Project, “Human Trafficking 101,” retrieved May, 2009, from <http://www.polarisproject.org/>.
- <sup>3</sup> <http://www.acf.hhs.gov/trafficking/about/index.html>
- <sup>4</sup> International Labor Organization, A Global Alliance Against Forced Labor, (Geneva: 2005), p10.
- <sup>5</sup> Ibid.
- <sup>6</sup> United Nations Office On Drugs and Crime, Global Report On Trafficking In Persons, (February 2009), p6.
- <sup>7</sup> Ibid.
- <sup>8</sup> Estes, Richard J. and Neil Alan Weiner, The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico, (Philadelphia: September, 2001), p6.
- <sup>9</sup> U.S. Congress, “Trafficking Victims Protection Reauthorization Act of 2005,” (Washington, D.C.: January, 2006), p1.
- <sup>10</sup> International Labor Conference, The End of Child Labour: Within Reach, (Geneva: 2006).
- <sup>11</sup> USAID, Trafficking in Person: USAID’s Response, (March 2006), pp3-4.
- <sup>12</sup> <http://www.nytimes.com/2009/04/05/world/asia/05kidnap.html>
- <sup>13</sup> Human Rights Center, University of California, Berkley, Hidden Slaves: Forced Labor in the United States, (Berkley: September, 2004), pp14-18.
- <sup>14</sup> United Nations Office on Drugs and Crime, Global Report On Trafficking In Persons, (February 2009), p7.
- <sup>15</sup> International Labor Organization, A Global Alliance Against Forced Labor, (Geneva: 2005), p10.
- <sup>16</sup> These states are: Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee and Texas. Virginia does not have a specific criminalization statute, but the practice can be prosecuted under another existing law.
- <sup>17</sup> South Carolina law does not explicitly list “sexual services” as a form of trafficking, but traffickers involved in such behavior can be prosecuted under language that criminalizes “any type of labor or services performed or provided by a person rendered through another person’s exertion of physical, financial, or other means of control over the person providing them labor or services.”
- <sup>18</sup> International marriage brokers are also known as “international marriage organizations.”

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## FACTS ABOUT HUMAN TRAFFICKING:

Human trafficking is now considered to be the second largest and fastest growing illegal activity in the world.

Globally, the human trafficking industry generates upwards of \$10 billion annually.

The number of people being trafficked for the purposes of forced labor or sexual exploitation could be as high as 27 million at any given time.

There are approximately 600,000 to 800,000 victims trafficked across international borders every year. Of these, approximately 80 percent are women or girls.

Up to 50 percent of all persons trafficked across international borders are children.

At any given time, approximately 166 million children ages five to 14 are exploited as child laborers, and approximately 74 million participate in hazardous work that can have adverse effects on the child's health, safety or moral development.

While most victims are from poverty-stricken areas of the world, more than 350,000 women and men are trafficked in industrialized countries every year.

More than three-quarters of all trafficking victims are forced into the sex industry.

Poverty and the lack of economic opportunities are the most common circumstances that contribute to the practice of human trafficking.

As many as 300,000 children in the United States are at risk of becoming victims of human trafficking at any given time.

Estimates on the number of forced laborers working in the United States at any given time range from 10,000 to 17,000. Approximately 59 percent of these individuals are exploited for the purposes of domestic servitude; 22 percent in agricultural employment; 11 percent in sweatshops and factories; and 8 percent in hotel jobs.

Human trafficking exacerbates public health threats throughout the world, such as the spread of HIV and other sexually transmitted diseases.

It is suspected that women, not men, are responsible for the majority of trafficking cases involving sexual exploitation.

Fourteen SLC states have enacted legislation that addresses human trafficking, and 13 of these states have statutes that specifically criminalize human trafficking.

Half of the SLC states have enhanced penalties for trafficking crimes perpetrated against children.

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For a number of years, the Human Services and Public Safety Committee of the Southern Legislative Conference (SLC), currently chaired by Representative John Arnold, Kentucky, has been examining Southern states' policies regarding human trafficking. This report investigates the continued trends concerning the South's attention to this problem. It was prepared by Jeremy L. Williams, Policy Analyst for the SLC, the Southern Office of The Council of State Governments, under the chairmanship of Senator Jeff Wentworth, Texas.