

1-1-2009

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### Recommended Citation

Stephanie L. Mariconda, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. Third World L.J. 151 (2009), <http://lawdigitalcommons.bc.edu/twlj/vol29/iss1/5>

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# BREAKING THE CHAINS: COMBATING HUMAN TRAFFICKING AT THE STATE LEVEL

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**Abstract:** Human trafficking is a modern form of slavery. Many individuals fall prey to this flourishing industry after being lured from their homes by the promise of economic opportunity. Upon relocation, these victims are forced to work under the darkest conditions in countries around the world, including the United States. This Note explores the problem of trafficking in the United States and the efforts being exerted to combat it at the federal and state levels. Massachusetts State Senator Mark C. Montigny recently introduced a comprehensive bill that would complement and improve upon federal efforts to prosecute perpetrators of human trafficking and provide services to their victims. Ultimately, given the clandestine nature of the industry and the minimal effect the federal legislation has had, this Note urges Massachusetts to adopt Senator Montigny's bill to fight human trafficking effectively on the local level, and for other state legislatures quickly to follow suit.

## INTRODUCTION

In Laredo, Texas, a twelve-year-old Mexican girl, identified as S.A.D., was found shackled to a chain link fence behind the home of Warren and Sandra Bearden.<sup>1</sup> She had deep lacerations on her wrists and ankles where the chains had been attached, cuts and bruises on her face and body from being beaten, and her skin was severely burned after being left in the sun for days.<sup>2</sup> She suffered from such extensive malnourishment and dehydration that doctors were convinced that she

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<sup>1</sup> GILBERT KING, WOMAN, CHILD FOR SALE: THE NEW SLAVE TRADE IN THE 21ST CENTURY 5–7 (2004). The police discovered the child when they responded to a 911 call placed by a neighbor who heard strange noises coming from the Beardens' backyard. *Id.* at 6–7. During the proceedings, the victim was only referred to by her initials, S.A.D. Laurel Almada, *Bearden Denies Abuse Allegations*, LAREDO MORNING TIMES, Oct. 18, 2001, at 1A.

<sup>2</sup> KING, *supra* note 1, at 6; Laurel Almada, *Officer Cries on Stand in Bearden Trial*, LAREDO MORNING TIMES, Oct. 16, 2001, at 1A.; Stephanie Armour, *Some Foreign Household Workers Face Enslavement*, USA TODAY, Nov. 19, 2001, at 1A.

would not have survived another week if she had been left in the conditions in which she was found.<sup>3</sup>

The sordid details of S.A.D.'s situation were revealed upon her discovery.<sup>4</sup> The Beardens met S.A.D. while they were on vacation in Veracruz; Sandra Bearden was herself a Mexican citizen.<sup>5</sup> The Beardens made S.A.D. an offer that seemed too good to refuse: in exchange for working as a maid in their home, she would receive food, clothing, an education, and medical care.<sup>6</sup> Mrs. Bearden explained to S.A.D.'s family that she would give their daughter the opportunity to achieve the American dream.<sup>7</sup> After being smuggled into the United States, however, S.A.D.'s reality failed to match her expectations.<sup>8</sup> She was locked up outside after finishing her chores each day.<sup>9</sup> She was beaten regularly with a belt, a broomstick, a glass, or a skillet.<sup>10</sup> Mrs. Bearden sprayed mace in her eyes when she appeared tired.<sup>11</sup> S.A.D. was starved so often that she resorted to eating dirt to survive.<sup>12</sup> Instead of finding the American dream, S.A.D. found hell on earth.<sup>13</sup>

Mrs. Bearden was found guilty of five counts of injury to a child, one count of abandoning a child, and one count of aggravated kidnapping.<sup>14</sup> Mr. Bearden was also charged with child endangerment, but S.A.D.'s parents did not wish to proceed with his prosecution.<sup>15</sup> S.A.D.'s story made national headlines because of the severity of Mrs. Bearden's actions and because the atrocities took place in an unlikely location: suburban America.<sup>16</sup> However, her story is not rare; thou-

<sup>3</sup> *Police: Woman Chained 12-Year-Old Maid to Backyard Pole*, CNN.COM, May 14, 2001, <http://archives.cnn.com/2001/US/05/14/chained.girl>.

<sup>4</sup> See KING, *supra* note 1, at 5-7.

<sup>5</sup> *Id.* at 5.

<sup>6</sup> See *id.* at 5-6.

<sup>7</sup> *Id.* at 6.

<sup>8</sup> See *id.* at 5-6; *Police: Woman Chained 12-Year-Old Maid to Backyard Pole*, *supra* note 3.

<sup>9</sup> Armour, *supra* note 2.

<sup>10</sup> KING, *supra* note 1, at 7; Laurel Almada, *Child Testifies of Abuse*, LAREDO MORNING TIMES, Oct. 17, 2001, at 1A.

<sup>11</sup> KING, *supra* note 1, at 6; Armour, *supra* note 2.

<sup>12</sup> Armour, *supra* note 2.

<sup>13</sup> See KING, *supra* note 1, at 6-7; Armour, *supra* note 2.

<sup>14</sup> *Bearden v. Texas*, No. 04-02-00019-CR, 2003 WL 202684 at \*1 (Tex. Crim. App. Jan 31, 2003); Laurel Almada, *Bearden Sentenced to 99 Years*, LAREDO MORNING TIMES, Oct. 20, 2001, at 1A.

<sup>15</sup> George Zarazua, *Judge Dismisses Felony Charge; Victim's Family Satisfied with Laredo Wife's Conviction*, SAN ANTONIO EXPRESS-NEWS, Aug. 23, 2002, at 5B. S.A.D.'s parents believed that Mr. Bearden never abused the child and may not have even known about the abuse, as he was a truck driver who was not in the home very often. *Id.*

<sup>16</sup> KING, *supra* note 1, at 7.

sands of individuals in the United States have their own horrific stories of victimization and abuse stemming from trafficking and exploitation.<sup>17</sup> The human trafficking industry claims victims from varying cultures, geographic locations, and age groups; each one equally deserves to have their story told.<sup>18</sup>

Human trafficking threatens health, security, human rights, and fair labor standards on both the international and domestic level.<sup>19</sup> Currently, human trafficking is the third largest criminal industry in the world behind drug and arms trafficking, generating approximately \$9.5 billion in profit annually.<sup>20</sup> It affects an astounding number of people: the State Department estimates that 800,000 people are trafficked across international borders each year.<sup>21</sup> If that figure included victims who are trafficked within the internal borders of a

<sup>17</sup> See *id.*

<sup>18</sup> See *id.* at 7–8; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 4 (2007) [hereinafter TIP REPORT 2007], available at <http://www.state.gov/g/tip/rls/tiprpt/2007/>.

<sup>19</sup> Trafficking Victims Protection Act (TVPA) of 2000, 22 U.S.C. § 7101(b)(3) (2000); KING, *supra* note 1, at 15–16; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 4 (2008) [hereinafter TIP REPORT 2008], available at <http://www.state.gov/g/tip/rls/tiprpt/2008/>; TIP REPORT 2007, *supra* note 18, at 5; see Joan Fitzpatrick, *Trafficking as a Human Rights Violation: The Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking*, 24 MICH. J. INT'L L. 1143, 1147 (2003).

The distinction between human smuggling and human trafficking must be understood, as these terms are incorrectly used interchangeably. SHELDON X. ZHANG, SMUGGLING AND TRAFFICKING IN HUMAN BEINGS: ALL ROADS LEAD TO AMERICA 106 (2007). Human smuggling involves illegal immigrants who willingly and voluntarily pay a fee to be transported to a different country. See *id.* “[T]he relationship between migrants and offenders (the smugglers) usually ends on arrival in the destination country. The criminal’s profit is derived from the process of smuggling the migrant alone.” Kevin Bales & Steven Lize, Trafficking in Persons in the United States 11 (Mar. 2005) (unpublished report) available at <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>. In contrast, human trafficking “is smuggling *plus* coercion or deception at the beginning of the process and exploitation at the end.” *Id.* While smuggling victims have consented to the activity, trafficking victims “have either never consented or, if they initially consented, their consent has been negated by the coercive, deceptive or abusive actions of the traffickers.” U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 18 (2004) [hereinafter TIP REPORT 2004], available at <http://www.state.gov/g/tip/rls/tiprpt/2004/>.

<sup>20</sup> U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 13 (2006) [hereinafter TIP REPORT 2006], available at <http://www.state.gov/g/tip/rls/tiprpt/2006/>; DAVID BASTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE—AND HOW WE CAN FIGHT IT 3–4 (2007); ZHANG, *supra* note 19, at 106.

<sup>21</sup> TIP REPORT 2007, *supra* note 18, at 8. But see ZHANG, *supra* note 19, at 108 (noting other organizations have estimated between one and four million people are victimized annually). Data on the number of trafficking victims varies greatly due to the clandestine nature of the industry and the failure of victims to come forward. Susan W. Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 2 LOY. INT'L L. REV. 193, 193 n.2 (2005).

country, it would skyrocket even higher.<sup>22</sup> Although it is unclear precisely how many victims are trafficked into the United States from abroad, Congress has approximated that anywhere from 14,500 to 50,000 individuals are brought into the United States per year, making it a coveted destination country.<sup>23</sup> Because of this popularity, the United States must exert greater efforts on both the state and federal levels to effectively stop this flourishing industry.<sup>24</sup>

Moreover, the United States must continue to fervently combat human trafficking to protect those who are targeted and fall victim to this ever-growing industry.<sup>25</sup> The practice of human trafficking “is an ongoing, underground, and brutal exploitation of men, women and children. It is a hidden crime that preys on the most vulnerable—the poor, the uneducated, children, and especially, the impoverished immigrant seeking a better life.”<sup>26</sup> Many of the victims come from the third-world after being offered the opportunity to obtain an education, a steady income, or the ability to provide a better life for the families they leave behind.<sup>27</sup> The victims come to achieve the American dream of success and opportunity, but, in reality, experience an American nightmare of exploitation and degradation.<sup>28</sup> The fundamental rights and freedoms of these individuals must be fought for and protected at every level of government.<sup>29</sup>

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<sup>22</sup> See TIP REPORT 2007, *supra* note 18, at 8.

<sup>23</sup> 22 U.S.C. § 7101(b)(1) (reporting that 50,000 victims are smuggled into the United States annually); TIP REPORT 2004, *supra* note 19, at 23 (reporting approximately 14,500 to 17,500 individuals have been smuggled into the country); U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2003) [hereinafter TIP REPORT 2003], available at <http://www.state.gov/g/tip/rls/tiprpt/2003> (estimating that between 18,000 and 20,000 individuals are brought into the United States annually); KING, *supra* note 1, at 19 (reporting the CIA has estimated 50,000 people are being trafficked into the U.S. each year); see also ZHANG, *supra* note 19, at 115; Polaris Project, Transnational Trafficking into the U.S., <http://www.polarisproject.org/content/view/full/61/82/> (last visited Oct. 8, 2008). There has been little explanation for the disparity in official government estimates. See Dina Francesca Haynes, (Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act, 21 GEO. IMMIGR. L.J. 337, 343–44 (2007).

<sup>24</sup> See Sally Stoecker, *Human Trafficking: A New Challenge for Russia and the United States*, in HUMAN TRAFFIC AND TRANSNATIONAL CRIME: EURASIAN AND AMERICAN PERSPECTIVES 13, 24 (Sally Stoecker & Louise Shelley eds., 2005).

<sup>25</sup> See *id.*

<sup>26</sup> Bales & Lize, *supra* note 19, at 6.

<sup>27</sup> KING, *supra* note 1, at 2. See Michael Payne, *The Half-Fought Battle: A Call for Comprehensive State Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation*, 16 KAN. J.L. & PUB. POL’Y 48, 49 (2006).

<sup>28</sup> KING, *supra* note 1, at 6–8.

<sup>29</sup> See TIP REPORT 2007, *supra* note 18, at 5.

This Note will argue that additional measures must be taken on the state level to effectively combat human trafficking in the United States. Specifically, this Note will examine and advocate for the legislation that has been proposed by State Senator Mark C. Montigny of Massachusetts. Part I will detail the different industries that take advantage of human trafficking in the United States: sexual enslavement, domestic servitude, and forced labor. This section will also analyze how the human trafficking industry operates, and the effects it has on its victims, to better understand what state-level legislation will need to accomplish. Part II will explain the federal legislation that is currently in place that is used to combat human trafficking, including the Mann Act, the Trafficking Victims Protection Act (TVPA) and its subsequent reauthorization acts, and the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act).<sup>30</sup> Finally, Part III will discuss the merits of state anti-trafficking legislation, analyze Senator Montigny's bill in detail, and urge the Massachusetts State Legislature to pass the bill immediately. Moreover, this Note encourages all states that lack comprehensive anti-trafficking legislation to look to the Massachusetts bill for guidance when updating or drafting their own statutory scheme.

## I. THE INNER WORKINGS OF HUMAN TRAFFICKING

*It is hard for many Americans to believe that slavery still exists on a grand scale in the world, let alone that it may have a foothold in their community.*<sup>31</sup>

### A. Industries that Benefit from Human Trafficking in the United States

Many different industries in the United States profit from the exploitation of human trafficking victims.<sup>32</sup> Accordingly, it is important to analyze these industries to better understand how to effectively combat

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<sup>30</sup> White-Slave Traffic (Mann) Act, 18 U.S.C. §§ 2421–2427 (2000); TVPA of 2000, ch. 28, 114 Stat. 1464 (codified as amended at scattered sections of 18, 22 U.S.C. (2000)); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109–164, 119 Stat. 3558 (codified as amended at scattered sections of 18, 22, 42 U.S.C. (Supp. V 2005)) [hereinafter TVPRA of 2005]; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, 117 Stat. 2875 (codified as amended at scattered sections of 8, 18, 22 U.S.C. (Supp. III 2003)) [hereinafter TVPRA of 2003]; Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108–21, 117 Stat. 650 (relevant sections codified as amended at 18 U.S.C. § 2423).

<sup>31</sup> BATSTONE, *supra* note 20, at 228.

<sup>32</sup> See TIP REPORT 2007, *supra* note 18, at 4; Fitzpatrick, *supra* note 19, at 1149.

human trafficking through state statutory schemes.<sup>33</sup> Specifically, the provisions focusing on victim protection must be drafted to effectively encompass as many types of trafficking victims as possible, which can only be accomplished after gaining a thorough understanding of human trafficking and the economies it fuels.<sup>34</sup> This analysis is also needed to generate awareness.<sup>35</sup> Victims of human trafficking are living amongst us, without our knowledge, yet are very much in need of our help.<sup>36</sup> State legislation aims to heighten public awareness to improve detection of trafficking and deter its development, but success will remain unrealized if ordinary citizens are completely unaware of human trafficking and how it operates.<sup>37</sup>

## 1. Sexual Exploitation

The most notorious industry that benefits from human trafficking is the sexual slavery industry.<sup>38</sup> Roughly eighty percent of transnational human trafficking victims are women.<sup>39</sup> This high percentage can be attributed to sexual slavery's position as the most prominent form of slavery in the world.<sup>40</sup>

Sexual exploitation has surfaced in several different forms, but the general methods of exploitation remains the same.<sup>41</sup> The women are promised a better life through high-paying job offers or educational

<sup>33</sup> TIP REPORT 2007, *supra* note 18, at 4; Fitzpatrick, *supra* note 19, at 1149, 1164.

<sup>34</sup> See Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 385 (2005); Theresa Barone, Comment, *The Trafficking Victims Protection Act of 2000: Defining the Problem and Creating a Solution*, 17 TEMP. INT'L & COMP. L.J. 579, 592, 594 (2003).

<sup>35</sup> See BATSTONE, *supra* note 20, at 7; FREE THE SLAVES & HUMAN RIGHTS CTR., HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 5 (2004), available at [http://www.hrc.berkeley.edu/pdfs/hidden\\_slaves\\_report.pdf](http://www.hrc.berkeley.edu/pdfs/hidden_slaves_report.pdf).

<sup>36</sup> See BATSTONE, *supra* note 20, at 7; FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 5.

<sup>37</sup> See BATSTONE, *supra* note 20, at 7. FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 5.

<sup>38</sup> See Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 3027 (2006).

<sup>39</sup> TIP REPORT 2008, *supra* note 19, at 7; TIP REPORT 2007, *supra* note 18, at 8.

<sup>40</sup> TIP REPORT 2007, *supra* note 18, at 27.

<sup>41</sup> See *id.* at 26–27; Bales & Lize, *supra* note 19, at 24. There are additional ways that individuals end up being trafficked into the sex industry. Tala Hartsough, Note, *Asylum for Trafficked Women: Escape Strategies Beyond the T Visa*, 13 HASTINGS WOMEN'S L.J. 77, 85 (2002). Sometimes, the "girls might be sold by their parents to a broker." *Id.* (quoting KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY 18 (1999)). In other situations, women are aware that they will become prostitutes, but have no idea of how extreme the situation will be. *Id.*

opportunities.<sup>42</sup> However, once they leave their homes, they are forced into any number of commercial sex industries, including: “prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution and sex-tourism.”<sup>43</sup>

The subservience of these victims is maintained by the traffickers’ use of a number of control mechanisms.<sup>44</sup> Debt bondage is commonly used; many women are forced by their captors to pay off a “never-ending cycle of debt,” which includes the cost of the trip and the everyday expenses—food, medicine, toilet paper, condoms—that they incur.<sup>45</sup> Additional amounts are added to the outstanding balance for insubordination or underperformance.<sup>46</sup> Moreover, the women are given little (if any) money for services rendered and are forbidden from keeping track of their debt, giving their captors increased control over their freedom.<sup>47</sup>

In addition to financial restrictions, the women are limited by many other control mechanisms devised by their captors.<sup>48</sup> They are often subjected to intense physical and sexual violence.<sup>49</sup> Their physical movement is severely restricted: they are either under constant surveillance and/or they are moved around frequently to disorient them.<sup>50</sup> They are kept in isolation from the rest of society, and in extreme situations, from each other.<sup>51</sup> The women are also threatened

<sup>42</sup> TIP REPORT 2007, *supra* note 18, at 8; TIP REPORT 2003, *supra* note 23, at 6; Bales & Lize, *supra* note 19, at 24. Some of the employment opportunities that the women are offered to capture their interest include working as a babysitter, housekeeper, seamstress, waitress or model. TIP REPORT 2008, *supra* note 19, at 8; TIP REPORT 2003, *supra* note 23, at 6.

<sup>43</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., Sex Trafficking: Fact Sheet (2008), [http://www.acf.hhs.gov/trafficking/about/fact\\_sex.html](http://www.acf.hhs.gov/trafficking/about/fact_sex.html) (last visited Oct. 8, 2008) [hereinafter HHS, Sex Trafficking]; see TIP REPORT 2007, *supra* note 18, at 8, 10; Bales & Lize, *supra* note 19, at 38.

<sup>44</sup> U.S. DEP’T OF HEALTH & HUMAN SERVS., Human Trafficking: Fact Sheet (2008), [http://www.acf.hhs.gov/trafficking/about/fact\\_human.html](http://www.acf.hhs.gov/trafficking/about/fact_human.html) (last visited Oct. 8, 2008) [hereinafter HHS, Human Trafficking]; see Janice G. Raymond & Donna M. Hughes, *Sex Trafficking of Women in the United States: International and Domestic Trends* 59–68 (2001), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>.

<sup>45</sup> TIP REPORT, 2007, *supra* note 18, at 26. The women were also often overcharged significantly for food and necessities. See Bales & Lize, *supra* note 19, at 43. In one case, the girls that had been trafficked into prostitution were charged seven dollars for a bottle of hydrogen peroxide and three dollars for every sanitary napkin they needed. *Id.*

<sup>46</sup> HHS, Human Trafficking, *supra* note 44.

<sup>47</sup> See Bales & Lize, *supra* note 19, at 39, 43.

<sup>48</sup> See Raymond & Hughes, *supra* note 44, at 59–68.

<sup>49</sup> KING, *supra* note 1, at 50–51; Raymond & Hughes, *supra* note 44, at 61–62.

<sup>50</sup> Raymond & Hughes, *supra* note 44, at 57; see Bales & Lize, *supra* note 19, at 47–48.

<sup>51</sup> Raymond & Hughes, *supra* note 44, at 64–65.

with deportation, as their captors usually maintain possession of their travel and identity documents.<sup>52</sup> Finally, it is not uncommon for the captors to threaten to harm their families back home.<sup>53</sup>

Many unsuspecting girls fall victim to this industry in pursuit of a better life.<sup>54</sup> The Cadena-Sosa family operation illustrates how the human trafficking preys on the unsuspecting and ambitious.<sup>55</sup> The women of the Cadena family traveled to Mexico from their homes in Florida to obtain the girls.<sup>56</sup> They told the families they needed waitresses for their restaurant or nannies for their children and promised to pay wages of hundreds of dollars per week.<sup>57</sup> However, once they were in Florida, the girls were beaten, raped, and informed of their actual occupation.<sup>58</sup> They were dispersed among several brothels located near migrant camps and forced to “service” the migrant workers.<sup>59</sup> The girls were responsible for paying off a two-thousand dollar smuggling fee, plus their everyday expenses; they earned seven dollars for every person serviced.<sup>60</sup> The girls worked for six days a week, twelve hours a day.<sup>61</sup> One of the victims recalled, “[w]e mostly had to serve thirty-two to thirty-five clients a day. Our bodies were utterly sore and swollen.”<sup>62</sup> Resistance was met with beatings, rape, confinement, and threats directed at their families back home.<sup>63</sup> The operation finally came to an end when two of the girls escaped, found the Mexican consulate in Miami and contacted the FBI.<sup>64</sup> Shortly afterwards,

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<sup>52</sup> See FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 5; Bales & Lize, *supra* note 19, at 37, 39. The women are also told that the police will either physically harm or deport them in an effort to dissuade them from seeking assistance. Bales & Lize, *supra* note 19, at 38–39.

<sup>53</sup> Bales & Lize, *supra* note 19, at 39.

<sup>54</sup> See KING, *supra* note 1, at 16–17.

<sup>55</sup> See ANTHONY M. DESTEFANO, THE WAR ON HUMAN TRAFFICKING: HUMAN POLICY ASSESSED 1–5 (2007); KING, *supra* note 1, at 26–30.

<sup>56</sup> DESTEFANO, *supra* note 55, at 2; KING, *supra* note 1, at 27.

<sup>57</sup> KING, *supra* note 1, at 27. The families were also explicitly promised that the girls could return to Mexico if they were unhappy with their work. *Id.* at 27–28.

<sup>58</sup> *Id.* at 28.

<sup>59</sup> DESTEFANO, *supra* note 55, at 3; KING, *supra* note 1, at 28.

<sup>60</sup> DESTEFANO, *supra* note 55, at 3; KING, *supra* note 1, at 28. The men were charged twenty dollars for fifteen minutes with the girls, of which seven dollars went towards paying off the smuggling debt. DESTEFANO, *supra* note 55, at 3. However, the cost of food and phone cards to call home was added to the outstanding debt. *Id.*

<sup>61</sup> KING, *supra* note 1, at 29 (quoting “Maria,” one of the victims of the operation).

<sup>62</sup> *Id.*

<sup>63</sup> See *id.*

<sup>64</sup> DESTEFANO, *supra* note 55, at 4.

six brothels were raided.<sup>65</sup> Eight members of the Cadena-Sosa family were convicted, while seven fled to Mexico and avoided prosecution.<sup>66</sup>

## 2. Domestic Servitude

The domestic service industry is another sector that utilizes victims of human trafficking.<sup>67</sup> These victims are persuaded to accept these positions in a similar manner to those trapped in sexual enslavement: they are promised any combination of stable wages, medical benefits, or an education.<sup>68</sup> After the domestic servants arrive in the United States, their travel and identity documents are confiscated and they are kept against their will in their captor's home.<sup>69</sup> Their captors pay them trivial wages for their services.<sup>70</sup> Their workday is seemingly endless: some domestic servants work eighteen hour shifts, while others are on call at all times.<sup>71</sup> Moreover, they are often intentionally isolated from the outside world; in addition to being confined to the house, they are prohibited from talking to neighbors or guests, making phone calls, or writing to their families.<sup>72</sup>

Domestic servitude can be found in any town in America, as it is estimated to be the second largest industry to benefit from human trafficking in the United States.<sup>73</sup> It was found unexpectedly in Laredo, Texas in 2001 when S.A.D. was found chained in the Bearden's backyard.<sup>74</sup> It was also found in Boston's backyard in

<sup>65</sup> KING, *supra* note 1, at 26.

<sup>66</sup> *Id.* at 29–30. Because these individuals pled guilty, there was no trial. DESTEFANO, *supra* note 55, at 5. The exact details regarding what happened to the girls once the brothels were raided are not clear. See generally DESTEFANO, *supra* note 55; KING, *supra* note 1.

<sup>67</sup> See FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 15; TIP REPORT 2007, *supra* note 18, at 13.

<sup>68</sup> See TIP REPORT 2007, *supra* note 18, at 8.

<sup>69</sup> See *id.* at 13; Bales & Lize, *supra* note 19, at 38.

<sup>70</sup> See HUMAN RIGHTS WATCH, SWEPT UNDER THE RUG: ABUSES AGAINST DOMESTIC WORKERS AROUND THE WORLD, 35–36 (2006), available at <http://hrw.org/reports/2006/wrd0706/wrd0706webwcover.pdf>.

<sup>71</sup> See DESTEFANO, *supra* note 55, at 76–77; HUMAN RIGHTS WATCH, *supra* note 70, at 39.

<sup>72</sup> See TIP REPORT 2007, *supra* note 18, at 13.

<sup>73</sup> See DESTEFANO, *supra* note 55, at 76; FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 16; see also TIP Report 2008, *supra* note 19, at 6 (detailing the story of a thirty-two year old Mexican male who was forced into domestic servitude in San Diego, California); Corey Kilgannon, *Long Island Couple Are Convicted of Enslaving 2 Domestic Workers*, N.Y. TIMES, Dec. 18, 2007, at B3 (detailing the convictions of a married couple residing in Long Island, New York as a result of forcing two Indonesian women with expired visas to work as their domestic servants for five years).

<sup>74</sup> See *supra* notes 1–15 and accompanying text.

2006.<sup>75</sup> In Winchester, Massachusetts, Hana F. Al Jader was arrested for enslaving two Indonesian women.<sup>76</sup> These women were promised good wages in exchange for cooking, cleaning and providing care to Ms. Jader's husband.<sup>77</sup> When they arrived, however, their passports were confiscated and they were told that if they tried to quit, they would be responsible for the cost of their transportation to the United States.<sup>78</sup> The women were required to be on-duty twenty-four hours a day and were paid only three-hundred dollars a month.<sup>79</sup> They were discovered when one of the women managed to flee the house and obtained assistance.<sup>80</sup> Jader plead guilty to federal visa fraud and harboring an alien.<sup>81</sup> She was sentenced to two years of probation—the first six months constituting home confinement—to be followed by deportation to Saudi Arabia.<sup>82</sup> Jader was also ordered to pay a \$40,000 fine and \$207,000 in restitution to her former servants, and perform 100 hours of community service.<sup>83</sup>

### 3. Forced Hard Labor

Forced labor, which involves the exploitation of vulnerable, lower-class workers by employers, is also prevalent in the United States and fueled by the human trafficking industry.<sup>84</sup> Specifically, the agricultural sector and factory sweatshops benefit greatly from the services provided by trafficking victims.<sup>85</sup> The recruitment of these work-

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<sup>75</sup> See DEStEFANO, *supra* note 55, at 76–77 (explaining Hana Al Jader's case); Stephanie Ebbert & Scott Goldstein, *Forced-Labor Charges for Saudi Prince's Wife*, BOSTON GLOBE, Mar. 31, 2005, at B3 (detailing Hana Al Jader's case).

<sup>76</sup> DEStEFANO, *supra* note 55, at 76–77. Al Jader was a Saudi-Arabian princess who had homes in both Arlington and Winchester. *Id.*

<sup>77</sup> See *id.* at 76. Ms. Al Jader's husband was in a serious car accident in 1991 and required constant care. Shelley Murphy, *Princess Spared Prison on Immigration Charges*, BOSTON GLOBE, Dec. 22, 2006, at B4.

<sup>78</sup> DEStEFANO, *supra* note 55, at 76–77.

<sup>79</sup> *Id.*; Ebbert & Goldstein, *supra* note 75. Al Jader lied on the immigration forms for her servants, stating they would be paid \$1500 per month and would be required to work for eight hours a day, five days a week. *Id.*

<sup>80</sup> DEStEFANO, *supra* note 55, at 77.

<sup>81</sup> *Id.*

<sup>82</sup> Murphy, *supra* note 77.

<sup>83</sup> *Id.*

<sup>84</sup> TIP REPORT 2007, *supra* note 18, at 18. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 15 (2005) [hereinafter TIP REPORT 2005], available at <http://www.state.gov/g/tip/rls/tiprpt/2005/>; Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Florida Law on Human Trafficking*, 31 FLA. ST. U. L. REV. 289, 290 (2004).

<sup>85</sup> FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 16–18; see Bales & Lize, *supra* note 19, at 53.

ers typically occurs in the developing world and, predictably, begins with a promise of a better life.<sup>86</sup> Upon their arrival in the United States, the workers are usually oppressed through one of two systems: debt bondage or involuntary servitude.<sup>87</sup> Debt bondage requires the employee to repay her employer for the cost of entering the country and any additional living costs incurred.<sup>88</sup> This system is often manipulated by employers, who alter the terms of their agreements with the victims or undervalue the services that apply toward the reduction of the victims' debt.<sup>89</sup> Involuntary servitude restricts the workers' freedoms through fear: the workers are told that escaping would result in physical harm or severe legal consequences.<sup>90</sup>

The workers' freedom is further restricted in a number of ways by their employers.<sup>91</sup> The workers are usually kept completely dependent on the traffickers for all of their basic necessities.<sup>92</sup> It is also common practice for employers to either underpay their workers or issue a check for legal minimum wage, but cash it themselves and keep any amounts owed.<sup>93</sup> The workers never receive an explanation of their legal rights in the United States.<sup>94</sup> Finally, in addition to exploiting the naiveté of the workers, the traffickers use and threaten to use physical and sexual abuse to ensure compliance.<sup>95</sup>

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<sup>86</sup> See HUMAN RIGHTS CTR., FREEDOM DENIED: FORCED LABOR IN CALIFORNIA 10–11 (2005), available at <http://www.hrcberkeley.org/download/freedomdenied.pdf>. The recruiters are often from the same geographic area, or are at least of the same ethnic background, as the individuals they are seeking to recruit. *Id.*

<sup>87</sup> See TIP REPORT 2007, *supra* note 18, at 18–19.

<sup>88</sup> See *id.* at 18; TIP REPORT 2005, *supra* note 83, at 15.

<sup>89</sup> See TIP REPORT 2005, *supra* note 83, at 15; U.S. DEP'T. OF HEALTH & HUMAN SERVS., Labor Trafficking: Fact Sheet (2008), [http://www.acf.hhs.gov/trafficking/about/fact\\_labor.html](http://www.acf.hhs.gov/trafficking/about/fact_labor.html) (last visited Oct. 8, 2008) [hereinafter HHS, Labor Trafficking]. The manipulation of the debt bondage system often significantly extends the duration of a victim's employment with the employer. TIP REPORT 2005, *supra* note 84, at 15.

<sup>90</sup> See TIP REPORT 2007, *supra* note 18, at 18.

<sup>91</sup> See HUMAN RIGHTS CTR., *supra* note 86, at 12, 23; DEStEFANO, *supra* note 55, at 73; Bales & Lize, *supra* note 19, at 43.

<sup>92</sup> See HUMAN RIGHTS CTR., *supra* note 86, at 12. Such necessities include food, shelter, cash, and medical attention. *Id.*; see also DEStEFANO, *supra* note 55, at 73 (detailing the addition of charges for food, housing, electricity, and transportation to and from work to the debt owed by a trafficker in New York).

<sup>93</sup> See Bales & Lize, *supra* note 19, at 43.

<sup>94</sup> See HUMAN RIGHTS CTR., *supra* note 86, at 23.

<sup>95</sup> See *id.* at 12; see also DEStEFANO, *supra* note 55, at 73 (explaining that a trafficking victim, who was forced to work on a farm in New York, was beaten with brass knuckles for complaining about the living conditions provided for his pregnant wife and five-year-old daughter, in particular a trailer they shared with five other migrant workers).

One story that highlights the profitability of forced hard labor is that of Johannes Du Preez.<sup>96</sup> Du Preez owned Newton Granite & Marble, which produced kitchen and bathroom countertops.<sup>97</sup> Du Preez needed workers to work long hours and engage in a large amount of heavy lifting.<sup>98</sup> Consequently, he hired hundreds of individuals from South Africa and Zimbabwe by promising them visas.<sup>99</sup> When his workers arrived in the United States, Du Preez told them they were indebted to him for the cost of their immigration documents and housing expenses, and if they failed to comply he would turn them in to the immigration authorities.<sup>100</sup> His workers labored endlessly, cutting and polishing granite and marble.<sup>101</sup> In November 2005, after immigration agents raided his factory, Du Preez pled guilty to conspiracy and harboring aliens, but subsequently disappeared.<sup>102</sup>

### B. *Factors Contributing to the Development of Human Trafficking*

As illustrated above, trafficking occurs in many cultures and serves many different purposes.<sup>103</sup> However, there are common factors that have contributed to its development.<sup>104</sup> One such factor is demand: a global market exists for cheap, exploitable labor in prostitution, sex tourism, mail-order brides, child pornography, agricultural labor, factory labor, and domestic servitude.<sup>105</sup> Moreover, human trafficking, to its perpetrators, is nothing more than a business endeavor.<sup>106</sup> Those who engage in trafficking are simply fulfilling market demands.<sup>107</sup>

<sup>96</sup> See DEStEFANO, *supra* note 55, at 71–72.

<sup>97</sup> *Id.* at 71. Many of these countertops were sold to major retailers, such as to Home Depot, located across the southeastern United States. *Id.*

<sup>98</sup> *See id.*

<sup>99</sup> *See id.* Du Preez was able to get the workers into the United States under a special visa program reserved for managers and executives. *Id.*

<sup>100</sup> *Id.* Du Preez also encouraged the spouses of those who were already employed to work to reduce the outstanding debt. *Id.*

<sup>101</sup> See DEStEFANO, *supra* note 55, at 71.

<sup>102</sup> *Id.* at 72.

<sup>103</sup> See Bales & Lize, *supra* note 19, at 7; *supra* notes 32–102 and accompanying text.

<sup>104</sup> See Bales & Lize, *supra* note 19, at 7.

<sup>105</sup> TIP REPORT 2004, *supra* note 19, at 19–20; FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 1, 14–15; Bales & Lize, *supra* note 19, at 8 (“Demand for trafficked labor exists in the American economy. There are citizens and others in the United States who are willing to exploit other human beings in this way.”).

<sup>106</sup> See KEVIN BALES, ENDING SLAVERY: HOW WE FREE TODAY’S SLAVES 1–2 (2007); TIP REPORT 2004, *supra* note 19, at 19–20.

<sup>107</sup> See TIP REPORT 2004, *supra* note 19, at 19–20; Hartsough, *supra* note 41, at 83 (“Most slaveholders feel no need to explain or defend their chosen method of labor recruitment and management. Slavery is a very profitable business, and a good bottom line

The industry of human trafficking also thrives because there is an endless supply of victims.<sup>108</sup> Individuals end up as victims of human trafficking due to a combination of factors, the most significant being hopeless poverty.<sup>109</sup> Many individuals who end up as victims accept an initial offer of employment to provide themselves or their families with a better life; they have no viable employment or educational opportunities in their own hometowns.<sup>110</sup> In other heartbreaking situations, victims are unwittingly sold by their families or significant others out of desperation.<sup>111</sup>

Trafficking is a lucrative endeavor.<sup>112</sup> It has been estimated that human trafficking generates about seven to ten billion dollars annually.<sup>113</sup> Moreover, if the sale of trafficked individuals and the value of their labor or services are evaluated together, then the human trafficking industry generates approximately thirty-two billion dollars annually.<sup>114</sup> It is also fairly common for traffickers to exploit the individuals and then re-sell them to a new, different employer.<sup>115</sup> With such a high prospect of amassing large amounts of wealth, it is clear why many individuals are eager to get involved in the business of trafficking in persons.<sup>116</sup>

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is justification enough.”) (quoting KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 10 (1999)).

<sup>108</sup> See TIP REPORT 2004, *supra* note 19, at 19.

<sup>109</sup> See *id.*; Stacey Mathews, Comment, *International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?*, 27 Hous. J. INT’L L. 649, 661 (2005).

<sup>110</sup> See TIP REPORT 2004, *supra* note 19, at 19; TIP REPORT 2003, *supra* note 23, at 7, 9.

<sup>111</sup> See Hartsough, *supra* note 41, at 85.

<sup>112</sup> See TIP REPORT 2003, *supra* note 23, at 9.

<sup>113</sup> *Id.* “Traffickers may earn a few hundred to thousands of dollars for a trafficked child laborer and brothel owners may make a few thousand to tens of thousands of dollars for each woman forced into prostitution.” *Id.*

<sup>114</sup> TIP REPORT 2008, *supra* note 19, at 34.

<sup>115</sup> TIP REPORT 2003, *supra* note 23, at 9.

<sup>116</sup> See *id.* One forced labor case that highlights how lucrative the use of trafficking victims can be is the Ramos case. See Bales & Lize, *supra* note 19, at 44. Brothers Juan and Ramiro Ramos recruited Mexican migrant workers in Arizona and transported them to Florida to work in their citrus orchards. DE STEFANO, *supra* note 55, at 74. These migrants were indebted to a smuggler for \$250 for assistance crossing the border; the smuggler sold the migrants to the Ramos brothers for \$1000 each. *Id.* The workers were responsible for the full “transporting fee” as well as transportation to work, living space, food and a check-cashing fee. *Id.*; Bales & Lize, *supra* note 19, at 55. Ultimately, they received about forty to fifty dollars a week, while the brothers kept over half of their wages. See Bales & Lize, *supra* note 19, at 44. As a result of this operation, the Ramos brothers made approximately three million dollars during a period of eighteen months. *Id.*

The involvement of organized crime also facilitates the development of the human trafficking industry.<sup>117</sup> “Traffickers have been compared to drug cartels in their ability to smuggle their goods across borders and utilize advanced communications to their benefit.”<sup>118</sup> Crime networks of various forms, which range from gangs to entrepreneurial citizens, interact between countries to provide the markets with the resources they demand.<sup>119</sup> For example, “[a] club owner in Chicago can pick up the phone and ‘mail-order’ three beautiful young girls from eastern Europe. Two weeks later a fresh shipment of three Slavic girls will be dancing in his club.”<sup>120</sup>

In addition, human trafficking would not be able to flourish if governments were willing and able to stop it; unfortunately, in many countries, both of these elements are often lacking.<sup>121</sup> Many governments in developing countries implicitly condone human trafficking when law enforcement agents voluntarily look the other way, as victims are smuggled across borders.<sup>122</sup> Other countries facilitate human trafficking by failing to criminalize it in all of its forms and variations.<sup>123</sup> On the other hand, there are countries that are genuinely interested in combating human trafficking, but lack the resources to effectively do so on the local level.<sup>124</sup> In addition, countries ravaged by armed conflict or

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<sup>117</sup> See TIP REPORT 2004, *supra* note 19, at 19; BATSTONE, *supra* note 20, at 171. Batstone explains that trafficking begins on a local level with local organizations. *Id.* However, these local organizations interact and communicate to traffic victims to locations where they are needed most. *See id.*

<sup>118</sup> Mathews, *supra* note 109, at 664. These organized crime networks assist with the falsification of travel and identification documents. Cynthia Shepard Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT'L & COMP. L. 503, 506 (2006). In addition, these networks bribe public officials and law enforcement agents to smuggle individuals across international borders without detection. *Id.*

<sup>119</sup> See ZHANG, *supra* note 19, at 122; Mathews, *supra* note 109, at 663.

<sup>120</sup> BATSTONE, *supra* note 20, at 171.

<sup>121</sup> KING, *supra* note 1, at 20; TIP REPORT 2004, *supra* note 19, at 19; *see* Mathews, *supra* note 109, at 662, 663.

<sup>122</sup> Mathews, *supra* note 109, at 663. For example, the State Department has reported that Algeria has not taken any steps to punish traffickers of men and women and has failed to conduct any investigation on the trafficking of children. TIP REPORT 2007, *supra* note 18, at 53. In addition, Iran has not reported any prosecutions or convictions of traffickers or government officials facilitating trafficking. *Id.* at 120.

<sup>123</sup> *See generally* TIP REPORT 2007, *supra* note 18 (analyzing each country and pointing out which countries fail to criminalize all forms of trafficking). For example, to date, Algeria and Afghanistan do not prohibit all forms of trafficking in persons. *Id.* at 51, 53. Chad does not prohibit human trafficking at all. *Id.* at 78.

<sup>124</sup> *See id.* at 99 (explaining that Ethiopia lacks the resources to assist trafficking victims); Mathews, *supra* note 109, at 663.

political instability are too preoccupied to stop the extraction of victims from their countries.<sup>125</sup>

Finally, the industry of human trafficking continues to flourish, because of a lack of awareness.<sup>126</sup> “Trafficking victims are often ashamed or afraid to return home” if they have been unsuccessful, leaving their peers in the dark about any future threat of human trafficking.<sup>127</sup> Potential victims’ families are enticed by the prospect of success when they hear about positive experiences of those individuals who previously accepted a similar offer of employment; they do not know enough to see through the facade being constructed by the traffickers.<sup>128</sup> Consequently, because these individuals are unaware of the dangers that await them, they have little trouble accepting a trafficker’s offer.<sup>129</sup>

### C. *Effects of Human Trafficking on Victims*

The effects of human trafficking weigh heavily on the physical and mental stability of its victims.<sup>130</sup> Physical injuries sustained range in severity from bruises and scars to broken bones and concussions.<sup>131</sup> Malnourishment and various diseases—including hepatitis, malaria, tuberculosis, and pneumonia—also threaten victims’ health.<sup>132</sup> Many suffer from sexually transmitted diseases from being raped or working in the commercial sex industry.<sup>133</sup> Other female victims are found pregnant or infertile as a result of an abortion that went awry or “chronic untreated sexually transmitted infections.”<sup>134</sup> Those who were forced to perform hard labor often suffer from “chronic back, hearing, cardio-

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<sup>125</sup> See TIP REPORT 2003, *supra* note 23, at 8.

<sup>126</sup> *Id.* at 7–8.

<sup>127</sup> *Id.*

<sup>128</sup> See *id.*

<sup>129</sup> See *id.*

<sup>130</sup> See TIP REPORT 2008, *supra* note 19, at 21; Sadrudin et al., *supra* note 34, at 405; HHS, Labor Trafficking, *supra* note 89; U.S. DEP’T OF HEALTH & HUMAN SERVS., Resources: Common Health Issues Seen in Victims of Human Trafficking, [http://www.acf.hhs.gov/trafficking/campaign\\_kits/tool\\_kit\\_health/health\\_problems.pdf](http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_health/health_problems.pdf) (last visited Oct. 8, 2008) [hereinafter HHS, Resources]; HHS, Sex Trafficking, *supra* note 43.

<sup>131</sup> HHS, Labor Trafficking, *supra* note 89; HHS, Resources, *supra* note 130; HHS, Sex Trafficking, *supra* note 43.

<sup>132</sup> HHS, Resources, *supra* note 130; HHS, Sex Trafficking, *supra* note 43.

<sup>133</sup> HHS, Resources, *supra* note 130; HHS, Sex Trafficking, *supra* note 43.

<sup>134</sup> HHS, Resources, *supra* note 130; HHS, Sex Trafficking, *supra* note 43.

vascular or respiratory problems.”<sup>135</sup> Finally, some victims suffer from drug and alcohol addictions.<sup>136</sup>

In addition to enduring physical injuries, many victims suffer from various mental illnesses.<sup>137</sup> It is not uncommon for victims to experience post-traumatic stress disorder, depression, disassociative disorders, or anxiety disorders.<sup>138</sup> Other victims suffer from traumatic bonding, otherwise known as “Stockholm Syndrome,” which is “characterized by cognitive distortions where reciprocal positive feelings develop between captors and their hostages.”<sup>139</sup> Some victims become unable to control their emotions as a result of living in a constant state of fear.<sup>140</sup> In addition, victims may experience culture shock because they find themselves in a society that is radically different from that of their home country.<sup>141</sup> Ultimately, those who are lucky enough to gain their freedom still have a long journey ahead of them before they are fully rehabilitated.<sup>142</sup>

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<sup>135</sup> HHS, Resources, *supra* note 130.

<sup>136</sup> *Id.*; HHS, Sex Trafficking, *supra* note 43. One explanation as to why trafficking victims suffer from these disorders declares:

Human trafficking victims are often locked in situations that are almost impossible to escape. Even where escape is physically possible, victims may be psychologically incapable of escape due to their constant terror. This sense of having no control over one’s safety, daily movement, or future makes victims particularly vulnerable to traumatic stress disorders.

Sadrudin et al., *supra* note 34, at 405.

<sup>137</sup> See TIP REPORT 2008, *supra* note 19, at 21; Sadrudin et al., *supra* note 34, at 405; HHS, Labor Trafficking, *supra* note 89; HHS, Sex Trafficking, *supra* note 43.

<sup>138</sup> See TIP REPORT 2008, *supra* note 19, at 21; HHS, Labor Trafficking, *supra* note 89; HHS, Sex Trafficking, *supra* note 43.

<sup>139</sup> Sadrudin et al., *supra* note 34, at 404; HHS, Labor Trafficking, *supra* note 89; see also HHS, Sex Trafficking, *supra* note 43.

<sup>140</sup> Sadrudin et al., *supra* note 34, at 403–04.

<sup>141</sup> HHS, Resources, *supra* note 130.

<sup>142</sup> See TIP REPORT 2008, *supra* note 19, at 21; HHS, Labor Trafficking, *supra* note 89; HHS, Resources, *supra* note 130; HHS, Sex Trafficking, *supra* note 43.

## II. FEDERAL LEGISLATION COMBATING HUMAN TRAFFICKING

*From the day of our founding, we have proclaimed that every man and woman on this Earth has rights and dignity and matchless value. . . . [N]o one is fit to be a master and no one deserves to be a slave.*

—President George W. Bush<sup>143</sup>

The federal government has passed several pieces of legislation to combat human trafficking, complementing the Thirteenth Amendment's general prohibition of slavery and involuntary servitude.<sup>144</sup>

### A. *The Mann Act*

The Mann Act, formally known as the White Slave Traffic Act, is one of the nation's first anti-trafficking statutes.<sup>145</sup> The Mann Act prohibits the knowing transport of any individual in interstate or foreign commerce with the intent that the trafficked individual will engage in "prostitution, or in any sexual activity for which any person can be charged with a criminal offense."<sup>146</sup> In addition, the Mann Act prohibits the knowing persuasion, inducement, or coercion of any individual to travel in interstate or foreign commerce to engage in any illegal sexual activity.<sup>147</sup>

### B. *The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003*

The PROTECT Act complements and amends the Mann Act by giving law enforcement authorities valuable new tools to deter and punish those who engage in or facilitate sex tourism.<sup>148</sup> The PROTECT Act

<sup>143</sup> President George W. Bush, Second Inaugural Address (Jan. 20, 2005) in 43 WKLY. COMP. PRES. DOC. 74 (2005).

<sup>144</sup> See U.S. CONST. amend. XIII, § 1; Torg, *supra* note 118, at 506–07. The Thirteenth Amendment states, in relevant part: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. CONST. amend. XIII, § 1.

<sup>145</sup> See White-Slave Traffic (Mann) Act, 18 U.S.C. §§ 2421–2427 (2000), amended by 18 U.S.C. §§ 2421–2426 (Supp. V 2005); Mathews, *supra* note 109, at 671.

<sup>146</sup> 18 U.S.C. § 2421; see Torg, *supra* note 118, at 509. An actual or attempted violation of this provision is punishable by a maximum of ten years imprisonment, a fine, or both. 18 U.S.C. § 2421.

<sup>147</sup> 18 U.S.C. § 2422. An actual or attempted violation of this provision is punishable by a maximum of twenty years imprisonment, a fine, or both. *Id.*

<sup>148</sup> See Amy Fraley, Note, *Child Sex Tourism Legislation Under the PROTECT Act: Does It Really Protect?*, 79 ST. JOHN'S L. REV. 445, 456–59 (2005) (tracing the evolution of legislation that combats sex tourism). See generally PROTECT Act, 18 U.S.C. § 2423 (Supp. V.

criminalizes attempted and completed acts of sex tourism committed by United States citizens (or permanent residents) within the United States and abroad.<sup>149</sup> The maximum penalty for these crimes is thirty years.<sup>150</sup> The PROTECT Act also makes it a crime for an individual to arrange, induce, or procure a third party to travel in interstate or foreign commerce for the purpose of engaging in illicit sexual conduct in exchange for a commercial advantage.<sup>151</sup> Finally, the PROTECT Act increases the penalties for certain sexual offenses related to children.<sup>152</sup>

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2005). Although the PROTECT Act made many advancements, only those relevant to human trafficking are discussed in this Note.

<sup>149</sup> 18 U.S.C. § 2423. Sex tourism “involves people who travel to engage in commercial sex acts with children.” TIP Report 2008, *supra* note 19, at 14. The PROTECT Act specifically amends the criminal code and details sex tourism as follows:

(b) Travel with Intent to Engage in Illicit Conduct.—A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) Engaging in Illicit Sexual Conduct in Foreign Places.—Any United States citizen or alien admitted for permanent residence who travels in foreign commerce, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

18 U.S.C. § 2423(b)–(c); *see also* Mathews, *supra* note 109, at 693 (explaining the provisions of the PROTECT Act). For the purposes of the PROTECT Act, “illicit sexual conduct” is defined as “(1) a sexual act . . . with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act . . . with a person under 18 years of age.” 18 U.S.C. § 2423(f).

<sup>150</sup> 18 U.S.C. § 2423(b)–(c). The PROTECT Act increased this penalty from fifteen years. §§ 103(a)(2)(c), 105, § 2432(b)–(c), Pub. L. No 108–21, 117 Stat. 651–654. In addition, the Criminal Code has been amended to impose a “two strikes you’re out” sentence: if an individual is convicted of transporting a minor for the purpose of engaging in any sexual activity which is a criminal offense, and he has an existing conviction, he must be sentenced to life imprisonment. *Id.* § 106 (codified at 18 U.S.C. § 3559).

<sup>151</sup> 18 U.S.C. § 2423(d).

<sup>152</sup> §§ 103, 105, 106, 117 Stat. at 652–55; *see* Torg, *supra* note 109, at 509–10. For example, the PROTECT Act created a minimum five-year sentence for individuals convicted of “knowingly transport[ing] an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense. § 103(b)(2)(b) (codified at 18 U.S.C. § 2423(a)).

### C. *The Trafficking Victims Protection Act*

The TVPA is the first piece of modern, comprehensive, federal legislation that combats human trafficking.<sup>153</sup> It aims to accomplish three main goals: prosecution of traffickers, prevention against the development of the industry, and protection of victims.<sup>154</sup>

#### 1. Prosecution and Punishment

The TVPA provides for the punishment and prosecution of those who participate in trafficking in persons in a number of ways.<sup>155</sup> It alters the U.S. Criminal Code, creating new criminal offenses: (1) forced labor; (2) trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; (3) sex trafficking of children or by force, fraud, or coercion; and (4) unlawful conduct with documents in furtherance of trafficking.<sup>156</sup> The Act also enhances the penalties for existing crimes related to trafficking: the minimum penalties have been increased to twenty years for crimes of peonage, enticement into slavery, and sale into involuntary servitude.<sup>157</sup> Moreover, if, during the commission of these crimes, there is actual or attempted murder, kidnapping, or aggravated sexual abuse, a life sentence is permitted.<sup>158</sup> The TVPA also created strict forfeiture and restitution provisions for those found guilty of the behavior criminalized under the section.<sup>159</sup> Finally, the TVPA

<sup>153</sup> HHS, Human Trafficking, *supra* note 44; see Angela D. Giampolo, Note, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 198 (2006); Stephanie Richard, Note, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 451 (2005). See generally TVPA of 2000, Pub. L. No. 106-386, § 112, 114 Stat. 1464, 1486 (codified as amended in scattered sections of 18 U.S.C.) (2000).

<sup>154</sup> Torg, *supra* note 118, at 503; Mathews, *supra* note 109, at 676.

<sup>155</sup> See TVPA of 2000, Pub. L. No. 106-386, § 112, 114 Stat. 1464, 1486 (codified as amended at scattered sections of 18 U.S.C.) (2000).

<sup>156</sup> 18 U.S.C. §§ 1589-1592 (2000); see also 22 U.S.C. § 7101(b)(14)-(15) (2000) (explaining the need to create new legislation to address the inefficiencies of existing legislation); *Developments in the Law—Jobs and Borders*, 118 HARV. L. REV. 2171, 2192 (2005) (explaining the criminal provisions added by the TVPA).

<sup>157</sup> TVPA of 2000 § 112, 114 Stat. at 1486-90 (codified at 18 U.S.C. §§ 1851(a), 1583, and 1584).

<sup>158</sup> TVPA of 2000 § 112; see also Torg, *supra* note 118, at 507-08 (explaining the increase in penalties).

<sup>159</sup> 18 U.S.C. §§ 1593-1594; Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041, 1050 (2002). The forfeiture provisions were bolstered by the TVPRA of 2005, which requires the forfeiture of any property used or intended to be used to commit or facilitate any violation of the TVPA or that was derived from proceeds made in violation of the chapter. TVPRA of 2005, 18 U.S.C. § 2428 (Supp. V 2005).

authorizes the President to sanction foreign individuals who play a significant role in a severe form of trafficking in persons or provides financial, technological, or material support to such an endeavor.<sup>160</sup>

The subsequent reauthorization acts also made changes that strengthened the federal government's prosecution efforts.<sup>161</sup> The TVPRA of 2003 made any trafficking offense a predicate offense for prosecution under the Racketeer Influenced Corrupt Organizations Act [RICO].<sup>162</sup> The TVPRA of 2005 extended the extraterritorial authority of the provisions to those employed by or accompanying the Federal Government outside the United States.<sup>163</sup>

Two final changes strengthened prosecutorial efforts by making them multi-faceted.<sup>164</sup> The TVPRA of 2003 created a private right of action: trafficking victims can now bring civil actions in federal district courts against perpetrators to recover damages and attorney fees.<sup>165</sup> The TVPRA of 2005 established a grant program to assist state and local law enforcement agencies efforts to establish, develop, expand their programs that investigate and prosecute those who engage in severe forms of trafficking in persons, commercial sex acts, and other related offenses.<sup>166</sup>

## 2. Prevention Efforts

The TVPA aims to prevent the expansion of human trafficking in two significant ways: the development of "programs to counteract the common reasons for victimization, and sanctions to motivate compliance with U.S. anti-trafficking standards."<sup>167</sup> To counteract the conditions which fuel the trafficking industry, the TVPA requires the President to implement international initiatives to enhance economic

<sup>160</sup> 22 U.S.C. § 7108 (2000).

<sup>161</sup> See TVPRA of 2005, Pub. L. No. 109-164, § 103, 119 Stat. 3557, 3562-63; TVPRA of 2003, Pub. L. No. 108-193, § 5, 117 Stat. 2875, 2878.

<sup>162</sup> See TVPRA of 2003, § 5; Chacón, *supra* note 38, at 2992.

<sup>163</sup> 18 U.S.C. §§ 3271-3272 (Supp. V 2005).

<sup>164</sup> See 18 U.S.C. § 1595 (Supp. IV 2004); TVPRA of 2005, § 104 (codified at 42 U.S.C. 14044c (Supp. V 2005)).

<sup>165</sup> TVPRA of 2003, § 5 (codified at 18 U.S.C. § 1595 (Supp. IV 2004)); see also *Developments in the Law—Jobs and Borders*, *supra* note 156, at 2193 (explaining the creation of a private right of action for trafficking victims).

<sup>166</sup> 42 U.S.C. § 14044c (Supp. V 2005). Twenty-five million dollars was allocated to this initiative for the fiscal years of 2006 and 2007. *Id.* However, such grants can only be obtained if the state or local law enforcement agency works collaboratively with social service providers and relevant nongovernmental organizations. *Id.* § 14044c(b).

<sup>167</sup> *Developments in the Law—Jobs and Borders*, *supra* note 156, at 2189; see Cooper, *supra* note 159, at 1047.

opportunities for potential victims, including programs that provide job training and counseling to adults and programs to keep children in elementary and secondary schools.<sup>168</sup> The President must also devise and implement programs to heighten public awareness on the issue of human trafficking.<sup>169</sup>

As for sanctions, the TVPA permits the withholding of financial assistance to countries that do not adequately combat human trafficking within their own borders.<sup>170</sup> It also incorporates a provision into any agreement between a federal department or agency and a private entity terminating the agreement if the other party “(i) engages in severe forms of trafficking in persons or has procured a commercial sex act during the period of time that the grant, contract, or (ii) co-

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<sup>168</sup> 22 U.S.C. § 7104(a). The initiatives that were suggested within the text of the TVPA include:

- (1) Microcredit lending programs, training in business development, skills training, and job counseling;
- (2) programs to promote women’s participation in economic decisionmaking;
- (3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;
- (4) development of educational curricula regarding the dangers of trafficking; and
- (5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

*Id.* The President is required to consult with the appropriate nongovernmental agencies when devising these programs. *Id.* § 7104(f).

<sup>169</sup> *Id.* § 7104(b). No specific programs were enumerated in the provision to heighten public awareness; the provision merely states, “The President . . . shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.” *Id.*

<sup>170</sup> *Id.* § 7107. Whether countries are sanctioned is determined by the following process: the TVPA requires the Secretary of State to provide an annual report to Congress assessing every country’s level of adherence to the “minimum standards for the elimination of trafficking” established by the Act. *Id.* § 7107(b); see Cooper, *supra* note 159, at 1048. The minimum standards require every country to (1) prohibit severe forms of trafficking in persons and punish those who engage in such action; (2) punish any trafficking involving sexual exploitation or kidnapping, or trafficking that results in a death to be treated as gravely as other sexual assault crimes in the country; (3) punish knowing acts of trafficking strongly enough to deter future attempts; and (4) make “serious and sustained efforts” to eliminate severe forms of trafficking in persons. 22 U.S.C. § 7106(a); Cooper, *supra* note 159, at 1048. Within the report required by the statute, different tiers indicate the various levels of compliance: the most compliant countries are listed in Tier 1, while the countries that fail to comply with or make “significant efforts” to comply with these standards are found in Tier 3. 22 U.S.C. § 7107(b). See generally TIP REPORT 2007, *supra* note 18. Ultimately, Tier 3 countries are denied nonhumanitarian, nontrade-related foreign assistance. 22 U.S.C. § 7107(a). Under this same system, the TVPA provides assistance to countries striving to meet the minimum standards of compliance. *Id.* § 2152(a); Cooper, *supra* note 159, at 1049.

operative agreement is in effect, or uses forced labor in the performance of the grant, contract, or cooperative agreement.”<sup>171</sup>

### 3. Protection and Services for Victims

Finally, the TVPA and its reauthorizations strive to protect and provide assistance to victims of human trafficking both in the United States and abroad.<sup>172</sup> For victims in the United States to receive any benefits or services, they must meet certain eligibility requirements.<sup>173</sup> The first requirement mandates that an individual be successfully classified as a “victim of a severe form of trafficking in persons,” which means the individual was subjected to either:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>174</sup>

If the individual is under the age of eighteen and fits into the above classification, she is eligible for benefits and protection.<sup>175</sup> However, individuals above the age of eighteen must also be certified by the Secretary of Health and Human Services.<sup>176</sup> After an individual’s eli-

<sup>171</sup> 22 U.S.C. § 7104(g).

<sup>172</sup> See *id.* § 7105. For victims abroad, the Act requires the creation of programs to assist with the safe integration or reintegration of victims in their home countries. *Id.* § 7105(a)(1). It also provides support for nongovernmental organizations and protective shelters to provide legal and social services to victims and to create additional service centers. TVPRA of 2003, 22 U.S.C. § 7105(a)(1)(A)–(B), (D) (Supp. III 2003).

<sup>173</sup> 22 U.S.C. § 7105(b)(1)(A); see Ellen L. Buckwalter et al., *Modern Day Slavery in Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 409 (2006); *Developments in the Law—Jobs and Borders*, *supra* note 156, at 2191.

<sup>174</sup> 22 U.S.C. §§ 7102(8), 7105(b)(1)(c).

<sup>175</sup> *Id.* § 7105(b)(1)(c).

<sup>176</sup> *Id.* § 7105(b)(1)(c), (e). This certification requires the person to be “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons” and has either “made a bona fide application for a visa under section 1101(a)(15)(T) . . . [or] is a person whose continued presence in the United States the Secretary of Homeland Security is ensuring in order to effectuate prosecution of traffickers in persons.” 22 U.S.C. § 7105(b)(1)(E)(i) (2000 & Supp. V 2005).

During the 2006 fiscal year, 214 certifications were issued to adults and 20 eligibility letters were issued to minors. U.S. DEP’T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2006 at 5 (2007) [hereinafter FY 2006 ASSESSMENT], available at <http://www.state.gov/documents/organization/94809.pdf>.

gibility is established, she must be informed of her rights and given access to translation services.<sup>177</sup> The victim is also entitled to a number of Federal and State benefits and services to the same extent that an alien admitted as a refugee would be.<sup>178</sup> If the victim is being held in custody, she must be kept in an appropriate facility and be granted access to medical care.<sup>179</sup>

The Act also provides assistance to trafficking victims at a more local level by creating a grant system for state and local governments and nonprofit nongovernmental organizations to expand or strengthen victim service programs.<sup>180</sup> The TVPRA of 2005 also requires the creation of a pilot program that establishes residential treatment facilities for juvenile victims of trafficking.<sup>181</sup>

Finally, the TVPA protects victims from criminal prosecution: it declares that “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked . . . .”<sup>182</sup> The act encourages “protecting rather than punishing the victims of such offenses.”<sup>183</sup>

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During the 2007 fiscal year, 270 certifications were issued to adults and 33 eligibility letters were issued to minors. U.S. DEP’T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT EFFORT TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2007 at 4 (2008) [hereinafter FY 2007 ASSESSMENT], available at <http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf>. The total number of certification letters issued since the program was instituted is 1379. *Id.* However, the assessment fails to disclose how many applications, in total, have been filed, and how many individuals were denied certification. *See generally id.*

<sup>177</sup> 22 U.S.C. § 7105(c)(2).

<sup>178</sup> *Id.* § 7105(b)(1)(A). One significant benefit the TVPA provides for victims is the opportunity to remain in the country on a visa after being removed from the trafficking environment. 8 U.S.C. § 1101(a)(15)(T); 22 U.S.C. § 7105(e); Buckwalter et al., *supra* note 173, at 410. Once obtained, the holder of the “T visa” can maintain this status for four years and can apply for permanent residency after three years of residing in the United States. 8 U.S.C. § 1184(o)(7)(A) (“An alien who is issued a visa or otherwise provided non-immigrant status . . . may be granted such status for a period of not more than 4 years.”); 8 U.S.C. § 1255(l)(1)(A) (2000 & Supp. V 2005) (detailing the process available to trafficking victims to become a permanent resident after residing in the United States for three years with a T visa).

<sup>179</sup> 22 U.S.C. § 7105(c)(1).

<sup>180</sup> *Id.* § 7105(b)(2).

<sup>181</sup> *Id.* § 14044b (Supp. V 2005).

<sup>182</sup> *Id.* § 7101(b)(19).

<sup>183</sup> *Id.* § 7101(b)(24).

### III. STATE-LEVEL LEGISLATION COMBATING HUMAN TRAFFICKING IN THE UNITED STATES

*We must go beyond an initial rescue of victims and restore to them dignity and the hope of productive lives.*<sup>184</sup>

#### A. *The Need for State Legislation*

Despite the progress that has been made in combating human trafficking in the United States, state legislation is vital to successfully combat human trafficking.<sup>185</sup> The primary reason such legislation is necessary is because the federal statutory scheme is not effective on the local level.<sup>186</sup> For example, the Mann Act was not intended to combat human trafficking as it exists today; instead, it was intended to eliminate the “white-slave” trafficking within the United States.<sup>187</sup> Accordingly, it does not address trafficking on an international level.<sup>188</sup> In addition, it only addresses trafficking executed for sexual exploitation, and does not criminalize the trafficking of victims for domestic servitude or forced labor.<sup>189</sup> In addition, while the PROTECT Act is a more recent piece of legislation, it also has a very narrow scope with respect to trafficking: domestic and international sex tourism.<sup>190</sup> Ultimately, neither of these pieces of legislation makes significant inroads in the fight against all forms of human trafficking.<sup>191</sup>

<sup>184</sup> TIP REPORT 2008, *supra* note 19, at 5.

<sup>185</sup> See Buckwalter et al., *supra* note 173, at 425.

<sup>186</sup> See Chacón, *supra* note 38, at 3017–20; Haynes, *supra* note 23, at 365–66; Susan Tiefenbrun, *The Saga of Susannah: A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence and Protection Act of 2000*, 2002 UTAH L. REV. 107, 165–66.

<sup>187</sup> *Mortensen v. United States*, 322 U.S. 369, 377 (1944). The Court explained the goal of the Mann Act:

Congress was attempting primarily to eliminate the “white slave” business which uses interstate and foreign commerce as a means of procuring and distributing its victims and “to prevent panders and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.”

*Id.* (quoting H. R. Rep. No. 61-47, at 10 (1910)).

<sup>188</sup> Mathews, *supra* note 109, at 671–72.

<sup>189</sup> See Torg, *supra* note 118, at 509.

<sup>190</sup> See PROTECT Act, 18 U.S.C. § 2423(a)–(c) (Supp. V 2005).

<sup>191</sup> See Torg, *supra* note 118, at 509, 510 (explaining that the Mann Act provides a framework to combat the transportation of individuals within the United States for engaging in criminal sexual activity, while the PROTECT Act aims to put an end to “child trafficking, child sex tourism, and other forms of child exploitation” in the United States and abroad); Mathews, *supra* note 109, at 671–72.

Furthermore, while the TVPA and its subsequent reauthorization acts have been heralded for making significant progress in the fight against human trafficking, they still have several shortcomings.<sup>192</sup> One criticism of the TVPA is that it lacks “an enforcement arm” to implement its provisions.<sup>193</sup> It has been labeled “top-heavy,” as high ranking officials comprise the vast majority of those who understand how to identify and assist trafficking victims, and yet these individuals are the least likely to encounter such individuals.<sup>194</sup> This top-down approach is dangerous because not only will it permit perpetrators to remain free and victims to remain in danger, but also because “[a] law without vigorous and effective implementation is worse than no law at all, because it lulls us into the false sense that we have done something to solve the problem.”<sup>195</sup>

Another significant critique, which is also an unfortunate reality, focuses on the failure of the TVPA to provide relief to trafficking victims.<sup>196</sup> The number of victims who have been certified to receive federal protection and services is “stunningly low.”<sup>197</sup> Since the TVPA was enacted in October 2000, only 1379 people have been certified.<sup>198</sup> This figure has a number of possible explanations: it can be attributed to poor implementation of the TVPA and a lack of public awareness about the Act’s benefits.<sup>199</sup> In the alternative, the low number could be attributed to the fact that TVPA does not necessarily offer relief to all victims of all forms of trafficking.<sup>200</sup> Regardless of the cause of the problem,

<sup>192</sup> See Barone, *supra* note 34, at 593–94; Chacón, *supra* note 38, at 3017–20; Haynes, *supra* note 23, at 365–66; Tiefenbrun, *supra* note 186, at 165–66.

<sup>193</sup> Tiefenbrun, *supra* note 186, at 165.

<sup>194</sup> Haynes, *supra* note 23, at 365–66; see also Coonan, *supra* note 84, at 294 (explaining that local law enforcement in Florida is relatively unfamiliar with the concept of human trafficking and the provisions of the TVPA).

<sup>195</sup> Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop It Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 323 (2005) (quoting *Implementation of the Trafficking Victims Protection Act: Hearing Before the H.R. Comm. on Int’l Relations*, 107th Cong. 1 (2001) (statement of U.S. Representative Henry J. Hyde)).

<sup>196</sup> See Chacón, *supra* note 38, at 3018; Tiefenbrun, *supra* note 186, at 165. While there are a number of criticisms of the TVPA, only those within the scope of this Note will be addressed.

<sup>197</sup> Chacón, *supra* note 38, at 3018.

<sup>198</sup> See FY 2007 ASSESSMENT, *supra* note 176, at 1, 4. The Assessment fails to mention how many victims applied for certification, but were denied. See generally *id.*

<sup>199</sup> See *id.*; see also Chacón, *supra* note 38, at 3018–19 (explaining that the Department of Justice has attributed the low numbers resulted to problems of outreach); Tiefenbrun, *supra* note 186, at 165 (criticizing the TVPA’s lack of an enforcement arm).

<sup>200</sup> See Barone, *supra* note 34, at 592, 594. For example, because relevant provisions only extend to victims of “severe forms of trafficking,” the TVPA denies protection and services to individuals who are well-deserving of such assistance, but do not meet the spe-

the effect remains clear: the protection and services provided for in TVPA are not reaching those who are in dire need of assistance.<sup>201</sup>

State legislation, if drafted correctly, can also bolster the federal legislation combating all forms of trafficking in many ways.<sup>202</sup> For example, states can implement local law enforcement training on how to recognize and appropriately respond to issues related to human trafficking.<sup>203</sup> This training is crucial because local law enforcement agents are far more likely to come across human trafficking than federal-level authorities.<sup>204</sup> Moreover, knowledgeable law enforcement agents would serve as a deterrent, dissuading traffickers from bringing victims into the country.<sup>205</sup>

Another benefit of state anti-trafficking legislation would be the criminalization of human trafficking at the state level, which would facilitate the prosecution of criminals in state court.<sup>206</sup> Without such legislation, prosecutors would be hard-pressed to find suitable charges for perpetrators of trafficking.<sup>207</sup> In addition, this access to state courts would provide quicker and more efficient remedies in many situations.<sup>208</sup> Furthermore, “a greater number of overall prosecutions will have a greater impact on a local level.”<sup>209</sup>

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cific criteria of the provision. *Id.* In addition, “many of the most traumatized victims might be physically or psychologically incapable of providing cooperation with law enforcement and would thus be ineligible for any benefits” under the Federal statutory scheme. Sadruddin et al., *supra* note 34, at 395. In other situations, victims of less extreme forms of sex trafficking will be denied assistance under the TVPA. *See id.* at 408; Barone, *supra* note 34, at 592.

<sup>201</sup> *See* Chacón, *supra* note 38, at 3018.

<sup>202</sup> *See* Buckwalter et al., *supra* note 173, at 425–26.

<sup>203</sup> *See id.* at 425; Coonan, *supra* note 84, at 294.

<sup>204</sup> *See* Coonan, *supra* note 84, at 293–94. Local law enforcement authorities can encounter trafficking operations or victims of trafficking during the course of many of their routine responsibilities, including “vice raids, in crime scene investigations in immigrant communities, and even in domestic violence calls.” *Id.* at 293.

<sup>205</sup> *See* Buckwalter et al., *supra* note 173, at 426.

<sup>206</sup> *See* Torg, *supra* note 118, at 512–13.

<sup>207</sup> *Id.* at 513. Torg notes that, without state legislation, prosecutors will charge traffickers with other crimes, including “prosecution, assault, or workplace violations” or decline to pursue the case altogether. *Id.*

<sup>208</sup> Buckwalter et al., *supra* note 173, at 425; Payne, *supra* note 27, at 59. Concerns have been raised that the federal authorities are not always willing or able to prosecute cases involving a small group of victims. Buckwalter et al., *supra* note 173, at 425; *see also* Coonan, *supra* note 84, at 294 (arguing that state legislation is needed because “federal resources are necessarily committed to countering terrorism . . . [and] it is inevitable that investigations of human trafficking situations will be relegated to a lower priority”).

<sup>209</sup> Torg, *supra* note 118, at 513.

Moreover, state legislation will be able to respond to specific needs of its particular territory in an effective manner.<sup>210</sup> From the perspective of victim assistance, each state can design rehabilitative and social service programs specific to victims found within its jurisdiction.<sup>211</sup> In addition, different regions of the country utilize trafficking victims to fulfill different economic needs; accordingly, state legislation can be drafted to more effectively combat issues specific to the area.<sup>212</sup> State legislation would more effectively prevent the importation of trafficking victims along their individual borders.<sup>213</sup>

Finally, morality and empathy command the passage of such legislation: human trafficking “constitutes one of the most egregious and systematic human rights violations of the new century, and should be countered at every turn.”<sup>214</sup> Ultimately, each state should aim to achieve as many of these objectives as possible to effectively combat human trafficking when drafting new legislation or amending existing legislation.<sup>215</sup>

### B. *The Anti-Trafficking Legislation Proposed in Massachusetts*

In 2007, Massachusetts State Senator Mark C. Montigny introduced Senate Bill No. 97, An Act Relating to Anti-Human Trafficking and Protection.<sup>216</sup> The bill aims to provide additional protections and services to victims of human trafficking on the state level and criminalize distinct human trafficking related offenses.<sup>217</sup>

#### 1. Services and Forms of Compensation Provided to Victims

The bill provides assistance directly to trafficking victims in a number of ways.<sup>218</sup> First, the bill provides funding for non-profit services offered to victims of trafficking through the establishment of a

<sup>210</sup> See Buckwalter et al., *supra* note 173, at 426.

<sup>211</sup> *Id.* (“[W]arm clothing is not usually an urgent need for trafficking victims in Hawaii, whereas it certainly is in Alaska. State laws can require that these needs take priority over others.”); See *supra* notes 130–142 and accompanying text (explaining various physical and mental ailments experienced by trafficking victims).

<sup>212</sup> Buckwalter et al., *supra* note 173, at 426.

<sup>213</sup> Payne, *supra* note 27, at 59.

<sup>214</sup> Coonan, *supra* note 84, at 295.

<sup>215</sup> See Buckwalter et al., *supra* note 173, at 425–26, 428–29.

<sup>216</sup> See S. 97, 185th Gen. Court, Reg. Sess. (Mass. 2007).

<sup>217</sup> See generally *id.* In addition to Senate Bill 97, Senator Montigny has introduced Senate Bill No. 103, entitled, Resolve Studying Trafficking of Persons and Involuntary Servitude. See S. 103, 184th Gen. Court, Reg. Sess. (Mass. 2005).

<sup>218</sup> See Mass. S. 97, §§ 1, 9.

Victims of Human Trafficking Trust Fund.<sup>219</sup> This fund will be comprised of assets, proceeds from assets seized, and fines and assessments collected in accordance with the new state-level human trafficking crimes created by the bill.<sup>220</sup> Money from the fund will be awarded to non-profit and community-based programs that provide services to trafficking victims.<sup>221</sup> The non-exhaustive list of services that are entitled to funding include: “legal and case management services, health care, mental health, social services, housing or shelter services, education, job training or preparation, interpreting services, English-as-a-second language classes, [and] victim’s compensation . . . .”<sup>222</sup>

Second, the bill creates a number of social services to be provided by directly by Massachusetts.<sup>223</sup> It requires the creation of a pilot program for a “human trafficking safe house” that will meet the needs of adult and child trafficking victims.<sup>224</sup> This house must have twenty-four hour security and a multilingual trauma staff, among other services.<sup>225</sup> The bill also requires the Department of Social Services to devise age-appropriate services for child victims of trafficking.<sup>226</sup>

Third, Senator Montigny’s bill also provides monetary compensation to victims in direct and indirect ways.<sup>227</sup> It creates a tax deduction for any amount received by a victim for services rendered while in involuntary servitude, sexual servitude, or forced labor.<sup>228</sup> It mandates that the Attorney General’s office compensate the victim for “the greater of the following: (1) the gross income or value to the defendant of the victim’s labor or services or (2) the value of the victim’s labor or services as guaranteed under the commonwealth’s minimum wage and overtime provisions; whichever is greater, and interest.”<sup>229</sup> It also pro-

<sup>219</sup> *Id.* § 1.

<sup>220</sup> *Id.* The bill limits the amount of the fund that can be spent on administrative costs and forbids the money from being placed in the General Fund at the end of each fiscal year. *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Mass. S. 97, § 9.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.* The house must also have access to healthcare and mental health services and access to employment and educational services. *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.* §§ 2, 9.

<sup>228</sup> Mass. S. 97, § 2; *see also* MASS. GEN. LAWS ch. 62, § 2 (2006) (listing current permissible tax deductions from gross income to which the bill would add a provision regarding trafficking victims).

<sup>229</sup> *See* Mass. S. 97, § 9.

vides for restitution from those convicted of human trafficking violations.<sup>230</sup>

## 2. Providing for a Private Right of Action and Amending the Criminal Code

The bill also seeks to empower victims to bring private rights of action for the human trafficking related offenses that have been committed.<sup>231</sup> The bill requires courts to advance the proceedings and give the victim a speedy civil trial upon motion.<sup>232</sup> It also prevents confidential communications made between the victim and her caseworker from being disclosed or subject to discovery without written consent of the victim.<sup>233</sup> The bill requires all victims to be provided with a copy of any

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<sup>230</sup> *Id.* Although this list is not exhaustive, restitution can be ordered for:

- (1) [L]ost income . . . (2) medical and related professional services relating to physical, psychiatric or psychological care; (3) physical and occupational therapy or rehabilitation; (4) necessary transportation, temporary housing, and child care expenses; (5) in the case of an offense resulting in damage or destruction of property, return of the property, or if return is impossible, impracticable or inadequate, payment of the replacement value of the property; (6) in the case of an offense resulting in death, or bodily injury that results in death, the costs and expenses of necessary funeral and related services; (7) [attorneys' fees] (8) compensation for emotional distress, pain, and suffering; (9) expenses incurred in relocating away from the defendant . . . ; (10) any other losses suffered by the human trafficking victim.

*Id.*

<sup>231</sup> *Id.* Section 9 of the Act contains the proposed chapter 265A of the criminal code: Sections 11 and 13 of this proposed chapter specifically create a private right of action for involuntary servitude, trafficking of persons for forced labor or services or sexual servitude. *Id.* § 9.

<sup>232</sup> *Id.* § 4.

<sup>233</sup> *Id.* § 6. For the purpose of this rule, a "confidential communication," is:

Information transmitted in confidence by and between a human trafficking victim and a human trafficking victim's caseworker by a means which does not disclose the information to a person other than a person present for the benefit of the victim, or to those to whom disclosure of such information is reasonably necessary to the counseling and assisting of such victim. The term includes all information received by the human trafficking victim's caseworker which arises out of and in the course of such counseling and assisting, including, but not limited to, reports, records, working papers, or memoranda.

*Id.* A different rule exists for confidential communication during criminal cases: the communications shall be subject to discovery and admission as evidence only to the extent that it contains information that is exculpatory for the defendant. *Id.* The Court must review the information to determine whether the information is actually exculpatory before permitting discovery or introduction at trial. *Id.*

incident or police reports that relate to their cases.<sup>234</sup> In addition, it allows the victims to deliver their testimony at the civil trial by means of videoconference if they cannot attend in person due to their immigration status or undue financial or other hardship.<sup>235</sup>

On the other end of the spectrum, the bill also protects trafficking victims from prosecution in some ways, declaring that, “[a] human trafficking victim is not criminally liable for any sexual conduct for a fee or other thing of value committed as a result of, or incident or related to, being trafficked.”<sup>236</sup> The bill also provides for the affirmative defenses of duress and coercion in all other prosecutions.<sup>237</sup>

Senator Montigny’s bill also amends Massachusetts’ criminal code to criminalize human trafficking as a separate offense.<sup>238</sup> Human trafficking is criminalized in three sections of the proposed chapter.<sup>239</sup> First, the crime of involuntary servitude was created, defined as the intentional subjecting of another person to forced labor or services.<sup>240</sup>

<sup>234</sup> Mass. S. 97, § 8.

<sup>235</sup> *Id.* § 5. To utilize this method of videoconferencing during a civil trial, certain requirements must be met. *Id.* First, the testimony of the victim must be given under oath before an ambassador, a consular general, or any other respective designee in an embassy or consular office of the United States. *Id.* In addition, the defendant’s counsel must have the opportunity to cross-examine the witness at the trial, either in person or through the videoconference. *Id.*

<sup>236</sup> *Id.* § 9.

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> Mass. S. 97, § 9.

<sup>240</sup> *Id.* Involuntary servitude is punishable by a maximum fine of two thousand dollars and a minimum state imprisonment sentence of five years. *Id.* The maximum state sentence is twenty-five years. *Id.* Forced labor or services, for the purposes of the entire chapter, are defined as:

(1) work of economic or financial value or (2) activities performed directly or indirectly, under the supervision of or for the benefit of another including, but not limited to, sexual conduct for a fee or other thing of values, sexually-explicit performances and involvement in the production of pornography. Such work or services shall have been obtained or maintained in whole or in part through:

- (i) intimidation, fraud, duress or coercion;
- (ii) psychological manipulation;
- (iii) causing or threatening to cause injury to any person;
- (iv) physically restraining or threatening to physically restrain another person;
- (v) abusing or threatening to abuse the law or legal process by knowingly providing misinformation as to the adverse legal consequences of a person’s actions including, but not limited to, threats of deportation;
- (vi) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any

Second, the crime of trafficking of persons for forced labor or services, or the intentional enticing, harboring, transporting or delivering another, with the intent that the person be subjected to forced labor or services, or intentionally benefiting financially or receiving anything of value, directly or indirectly, from such conduct was created.<sup>241</sup> Finally, the crime of procuring another for sexual servitude is defined as the intentional enticing, harboring, transporting, or delivering another, with the intent that the person engage in a sexually-explicit performance, the production of pornography or sexual conduct for compensation.<sup>242</sup> An additional state prison sentence of ten to fifteen years is required if the victim of any of the above crimes is under the age of eighteen.<sup>243</sup> Further state prison sentences are also required if any of the above crimes are committed by means of kidnapping, result in bodily injury or serious bodily injury to the victim, or results in the death of another.<sup>244</sup> Finally, additional penalties are required depending on the duration for which the victim was subjected to any of these crimes.<sup>245</sup> Moreover, the act requires restitution for victims and forfeiture of assets and property used to facilitate a violation of human trafficking.<sup>246</sup>

The act also criminalizes the behavior of those who indirectly participate in the trafficking industry.<sup>247</sup> If an individual engaging in sexual conduct for a fee and knows or has reason to know the other person is a victim of human trafficking, they are subject to criminal liability.<sup>248</sup> Business entities that knowingly aid or participate in human trafficking can lose their license and can be subject to civil liability.<sup>249</sup>

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other actual or purported government identification document, of another person;

(vii) the use of blackmail;

(viii) causing or threatening to cause financial harm or to use financial control over any person.

*Id.*

<sup>241</sup> *Id.* A violation of this offense is punishable by a maximum fine of two thousand dollars and carries a minimum imprisonment sentence of ten years. *Id.* The maximum sentence is twenty years. *Id.*

<sup>242</sup> *Id.* A violation of this offense is punishable by a maximum fine of two thousand dollars and carries a minimum imprisonment sentence of twenty years. *Id.* The maximum sentence is thirty years. *Id.*

<sup>243</sup> *Id.*

<sup>244</sup> Mass. S. 97, § 9.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> See Mass. S. 97, § 9.

### 3. Responsibilities Given to New and Existing Administrative Agencies

Finally, Senator Montigny's bill gives the Attorney General responsibilities to combat human trafficking.<sup>250</sup> The bill requires the Office of the Attorney General to create and distribute informational material to state and local employers who might encounter victims of human trafficking.<sup>251</sup> The Attorney General is also responsible for generating an annual report on trafficking incidents within Massachusetts, which is to be distributed annually to various committees within the Legislature.<sup>252</sup>

The bill creates an Anti-Human Trafficking Task Force which has a number of significant responsibilities, including organizing data on the nature and extent of human trafficking, identifying federal, state and local programs that can provide benefits and services to victims, determining how to increase public awareness of human trafficking, and recommending educational and training opportunities for law enforcement and social service providers.<sup>253</sup> Twenty-six different state officials from various agencies and branches and representatives from non-profit agencies have been appointed to serve on the task force.<sup>254</sup> Overall, the Massachusetts bill makes great progress in the fight against human trafficking.<sup>255</sup>

#### C. *Contrasting the Proposed Massachusetts Legislation with Other States' Legislation*

Anti-trafficking laws on the state level are a relatively new phenomenon; before 2003, no state had any legislation on the issue.<sup>256</sup> As awareness of the human trafficking industry has disseminated, states responded by enacting various types of legislation to tackle the problem within their borders.<sup>257</sup> Thus far, Massachusetts has drafted the most

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.* For a full list of responsibilities delegated to the task force include, see Section 9 of the proposed legislation. *See id.*

<sup>254</sup> Mass. S. 97, § 9. The force is required to publish their findings on an annual basis. *Id.*

<sup>255</sup> *See generally id.*

<sup>256</sup> Buckwalter et al., *supra* note 173, at 416; *see* Amy Farrell, *State Human Trafficking Legislation*, in MARSHALING EVERY RESOURCE: STATE AND LOCAL RESPONSES TO HUMAN TRAFFICKING 20 (Dessi Demitrova ed., 2007).

<sup>257</sup> Farrell, *supra* note 256, at 21. The Department of Justice has also drafted a model anti-trafficking criminal statute for states to adopt or consult for guidance when drafting their legislation. *Id.* at 22. *See generally* U.S. DEP'T OF JUSTICE, MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE, *available at* [www.usdoj.gov/crt/crim/model\\_state\\_law.pdf](http://www.usdoj.gov/crt/crim/model_state_law.pdf). In addition, a

comprehensive statutory scheme combating trafficking on the state level, as it not only criminalizes trafficking, but also contains provisions to protect victims and prevent the development of the trafficking industry.<sup>258</sup>

To date, thirty-three states have criminalized trafficking as a separate offense.<sup>259</sup> In some states, like Louisiana, this is the only mechanism provided by the state to combat human trafficking.<sup>260</sup> The criminalization of human trafficking and offenses related to human trafficking is but one component of Senator Montigny's comprehensive bill.<sup>261</sup> Moreover, the Massachusetts criminal definition of human trafficking is extremely expansive: it explicitly criminalizes the trafficking of individuals to perform forced labor or services, which encompasses any work of economic or financial value, and trafficking for sexual purposes, which includes sexually explicit performances and the production of pornography.<sup>262</sup> The criminal component of the bill is also progressive because it enhances punishment for the trafficking of minors.<sup>263</sup>

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number of non-profit organizations like the Polaris Project, have drafted model legislation to assist states with their efforts. Farrell, *supra* note 299, at 22. See generally POLARIS PROJECT, MODEL COMPREHENSIVE STATE LEGISLATION TO COMBAT TRAFFICKING IN PERSONS (2006), available at <http://www.polarisproject.org/images/docs/Model-Comprehensive-State-Legislation.pdf>.

<sup>258</sup> See generally S. 97, 185th Gen. Court, Reg. Sess. (Mass 2007).

<sup>259</sup> Polaris Project, U.S. Policy Alert on Human Trafficking (Dec. 2007), available at <http://www.polarisproject.org/content/view/full/157> (follow 12/20/2007 hyperlink).

<sup>260</sup> See, e.g., LA. REV. STAT. ANN. § 14:46.2 (2007); see also CTR. FOR WOMEN POLICY STUDIES, (2006) <http://www.centerwomenpolicy.org/programs/trafficking/map/lawdetail.cfm?state=LA#14> (last visited Oct. 9, 2008) (indicating that H.B. 56 is the only bill that the Louisiana legislature passed to combat trafficking).

<sup>261</sup> Compare Mass. S. 97 with LA. REV. STAT. ANN. § 14:46.2 (2007) (noting Louisiana only criminalizes human trafficking, while the Massachusetts bill has numerous other components).

<sup>262</sup> See Mass. S. 97; see also Buckwalter et al., *supra* note 162, at 428 (urging states to draft criminal anti-trafficking legislation that encompasses all types of trafficking). In contrast, Texas originally criminalized trafficking when executed for the purposes of forced labor or services, but later amended its statutory scheme to criminalize trafficking for purposes of prostitution, as defined in § 43.02 of its Penal Code. TEX. PENAL CODE ANN. § 20A.01 (2007); S. 11, 80th Sess., Reg. Sess. (Tex. 2007).

<sup>263</sup> Mass. S. 97; Farrell, *supra* note 256, at 25; see Buckwalter et al., *supra* note 173, at 428. One criminal component the Massachusetts bill does not provide for is the criminal liability of business entities. See Farrell, *supra* note 256, at 25; see generally Mass. S. 97. In contrast, the Georgia criminal code declares:

A corporation may be prosecuted under [Trafficking of Persons for Forced Labor or Sexual Servitude] for an act or omission constituting a crime under this Code section only if an agent of the corporation performs the conduct which is an element of the crime while acting within the scope of his or her office or employment and on behalf of the corporation and the commission

In addition, the legislation of some states—including the bill proposed by Massachusetts—extends beyond criminal provisions and provides services for trafficking victims.<sup>264</sup> Such provisions, although extremely necessary, still remain rare in state statutory schemes.<sup>265</sup> When included in a statute, such services are provided for in different ways, including specific enumeration of the required services.<sup>266</sup> The Massachusetts bill specifically creates one program: it requires the Executive Office of Health and Human Services to create a human trafficking safe house.<sup>267</sup> Other states have not specifically required such a program in their legislation.<sup>268</sup>

Another way services are provided for is through the creation of a state Task Force or Committee, which is given the responsibility of analyzing the problems posed by human trafficking within the state and devising the necessary social services and programs to eradicate those problems.<sup>269</sup> This is the method that Massachusetts opted to utilize for the creation of all social services other than the safe house.<sup>270</sup> The bill also establishes a Victims of Human Trafficking Fund, which will provide a source of funding for social services once they are established.<sup>271</sup>

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of the crime was either authorized, requested, commanded, performed, or within the scope of his or her employment on behalf of the corporation or constituted a pattern of illegal activity that an agent of the company knew or should have known was occurring.

GA. CODE ANN. § 16-5-46(g) (2007).

<sup>264</sup> See Mass. S. 97; see also CAL. WELF. & INST. CODE §§ 18945, 13283 (extending eligibility for social services to victims of trafficking) (West Supp. 2008); CAL. PENAL CODE § 1202.4 (West 2004) (providing for mandatory restitution to victims); CAL. CIV. CODE § 52.5 (2007) (providing victims of trafficking with a private right of action); N.J. STAT. ANN. § 52:4B-11(b)(13) (West Supp. 2007) (permitting compensation for trafficking victims).

<sup>265</sup> See Polaris Project, *supra* note 259 (reporting that as of December 2007, only fourteen states have enacted legislation providing victim protection and only twenty-four states have enacted legislation providing for either a Research Commission or a Task Force of some kind).

<sup>266</sup> See 720 ILL. COMP. STAT. ANN. 5/10A-10(f) (West Supp. 2007) (“Subject to the availability of funds, the Department of Human Services may provide or fund emergency services and assistance to individuals who are victims of one or more offenses defined in this Article 10A.”); Buckwalter et al., *supra* note 162, at 429.

<sup>267</sup> Mass. S. 97 § 9.

<sup>268</sup> Compare *id.* (providing for the creation of a safe house) with 720 ILL. COMP. STAT. ANN. 5/10 A-10(f) (providing for “emergency services”).

<sup>269</sup> See, e.g., VA. CODE ANN. §§ 30-287 to -292 (West Supp. 2007); WASH. REV. CODE ANN. § 7.68.360 (West 2007) (creating a “work group to develop written protocols for delivery of services to victims of trafficking of humans”); Mass. S. 97.

<sup>270</sup> Mass. S. 97.

<sup>271</sup> Compare Mass. S. 97 (creating the Victims of Human Trafficking Fund) with CAL. WELF. & INST. CODE § 18945 (West Supp. 2008) (“Benefits and services under this division shall be paid from state funds to the extent federal funding is unavailable.”).

Finally, the statutory schemes of a few states contain provisions that focus on preventing the development of the human trafficking industry within that particular state's borders.<sup>272</sup> At the state level, the most effective way to combat the spread of human trafficking is through the creation of knowledgeable law enforcement agencies and increasing public awareness about the inner-workings of human trafficking.<sup>273</sup> Some states, like Connecticut, simply require its task force to devise these programs without any formal requirements.<sup>274</sup> Other states, like Massachusetts and California, are a bit more concrete in terms of the standards and programs they would like devised.<sup>275</sup>

The main criticism of the Massachusetts Anti-Trafficking Task Force is that there are no concrete deadlines for when the Task Force's analyses must be completed and actual implementation of recommen-

<sup>272</sup> See, e.g., VA. CODE ANN. §§ 30–287 to –292 (2007) (establishing a human trafficking commission to prevent the progression of human trafficking within the state).

<sup>273</sup> See Buckwalter et al., *supra* note 173, at 426, 433–44 (stressing the significance of education and training for local law enforcement agencies and government officials); FREE THE SLAVES & HUMAN RIGHTS CTR., *supra* note 35, at 3 (urging the launch of public awareness campaigns in the United States); see Raymond & Hughes, *supra* note 44, at 11, 92 (stressing the value of increasing public awareness).

<sup>274</sup> CONN. GEN. STAT. ANN. § 46a-4b (West Supp. 2007) (“The Permanent Commission on the Status of Women, in conjunction with the Police Officer Standards and Training Council, shall develop a training program on trafficking in persons and make such training program available, upon request, to the Division of State Police within the Department of Public Safety, the office of the Chief State’s Attorney, local police departments and community organizations.”).

<sup>275</sup> See CAL. PENAL CODE § 13519.14 (West Supp. 2008); Mass. S. 97. The California Penal Code requires the creation of courses of instruction that:

[S]tress the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that satisfy the law enforcement agency endorsement (LEA) required by federal law, collaboration with federal law enforcement officials, therapeutically appropriate investigative techniques, the availability of civil and immigration remedies and community resources, and protection of the victim.

CAL. PENAL CODE § 13519.14. Senator Montigny’s bill requires the task force to offer recommendations on training programs that focus on a non-exhaustive list of concerns, including:

[M]ethods used to identify human trafficking victims including preliminary interviewing and questioning techniques, methods of protecting the special needs of women and child human trafficking victims, developments in state and federal laws regarding human trafficking, and methods to increase effective collaboration between state and local agencies, law enforcement, social service providers and non-governmental organizations . . . .

Mass. S. 97.

dations must begin.<sup>276</sup> The existence of social services and law enforcement protection at the local level are the heart of the state legislation; accordingly, the legislature should emphasize that these programs and protocols should be created as quickly and efficiently as possible.<sup>277</sup> The same criticism stands for the development of law enforcement training programs.<sup>278</sup> Notwithstanding this critique, the Massachusetts bill is comprehensive and progressive in contrast to the anti-trafficking statutory schemes of other states. The bill should be passed immediately and other states should quickly follow suit.

### CONCLUSION

*I am not for sale.*

*You are not for sale.*

*No one should be for sale.*<sup>279</sup>

“Human trafficking is a pernicious new variation on the ancient theme of slavery and trading in human flesh.”<sup>280</sup> As an industry, human trafficking claims the freedom of hundreds of thousands of individuals every year. That number is only growing. To properly frustrate the efforts of perpetrators and provide protection to victims, significant effort must be expended at the state and local level, in conjunction with the legislative measures already taken on the federal level. Moreover, such effort cannot be limited to only criminal provisions. To prevent the development of the human trafficking industry, public awareness programs must be developed and law enforcement and administrative agencies must be enlightened. To protect victims, social services must be offered liberally and private rights of action must be conferred without hesitation.

The Massachusetts bill accomplishes all of these goals and more; it stands as one of the most comprehensive anti-trafficking statutory schemes to date. Accordingly, this bill must be passed by the State Leg-

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<sup>276</sup> Compare Mass. S. 97 (establishing the Anti-Trafficking Task Force and requiring the publication of an annual report on its findings) with WASH. REV. CODE § 7.68.360 (West 2007) (requiring the protocols to be created within one year of the creation of the “work group”).

<sup>277</sup> See Buckwalter et al., *supra* note 173, at 433–34.

<sup>278</sup> Compare Mass. S. 97 (containing no deadlines) with CAL. PENAL CODE § 13519.14(a) (requiring implementation of law enforcement programs within two years of passage) (West Supp. 2008).

<sup>279</sup> BATSTONE, *supra* note 20, at 301.

<sup>280</sup> Coonan, *supra* note 84, at 301.

islature immediately, either in its current form or in a revised form with more concrete deadlines for program implementation. In addition, other states that have not yet adopted anti-trafficking legislation should quickly follow suit, using the Massachusetts bill as a guide. Moreover, if states have statutory schemes that do not address victim protection and prevention, such legislation should also be drafted and passed immediately, again using the Massachusetts bill as a model. The longer the delay in taking such action, the longer children like S.A.D. will remain chained outside. We must make it clear, for S.A.D.—and others like her—that slavery in any form is simply unacceptable.

