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MODERN DAY SLAVERY IN OUR OWN BACKYARD

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INTRODUCTION

On April 5, 2005, three Mexican men plead guilty to twenty-seven "counts of forcing young Mexican women into prostitution in brothels throughout the New York City area."\textsuperscript{1} Their pleas were a part of "one of the government’s largest sex trafficking cases brought under [the] provisions of the Trafficking Victims Protection Act of 2000."\textsuperscript{2}

One of the men tried to stab a young Mexican woman he had forced into prostitution in New York using the jagged edge of a bottle he had broken over her head. Another forced his girlfriend to have an abortion, saying it was necessary so he could keep selling her to men. A third told his own wife that he would kill her family back in Mexico if she did not continue to service more than 20 men a night.\textsuperscript{3}

Lawyers representing the three defendants said that "the evidence was so overwhelming . . . that all three pleaded guilty to all 27 counts against them."\textsuperscript{4}

In New Jersey, "[a]t least 30 girls and young women — some as young as 14 — were smuggled from Honduras to Hudson County, where they were forced into virtual slavery in bars and beaten if they tried to leave."\textsuperscript{5} On July 21, 2005, ten alleged members of this smuggling ring, which lured young women from Honduras into the United States for forced-labor jobs, were indicted.\textsuperscript{6}

Though they may be surprising to some, these news stories are not from third-world countries. This is news from "our own back-yard." Human trafficking is a global issue. To effectively fight trafficking in the United States, legislation at the state level, in addition to federal anti-trafficking laws, is critical. Although many state constitutions and laws address kidnapping, prostitution, and

\textsuperscript{2} Id.
\textsuperscript{3} William Glaberson, Sex-Trafficking Pleas Detail Abuse of Mexican Women, N.Y. TIMES, Apr. 6, 2005, at B3.
\textsuperscript{4} Id.
\textsuperscript{5} Amy Klein, 10 Charged as Human Smugglers; N.J. Ring Lured Girls into Servitude, U.S. Says, THE RECORD (Bergen County, N.J.), July 22, 2005, at A1.
slavery, it is important that each state have legislation specifically addressing human trafficking.

This article describes the problem of human trafficking, both globally and in the United States. Part I provides a background to the scope of the problem. Part II discusses federal and state antitrafficking legislation and criminal prosecutions, including the U.S. Department of Justice's Model State Anti-Trafficking Criminal Statute and the legislation of the State of Washington, which has served as a model for other states. Part III examines the role of nongovernmental organizations in the fight against human trafficking. Part IV provides recommendations to aid in the eradication of human trafficking.

I. BACKGROUND

The United Nations defines trafficking in persons as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.\(^7\)

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Human trafficking and smuggling "are some of the fastest growing areas of international criminal activity." Significant differences exist between human trafficking and human smuggling. Trafficking requires the element of force, whereas a person being smuggled generally cooperates. Further, trafficking need not involve the crossing of an international border, whereas smuggling always involves crossing an international border.

Human trafficking is "a transnational criminal enterprise that recognizes neither boundaries nor borders." "Each year an estimated 800,000 to 900,000 human beings are bought, sold or forced across the world's borders." Worldwide, "approximately 2.5 million men, women and children are victims of trafficking at any point in time." Victims are trafficked for forced labor, sexual exploitation, organs, international matchmaking and the mail-order bride industry, child pornography, illegal adoptions, camel jockeying, and forced begging. "According to the U.S.

9. Id. at 2-4.
10. Id. at 4.
11. Id. at 2-4. Additionally, while trafficking involves "[f]orced [l]abor and/or [e]xploitation," smuggling does not involve "actual or implied coercion"; trafficked persons are victims, while smuggled persons "are violating the law"; trafficking victims are "enslaved, subjected to limited movement or isolation, or have documents confiscated," while smuggled "[p]ersons are free to leave, change jobs, etc."; trafficking "[n]eeds not involve the actual movement of the victim," while smuggling "[f]acilitates the illegal entry of person(s) from one country in to another"; and a trafficking victim "must be involved in labor/services or commercial sex acts, i.e., must be 'working,'" while a person being smuggled "must only be in [a] country or attempting entry illegally." Id. at 4.
13. Id.
16. See generally id.
17. See, e.g., id. at 11-12.
18. See, e.g., id. at 51, 83, 127, 132, 139, 170.
19. See, e.g., id. at 18, 82, 161, 230, 239.
20. See, e.g., id. at 21, 69.
Federal Bureau of Investigation, human trafficking generates an estimated $9.5 billion in annual revenue [globally]." This money is "closely connected with money laundering, drug trafficking, document forgery, and human smuggling." 

Approximately 14,500 to 17,500 individuals are trafficked annually into the United States, making the United States the third largest destination country in the world for victims of human trafficking. With 5,000 to 7,000 of these individuals originating from East Asia and the Pacific, the region is the largest source of persons trafficked to the United States. Latin America, Europe, and Eurasia are also leading sources, with approximately 3,500 to 5,000 persons trafficked to the United States originating from each of those regions. Within the United States, the highest concentrations of trafficked persons are located in California, Florida, New York, Hawaii, Georgia, Alaska, Texas, and North Carolina. In the United States, trafficking victims are typically entrapped in commercial sexual exploitation, such as working in prostitution, or in labor exploitation, involving work in sweatshops, construction, agriculture, and domestic settings. Human trafficking investigations have been initiated in every state and territory of the United States except for four states. During fiscal years 2001 to 2003, U.S. federal authorities initiated 110 trafficking prosecutions and secured 78 convictions. Compared to the three previous fiscal years, this represented a three-fold increase in prosecutions and a fifty percent increase in convictions secured. Despite these improvements, thousands of trafficking offenses still go unprosecuted.

The pervasiveness of human trafficking is partially explained by examining its causes. According to the U.S. Department of State:

23. Id. at 13-14.
24. Id. at 14.
25. 2004 ASSESSMENT, supra note 12, at 5.
27. 2004 ASSESSMENT, supra note 12, at 10.
28. Id.
30. See, e.g., 2004 ASSESSMENT, supra note 12, at 5.
31. Id. at 26. The Department of Justice report does not specify which states are the four in which human trafficking investigations have not been initiated.
32. Id. at 26.
33. Id.
The causes of human trafficking are complex and often reinforce each other. Viewing trafficking in persons as a global market, victims constitute the supply and abusive employers or sexual exploiters represent the demand. The supply of victims is encouraged by many factors including poverty, the attraction of perceived higher standards of living elsewhere, lack of employment opportunities, organized crime, violence against women and children, discrimination against women, government corruption, political instability, and armed conflict. On the demand side, factors driving trafficking in persons include the sex industry and the growing demand for exploitable labor.

Both the supply and demand sides of the equation must be addressed.

II. LEGAL ENVIRONMENT

This section discusses the U.S. legal environment with regard to anti-trafficking legislation. This discussion begins with the Victims of Trafficking and Violence Protection Act of 2000 and related criminal prosecutions pursuant to that law. It continues with a discussion of the Trafficking Victims Protection Reauthorization Act of 2003, other federal legislation related to human trafficking, including pending federal legislation related to human trafficking, and the Department of Justice’s Model State Anti-Trafficking Criminal Statute. This section also addresses existing state anti-trafficking legislation and, in particular, examines the anti-trafficking legislation of the State of Washington, which has served as a model for many other states.

A. Federal Legislation and Case Law

1. The Victims of Trafficking and Violence Protection Act of 2000

The Victims of Trafficking and Violence Protection Act of 2000 (TVPA) was the first U.S. law “to recognize that people trafficked against their will are victims of a crime, not illegal aliens,” and

should be treated accordingly.\textsuperscript{39} The TVPA makes "trafficking victims eligible for federally-funded or -administered health and other benefits and services as if they were refugees."\textsuperscript{40} The TVPA levies additional sanctions by delineating new crimes and enhancing penalties for existing crimes.\textsuperscript{41} Furthermore, the TVPA provides for assistance to foreign countries to draft "laws to prohibit and punish acts of trafficking, and to strengthen investigation and prosecution of traffickers."\textsuperscript{42}

Prior to the passage of the TVPA, non-citizen trafficking victims were precluded from receiving government benefits.\textsuperscript{43} Under the TVPA, adult victims may be "certified"\textsuperscript{44} to receive federally funded or administered benefits and services such as cash assistance, medical care, food stamps, and housing.\textsuperscript{45} Child victims do not need to be "certified" to receive benefits and services, but receive eligibility letters to the same effect.\textsuperscript{46} Eligibility for benefits under the TVPA is often linked to the victim's immigration status.\textsuperscript{47}

Victims of a severe form of trafficking\textsuperscript{48} may be granted "continued presence"\textsuperscript{49} status "if federal law enforcement determines that they are potential witnesses to trafficking and submits a request on their behalf to the Department of Homeland Security."\textsuperscript{50} "Continued presence" status enables the victims, and in some cases their family members, to remain in the United States while the


\textsuperscript{40} 2004 \textsc{Assessment}, \textit{supra} note 12, at 6.

\textsuperscript{41} Id. New crimes created by the TVPA include "forced labor; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; sex trafficking of children or by force, fraud or coercion; unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor; and attempts to engage in these behaviors." \textit{Id.} at 26.

\textsuperscript{42} Id. at 6. The TVPA also "expanded U.S. Government exchange and international visitor programs focusing on trafficking in persons." \textit{Id.}

\textsuperscript{43} Id.

\textsuperscript{44} 22 U.S.C. \textsection 7105(b)(1)(E) (2005).

\textsuperscript{45} 2004 \textsc{Assessment}, \textit{supra} note 12, at 12.

\textsuperscript{46} Id. at 12-13.

\textsuperscript{47} Id. at 12.

\textsuperscript{48} The TVPA defines "severe forms of trafficking in persons" as:

[S]ex 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 . . . 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 subjecting to involuntary servitude, peonage, debt bondage, or slavery.

\textsuperscript{22} U.S.C. \textsection 7102(8)(A)-(B) (2005).

\textsuperscript{49} 18 U.S.C. \textsection 7105(c)(3) (2005).

\textsuperscript{50} 2004 \textsc{Assessment}, \textit{supra} note 12, at 21.
investigation is pending.\textsuperscript{51} Victims who comply with "reasonable requests for assistance in the investigation and prosecution of acts of trafficking"\textsuperscript{52} may petition U.S. Citizenship and Immigration Services\textsuperscript{53} to modify their immigration status to "T nonimmigrant status."\textsuperscript{54} Recipients of a T visa "may remain in the United States for three years, and then may apply for lawful permanent residency status subject to certain statutory criteria."\textsuperscript{55} The Department of Justice's 2004 Assessment indicates that the "United States is currently the only country that offers the possibility of permanent residency to victims of trafficking."\textsuperscript{56}

As of September 30, 2003, the Department of Homeland Security had granted 374 continued presence requests, and as of November 30, 2003, the Department had received 757 T visa applications, of which 328 were granted, 38 were denied, and the remainder were pending.\textsuperscript{57} Furthermore, "many trafficking victims who received continued presence later applied for and received T nonimmigrant status; therefore, the total of approximately 450 victims served over the life of this program reflects victims who have received both types of benefits."\textsuperscript{58}

Under the provisions of the TVPA, federal authorities are required to provide trafficking victims with information about their rights.\textsuperscript{59} These rights include individual privacy, confidentiality, restitution, and notification of the status of their case.\textsuperscript{60} Applicable benefits may include federal refugee and immigration benefits relevant to trafficking victims and victims' compensation and assistance programs.\textsuperscript{61} Applicable services may include pro bono and low-cost legal services, immigration services, medical services, "services from victim service organizations including domestic

\begin{itemize}
\item \textsuperscript{51} Id. at 22.
\item \textsuperscript{52} Id. at 21.
\item \textsuperscript{53} "As of March 1, 2003, the functions of the Immigration and Naturalization Service were transferred to the Department of Homeland Security and placed within Directorate of Border and Transportation Security and U.S. Citizenship and Immigration Services." Id. at 21 n.11.
\item \textsuperscript{54} Id. at 21.
\item \textsuperscript{55} Id.
\item \textsuperscript{56} Id.
\item \textsuperscript{57} Id. at 22.
\item \textsuperscript{58} Id.
\item \textsuperscript{59} Id. at 13.
\item \textsuperscript{60} Id. The TVPA provides for mandatory restitution of the "full amount of the victim's losses," 18 U.S.C. § 1593(b)(1) (2005), as well as forfeiture of the perpetrator's property. Id. § 1594(b)(1)-(2).
\item \textsuperscript{61} 2004 ASSESSMENT, supra note 12, at 13.
\end{itemize}
violence and rape crisis centers," and protection, "especially against threats and intimidation." 62

2. Criminal Prosecutions Under the Victims of Trafficking and Violence Protection Act of 2000

Several cases have been prosecuted under the TVPA since its enactment in 2000. United States v. Virchenko 63 was the first case to be prosecuted under the TVPA. Victor Virchenko, a Russian national, facilitated the trafficking of Russian women and underage girls into the United States to dance nude in strip clubs in Alaska. 64 "Virchenko pleaded guilty in federal district court to six counts of immigration fraud and one count of transporting minors." 65 Virchenko was sentenced to thirty months in prison and subsequent deportation. 66

The largest trafficking case in U.S. history, United States v. Kil Soo Lee, 67 resulted in convictions in 2003. In 2002, the U.S. Department of Labor discovered and investigated the Daewoosa garment factory in American Samoa. 68 The government charged that "the defendants brought over 250 Vietnamese and Chinese nationals, mostly young women, to work as sewing machine operators." 69 The conditions in this factory were deplorable:

[V]ictims, some of whom were held up to two years, were forced to work through extreme food deprivation, beatings and physical restraint. The victims were held in barracks on a guarded company compound . . . and were threatened with confiscation of their passports, deportation, economic bankruptcy, severe economic hardship to family members, false arrest, and a host of other consequences. 70

A jury convicted the factory owner and leader of the operation, Kil Soo Lee, on nearly all counts, 71 including involuntary servitude,

62. Id.
65. Id.
66. Id.
69. Id.
70. Id.
71. Id.
extortion, and money laundering. Two other defendants pled guilty.

3. The Trafficking Victims Protection Reauthorization Act of 2003

The Trafficking Victims Protection Reauthorization Act of 2003 (TVPRA 2003) mandated new information campaigns to combat sex tourism, refined the federal criminal law, created a new civil action provision that allows trafficking victims to sue their traffickers in federal district court, and mandated the Attorney General to submit an annual report to Congress providing information on federal government activities to combat trafficking. Additionally, the TVPRA 2003 reauthorized parts of the TVPA as required by the TVPA.

4. The Trafficking Victims Protection Reauthorization Act of 2005

The Trafficking Victims Protection Reauthorization Act of 2005 (TVPRA 2005) amends section 106 of the TVPA by adding a new subsection addressing prevention of trafficking in conjunction with


73. Id.


75. Id. § 3(e) (codified as amended at 22 U.S.C. § 7104(e)(1)). Sex tourism involves “travel with intent to engage in illicit sexual conduct,” engaging in illicit sexual conduct in foreign places, or “for the purpose of commercial advantage or private financial gain, arranging, inducing, procuring, or facilitating the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct.” 18 U.S.C. § 2423(b)-(d) (2005).


77. Id. § 4(4) (codified as amended in 18 U.S.C. § 1595(a) (2003)).

78. Id. § 6(a)(1) (codified as amended in 22 U.S.C. § 7103(d)(7) (2003)).

79. Id.

post-conflict and humanitarian emergency assistance. The Act also amends section 107(c)(2) of the TVPA by adding the provision that “[t]o the extent practicable, victims of severe forms of trafficking shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking.” Further, the Act establishes a Guardian Ad Litem Program and assures access to counsel.

5. Other Federal Legislation Related to Human Trafficking

On April 30, 2003, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act) was signed into law. The PROTECT Act strengthens “law enforcement’s ability to prevent, investigate, prosecute and punish violent crimes committed against children.” It also provides appropriately severe penalties for those who harm children and strengthens the laws against child pornography in constitutionally permissible ways.

Another important piece of federal legislation is the recently-passed Violence Against Women and Department of Justice Re-authorization Act of 2005. The Violence Against Women Act as passed in 1994 was largely focused upon issues of domestic violence and general sexual assault, rather than problems specifically

81. Id. § 101(a).
82. Id. § 102(a).
83. Id. §§ 102(b)-(c).
85. Dep’t of Justice, PROTECT Act Fact Sheet (Apr. 30, 2003), http://www.usdoj.gov/opa/pr/2003/April/03_ag_266.htm. The PROTECT Act establishes a national AMBER Alert Program. Id. It also “allows law enforcement to use existing legal tools for the full range of serious sexual crimes against children,” including “using the interest to lure children for purposes of sexual abuse and sex trafficking.” Id. The PROTECT Act also clarifies that “there is no statute of limitations involving the abduction or physical or sexual abuse of a child.” Id.
86. Id. In 2002, “the Supreme Court declared unconstitutional a federal law that criminalized the possession of ‘virtual’ child pornography, i.e., materials whose production may not have involved the use of real children. This decision has made it immeasurably more difficult to eliminate the traffic in real child pornography.” Id. See also Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002). The PROTECT Act functions to “revise and strengthen the prohibition on ‘virtual’ child pornography, . . . prohibit any obscene materials that depict children, and provided [sic] tougher penalties compared to existing obscenity law, . . . [and to] encourage greater voluntary reporting of suspected child pornography found by internet service providers on their systems.” Dep’t of Justice, supra note 85.
associated with trafficking. In 2000, the Violence Against Women Act was reauthorized via a bill that merged with the TVPA. In January 2006, Congress again reauthorized the Violence Against Women Act through 2011 as part of the broader Department of Justice Reauthorization Act of 2005. The Reauthorization Act amends the original Violence Against Women Act to include the International Marriage Broker Regulation Act of 2005 (IMBRA). That legislation was introduced by Senator Maria Cantwell from Washington State, who remarked that the goal of IMBRA was to “better inform women entering this country as a prospective spouse about the past history of the man she may be marrying and to better inform them of their rights as residents of the United States if they become victims of domestic violence.”

Pending before Congress is the End Demand for Sex Trafficking Act of 2005. That legislation will serve “[t]o combat commercial sexual activities by targeting demand, to protect children from being exploited by such activities, to prohibit the operation of sex tours, to assist State and local governments to enforce laws dealing with commercial sexual activities, [and] to reduce trafficking in persons.”

6. The United States Department of Justice’s Model State Anti-Trafficking Criminal Statute

In July 2004, the Department of Justice released a Model State Anti-Trafficking Criminal Statute (Model Statute) for policymakers to use when amending their state’s penal laws to address trafficking. Following the release of the Model Statute, the U.S.

91. Id.
92. Id. §§ 831-834.
95. Id.
97. Id. at explanatory notes.
Senate passed resolutions “encouraging states to consider adopting comprehensive legislation to combat human trafficking and slavery.”

The Model Statute begins with definitions of “Blackmail,” “Commercial sexual activity,” “Financial harm,” “Forced labor or services,” “Labor,” “Services,” “Sexually-explicit performance,” and “Trafficking victim.” The Model Statute criminalizes involuntary servitude, sexual servitude of a minor, and trafficking of persons for forced labor or services. It also provides that involuntary servitude offenses include involuntary servitude, unlawful restraint for forced labor, legal coercion for forced labor, document servitude, and debt bondage.

The Model Statute includes sentencing enhancements to the statutory maximum when rape, kidnapping, sexual abuse, attempted murder, extreme violence, or death occur during an act of trafficking. Suggested considerations for sentencing include the infliction of bodily injury, the victims' time in servitude, and the number of victims. The Model Statute makes restitution mandatory. Specifically it states:

In addition to any other amount of loss identified, the court shall order restitution including the greater of 1) the gross income or

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(1) supports the bipartisan efforts of Congress, the Department of Justice, and State and local law enforcement offices to combat human trafficking and slavery;
(2) strongly encourages State legislatures to carefully examine the Department of Justice's model State anti-trafficking criminal statute, and to seriously consider adopting State laws combating human trafficking and slavery wherever such laws do not currently exist;
(3) strongly encourages State legislatures to carefully examine the Federal benefits and protections for victims of human trafficking and slavery contained in the Trafficking Victims Protection Act of 2000 and the Trafficking Victims Protection Reauthorization Act of 2003, and to seriously consider adopting State laws that, at a minimum, offer these explicit protections to the victims; and
(4) supports efforts to educate and empower State and local law enforcement officers in the identification of victims of human trafficking.
100. Id. § XXX.02(1).
101. Id. § XXX.02(2).
102. Id. § XXX.02(3).
103. Id. app. A.
104. Id. § XXX.02(4)(A).
105. Id. § XXX.02(4)(B)(1)-(3).
106. Id. § XXX.02(5).
value to the defendant of the victim's labor or services or 2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) and [corresponding state statutes, if any].

Finally, the Model Statute includes provisions requiring the Attorney General to issue a report detailing how existing laws respond to the needs of trafficking victims and requiring the Department of Health and Human Services to "issue a report outlining how existing social service programs respond . . . to the needs of trafficking victims." 108

B. State Legislation

1. Existing Anti-Trafficking Legislation at the State Level

Only within the last two years have states begun to respond to the problem of human trafficking with legislation. Until 2003, no anti-trafficking laws existed at the state level. As of August 2005, eleven states had passed legislation criminalizing or mandating state investigation of human trafficking, 109 and fourteen states had anti-trafficking bills pending in their legislatures. 110

Colorado, 111 Connecticut, 112 Idaho, 113 and Washington 114 each adopted laws establishing state trafficking task forces or committees. Seven states currently have bills pending in the legislature to

107. Id.
108. Id. § XXX(B)(1)(B).
111. COLO. REV. STAT. § 18-1.8-101 (2005).
create a human trafficking task force or committee or to require a statistical report on trafficking. These task forces and committees enable a state to determine the severity of its human trafficking problem, evaluate its progress in combating human trafficking, assess the services and protections available to trafficking victims, increase public awareness, demonstrate the need for law enforcement training and education, and make recommendations to the legislature. Creating such a task force or workgroup, mandating a reporting requirement, or creating a research commission is a critical element of state anti-trafficking legislation.

Ten states have anti-trafficking laws with specific provisions addressing the trafficking of children. For example, in Missouri, the sexual trafficking of a child under the age of eighteen is a separate crime from trafficking for the purpose of sexual exploitation. In Texas, the crime of trafficking in persons is elevated to a first-degree felony if "the person who is trafficked is younger than 14 years of age at the time of the offense."

Many states have anti-trafficking legislation that specifically refers to certain industries, mainly the labor and commercial sex industries. Nine states currently have enacted provisions and twelve states have pending legislative provisions that prohibit


118. Id. § 566.209.

119. TEX. PENAL CODE ANN. § 20A.02(b)(1) (Vernon 2004).


trafficking for forced labor or labor servitude. For example, in Missouri, "trafficking for the purposes of slavery, involuntary servitude, peonage, or forced labor" is a felony.\(^{122}\)

Several states have passed legislation or have legislation pending that specifically criminalizes sex trafficking, sexual servitude (of both adults and minors), trafficking for the purpose of sexual gratification or with a sexual motivation, trafficking in prostitution, or trafficking for commercial sexual activity.\(^{123}\) The states that have passed such legislation include Arizona,\(^ {124}\) Florida,\(^ {125}\) Idaho,\(^ {126}\) Illinois,\(^ {127}\) Missouri,\(^ {128}\) New Jersey,\(^ {129}\) Ohio,\(^ {130}\) Texas,\(^ {131}\) and Washington.\(^ {132}\) For example, in Florida, a person who "knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution," is guilty of sex trafficking, a second-degree felony.\(^ {133}\)

2. Anti-Trafficking Legislation in the State of Washington

The State of Washington has been at the forefront of the state anti-trafficking legislation initiative.\(^ {134}\) Washington was the first state to pass anti-trafficking legislation, and its comprehensive legislation has served as a model for other states adopting their own

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\(^{122}\) Mo. Rev. Stat. § 566.206(1)(3) (2005) ("A person commits the crime of trafficking for the purposes of slavery, involuntary servitude, peonage, or forced labor if a person knowingly recruits, harbors, transports, provides, or obtains by any means another person for labor or services, for the purposes of slavery, involuntary servitude, peonage, or forced labor.").


\(^{130}\) Ohio Rev. Code Ann. § 2907.21 (LexisNexis 2005).

\(^{131}\) Tex. Penal Code Ann. § 71.02(a)(3) (Vernon 2004).


Under Washington criminal law, a person commits trafficking in the first degree if he “[r]ecruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion . . . will be used to cause the person to engage in forced labor or involuntary servitude.” Trafficking in the first degree also occurs when a person “[b]enefits financially” or receives “anything of value from participation” in trafficking when his acts involve kidnapping or attempted kidnapping, a sexual motivation, or a resulting death. If the acts do not involve one of these elements, the person is guilty of trafficking in the second degree. The court may impose a sentence outside of the standard sentencing range when aggravating circumstances are present, such as multiple victims or a sexual motivation. Further, if any victim is a minor at the time of the offense, trafficking in the second degree is elevated to trafficking in the first degree.

In addition to criminalizing human trafficking, the Washington legislation required a workgroup to establish protocols for the social service needs of trafficking victims (including housing, health care, and legal assistance) by January 1, 2006. Washington’s comprehensive anti-trafficking legislation also addresses the issue of international matchmaking organizations (IMOs), also known as the ‘mail-order bride’ industry. Washington’s law was the first

139. Id. § 9A.40.100(1)(a)(i)-(ii).
140. Id. § 9A.40.100(2)(a).
141. Id. § 9.94A.535(3)(d)-(e).
142. Id. § 9.94A.535(2)(n).
143. Id. § 7.68.360.
legislative initiative in the United States to regulate the international matchmaking industry at the state level.145 Under the Washington legislation, IMOs are required, upon request, to furnish information to potential brides about potential spouses living in the State of Washington, including data regarding a history of domestic violence, harassment, restraining orders, and allegations of child abuse or neglect.146 Washington’s international matchmaking legislation served as a model for similar legislation in Hawaii and Texas.147 In addition, similar legislation was introduced at the federal level in 2003.148

Though Washington’s anti-trafficking legislation takes the most comprehensive approach in comparison to the other states with similar legislation, it still lacks an explicit provision for victim protections, which is described in detail in section IV.B.2, and a provision specifically criminalizing sex tourism.

III. THE ROLE OF NONGOVERNMENTAL ORGANIZATIONS

This section examines the roles of nongovernmental organizations (NGOs) as victim identifiers, service providers, advocates, lobbyists, consultants, and training providers.

Nongovernmental organization workers are sometimes the first to come into contact with a trafficking victim, even prior to law enforcement. For example, a victim may seek shelter or medical attention from an NGO before reporting that she is a victim of trafficking or reporting her trafficker to law enforcement. Thus, NGO workers who have direct contact with victims of trafficking must have the ability to identify them as such.

Service providers, law enforcement, and government officials have become increasingly aware of human trafficking. They are learning which traits suggest that a client is a trafficking victim. According to Attorney Barbara Egenhauser, Chief of the Special Prosecutions Division in Westchester County’s District Attorney’s Office, domestic violence aides in the Westchester County District Attorney’s Office now screen victims of domestic violence for human

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trafficking.\textsuperscript{149} This screening is done during the initial interview process.\textsuperscript{150} The issue of human trafficking may arise during the discussion of the nature of the victim's employment.\textsuperscript{151} For example, when a domestic violence victim indicates that she came to the United States to be a servant, the domestic violence aide will ask follow-up questions relevant to human trafficking.\textsuperscript{152} NGO workers need the training and education to enable them to take a similar approach with their clients.

NGOs often must intervene due to limitations on services and resources available at the federal level, the lack of state anti-trafficking laws that specifically provide for services for trafficking victims, and the fact that victims are often hesitant to cooperate with law enforcement in exchange for services. According to the International Rescue Committee, "the needs of trafficking victims are often distinct, severe, and extensive."\textsuperscript{153} Services that are needed include, but are not limited to, counseling; employment and job placement; immigration assistance; income assistance; independent living skills; interpretation, literacy and ESL; legal assistance (criminal and civil); medical and nutritional assistance (both emergency and long-term); recreation; reintegration; repatriation adjustment; safety planning; and shelter, food, and clothing (short-term and long-term).

Certain NGOs provide specific services;\textsuperscript{154} others take a more holistic approach and supply a broader range of services or provide referrals to other organizations for services that they do not provide.\textsuperscript{155} NGOs, unlike government service providers, have the ability to target services to certain groups of victims or to specific industries. Many NGOs provide services to specific ethnic groups.\textsuperscript{156}

\textsuperscript{149} Telephone Interview with Barbara Egenhauser, Chief, Special Prosecutions Division, Second Deputy District Attorney, Westchester County's District Attorney's Office (June 17, 2005).
\textsuperscript{150} Id.
\textsuperscript{151} Id.
\textsuperscript{152} Id.
\textsuperscript{154} For example, Asian Pacific Islander Legal Outreach provides legal services to trafficking victims in the Asian and Pacific Islander communities of the Greater Bay Area in California. See API Legal Outreach Homepage, http://www.apilegaloutreach.org (last visited Jan. 25, 2006).
\textsuperscript{155} For example, Break the Chain Campaign provides holistic services, including direct legal and support services, to trafficking victims in the D.C. area. See Break the Chain Campaign Homepage, http://www.ips-dc.org/campaign/index.htm (last visited Jan. 25, 2006).
\textsuperscript{156} See, \textit{e.g.}, Asian Pacific Islander Legal Outreach Homepage, http://www.apilegaloutreach.org (last visited Jan. 25, 2006).
The advantage of these targeted NGOs is that they can provide language services and develop cultural sensitivities to a greater extent than an NGO that provides general services to trafficking victims of a wider variety of backgrounds.

There are many networks and collaboratives throughout the United States comprised of different NGOs dedicated to serving victims of human trafficking, such as the Asian Anti-Trafficking Collaborative,\textsuperscript{157} the Freedom Network,\textsuperscript{158} and Project REACH.\textsuperscript{159} The organizations in these networks often work together to provide a wide range of services to trafficking victims. When one organization in the network cannot provide a particular service to a client, it refers the client to another organization in the network that can. This system ensures that victims receive comprehensive services.

The Asian Anti-Trafficking Collaborative (AATC), founded in 2003,\textsuperscript{160} is a successful model of an NGO network. The AATC consists of four agencies.\textsuperscript{161} It is the only network of its kind to specifically assist Asian victims.\textsuperscript{162} Although the network is based in northern California, its efforts have reached Seattle, Washington, Las Vegas, Nevada, and Washington, D.C.\textsuperscript{163} The AATC is an example of a "co-case management model," where several NGOs work together to manage a case.\textsuperscript{164} Asian Pacific Islander Legal Outreach (APILO), one of the agencies within the collaborative, provides legal services for victims, including legal representation in both criminal and family law proceedings and immigration assistance.\textsuperscript{165} The other three agencies that comprise the collaborative provide social services on a one-on-one basis for clients.\textsuperscript{166}


\textsuperscript{161} Id. AATC consists of Asian Women's Shelter, Narika, Donaldina Cameron House, and Asian Pacific Islander Legal Outreach. Id.

\textsuperscript{162} Asian Pacific Islander Legal Outreach, \textit{ supra} note 154.

\textsuperscript{163} Id.

\textsuperscript{164} Telephone Interview with Ivy Lee, Dir. of Immigration & Anti-Trafficking, Asian Pacific Islander Legal Outreach (June 24, 2005).

\textsuperscript{165} Id.

\textsuperscript{166} Id.
There are many NGOs that focus specifically on child victims of human trafficking.\(^{167}\) Fifty percent of victims who are trafficked across international borders are children.\(^{168}\) Children are sometimes overlooked as a group of trafficking victims; NGOs that can accommodate them adequately\(^{169}\) are crucial. Children, however, are sometimes difficult to locate as victims because they seldom approach law enforcement. Rehabilitative services, especially medical (both physical and mental), are needed because child victims are trafficked at a young age and rarely know any other life.\(^{170}\) Child victims often are further victimized by drug abuse, teen pregnancy, lack of education, and mental health issues.\(^{171}\) An NGO dedicated to assisting children can focus on these issues.

Numerous NGOs, such as the Coalition Against Trafficking in Women,\(^{172}\) focus exclusively on female victims of human trafficking. As eighty percent of victims who are trafficked across international borders are women,\(^{173}\) it is critical that the needs of female trafficking victims are sufficiently addressed. NGOs providing services specifically targeted to women have a greater ability to adequately address problems that are specific to female victims, such as reproductive health and pregnancy care.

Various NGOs concentrate on victims trafficked into specific industries. For instance, NGOs commonly focus on victims trafficked into the sex industry, including the international matchmaking industry, or the forced labor industry.\(^{174}\) Victims of particular industries also have particular service needs. For example, as reproductive and medical care are priorities for victims trafficked

\(^{167}\) For example, The Door, in New York City, works exclusively with young people, ages twelve to twenty-one. See The Door Homepage, http://www.door.org (last visited Jan. 25, 2006).

\(^{168}\) 2005 TRAFFICKING IN PERSONS REPORT, supra note 15, at 6.

\(^{169}\) ECPAT-USA (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes-USA) is one such organization. ECPAT-USA Homepage, http://www.ecpatusa.org (last visited Jan. 25, 2006). ECPAT-USA "is a network of organizations and individuals working together for the elimination of child prostitution, child pornography and trafficking of children for sexual purposes. It seeks to encourage the world community to ensure that children everywhere enjoy their fundamental rights free from all forms of commercial sexual exploitation." ECPAT-USA, MISSION STATEMENT (2003), available at http://www.ecpatusa.org.

\(^{170}\) Telephone Interview with Denise Scotto, Esq., Vice Chair, NGO Comm. on the Status of Women (July 6, 2005).

\(^{171}\) Id.


\(^{173}\) 2005 TRAFFICKING IN PERSONS REPORT, supra note 15, at 6.

into the sex industry, shelter and income assistance are priorities for victims trafficked into the forced labor industry.

NGOs also serve as advocates for victims’ rights and as lobbyists for legislation and policies affecting victims. NGOs such as the Protection Project, Equality Now, and Legal Momentum work with the government at both the federal and state levels to draft legislation affording services and protections to victims of human trafficking. NGOs like the Polaris Project also make recommendations to the government regarding how to eradicate human trafficking and how to legislate effectively.

NGOs also provide training to law enforcement and other service providers. These organizations work with law enforcement officers and service providers to strengthen their understanding of the problem of human trafficking, realize the problem’s existence in the United States, learn how to identify and treat victims of trafficking, and prosecute traffickers and enforcers. NGOs also play a major role in raising awareness of human trafficking among the general public. For instance, the Polaris Project disseminates information to the general public through public service announcements, newspaper articles, seminars, and the Internet.

IV. RECOMMENDATIONS

This section provides recommendations to help eradicate human trafficking. It first discusses the necessity for anti-trafficking legislation at the state level. Next this section analyzes the U.S. Department of Justice’s Model State Anti-Trafficking Criminal Statute and discusses “ideal” state anti-trafficking legislation. Finally, this section addresses the need for a “victim-centered”

179. Asian Pacific Islander Legal Outreach, supra note 154.
180. Id.
approach and coordinated collaboration among government agencies, local law enforcement, and nongovernmental organizations.

A. The Need for State Legislation

It is imperative that anti-trafficking laws exist at the state as well as the federal level for several reasons. First, law enforcement is, on the whole, a local issue, and criminal prosecutions are generally a state responsibility.\textsuperscript{182} Local law enforcement officials are often the first responders to reports of criminal activity and, therefore, the first to interact with trafficking victims. For example, local law enforcement generally responds to reports of prostitution. While investigating, officers may learn that the prostitutes are not acting voluntarily, but are in fact trafficking victims subjected to forced prostitution. Officers must have the proper education and training, which may be mandated by state anti-trafficking legislation, to identify trafficking victims and to understand that these victims should not be considered criminals. If the TVPA and TVPRA were the only anti-trafficking laws, there would be fewer prosecutions and the number of cases prosecuted would be insufficient given the magnitude of the problem.\textsuperscript{183} Additionally, local law enforcement can often prosecute offenders more quickly and efficiently than federal authorities.\textsuperscript{184}

Second, federal monetary and service resources are often unavailable, limited, or inadequate. In fiscal year 2004, the federal annual budget allotted $50,000,000 to the United States' initiative to fight human trafficking.\textsuperscript{185} That year's total federal budget amounted to $2,229,000,000,000.\textsuperscript{186} Thus, the federal government spent only 0.0022% of its total budget on anti-trafficking efforts. This is a minuscule amount in comparison to the severity of the trafficking problem in the United States and the amount of revenue human trafficking generates for perpetrators. In addition to the limited availability of resources, federal authorities are not always able, or willing, to prosecute trafficking cases involving only one victim or a small group of victims;\textsuperscript{187} larger trafficking rings or

\begin{itemize}
\item 182. See WAYNE R. LAFAVE & JEROLD H. ISRAEL, 1 CRIMINAL PROCEDURE § 1.2 (1984).
\item 183. Telephone Interview with Derek Ellerman, Co-Exec. Dir., The Polaris Project (July 12, 2005).
\item 184. Id.
\item 185. 2004 ASSESSMENT, supra note 12, at 12.
\item 187. Telephone Interview with Antonia Kirkland, Program Coordinator, Equality Now (July 11, 2005).
\end{itemize}
operations take priority.\textsuperscript{188} As it is important that all trafficking offenders be prosecuted, states must have the ability to prosecute smaller-scale offenders.

Third, state legislation enables local law enforcement and service providers to more effectively address the particular needs of trafficking victims in their areas of the country. For example, warm clothing is usually not 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.

Finally, state anti-trafficking legislation is a preventative measure that serves as an additional deterrent. Prosecutions will increase with the growth of anti-trafficking laws at the state level. If traffickers know that local law enforcement officials have the ability to arrest, prosecute, and convict offenders and that they will aggressively enforce the laws, traffickers may be deterred from involvement in human trafficking. Deterrence, in turn, becomes prevention of the crime.

B. "Ideal" State Legislation

1. Analysis of the United States Department of Justice's Model State Anti-Trafficking Criminal Statute

The U.S. Department of Justice's Model Statute\textsuperscript{189} is a solid starting point for states drafting anti-trafficking laws. The Model Statute covers most of the essential elements, including definitions, criminalization, restitution, and an assessment of services.\textsuperscript{190} The terminology and comprehensiveness of the Model Statute, however, have been criticized. According to Dr. Mohamed Mattar, Co-Director of the Protection Project, certain terms used in the Model Statute, such as "trafficking of persons" and "commercial sexual activity," are inconsistent with terms used in the TVPA.\textsuperscript{191} In addition, certain Model Statute sections are vague. For example, section XXX.01(4) of the Model Statute defines "forced labor or services" as:

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{188} Id.
\item \textsuperscript{189} MODEL STATE ANTI-TRAFFICKING CRIM. STAT. (Dep't of Justice 2004), available at http://www.usdoj.gov/crt/crim/model_state_law.pdf.
\item \textsuperscript{190} Id.
\end{enumerate}
\end{footnotesize}
[Labor or services] that are performed or provided by another person and are obtained or maintained through an actor's: (A) causing or threatening to cause serious harm to any person; (B) physically restraining or threatening to physically restrain another person; (C) abusing or threatening to abuse the law or legal process; (D) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (E) blackmail; (F) causing or threatening to cause financial harm to . . . any person. 192

It is unclear if the aforementioned actor is the trafficker, the consumer, or another actor. 193

The definition of "sexually-explicit performance" is also problematic according to Dr. Mattar. 194 The Model Statute defines "sexually-explicit performance" as "a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons." 195 A public act or show is not necessarily live (for example, the show may be a video performance), but it is unclear whether the intent is to include only live public acts or shows. 196 Further, it is unclear if massage parlors are included in the definition or if the definition is strictly limited to stripping or exotic dancing. 197

The Model Statute lacks a few important components that many states have taken upon themselves to add. First, it does not address the creation of a trafficking task force, committee, or research commission. 198 Second, the Model Statute does not discuss the crime of traveling abroad to engage in illegal commercial sexual activity (i.e., sex with minors or prostitution), also known as sex tourism. 199 Third, it does not consider the regulation of the international matchmaking industry, 200 nor do the explanatory notes suggest that states should regulate the industry. 201 Although sex

193. See Mattar, supra note 191.
194. Id.
196. See Mattar, supra note 191.
197. See id.
199. See generally id.
200. See generally id.
201. See id. at explanatory notes.
tourism and the matchmaking industry are sometimes international issues, state legislation can partially address these topics by criminalizing travel abroad to engage in illegal commercial sexual activity and mandating reporting requirements for international matchmaking organizations that operate within that state.

2. "Ideal" State Anti-Trafficking Legislation

The "ideal" state anti-trafficking legislation would take a holistic approach to human trafficking. The legislation would: criminalize all types of human trafficking; specifically prohibit the trafficking of children or provide for a sentencing enhancement when child victims are involved; work to prevent human trafficking, protect victims, and provide services and restitution to victims; address sex tourism and other issues related to human trafficking; and regulate the international matchmaking industry operating within the state. The legislation must make human trafficking a crime and provide that perpetrators of human trafficking must and will be prosecuted. It should encompass all types of trafficking, from forced labor or servitude to trafficking for commercial sexual exploitation, which ranges from prostitution to pornography. The legislation should contain a provision specifically related to the trafficking of children, either as a separate crime or as a sentencing enhancement when child victims are involved.

State anti-trafficking legislation must be preventative. It must provide for the protection of trafficking victims as well as the prosecution of traffickers. The states should enact provisions for educational programs and curricula on human trafficking for school children and the general public, similar to those enacted in the TVPA\textsuperscript{202} and the TVPRA.\textsuperscript{203} States can also help prevent human trafficking by encouraging other states to enact anti-trafficking legislation.

State legislation must protect victims from retaliation, criminal prosecution, and treatment as illegal aliens. For example, a Missouri statute provides that a trafficking victim "shall be afforded the rights and protections provided in the federal Trafficking Victims Protection Act of 2000."\textsuperscript{204} Without protection, victims face

\textsuperscript{202} 22 U.S.C. § 7104(b), (d) (2005).
\textsuperscript{204} MO. REV. STAT. § 566.223 (2005).
the threat of retaliatory violence at the hands of their traffickers and enforcers.\textsuperscript{205} The victim also risks criminal prosecution and deportation by coming forward.\textsuperscript{206} A victim who fears retaliation, prosecution, or deportation will be an ineffective witness. Without the assurance of protection, victims are likely to be hesitant and may even refuse to cooperate with law enforcement to aid in prosecutions. For example, a trafficking victim discovered during a raid of a brothel may fear prosecution for prostitution and, thus, may refuse to cooperate. Victim protection may encourage victims to come forward and foster a willingness to cooperate with law enforcement. Victims who are provided with services and shelter are often the first individuals to cooperate with law enforcement.\textsuperscript{207}

Victims must have access to services including, but not limited to, health services, social services, advocacy, and legal and immigration assistance. The Illinois Criminal Code provides an example of a statutory provision for victims’ services.\textsuperscript{208} This code provides that the Department of Human Services “may provide or fund emergency services and assistance to individuals who are victims” of trafficking.\textsuperscript{209} Victims must be notified of the availability of both protection and services. New York’s anti-trafficking bill, pending in the Assembly Codes Committee, requires that all victims be provided with information regarding their rights and available services.\textsuperscript{210}

If a statute does not specifically enumerate services to be provided to trafficking victims, then a provision for an assessment of available services or the requirement that guidelines or protocols for services be developed is needed. The pending New York Senate Bill also requires the New York Office of Temporary and Disability Assistance to report on “the effectiveness of existing social services programs in responding to the needs of trafficking victims, the coordination of such programs with federal victims assistance programs, and making [sic] recommendations for improving such social services programs, as may be necessary.”\textsuperscript{211} A Washington State Senate Bill, passed in 2005, requires the establishment of protocols for the social service needs of trafficking victims, including housing, health care, and employment.\textsuperscript{212}

\begin{itemize}
\item \textsuperscript{205} See Int’l Rescue Comm., \textit{supra} note 153.
\item \textsuperscript{206} Id.
\item \textsuperscript{207} Telephone Interview with Charles Song, Legal Dir., Coalition to Abolish Slavery and Trafficking (June 28, 2005).
\item \textsuperscript{208} 720 ILL. COMP. STAT. 5/10A-10(f) (2005).
\item \textsuperscript{209} Id.
\item \textsuperscript{210} S. 3914-B, 228th Leg., Reg. Sess. (N.Y. 2005).
\item \textsuperscript{211} Id.
\item \textsuperscript{212} WASH. REV. CODE § 7.68.900 (2005).
\end{itemize}
The legislation should also provide for restitution for the victim's labor or services. Arizona,\textsuperscript{213} Missouri,\textsuperscript{214} and New Jersey\textsuperscript{215} have statutes that require the award of restitution to trafficking victims. Illinois's similar statutory provision became effective on January 1, 2006.\textsuperscript{216} The New Jersey Code of Criminal Justice mandates that "[i]n addition to any other disposition authorized by law, any person who" commits the crime of human trafficking "shall be sentenced to make restitution to any victim."\textsuperscript{217} In New Jersey, the amount of restitution awarded "is the greater of: (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 determined" under New Jersey wage and labor laws.\textsuperscript{218} This provision is similar to the restitution provision suggested by the U.S. Department of Justice Model Statute.\textsuperscript{219}

A comprehensive approach would also criminalize sex tourism. At present, Hawaii is the only state with a law that specifically criminalizes sex tourism. The Hawaii Penal Code states that "a person commits the offense of promoting travel for prostitution if the person knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be prostitution if occurring in the state."\textsuperscript{220} Only two states, Alaska\textsuperscript{221} and New York,\textsuperscript{222} have pending bills that address sex tourism.

There are also specific issues which state legislation can, and should, address, including trafficking for human body parts and organs and illegal adoptions. The "poverty of potential donors, endless waitlists, and better quality of organs harvested from live donors" create a black market for human body parts and organs.\textsuperscript{223} Although some black market donors give their consent, many do not.\textsuperscript{224} Those who do not consent may be kidnapped and sold for

\begin{itemize}
\item \textsuperscript{213} ARIZ. REV. STAT. ANN. § 13-1309 (2005).
\item \textsuperscript{214} MO. REV. STAT. § 566.218 (2005).
\item \textsuperscript{215} N.J. STAT. ANN. § 2C:13-8(e) (West 2005).
\item \textsuperscript{216} 720 ILL. COMP. STAT. ANN. 5/10A-10(e) (West 2006).
\item \textsuperscript{217} N.J. STAT. ANN. § 2C:13-8(e) (West 2005).
\item \textsuperscript{218} Id.
\item \textsuperscript{220} HAW. REV. STAT. § 712-1208 (2004).
\item \textsuperscript{221} H.R. 101, 24th Leg., 1st Sess. (Alaska 2005).
\item \textsuperscript{222} S. 3914-B, 228th Leg., Reg Sess. (N.Y. 2005).
\item \textsuperscript{224} See The Global Traffic in Human Organs: Hearing Before the H. Subcomm. on Int'l Operations and Human Rights of the H. Comm. on Int'l Relations, 107th Cong. 2-8,
their body parts and organs, resulting in another form of human trafficking. Many states have enacted legislation prohibiting the trafficking of human body parts, organs, and bodies. For example, in Georgia, it is illegal for:

[A]ny person, firm, or corporation to buy or sell, to offer to buy or sell, or to assist another in buying or selling or offering to buy or sell a human body or any part of a human body or buy or sell a human fetus or any part thereof.

In Florida, it is a first-degree misdemeanor to buy, sell, or possess “the dead body of any human being . . . for the purpose of buying or selling or trafficking.”

Illegal adoptions frequently fall into the realm of child trafficking. In the aftermath of the Indian Ocean tsunami disaster of 2004, children all over the affected area were kidnapped and sold into slavery or prostitution or placed for adoption. Oklahoma’s anti-trafficking legislation exemplifies a practical response to illegal adoptions. This legislation specifically prohibits facilitating or assisting “in the adoption or foster care placement of a minor child, except by the Department of Human Services, a [licensed] child-placing agency . . . or an attorney.” It also prohibits bringing or sending a “child for the purpose of placing such child in a foster home or for the adoption thereof without first complying with the Interstate Compact on the Placement of Children.” In addition, the legislation prohibits advertising or soliciting “a woman who is pregnant to induce her to place her child upon birth for adoption,” except by an enumerated, licensed agency.

In addition to criminal anti-trafficking legislation, states should regulate the international matchmaking industry that operates within their state lines. The international matchmaking industry,
also known as the “mail-order bride” industry, is often linked to human trafficking.\textsuperscript{234} Frequently, “mail-order brides” are brought into the United States for the “purposes of exploitation of their labor and bodies.”\textsuperscript{235} Hawaii,\textsuperscript{236} Texas,\textsuperscript{237} and Washington\textsuperscript{238} are the only states that currently regulate the international matchmaking industry, and only two states, California\textsuperscript{239} and Indiana,\textsuperscript{240} have legislation pending to regulate this industry. In Hawaii, for example, international matchmaking organizations must allow the person living abroad to access the criminal and marital histories of prospective spouses living in Hawaii,\textsuperscript{241} Texas\textsuperscript{242} and Washington\textsuperscript{243} have similar requirements.

C. The Need for a Victim-Centered Approach

It is important that anti-trafficking laws focus on protecting victims and thus encourage their cooperation in the prosecution of traffickers.\textsuperscript{244} Trafficking victims are often reluctant to testify due to fear of “reprisals against themselves or their family members, or fear [of] removal from the U.S. to countries where they can face additional hardships, retribution, or alienation.”\textsuperscript{245} Additionally, trafficking victims not familiar with their rights may be afraid to report their abusers for fear of their own detention, prosecution, or deportation.\textsuperscript{246}

Since the inception of the TVPA, the U.S. Department of Justice (DoJ) Civil Rights Division has adopted a “victim-centered multidisciplinary approach” to the problem of trafficking.\textsuperscript{247}

\textsuperscript{234} Kohl-Welles, \textit{supra} note 145.
\textsuperscript{235} \textit{Id.}
\textsuperscript{236} HAW. REV. STAT. § 489N-2 (2005).
\textsuperscript{237} TEX. BUS. & COM CODE §§ 35.121-35.125 (Vernon 2005).
\textsuperscript{238} WASH. REV. CODE § 19.220.010 (2005).
\textsuperscript{241} HAW. REV. STAT. § 489N-2 (2005).
\textsuperscript{242} TEX. BUS. & COM CODE §§ 35.122-35.124 (Vernon 2005).
\textsuperscript{243} WASH. REV. CODE § 19.220.010 (2005).
\textsuperscript{245} See Int’l Rescue Comm., \textit{supra} note 153.
this three-step approach, the DoJ identifies and rescues victims and prosecutes traffickers. The term "victim-centered" denotes that the first priority of the DoJ is the well-being of the victims. Understanding that victims often must endure multiple interviews and the complexities of the criminal justice system, the Department recognizes that "cases should not be won at the cost of victim's well-being." The greatest challenge in the fight against human trafficking is to locate and identify victims. According to the International Rescue Committee:

| Trafficking is, by its very nature, unpredictable. Victors can surface in any community or location without warning, numbering anywhere from a few individuals to groups of a hundred victims or more. . . . | The needs of trafficking victims are often distinct, severe and extensive. Trafficking victims are typically held in slavery-like conditions, imprisoned or restricted, beaten, threatened, sexually assaulted, intimidated, and isolated while forced into prostitution, domestic service, or other labor situation. Exposure to these conditions can give rise to complex medical, psychological, immigration, legal, or social service needs that are not only intensive but also potentially long-term. Security risks can also arise within the trafficking context, as victims are involved in the investigation and prosecution of trafficking cases. |

Even if a system is in place to provide services to victims, these services cannot be offered until the victims are found. The TVPA mandates that "the Department of State and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims." Local law enforcement agencies, however, may not be aware of human trafficking activity in their jurisdictions or that trafficking is a federal crime. Without the proper education and training, police officers, health care workers, government officials, and NGO workers may routinely come into contact with victims, yet be unable

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248. Id.
249. Id. at 2.
250. Id.
251. 2004 ASSESSMENT, supra note 12, at 22.
to recognize them as such. Others may possess knowledge of potential trafficking rings, but fail to report the information to federal, state, or local law enforcement. Anti-trafficking organizations can increase awareness within local law enforcement.

To control their victims and reduce their risk of getting caught, traffickers often physically abuse, rape, and threaten their victims. Traffickers generally brainwash their victims into believing that the people who are trying to help them are their enemies and force their victims to lie to police and prosecutors. As a result of their experiences, victims often exhibit signs of post-traumatic stress disorder. It is important that prosecutors and law enforcement officials be cognizant of these factors and take measures, such as not wearing firearms during victim interviews, to ensure that victims feel secure and not threatened.

D. The Need for Coordinated Collaboration

According to the International Rescue Committee, "[n]o single agency can meet all the needs of trafficking victims. Services must be mobilized and coordinated to respond to the varied health, psychosocial, vocational, legal, cultural, and linguistic needs of victims of trafficking." Collaboration among law enforcement organizations at all levels and NGOs "is also critical to ensure that the best interests of trafficking victims are advanced during the investigation and prosecution of trafficking cases."

Immigration status issues, which are often at the forefront of a victim's concern, illustrate the need for this collaboration. State anti-trafficking laws can criminalize human trafficking and provide benefits, services, and protections for victims. The federal government, specifically U.S. Citizenship and Immigration Services within the U.S. Department of Homeland Security, is responsible for

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256. Id.
257. Id.
258. See id.
259. See, e.g., Int'l Rescue Comm., supra note 247, at 3.
260. See, e.g., id.
261. See, e.g., id.
262. See, e.g., id.
263. See Int'l Rescue Comm., supra note 153.
264. Id. Law enforcement organizations include the "FBI, U.S. Attorneys offices, Justice Department Civil Rights Division/Criminal Section, Bureau of Immigration and Customs Enforcement, and the Labor Department." Id.
immigration issues;\textsuperscript{265} no state agency or NGO can grant a change in immigration status without official federal involvement.

\section*{CONCLUSION}

In order to effectively fight human trafficking in the United States, legislation at the state level, in addition to federal anti-trafficking laws, is critical. Although many states have laws addressing kidnapping and prostitution, and many state constitutions and laws address the issue of slavery, each state must have legislation specifically addressing human trafficking. Federal and state anti-trafficking legislation should be consistent. States should combine their existing laws addressing kidnapping, prostitution, and slavery with new trafficking-specific laws into a trafficking chapter, similar to the structure of the federal criminal code.\textsuperscript{266} Additionally, “there is a strong need for uniformity in definitions and concepts across state lines to minimize confusion as trafficking victims in state prosecutions begin to seek the victim protections available through the federal Departments of Health and Human Services and of Homeland Security.”\textsuperscript{267}

Eleven states have already enacted anti-trafficking legislation\textsuperscript{268} and fourteen states have pending anti-trafficking legislation.\textsuperscript{269} Thus, half the states have taken action or are taking action in this area since the State of Washington enacted legislation in 2003. Additional states have acknowledged the need for legislation at the state level. Once this legislation is in place, the focus can and must shift to educating and training law enforcement, nongovernmental agencies, and the public, and facilitating collaboration amongst agencies. Only with these actions can we hope to prevent the countless horror stories, such as the tragedy that occurred in Hudson County, New Jersey,\textsuperscript{270} from continuing to occur right in “our own backyard.”


\textsuperscript{266} \textsc{Model State Anti-Trafficking Crim. Stat.} explanatory notes (Dep’t of Justice 2004), available at http://www.usdoj.gov/crt/crim/model_state_law.pdf.

\textsuperscript{267} Id.

\textsuperscript{268} \textit{See supra} note 109.

\textsuperscript{269} \textit{See supra} note 110.

\textsuperscript{270} \textit{See supra} notes 5-6.