

## **MODERN DAY SLAVERY IN OUR OWN BACKYARD**

### **ABSTRACT**

Trafficking in persons is one of the fastest growing areas of international criminal activity. Each year an estimated 600,000 – 800,000 human beings are bought, sold or forced across the world’s borders. Approximately 2.5 million men, women and children are victims of trafficking at any point in time throughout the world. Approximately 14,500 – 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.

In order to fight trafficking in the United States effectively, legislation at the state level, in addition to the 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, it is important that each state have legislation specifically addressing human trafficking. Thirteen states have already enacted anti-trafficking legislation and thirteen states have pending legislation. Thus, more than half of the states have taken action or are taking action in this area since the State of Washington became the first state to enact legislation in 2003. Many more states have acknowledged the need for legislation at the state level. Once the legislation is in place, the focus must be on education and training of law enforcement, non-governmental agencies, and the public, and on the facilitation of collaboration across agencies.

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## MODERN DAY SLAVERY IN OUR OWN BACKYARD

### I. INTRODUCTION

In April 2005, “in one of the government’s largest sex trafficking cases brought under provisions of the Trafficking Victims Protection Act of 2000, ... three men pled guilty to 27 counts of forcing Mexican women into prostitution in brothels throughout the New York City area.”<sup>1</sup> “One of the men tried to stab a young Mexican woman he had forced into prostitution 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.”<sup>2</sup> Lawyers for the three men who were charged said that “the evidence was so overwhelming” that all three pled guilty to all twenty-seven counts against them.<sup>3</sup>

In another incident, “[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.”<sup>4</sup> This incident resulted in the indictment, on July 21, 2005, of ten alleged members of a smuggling ring that lured young women from Honduras into the United States for forced-labor jobs.<sup>5</sup>

While they may be surprising to some, these are not news stories from third-world countries. This is the news from “our own backyard.” Human trafficking is a

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<sup>1</sup> U.S. Department of Homeland Security, *Three Plead Guilty to Forcing Young Mexican Women into Sexual Slavery*, US Federal News, April 11, 2005 (2005 WLNR 6868743).

<sup>2</sup> William Glaberson, *Sex-Trafficking Pleas Detail Abuse of Mexican Women*, New York Times, April 6, 2005.

<sup>3</sup> *See id.*

<sup>4</sup> Amy Klein, *10 Charged as Human Smugglers; N.J. Ring Lured Girls into Servitude, U.S. Says*, The Bergen County Record, July 22, 2005.

<sup>5</sup> *See* Eric Green Washington, *Indictments Made in Case Involving U.S.-Honduras Smuggling Ring*, US Federal News, July 21, 2005.

global issue. In order to fight trafficking in the United States effectively, legislation at the state level, in addition to the 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, it is important that each state have legislation specifically addressing human trafficking.

This article will describe the problem of human trafficking, both globally and in the United States. Second, it will discuss federal anti-trafficking legislation and criminal prosecutions under the federal legislation. Third, it will suggest improvements to the United States Department of Justice's Model State Anti-Trafficking Criminal Statute. Fourth, this article will discuss anti-trafficking legislation at the state level as well as the legislation of the State of Washington, which has served as a model for the rest of the United States. Next, it will examine the role of non-governmental organizations in the fight against human trafficking. Finally, this article will provide recommendations to aid in the eradication of human trafficking.

## **II. BACKGROUND**

The United Nations has defined trafficking in persons as “the 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.”<sup>6</sup>

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<sup>6</sup> See *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, an addendum of the United Nations Convention Against Transnational Crime* (entered into force December 25, 2003). Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to

Trafficking in persons and human smuggling are two of the fastest growing areas of international criminal activity.<sup>7</sup> There are significant statutory differences between human trafficking and human smuggling.<sup>8</sup> Trafficking must contain an element of force, whereas a person being smuggled is generally cooperating.<sup>9</sup> Further, trafficking has no requirement of a crossing of an international border, while smuggling always involves crossing an international border.<sup>10</sup>

Trafficking is a transnational criminal enterprise that recognizes neither boundaries nor borders.<sup>11</sup> Each year an estimated 600,000-800,000 human beings are bought, sold or forced across the world's borders,<sup>12</sup> and worldwide, approximately 2.5 million men, women and children are victims of trafficking at any point in time.<sup>13</sup>

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slavery, servitude or the removal of organs. The United Nations first addressed the issue of human trafficking in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of Others, 96 U.N.T.S. 271, entered into force July 25, 1951. Other UN conventions addressing the issue of human trafficking include: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which entered into force September 3, 1981, the Convention on the Rights of the Child which entered into force September 3, 1989, the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography which entered into force January 18, 2002, the Optional Protocol to the Convention on the Rights of the Child in Armed Conflict which entered into force February 12, 2002, and the United Nations Convention against Transnational Organized Crime which entered into force September 29, 2003.

<sup>7</sup> See United States Department of Justice, *Human Smuggling and Trafficking Center Fact Sheet*, [http://www.usdoj.gov/crt/crim/smuggling\\_trafficking\\_facts.pdf](http://www.usdoj.gov/crt/crim/smuggling_trafficking_facts.pdf).

<sup>8</sup> See *id.*

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* Additional differences between trafficking in persons and human smuggling are: trafficking involves forced labor and/or exploitation; there is no actual or implied coercion in smuggling; persons who are trafficked are victims, persons who are smuggled are violating the law; trafficking victims are enslaved, subjected to limited movement or isolation, or had documents confiscated, smuggled persons are free to leave, change jobs, etc.; trafficking need not involve actual movement of the victim, smuggling facilitates the illegal entry of person(s) from one country to another; a trafficking victim must be involved in labor, services or commercial sex acts (i.e. must be working), a person being smuggled must only be in a country or attempting to enter a country illegally.

<sup>11</sup> See United States Department of Justice, *Assessment of U.S. Activities to Combat Trafficking in Persons*, p.4. (June 2004), [http://www.usdoj.gov/crt/crim/wetf/us\\_assessment.pdf](http://www.usdoj.gov/crt/crim/wetf/us_assessment.pdf) (hereinafter "2004 Assessment of U.S. Activities to Combat Trafficking in Persons").

<sup>12</sup> See U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *2005 Trafficking in Persons Report* (June 2005), <http://www.state.gov/g/tip/> (hereinafter "2005 Trafficking in Persons Report."

<sup>13</sup> See Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report of the Director-General – A global alliance against forced labour, International Labour Conference 93<sup>rd</sup> Session 2005.

[http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=5059](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059).

Victims are trafficked for forced labor, sexual exploitation, organs and stem cells, international matchmaking and the mail-order bride industry, child pornography, adoptions, camel jockeying and forced begging and peddling.<sup>14</sup> According to the United States Federal Bureau of Investigation, human trafficking generates an estimated \$9.5 billion in annual revenue, globally.<sup>15</sup> This money is closely connected with money laundering, drug trafficking, document forgery, and human smuggling.<sup>16</sup>

Approximately 14,500-17,500 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.<sup>17</sup> The largest numbers of people trafficked into the United States come from East Asia and the Pacific (5,000-7,000), and from Latin America, Europe and Eurasia (3,500-5,500 from each).<sup>18</sup> Within the United States, the highest concentrations of trafficked persons are in California, New York, Hawaii, Georgia, Alaska, Texas, and North Carolina.<sup>19</sup> Victims of trafficking in the United States are typically entrapped in commercial sexual exploitation, in prostitution, or in labor exploitation, in such venues as sweatshops, construction, agriculture, and domestic settings.<sup>20</sup> Human trafficking investigations have been initiated in every state and territory of the United States except for four states.<sup>21</sup> During fiscal years 2001-2003, 110 prosecutions were initiated and seventy-eight convictions were secured by United States

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<sup>14</sup> See generally *2005 Trafficking in Persons Report*, *supra* note 12.

<sup>15</sup> See *id.* at 13-14.

<sup>16</sup> See *id.*

<sup>17</sup> See *2004 Assessment of U.S. Activities to Combat Trafficking in Persons*, *supra* note 11 at 5.

<sup>18</sup> See *id.* at 10. People trafficked into the United States come from India – 35%, Vietnam – 11%, Mexico – 9%, Indonesia – 5%, Tonga – 5%, Zambia – 5%, Thailand – 4%.

<sup>19</sup> See Dr. Mohamed Mattar, *Trafficking in Persons: The Scope of the Problem and the Appropriate Responses: Global Perspective*, Address at the Department of Defense Seminar on Globalization and Corruption (September 14-15, 2004).

<sup>20</sup> See *2004 Assessment of U.S. Activities to Combat Trafficking in Persons*, *supra* note 11 at 5.

<sup>21</sup> See *id.* at 26. The Department of Justice report does not indicate which are the four states in which human trafficking investigations have not been initiated.

federal authorities.<sup>22</sup> While this represented a three-fold increase in prosecutions initiated and a fifty percent increase in convictions secured, compared to the previous three fiscal years,<sup>23</sup> there are thousands of potential trafficking cases which have not been initiated.

The causes of human trafficking are complex and often reinforce each other.<sup>24</sup> Viewing trafficking in persons in a global market, victims constitute the “supply” and employers or exploiters represent the “demand.”<sup>25</sup> The supply of victims is driven 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.<sup>26</sup> On the demand side, factors driving trafficking in persons include the sex industry, a growing demand for cheap, vulnerable, and illegal labor (including domestic servants), and demand for young women as brides and concubines.<sup>27</sup> Both the supply and demand sides of the equation must be addressed.

### **III. LEGAL ENVIRONMENT**

This section will discuss the legal environment of the United States with regard to anti-trafficking legislation at the federal level. It will begin with the Victims of Trafficking and Violence Protection Act of 2000<sup>28</sup> and related criminal prosecutions pursuant to that law. It will also discuss the Victims of Trafficking and Violence

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<sup>22</sup> *See id.* at 25.

<sup>23</sup> *See id.*

<sup>24</sup> *See 2005 Trafficking in Persons Report, supra* note 12 at 17.

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

<sup>26</sup> *See id.*

<sup>27</sup> *See id.* at 18.

<sup>28</sup> *See* 22 U.S.C. §7102 (8)(A),(B) Trafficking Victims Protection Act of 2000 (signed into law October 28, 2000).

Protection Reauthorization Act of 2003,<sup>29</sup> other federal legislation related to human trafficking, pending federal legislation related to human trafficking, and the United States Department of Justice’s Model State Anti-Trafficking Criminal Statute. This section will also discuss existing state anti-trafficking legislation, and, in particular, will examine the anti-trafficking legislation of the State of Washington, which has served as a model for many of the states of the United 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 (“TVPA”) of 2000<sup>30</sup> was the first law in the United States to recognize that people trafficked against their will are crime victims, not illegal aliens, and should be treated as such.<sup>31</sup> The “TVPA” provided for victim assistance in the United States by making trafficking victims eligible for federally-funded or administered health and other benefits as if they were refugees;<sup>32</sup> created new crimes and enhanced penalties for existing crimes;<sup>33</sup> provided for assistance

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<sup>29</sup> See 22 U.S.C. §7102 (8)(A),(B) Trafficking Victims Protection Reauthorization Act of 2003 (signed into law December 19, 2003).

<sup>30</sup> See 22 U.S.C. §7102 (8)(A),(B) Trafficking Victims Protection Act of 2000 (signed into law October 28, 2000). Trafficking Victims Protection Reauthorization Act of 2003 (signed into law December 19, 2003). The “TVPA” defined “severe forms of trafficking in persons” as “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 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>31</sup> See Peter Landesman, *The Girls Next Door*, New York Times, January 25, 2004; Magazine Desk; Pg. 30.

<sup>32</sup> See *2004 Assessment of U.S. Activities to Combat Trafficking in Person*, *supra* note 11 at 6.

<sup>33</sup> See *id.* Including 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; criminalized attempts to engage in these behaviors; and providing for mandatory restitution and forfeiture.

to foreign countries in drafting laws to prohibit and punish acts of trafficking, and strengthened investigation and prosecution of traffickers.<sup>34</sup>

Eligibility for benefits under the “TVPA” is often linked to the victims’ immigration status.<sup>35</sup> Adult victims must be “certified”<sup>36</sup> to receive federally funded or administered benefits and services such as cash assistance, medical care, food stamps, and housing.<sup>37</sup> Child victims do not need to be “certified” to receive benefits and services, but do receive eligibility letters to the same effect.<sup>38</sup>

Victims of a severe form of trafficking may be granted “continued presence”<sup>39</sup> status if federal law enforcement determines that the victims are witnesses to trafficking and submits a request on their behalf to the Department of Homeland Security.<sup>40</sup> “Continued presence” enables the victims, and in some cases their family members, to remain in the United States during the pendency of the investigation.<sup>41</sup> Victims who comply with “reasonable requests for assistance in the investigation of prosecution of acts of trafficking” may also petition United States Citizenship and Immigration Services<sup>42</sup> for “T” nonimmigrant status.<sup>43</sup> Recipients of a “T” visa may remain in the United States for three years and may then apply for lawful permanent residency status subject to certain statutory authority.<sup>44</sup> The United States is the only country that currently offers victims

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<sup>34</sup> *See id.* Created programs to assist victims and expanded U.S. Government exchange and international visitor programs focusing on trafficking in persons.

<sup>35</sup> *See id.* at 12.

<sup>36</sup> *See* 22 U.S.C. §7105(b)(1)(E)(i) (2003).

<sup>37</sup> *See 2004 Assessment of U.S. Activities to Combat Trafficking in Persons, supra* note 11 at 12.

<sup>38</sup> *See id.* at 13.

<sup>39</sup> *See* 18 U.S.C. §7105 (c)(3) (2003).

<sup>40</sup> *See 2004 Assessment of U.S. Activities to Combat Trafficking in Persons, supra* note 11 at 21.

<sup>41</sup> *See id.* at 22.

<sup>42</sup> *See id.* at 21. 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 Border and Transportation Security and U.S. Citizenship and Immigration Services.

<sup>43</sup> *See id.*

<sup>44</sup> *See id.*

of trafficking the possibility of permanent residency.<sup>45</sup> During fiscal year 2003, the Department of Homeland Security received 601 applications for “T” visas of which 297 were approved, thirty were denied and the remaining are still pending.<sup>46</sup>

Under the provisions of the “TVPA,” federal authorities are required to provide trafficking victims with information about their rights (such as individual privacy, confidentiality, restitution, and notification of case status), applicable benefits (such as federal refugee and immigration benefits relevant to trafficking victims and victims’ compensation and assistance programs), and applicable services (such as pro bono and low-cost legal services, immigration services, medical services, services from victim service organizations including domestic violence and rape crisis centers, and available protections, especially against threats and intimidation).<sup>47</sup>

The “TVPA” created the new crimes of forced labor, trafficking with respect to peonage, slavery, involuntary servitude or forced labor, sex trafficking of children, trafficking by force, fraud or coercion, unlawful conduct with respect to documents as well as attempts to engage in these behaviors.<sup>48</sup> Mandatory restitution of the “full amount of the victim’s losses”<sup>49</sup> and forfeiture of the perpetrator’s property<sup>50</sup> are also provided for under the “TVPA.”

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<sup>45</sup> *See id.*

<sup>46</sup> *See id.* at 21-22. From the creation of these new immigrant benefits in the “TVPA” through September 30, 2003, the Department of Homeland Security had granted 374 continued presence requests and as of November 30, 2003 had received 757 “T” nonimmigrant status applications, 328 of which resulted in “T” nonimmigrant status, thirty-eight of which were denied, and the remaining were pending. Many trafficking victims who received continued presence later applied for and received “T” nonimmigrant status. The total of approximately 450 victims served over the life of the program reflects victims who have received both types of benefits.

<sup>47</sup> *See id.* at 13.

<sup>48</sup> *See* 18 U.S.C. Ch. 77 (2000).

<sup>49</sup> *See* 18 U.S.C. § 1593(b)(1) (2000).

<sup>50</sup> *See* 18 U.S.C. § 1594 (b)(1-2) (2000)

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

There have been several prosecutions under the “TVPA” since it was enacted in 2000. The first case to be prosecuted under the “TVPA” was *United States v. Virchenko*.<sup>51</sup> Victor Virchenko, a Russian national, brought Russian women and under age girls to the United States in December of 2001 to dance nude in strip clubs in Alaska.<sup>52</sup> “Virchenko pleaded guilty in federal district court to six counts of immigration fraud and one count of transporting minors.”<sup>53</sup> Virchenko was sentenced to thirty months in prison and to deportation.<sup>54</sup>

In 2003 there were convictions in the largest trafficking case in United States history, *United States v. Kil Soo Lee, et al.*<sup>55</sup> In 2002, the U.S. Department of Labor discovered and investigated the Daewoosa garment factory in American Samoa.<sup>56</sup> Officials found two hundred “Vietnamese and Chinese nationals, mostly young women,”<sup>57</sup> working as sewing machine operators and 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.”<sup>58</sup> The case was eventually prosecuted and a

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<sup>51</sup> See U.S. v. Virchenko, No. A01-0013CR (D. Alaska 2001).

<sup>52</sup> See Press Release, United States Department of Justice, *Alaska Man Sentenced to 30 Months For Immigration Fraud and Transporting Minors From Russia to Dance in an Anchorage Strip Club* (Aug. 28, 2001), <http://www.usdoj.gov/opa/pr/2001/August/438cr.htm>.

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See U.S. v. Soo Lee, et al., No. 01-CR-132-ALL (D. Haw. 2001), *motion to dismiss denied*, 159 F.Supp.2d 121 (D. Haw. 2001). According to the United States Department of Justice’s Assessment of U.S. Activities to Combat Trafficking in Persons of August 2003. See *2004 Assessment of U.S. Activities to Combat Trafficking in Persons*, *supra* note 11 at 13.

<sup>56</sup> See *2004 Assessment of U.S. Activities to Combat Trafficking in Persons*, *supra* note 11 at 13.

<sup>57</sup> See *id.*

<sup>58</sup> See *id.*

jury convicted the owner of the factory and leader of the operation, Kil Soo Lee, on nearly all counts,<sup>59</sup> including involuntary servitude, extortion and money laundering.<sup>60</sup> Two other defendants pled guilty.

### **3. The Victims of Trafficking and Violence Protection Reauthorization Act of 2003**

The Victims of Trafficking and Violence Protection Reauthorization Act of 2003 (“TVPRA”) mandated new information campaigns to combat “sex tourism,”<sup>61</sup> refined the federal criminal law,<sup>62</sup> created a new civil action provision that allows trafficking victims to sue their traffickers in federal district court,<sup>63</sup> and mandated an annual report to be submitted to Congress by the Attorney General providing information on U.S. Government activities to combat trafficking.<sup>64</sup> Additionally, the “TVPRA” reauthorized parts of the “TVPA” as required by the “TVPA.”

### **4. 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.<sup>65</sup> The “PROTECT Act” strengthened law enforcement’s ability to prevent, investigate,

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<sup>59</sup> *See id.*

<sup>60</sup> *See* Press Release, United States Department of Justice, *Garment Factory Owner Convicted in Largest Ever Human Trafficking Case Prosecuted by the Department of Justice* (Feb. 21, 2003), [http://www.usdoj.gov/opa/pr/2003/February/03\\_crt\\_108.htm](http://www.usdoj.gov/opa/pr/2003/February/03_crt_108.htm).

<sup>61</sup> *See* 22 U.S.C. § 7104 (2003). “Sex tourism” is defined as travel with the intent to engage in illicit sexual conduct or for the purpose of commercial advantage or private financial gain, arranging, inducing, procuring or facilitating the travel of a person knowing that such person intends to engage in illicit sexual conduct. 18 U.S.C. § 2423(b-d).

<sup>62</sup> The TVPRA amended 18 U.S.C. § 1591(a)(1) to permit federal anti-trafficking statutes to be used to prosecute trafficking in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States; 18 U.S.C. § 1591(b) was amended to include persons recruited, enticed, harbored, transported, provided or obtained, rather than just persons transported; and 18 U.S.C. §1961(1)(B) was amended to include trafficking in persons as a predicate offense for prosecution under the RICO statute.

<sup>63</sup> *See* 18 U.S.C. § 1595 (2003).

<sup>64</sup> *See* 22 U.S.C. § 7106 (2003).

<sup>65</sup> *See* 18 U.S.C. §§25, 1466A, 2252B, 3283, 42 U.S.C. §§5791, 5791a to 5791d, 13005, Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (“PROTECT Act”), (2005).

prosecute and punish violent crimes committed against children,<sup>66</sup> provided appropriately severe penalties for those who harm children and strengthened the laws against child pornography in ways that can survive Constitutional review.<sup>67</sup>

In addition, human trafficking is often prosecuted under the Racketeering Influenced and Corrupt Organization Act (“RICO Act”).<sup>68</sup> However, sex and labor trafficking are not considered offenses under the “RICO” Statute.<sup>69</sup>

## **5. Pending Federal Legislation Related to Human Trafficking**

Numerous other bills have been introduced and are pending in Congress to further prevent, protect and prosecute crimes of human trafficking. They include the Intercountry Adoption Act of 2000,<sup>70</sup> the International Marriage Broker Regulation Act

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<sup>66</sup> See Department of Justice, *PROTECT Act Fact Sheet* (April 30, 2003), [http://www.usdoj.gov/opa/pr/2003/April/03\\_ag\\_266.htm](http://www.usdoj.gov/opa/pr/2003/April/03_ag_266.htm). The “PROTECT Act” established a national AMBER Alert Program, allows law enforcement to use existing legal tools for the full range of serious sexual crimes against children, including “intent to lure children for purposes of sexual abuse and sex trafficking,” and makes it clear that in virtually all cases, there is no statute of limitations involving the abduction or physical or sexual abuse of a child.

<sup>67</sup> See *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. The “PROTECT Act” revises and strengthens the prohibition on ‘virtual’ child pornography; prohibits any obscene materials that depict children, and provides tougher penalties compared to existing obscenity law; and encourages greater voluntary reporting of suspected child pornography found by internet service providers on their systems.

<sup>68</sup> See 18 U.S.C. §§1961-1968, Racketeering Influenced and Corrupt Organizations Act (2004).

<sup>69</sup> Detective Kevin Mannion, *Brief History and Overview of Human Trafficking: Modern Day Slavery*, Presented at Sexual Exploitation and Trafficking of Women and Children: New York City and Beyond (March 31, 2005) (on file with author).

<sup>70</sup> See Intercountry Adoption Act of 2000 Fact Sheet (January 22, 2001), <http://uscis.gov/graphics/publicaffairs/factsheets/adoption.htm>. The Act approved the provisions of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention) which the United States has implemented. The objectives are to prevent the abduction, sale of, or trafficking in children by ensuring proper consent to the adoption, to allow for the child’s transfer to the receiving country, and to establish the adopted child’s status in the receiving country. See 42 U.S.C. §§ 14901-14902, 14911-14914, 14921-14924, 14931-14932, 14941-14944, 14951-14954 (2005).

of 2005,<sup>71</sup> the End Demand for Sex Trafficking Act of 2005,<sup>72</sup> and the Victims of Trafficking and Violence Protection Reauthorization Act of 2005.<sup>73</sup>

## **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”)<sup>74</sup> for policymakers to use when amending their state’s penal laws to address trafficking. Following the release of the Model statute, the United States Senate passed resolutions encouraging states to consider adopting comprehensive legislation to combat human trafficking and slavery.<sup>75</sup>

The Model Statute begins with definitions of “blackmail,” “commercial sexual activity,” “financial harm,” “forced labor or services,” “labor,” “services,” “sexual

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<sup>71</sup> See H.R. 3657, 109th Cong. (2005). International Marriage Broker Regulation Act of 2005. To regulate international marriage broker activity in the United States, by providing certain protections to individuals who utilize the services of international marriage brokers.

<sup>72</sup> See H.R. 2012.IH, 109th Cong., 1<sup>st</sup> Sess. (2005). End Demand for Sex Trafficking Act of 2005. To 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.

<sup>73</sup> See H.R. 972, 109th Cong., 1<sup>st</sup> Sess. (2005). The Trafficking Victims Protection Reauthorization of 2005 amends §106 of the “TVPA” by adding a new subsection addressing prevention of trafficking in conjunction with post-conflict and humanitarian emergency assistance; Amends §107(c)(2) of the “TVPA” by adding the provision that “to 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; Establishes Guardian Ad Litem Program and access to counsel.

<sup>74</sup> Model State Anti-trafficking Criminal Statute, Issued by the Trafficking in Persons and Worker Exploitation Task Force of the Department of Justice (U.S. Dep’t of Justice 2004), [http://www.usdoj.gov/crt/crim/model\\_state\\_law.pdf](http://www.usdoj.gov/crt/crim/model_state_law.pdf).

<sup>75</sup> See S. Res. 413, 414, 108th Cong., 2d Sess. (July 21, 2004). “Resolved that the Senate:

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 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.”

performance,” and “trafficking victim.”<sup>76</sup> The statute criminalizes involuntary servitude, sexual servitude of a minor and trafficking of persons for forced labor or services.<sup>77</sup> It also provides that servitude offenses include involuntary servitude, unlawful restraint for forced labor, legal coercion for forced labor, document servitude and debt bondage.<sup>78</sup>

The Statute includes guides for sentencing enhancements when rape, kidnapping, sexual abuse, attempted murder, extreme violence or death occur during an act of trafficking.<sup>79</sup> Suggested considerations for sentencing include bodily injury, time in servitude and the number of victims.<sup>80</sup> The Model Statute makes restitution mandatory.<sup>81</sup> Specifically it states that “in addition to any other amount of loss identified, the court shall order restitution including 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 as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act” and any corresponding state statutes.”<sup>82</sup> Finally, it includes provisions requiring the Attorney General to issue a report on 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.<sup>83</sup>

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<sup>76</sup> See Model State Anti-Trafficking Criminal Statute § XXX.01 (U.S. Dep’t of Justice 2004).

<sup>77</sup> See Model State Anti-Trafficking Criminal Statute § XXX.02 (U.S. Dep’t of Justice 2004).

<sup>78</sup> See Model State Anti-Trafficking Criminal Statute app. A (U.S. Dep’t of Justice 2004).

<sup>79</sup> See Model State Anti-Trafficking Criminal Statute §. XXX.02(4) (U.S. Dep’t of Justice 2004).

<sup>80</sup> See Model State Anti-Trafficking Criminal Statute § XXX.02(4)(B)(1-3) (U.S. Dep’t of Justice 2004).

<sup>81</sup> See Model State Anti-Trafficking Criminal Statute § XXX.02(5) (U.S. Dep’t of Justice 2004).

<sup>82</sup> See *id.*

<sup>83</sup> See Model State Anti-Trafficking Criminal Statute § XXX(B)(1)(A-B) (U.S. Dep’t of Justice 2004).

## B. STATE LEGISLATION

### 1. Existing Anti-Trafficking Legislation at the State Level

Only within the last two years have states begun to respond, with legislation, to the problem of human trafficking. Until 2003, there were no anti-trafficking laws in existence at the state level. As of August 2005, thirteen states had passed legislation criminalizing human trafficking,<sup>84</sup> and thirteen states had anti-trafficking bills pending in their legislatures.<sup>85</sup>

Five states, Colorado, Connecticut, Hawaii, Idaho, and Washington, have adopted laws establishing state-level trafficking task forces or committees.<sup>86</sup> Seven states currently have bills pending in the legislature to create a task force or committee or to require a statistical report on trafficking.<sup>87</sup> These types of organized groups enable a state to determine the severity of its human trafficking problem, to evaluate its progress in combating human trafficking, to assess the services and protections that are available to trafficking victims, to increase public awareness, to demonstrate the need for law enforcement training and education, and to make recommendations to the legislature. Creating a task force or workgroup, mandating a reporting requirement, or creating a research commission is a critical element of state anti-trafficking legislation.

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<sup>84</sup> Arizona, Colorado, Florida, Idaho, Illinois (effective January 1, 2006), Kansas, Louisiana, Missouri, New Jersey, Oklahoma, Texas and Washington have adopted some type of legislation criminalizing human trafficking whether it is trafficking in general, sex trafficking, or the trafficking of children.

<sup>85</sup> Alaska, Arkansas, California, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, New Mexico, New York, Oregon, Pennsylvania and Wisconsin currently have bills pending in their state legislatures.

<sup>86</sup> See Colo. Rev. Stat. § 18-1.8-101 (2005); H.B. 5358, 2004 Sess. (Conn. 2004); *Hawaii Anti-Trafficking Task Force Formed*, Globalization Research Center, May 28, 2003, [www.hawaii.edu/global/projects\\_activities/Trafficking/ATTF\\_Press\\_release\\_May\\_03.pdf](http://www.hawaii.edu/global/projects_activities/Trafficking/ATTF_Press_release_May_03.pdf); H.C.R. 18, 58th Leg., Reg. Sess. (Idaho 2005); Wash. Rev. Code § 7.68.350 (2005).

<sup>87</sup> California, Maine, Massachusetts, Nebraska, New York, North Carolina and Oregon. See A.B. 22, 2005-06 Sess. (Cal. 2005); S 103, 122d Leg., Reg. Sess. (Me. 2005); S 103, 184th Gen. Ct., Reg. Sess. (Mass. 2005); L.B. 260, 99th Leg., 1st Sess. (Neb. 2005); S.B. 3914B, 228th Leg., Reg. Sess. (N.Y. 2005); H 1461, 2005-2006 Sess. (N.C. 2005); S.B. 993, 73rd Leg. (Or. 2005).

Nine states have anti-trafficking laws with provisions relating specifically to the trafficking of children.<sup>88</sup> For example, in Missouri, the sexual trafficking of a child under the age of eighteen<sup>89</sup> is a separate crime from trafficking for the purpose of sexual exploitation.<sup>90</sup> In Texas the crime of trafficking in persons is elevated to a felony in the first degree if “the person who is trafficked is younger than 14 years of age at the time of the offense.”<sup>91</sup>

Many states with anti-trafficking legislation specifically refer 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 trafficking for forced labor or labor servitude.<sup>92</sup> For example, in Missouri, trafficking for the purpose of slavery, involuntary servitude, peonage, or forced labor is a felony.<sup>93</sup>

Ten states have passed legislation and ten states have legislation pending that refers specifically to crimes of sex trafficking, sexual servitude (of both adults and

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<sup>88</sup> Arizona, Connecticut, Florida, Illinois (effective January 1, 2006), Kansas, Missouri, New Jersey, Oklahoma, and Texas. *See* Ariz. Rev. Stat. § 13-604.01 (2005); Conn. Gen. Stat. § 53-21 (2005); Fla. Stat. ch. 796.035 (2005); 721 Ill. Comp. Stat 5/10A-10 (2005); S.B. 702, 81st Leg., Reg. Sess. (Kan. 2005); Mo. Rev. Stat. § 568.175 (2005); N.J. Rev. Stat. § 2C: 13-8 (2005); Okl. Stat. tit. 21, §866 (2004); Tex. Penal Code § 20A.02 (2004).

<sup>89</sup> *See* Mo. Rev. Stat. § 566.212 (2005).

<sup>90</sup> *See* Mo. Rev. Stat. § 566.209 (2005).

<sup>91</sup> Tex. Penal Code § 20A.02(b)(1) (2004).

<sup>92</sup> Legislation has been enacted in Arizona, Florida, Illinois (effective January 1, 2006), Kansas, Louisiana, Missouri, New Jersey, Texas and Washington. *See* S.B. 1372, 47th Leg., 1st Reg. Sess. (Ariz. 2005); Fla. Stat. ch. 787.06 (2005); 720 Ill. Comp. Stat. 5/10A-10(c) (2005); 81<sup>st</sup> Leg., Reg. Sess. (Kan. 2005); H.B. 56, 2005 Reg. Sess. (La. 2005); Mo. Rev. Stat. § 566.206 (2005); N.J. Rev. Stat. § 2C: 13-8 (2005); Tex. Penal Code § 20A.01 (2004); Wash. Rev. Code § 9A.40.100 (2005). Legislation is pending in Alaska, Arkansas, California, Indiana, Iowa, Maryland, Minnesota, Montana, New Mexico, New York, Oregon, and Wisconsin. *See* H.B. 148, 24th Leg., 1st Sess. (Alaska 2005); H.B. 2979, 85th Gen. Assemb., Reg. Sess. (Ark. 2005); A.B. 22, 2005-06 Sess. (Cal. 2005); H.B. 1825, 114th Leg., Reg. Sess. (Ind. 2005); S.F. 2165, 80th Gen. Assemb., Reg. Sess. (Iowa 2004); H.B. 1473, 419th Gen. Assemb., 2005 Sess. (Md. 2005); H.F. 1760, 84th Leg., Reg. Sess. (Minn. 2005); L.C. 1714, 59th Leg., Reg. Sess. (Mont. 2005); H.B. 241, 47th Leg., 1st Reg. Sess. (N.M. 2005); S.B. 3914B, 228th Leg., Reg. Sess. (N.Y. 2005); S.B. 993, 73rd Leg. (Or. 2005); H.B. 2016, 73rd Leg. (Or. 2005); A.B. 463, 97th Leg., Reg. Sess. (Wis. 2005).

<sup>93</sup> *See* Mo. Rev. Stat. § 566.206(1) (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.

minors), trafficking for purposes of sexual gratification or with a sexual motivation, trafficking in prostitution or trafficking for commercial sexual activity.<sup>94</sup> The states that have passed such legislation include Arizona, Florida, Idaho, Illinois (effective January 1, 2006), Louisiana, Missouri, New Jersey, Ohio, Texas, and Washington.<sup>95</sup> For example, in Florida a person is guilty of sex trafficking, a felony in the second degree, if he “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.”<sup>96</sup>

## **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.<sup>97</sup> Washington was the first state to pass anti-trafficking legislation and its legislation has served as a model for other states adopting their own legislation because of its comprehensiveness.<sup>98</sup> In June 2002, the state legislature passed a bill

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<sup>94</sup> Alaska, Arkansas, California, Indiana, Louisiana, Maryland, Minnesota, New Mexico, New York and Oregon. *See* H.B. 148, 24th Leg., 1st Sess. (Alaska 2005); H.B. 2979, 85th Gen. Assemb., Reg. Sess. (Ark. 2005); A.B. 22, 2005-06 Sess. (Cal. 2005); H.B. 1825, 114th Leg., Reg. Sess. (Ind. 2005); H.B. 56, 2005 Reg. Sess. (La. 2005); H.B. 1473, 419th Gen. Assemb., 2005 Sess. (Md. 2005); H.F. 1760, 84th Leg., Reg. Sess. (Minn. 2005); H.B. 241, 47th Leg., 1st Reg. Sess. (N.M. 2005); S.B. 3914B, 228th Leg., Reg. Sess. (N.Y. 2005); H.B. 2016, 73rd Leg. (Or. 2005).

<sup>95</sup> *See* Ariz. Rev. Stat. § 13-1307 (2005); Fla. Stat. ch. 796.045 (2005); Idaho Code § 18-5601 (2005); 720 Ill. Comp. Stat. 5/10A-10(d)(1) (2005); Mo. Rev. Stat. § 566.209 (2004); N.J. Rev. Stat. §2C: 13-8 (2005); Ohio Rev. Code § 2907.21 (2005); Tex. Penal Code § 71.02(a)(3) (2004); Wash. Rev. Code § 9A.40.100(1)(a)(ii)(B) (2005); Wash. Rev. Code § 9.94A.835 (2005).

<sup>96</sup> Fla. Stat. 796.045 (2005).

<sup>97</sup> *See* Wash. Office of Crime Victims Advocacy, *Washington State Task Force against Trafficking in Persons* at 3 (June 2004) (on file with author).

<sup>98</sup> Telephone interview with Jeanne Kohl-Welles, Senator, State of Washington (July 7, 2005).

creating the Washington State Task Force on Trafficking,<sup>99</sup> and in 2003, legislation was enacted criminalizing human trafficking.<sup>100</sup>

Under the Washington criminal statute, a person is guilty of trafficking in the first degree if he “recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion<sup>101</sup>...will be used to cause the person to engage in forced labor or involuntary servitude.”<sup>102</sup> He is also guilty of trafficking in the first degree if he “benefits financially” or receives “anything of value from participation”<sup>103</sup> in trafficking when his acts involve kidnapping or attempted kidnapping<sup>104</sup>, a sexual motivation<sup>105</sup> or a resulting death.<sup>106</sup> If the acts or venture do not involve one of the four aforementioned stipulations, he is guilty of trafficking in the second degree.<sup>107</sup> The court may impose a sentence on a defendant that is outside of the standard sentence range, when there are aggravated circumstances such as multiple victims<sup>108</sup> or a sexual motivation.<sup>109</sup> 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.<sup>110</sup>

Washington’s legislation not only criminalizes human trafficking but also provides that protocols for social service needs of trafficking victims (including housing,

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<sup>99</sup> House Bill 2381 was sponsored by Washington State Representative Velma Veloria (D-11); its companion Senate Bill 6407 was sponsored by Washington State Senator Jeanne Kohl-Welles (D-36). The Task Force was extended for another year in 2005. *See* H.B. 1090, 58th Leg., Reg. Sess. (Wash. 2003). *See also* Wash. Rev. Code § 7.68.350 (2005).

<sup>100</sup> *See* H.B. 1175, 57th Leg., Reg. Sess. (Wash. 2003). This legislation was prompted by the findings and recommendations of the Washington State Task Force Report on Trafficking in Persons issued in November 2002 by the Wash. Dep’t of Cmty., Trade and Econ. Dev.

<sup>101</sup> Wash. Rev. Code. § 9A.36.070 (2005).

<sup>102</sup> Wash. Rev. Code. § 9A.40.100(1)(a)(i)(A) (2005).

<sup>103</sup> Wash. Rev. Code. § 9A.40.100(1)(a)(i)(B) (2005).

<sup>104</sup> *See* Wash. Rev. Code § 9.40.100(1)(ii)(A) (2005).

<sup>105</sup> *See* Wash. Rev. Code. § 9.94A.835 (2005).

<sup>106</sup> *See* Wash. Rev. Code. § 9A.40.100(1)(a)(ii)(A-C) (2005).

<sup>107</sup> *See* Wash. Rev. Code. § 9A.40.100(2)(a) (2005).

<sup>108</sup> *See* Wash. Rev. Code. § 9.94A.535(2)(d)(i) (2005).

<sup>109</sup> *See* Wash. Rev. Code. § 9.94A.535(2)(f) (2005).

<sup>110</sup> *See* Wash. Rev. Code §9.94A.535(2)(n) (2005).

health care, and legal assistance) be established by a workgroup by January 1, 2006.<sup>111</sup> Washington's anti-trafficking legislation is also comprehensive in that it addresses the issue of international matchmaking organizations (IMO's), also known as the "mail-order bride" industry.<sup>112</sup> Washington's law was the first legislative initiative in the United States to regulate the international matchmaking industry at the state level.<sup>113</sup> Under the Washington legislation, IMO's are required to furnish information to potential brides, upon request, 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.<sup>114</sup> Washington's international matchmaking legislation served as a model for similar legislation in Hawaii and Texas.<sup>115</sup> In addition, similar legislation was introduced at the federal level in 2003.<sup>116</sup>

Washington's anti-trafficking legislation is the most comprehensive approach of all of the states with similar legislation. All it lacks is an explicit provision for victim protections, which will be described in detail in section V.B.2., *infra*, and a provision specifically criminalizing sex tourism.

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<sup>111</sup> See S.B. 5127, 59th Leg., Reg. Sess. § 2(2)(d)(3) (Wash. 2005). Adding a new section to Wash. Rev. Code § 7.68.

<sup>112</sup> Only three states address the issue of international matchmaking organizations: Washington, Texas and Hawaii. California and Indiana have pending legislation.

<sup>113</sup> Senator Jeanne Kohl-Welles, *Regulating the "Mail-Order Bride" Industry: Initial Solutions from Washington State*, Presented at the Institute for Women's Policy Research Conference (June 22, 2003) (on file with author).

<sup>114</sup> See H.B. 1826, 58th Leg., Reg. Sess. (Wash. 2003). See also Wash. Rev. Code § 9A.82.010 (2005).

<sup>115</sup> Senator Jeanne Kohl-Welles, *Regulating the "Mail Order Bride" Industry: Initial Solutions from Washington State*, Presented at the Institute for Women's Policy Research Conference (June 22, 2003) (on file with author). See Haw. Rev. Stat. § 489N-2 (2004); H.B. 2018, 79th Leg. (Tex. 2005) (effective Sept. 1, 2005). See also Tex. Gov't Code § 411.084 (2005).

<sup>116</sup> See H.R. 2949, 108th Cong., 1st Sess. (2003) introduced by United States Senator Maria Cantwell (D-WA) and United States Representative Rick Larsen (D-WA).

#### IV. THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

This section will examine the roles of non-governmental organizations (NGO's) as victim identifiers, service providers, advocates, lobbyists, consultants, and training providers.

Non-governmental organization workers are sometimes the first to come into contact with a victim, even prior to law enforcement. For example, a victim might go to an NGO seeking shelter or medical attention 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 recognize them as such. Service providers, law enforcement and government officials have become increasingly aware of human trafficking. They are learning what traits to look for in a client to identify the client as a trafficking victim. According to Barbara Egenhauser, a Second Deputy District Attorney in Westchester County, New York, domestic violence aides in the Westchester County District Attorney's office are now screening victims of domestic violence for human trafficking.<sup>117</sup> The screening is done in the initial interview process.<sup>118</sup> Sometimes during the interview process the issue of human trafficking arises in the discussion of the nature of the victim's employment.<sup>119</sup> For example, when a domestic violence victim indicates that she came to the United States to be a servant, the domestic violence aide will follow up with further questions relevant to human

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<sup>117</sup> Telephone interview with Barbara Egenhauser, Second Deputy District Attorney and Head of Special Prosecutions Unit, Westchester District Attorney's Office (June 17, 2005).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

trafficking.<sup>120</sup> Non-governmental organization workers need the training and education to be able to take a similar approach with their clients.

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, it is often the NGO's that must step in. Aside from government grants, NGO's have alternate sources of funding including private donations and fundraisers run by the NGO itself.

The needs of trafficking victims are distinct, severe and extensive.<sup>121</sup> Services 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 NGO's may provide one specific service.<sup>122</sup> Others may take a more holistic approach and supply a broad range of services or provide referrals to other organizations for services that they do not provide.<sup>123</sup>

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<sup>120</sup> *Id.*

<sup>121</sup> International Rescue Committee, Trafficking in the United States, Special Considerations for Working with Victims of Trafficking (March 2004), <http://www.theirc.org/index.cfm/wwwID/1886>.

<sup>122</sup> *E.g.*, Asian Pacific Islander Legal Outreach provides legal services for trafficking victims in the Asian and Pacific Islander communities. For more information see [www.apilegaloutreach.org](http://www.apilegaloutreach.org).

Non-governmental organizations, unlike government service providers, have the ability to target services to certain groups of victims or to specific industries. Many NGO's provide services to specific ethnic groups.<sup>124</sup> The advantage to this distinct service-providing NGO is that it can provide language services and it can develop cultural sensitivity, to a greater extent, than an NGO that provides services to trafficking victims in general.

There are many networks and "collaboratives" throughout the United States comprised of different NGO's dedicated to serving victims of human trafficking. Some of these networks include the Asian Anti-Trafficking Collaborative,<sup>125</sup> the Freedom Network,<sup>126</sup> and Project REACH.<sup>127</sup> 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,<sup>128</sup> is a successful model of an NGO network. The "AATC" consists of five agencies<sup>129</sup> and operates in northern California.<sup>130</sup> It is the only network of its kind to specifically assist

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<sup>123</sup> *E.g.*, Break the Chain Campaign provides holistic services to trafficking victims. For more information see <http://www.ips-dc.org/campaign/>.

<sup>124</sup> *E.g.*, Asian Pacific Islander Legal Outreach provides services to the Asian and Pacific Islander communities. For more information see [www.apilegaloutreach.org](http://www.apilegaloutreach.org).

<sup>125</sup> *See* <http://www.apilegaloutreach.org/trafficking.html>.

<sup>126</sup> *See* <http://www.freedomnetworkusa.org>.

<sup>127</sup> *See* <http://www.traumacenter.org/projectreach/index.asp>.

<sup>128</sup> *See* International Rescue Committee, US Department of Justice Civil Rights Division, Trafficking Watch, p.15 Issue 6 (Winter 2005).

<sup>129</sup> AATC consists of Donaldina Cameron House, Asian Women's Shelter, Narika, Asian American Legal Defense and Education Fund and Asian Pacific Islander Legal Outreach.

<sup>130</sup> Telephone interview with Ivy Lee, Director of Immigration and Anti-Trafficking, Asian Pacific Islander Legal Outreach (June 24, 2005).

Asian victims.<sup>131</sup> Although the network is based in northern California, its efforts<sup>132</sup> have reached Seattle, Washington, Las Vegas, Nevada, and Washington, D.C.<sup>133</sup> The “AATC” is an example of a “co-case management model,” where several NGO’s work together to manage a case.<sup>134</sup> Asian Pacific Islander Legal Outreach (“APILO”) provides legal services for victims (including legal representation, in both criminal and family law proceedings, as well as immigration assistance) while the other four agencies provide social services on a one-on-one basis with clients.<sup>135</sup>

There are many NGO’s<sup>136</sup> that focus specifically on child victims of human trafficking. Fifty percent of victims who are trafficked across international borders are children.<sup>137</sup> Children are sometimes overlooked as a group of trafficking victims; NGO’s that can accommodate them adequately are crucial.<sup>138</sup> Children are sometimes difficult to locate as victims because they seldom come forward to law enforcement. Because child victims of trafficking are trafficked at a young age and rarely know any other life, they need many rehabilitative services,<sup>139</sup> especially medical (both physical and mental) services. Child victims often become victimized further by drug abuse, teen pregnancy,

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<sup>131</sup> See <http://www.apilegaloutreach.org/trafficking.html>.

<sup>132</sup> Asian Pacific Islander Legal Outreach is a member of the “AATC,” a response network in Northern California. “APILO” provides legal services and the “AATC” works with community members, law enforcement officials, and victims. See <http://www.apilegaloutreach.org/trafficking.html>.

<sup>133</sup> See <http://www.apilegaloutreach.org/trafficking.html>.

<sup>134</sup> Telephone interview with Ivy Lee, Director of Immigration and Anti-Trafficking, Asian Pacific Islander Legal Outreach (June 24, 2005).

<sup>135</sup> *Id.*

<sup>136</sup> *E.g.*, The Door in New York City works with young people, ages twelve to twenty-one. For more information see [www.door.org](http://www.door.org).

<sup>137</sup> See U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *2005 Trafficking in Persons Report*, p. 7 (June 2005) (available at <http://www.state.gov/g/tip/>).

<sup>138</sup> ECPAT-USA (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes-USA), a branch of ECPAT-International, is one such organization. ECPAT is “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 forms of commercial sexual exploitation.” ECPAT-USA, Mission Statement (2003) available at <http://www.ecpatusa.org>.

<sup>139</sup> Telephone interview with Denise Scotto, Esq., Vice Chair, NGO Committee on the Status of Women (July 6, 2005).

lack of education, and mental health issues. These are issues on which an NGO dedicated to assisting children can focus.

Numerous NGO's, such as the Coalition Against Trafficking in Women, focus exclusively on female victims of human trafficking. Eighty percent of victims who are trafficked across international borders are women.<sup>140</sup> Because this percentage is so large, it is important that the needs of female trafficking victims be addressed sufficiently. Non-governmental organizations providing services primarily or only to women have an increased ability to address adequately problems that face women victims such as reproductive health care, including pregnancy.

Various NGO's concentrate on victims trafficked into specific industries. Non-governmental organizations commonly focus on victims trafficked into the sex industry, including the international matchmaking industry,<sup>141</sup> or the forced labor industry. Victims of particular industries have particular service needs too. To illustrate, reproductive and medical care are priorities for victims trafficked into the sex industry, while shelter and income assistance are priorities for victims trafficked into the forced labor industry.

Non-governmental organizations also serve as advocates for victims' rights and as lobbyists for legislation and policies affecting victims. Non-governmental organizations such as the Protection Project, Equality Now and Legal Momentum<sup>142</sup> work with the government, both federal and state, to draft legislation affording services and protections to victims of human trafficking. Non-governmental organizations such as the Polaris

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<sup>140</sup> See *2005 Trafficking in Persons Report*, *supra* note 12 at 7.

<sup>141</sup> *E.g.*, Tahirih Justice Center in Virginia and the Sex Worker's Project (a project of the Urban Justice Center) in New York. For more information, see <http://www.tahirih.org> and <http://www.sexworkersproject.org>.

<sup>142</sup> See <http://www.protectionproject.org>, <http://www.equalitynow.org> and <http://www.legalmomentum.org>.

Project also make recommendations to the government on how to eradicate human trafficking and how to legislate effectively.<sup>143</sup>

Non-governmental organizations are providers of training to law enforcement and other service providers. They work with law enforcement officers and service providers to help them understand the problem of human trafficking, to realize that it does exist in the United States, to learn how to identify and treat victims of trafficking and to prosecute traffickers and enforcers.<sup>144</sup> Non-governmental organizations play a major role in raising awareness of human trafficking, not just among law enforcement and service providers, but among the general public as well. Non-governmental organizations, such as the Polaris Project, disseminate information to the general public through public service announcements, newspaper articles, and seminars.<sup>145</sup>

## V. RECOMMENDATIONS

This section will provide recommendations to aid in the eradication of human trafficking. This section will first discuss why anti-trafficking legislation is necessary at the state level; it will analyze the United States Department of Justice's Model State Anti-Trafficking Criminal Statute; and it will discuss the "ideal" state anti-trafficking legislation. Finally, this section will discuss the need for a "victim-centered" approach

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<sup>143</sup> See Polaris Project, "U.S. Policy Program," *Polaris Project At-A-Glance* available at [http://www.polarisproject.org/polarisproject/news\\_p3/Polaris\\_AAG.doc](http://www.polarisproject.org/polarisproject/news_p3/Polaris_AAG.doc).

<sup>144</sup> E.g., Asian Pacific Islander Legal Outreach co-hosted an anti-trafficking training program with the United State's Attorney's Office of the Northern District of California. Over one hundred people, from California, Washington, D.C. and New York attended. The purpose of the training was to "spearhead a joint anti-trafficking working group with local and federal law enforcement and immigration authorities to insure better protection for trafficking victims and successful prosecutions of traffickers;... to integrate anti-trafficking training curriculum into San Francisco Police Department's domestic violence and sexual assault training for first responders;... and to draft California anti-trafficking legislation and proposal for establishing a multi-agency (governmental and non-governmental organizations) anti-trafficking task force." See <http://www.apilegaloutreach.org/trafficking.html>.

<sup>145</sup> See HumanTrafficking.com, an online research system developed by the Polaris Project, available at <http://www.humantrafficking.com>.

and for coordinated collaboration among government agencies, local law enforcement and non-governmental organizations.

#### **A. THE NEED FOR STATE LEGISLATION**

There are several reasons why it is imperative that anti-trafficking laws exist at the state as well as at the federal level. First, law enforcement is, on the whole, a local issue and criminal prosecutions are generally a responsibility of the states.<sup>146</sup> It is often local law enforcement officials who are the first responders to reports of criminal activity and therefore the first to come into contact with trafficking victims. For example, it is local law enforcement that generally responds to reports of prostitution. After investigating, officers may learn that the prostitutes are not voluntary prostitutes but are, in fact, trafficking victims subjected to forced prostitution. Officers must have the proper education and training, which can be mandated in state-level anti-trafficking legislation, to identify trafficking victims and to understand that victims should not be treated as 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 inappropriate given the scope of the problem.<sup>147</sup> Additionally, it is often the case that local law enforcement can prosecute offenders more quickly and efficiently than can federal authorities.

Second, federal monetary and service resources are often unavailable, limited or inadequate. In fiscal year 2004, \$50,000,000 was allotted to the United States’ initiative to fight human trafficking in the federal annual budget.<sup>148</sup> That same year the total

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<sup>146</sup> See Wayne R. LaFare & Jerold H. Israel, *Criminal Procedure* § 1.2 (vol. 1 1984).

<sup>147</sup> Telephone interview with Derek Ellerman, Co-Executive Director, The Polaris Project (July 12, 2005).

<sup>148</sup> See *2004 Assessment of U.S. Activities to Combat Trafficking in Persons*, *supra* note 11 at 12.

federal budget amounted to \$2,229,000,000,000.<sup>149</sup> Thus, only .0022% of the total federal budget was spent on anti-trafficking efforts. This is a miniscule amount in comparison to the severity of the trafficking problem in the United States and to the amount of revenue it creates for perpetrators. In addition to the limited availability of resources, federal authorities are not always able, or willing, to prosecute trafficking cases involving one victim, or a small group of victims.<sup>150</sup> On a practical level, larger trafficking rings or operations take priority. Nevertheless, it is important that all trafficking offenders be prosecuted; thus, state law enforcement must have the ability to step in.

Third, state legislation enables local law enforcement and service providers to better address the particular needs of trafficking victims in specific areas of the country. For example, warm clothing is not usually an urgent need for trafficking victims in Hawaii, whereas in Alaska it certainly is. State laws can require that needs such as these take priority over others.

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

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<sup>149</sup> See U.S. Gov't Publ'n Office, Budget of the United States Government, Fiscal Year 2004 at 311 (2004).

<sup>150</sup> Telephone Interview with Antonia Kirkland, Program Coordinator, Equality Now (July 11, 2005).

## **B. “IDEAL” STATE LEGISLATION**

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

The United States Department of Justice’s Model State Anti-Trafficking Criminal Statute (“Model Statute”) is a solid starting point for states first drafting anti-trafficking laws. The Model Statute covers most of the essential elements: definitions, criminalization, restitution, and an assessment of services. However, the terminology and comprehensiveness of the Model Statute have been criticized. According to Dr. Mohammed Mattar, Executive 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 Trafficking Victims Protection Act.<sup>151</sup> In addition, the Model Statute contains sections that are vague. For example, in section XXX.01(4), the Statute defines “forced labor or services” as 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.”

It is unclear if the actor is the trafficker, the consumer, or another actor.<sup>152</sup>

The definition of “sexually-explicit performance” is also problematic according to Dr. Mattar. A “sexually-explicit performance” is defined as “a live or public act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of

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<sup>151</sup> See Dr. Mohammed Mattar, Recent Federal and State Anti-Trafficking Legislative Initiatives, Speech in Portland, Oregon (Oct. 4, 2004) (available at <http://www.protectionproject.org>).

<sup>152</sup> See *id.*

patrons.”<sup>153</sup> Since a public act or show is not necessarily live (for example, the show may be a video performance), it is unclear whether the intent is to include only live public acts or shows.<sup>154</sup> It is also unclear if massage parlors are included in the definition or if the definition includes strictly “stripping” or exotic dancing.<sup>155</sup>

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. Second, the Statute does not address the crime of traveling abroad to engage in illegal commercial sexual activity (i.e., sex with minors, prostitution), also known as “sex tourism.” Third, it does not address the regulation of the international matchmaking industry nor do the explanatory notes suggest that states should regulate the industry. Although “sex tourism” and the international matchmaking industry are sometimes international issues, state legislation can address the 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; it would specifically prohibit the trafficking of children or provide for a sentencing enhancement when child victims are involved; it would work to prevent human trafficking, to protect victims and to provide services and restitution to victims; it would

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<sup>153</sup> See Model State Anti-Trafficking Criminal Statute § XXX.01(9) (U.S. Dep’t of Justice 2004).

<sup>154</sup> See Dr. Mohammed Mattar, Recent Federal and State Anti-Trafficking Legislative Initiatives, Speech in Portland Oregon (Oct. 4, 2004) (available at <http://www.protectionproject.org>).

<sup>155</sup> See *id.*

address “sex tourism” and other issues related to human trafficking; and it would 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. The legislation should encompass all types of trafficking from forced labor or servitude to trafficking for commercial sexual exploitation (ranging 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 protection of the trafficking victims, and for the prosecution of the traffickers. Provisions for educational programs and curricula on human trafficking for school children and the general public similar to those enacted in the “TVPA”<sup>156</sup> and the “TVPRA,”<sup>157</sup> should be enacted at a state level. States can 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 state statute provides that a trafficking victim “shall be afforded the rights and protections provided in the federal ‘TVPA.’”<sup>158</sup> Without protection, victims face the threat of retaliatory violence at the hands of their traffickers and enforcers. If a victim comes forward he or she also risks

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<sup>156</sup> See Victims of Trafficking and Violence Protection Act of 2000 § 106 (2000) and Victims of Trafficking and Violence Protection Reauthorization Act of 2003 § 3(e) (2003). “TVPRA” also provides for dissemination of information to travelers, entering and leaving the United States, on the dangers and crimes of human trafficking.

<sup>157</sup> See Victims of Trafficking and Violence Protection Reauthorization Act of 2003 § 3(e) (2003). Also provides for dissemination of information to travelers, entering and leaving the United States, on the dangers and crimes of human trafficking.

<sup>158</sup> See Mo. Rev. Stat. § 566.223 (2005).

criminal prosecution and deportation. A victim who fears retaliation, prosecution or deportation will be an ineffective witness. Without the assurance of protection, victims will be hesitant, and may even refuse to cooperate with law enforcement to aid in prosecutions. To illustrate, a trafficking victim discovered during a raid of a brothel may fear that she will be prosecuted for prostitution and thus may refuse to cooperate. Assured victim protection may actually encourage victims to come forward and will foster a willingness to cooperate with law enforcement. It has been observed that victims who are provided with services and shelter are often the first ones to cooperate with law enforcement.<sup>159</sup>

Victims must have access to victims' services, including but not limited to health services, social services, advocacy, and legal and immigration assistance. An example of a provision regarding victims' services can be found in the Illinois Criminal Code. It provides that the Department of Human Services "may provide or fund emergency services and assistance to individuals who are victims..." of trafficking.<sup>160</sup> Victims must be notified of the availability of both protection and services. New York's anti-trafficking bill, pending in the New York State Assembly's Codes Committee, requires that all victims be provided with information regarding their rights and available services.<sup>161</sup> If a statute does not specifically enumerate services to be provided to trafficking victims, a provision for an assessment of available services or the requirement that guidelines or protocols for services be developed will suffice. The pending New York Senate Bill also requires the New York Office of Temporary and Disability

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<sup>159</sup> Telephone Interview with Charles Song, Legal Director, Coalition to Abolish Slavery and Trafficking (June 28, 2005).

<sup>160</sup> See 720 Ill. Comp. Stat. 5/10A-10(f) (2005).

<sup>161</sup> See S.B. 3914B, 228th Leg., Reg. Sess. (N.Y. 2005).

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 requires it to make “recommendations for improving such social services programs, as may be necessary.”<sup>162</sup> A Washington Senate Bill passed in 2005 added a new section to the Revised Code of Washington<sup>163</sup> requiring that protocols for social service needs of trafficking victims (including housing, health care, and legal assistance) be established by a workgroup by January 1, 2006.<sup>164</sup>

The legislation should also include a provision for restitution for the labor or services provided by the victim. Arizona, Missouri and New Jersey have statutory provisions requiring the award of restitution to trafficking victims.<sup>165</sup> Illinois’s statutory provision becomes effective on January 1, 2006.<sup>166</sup> The New Jersey Code of Criminal Justice mandates that in 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.<sup>167</sup> “The court shall award to the victim restitution which 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.<sup>168</sup> This provision is similar to the one suggested by the United States Department of Justice Model State Anti-Trafficking Criminal Statute.

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<sup>162</sup> *Id.*

<sup>163</sup> See Wash. Rev. Code. § 7.68 (2005).

<sup>164</sup> See S.B. 5127, 59th Leg., Reg. Sess. § 2(2)(d) (Wash. 2005). According to the final bill report for S.B. 5127, the workgroup will submit final written protocols on January 1, 2006. The original bill called for the protocols to be submitted by July 1, 2005. The final report is available at <http://www.leg.wa.gov/pub/billinfo/2005-06/Htm/Bill%20Reports/Senate%20Final/5127.FBR.htm>.

<sup>165</sup> See Ariz. Rev. Stat. § 13-1309 (2005); Mo. Rev. Stat. § 566.218 (2005); N.J. Rev. Stat. § 2C: 13-8(e) (2005).

<sup>166</sup> See 720 Ill. Comp. Stat. 5/10A-10(e) (2005).

<sup>167</sup> See N.J. Stat. Ann. § 2C: 13-8(e) (West 2005).

<sup>168</sup> See N.J. Stat. Ann. § 2C: 13-8(e)(1-2) (West 2005).

A comprehensive approach would criminalize “sex tourism.” At present, Hawaii is the only state with a law that specifically criminalizes “sex tourism.” The Hawaii Penal Code, section 712-1208, 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.”<sup>169</sup> Only two states, Alaska and New York, have pending bills that address sex tourism.<sup>170</sup>

There are also specific issues which state legislation can, and should, address. These include 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” have created a black market for human body parts and organs.<sup>171</sup> Although many black market donors give their consent, many do not. Those who do not are typically kidnapped and sold for their body parts and organs, constituting a 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 “any 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.”<sup>172</sup> In Florida, it is a misdemeanor of the first degree to buy, sell, or possess, for the purpose of buying or selling or trafficking, the dead body of any human being.<sup>173</sup>

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<sup>169</sup> Haw. Rev. Stat. § 712-1208 (2004).

<sup>170</sup> See H.B. 101, 24th Leg., 1st Sess. (Ark. 2005); S.B. 3914-B, 228th Leg., Reg. Sess. (N.Y. 2005)

<sup>171</sup> See Erica Teagarden, *Human Trafficking: Legal Issues Presumed Consent Laws*, 30 N.C.J. Int'l L. & Com. Reg. 685, 686-687 (Spring 2005).

<sup>172</sup> Ga. Code Ann. § 16-12-160(a) (2004).

<sup>173</sup> See Fla. Stat. ch. 872.01 (2005).

Illegal adoptions frequently fall into the realm of child trafficking. Especially in light of the 2004 tsunami disaster, children all over the world are being kidnapped and sold into slavery or prostitution or placed for adoption.<sup>174</sup> Oklahoma’s anti-trafficking legislation exemplifies a practical response to illegal adoptions. It specifically prohibits facilitating or assisting in adoption or foster care placement, except by the Department of Human Services, a licensed agency or attorney; bringing or sending a “child for the purpose of placing such child in a foster home” or for adoption without “complying with the Interstate Compact on Placement of Children;” and 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.<sup>175</sup>

In addition to criminal anti-trafficking legislation, a state should have legislation that regulates the international matchmaking industry that operates within the state. The international matchmaking industry, also known as the “mail-order bride” industry, is often linked to human trafficking.<sup>176</sup> Frequently, “mail-order brides” are brought into the United States for the “purposes of exploitation of their labor and bodies.”<sup>177</sup> Hawaii, Texas, and Washington are the only states that currently have legislation regulating the international matchmaking industry<sup>178</sup> and only two states, California and Indiana, have pending legislation.<sup>179</sup> In Hawaii, for example, international matchmaking organizations must allow the person living abroad to access criminal and marital history about

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<sup>174</sup> See Richard Gray, *Security Stepped Up As Fears Grow of Trafficking in Orphans*, N.Y. Times, Jan. 9, 2005, at 11.

<sup>175</sup> See 21 Okla. Stat. § 866(A)(1) (2004).

<sup>176</sup> Senator Jeanne Kohl-Welles, *Regulating the “Mail-Order Bride” Industry: Initial Solutions from Washington State*, Presented at the Institute for Women’s Policy Research Conference (June 22, 2003) (on file with author).

<sup>177</sup> *Id.*

<sup>178</sup> See Haw. Rev. Stat. § 489N-2 (2004); H.B. 2018, 79th Leg. (Tex. 2005) (effective Sept. 1, 2005); Wash. Rev. Code § 19.220.01 (2005). See also Tex. Gov’t Code § 411.084 (2005).

<sup>179</sup> See A.B. 634, 2005-2006 Reg. Sess. (Cal. 2005) and H.B. 1825, 114th Leg., 1st Reg. Sess. (Ind. 2005).

prospective spouses living in the United States.<sup>180</sup> Texas and Washington have similar requirements.<sup>181</sup>

### C. THE NEED FOR A VICTIM-CENTERED APPROACH

It is important that anti-trafficking laws in the United States focus on protecting the victims so that they will cooperate with prosecuting traffickers.<sup>182</sup> Trafficking victims are often reluctant to testify for fear of reprisals against themselves or their family members, or for fear of removal from the U.S. to countries where they can face additional hardships, retribution, or alienation.<sup>183</sup> Additionally, trafficking victims are often not familiar with the rights of victims in the United States criminal justice system and may be afraid to report their abusers for fear of their own detention, prosecution, or deportation.<sup>184</sup>

Since the inception of the “TVPA,” the United States Department of Justice’s (“DOJ”) Civil Rights Division has adopted a “victim-centered multidisciplinary approach” to the problem of trafficking.<sup>185</sup> Under this three-step approach, the DOJ identifies victims, rescues victims, and prosecutes traffickers.<sup>186</sup> The term “victim-centered” denotes that the number one priority of the DOJ is the well-being of the victims.<sup>187</sup> According to the DOJ, due to the multiple interviews that the victims must

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<sup>180</sup> See Haw. Rev. Stat. § 489N-2 (2004).

<sup>181</sup> See Tex. Gov’t Code. § 411.084 (2005). See also Wash. Rev. Code § 19.220.01 (2005).

<sup>182</sup> See LeRoy G. Potts, Jr., *Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons*, 35 Geo. Wash. Int’l L. Rev. 227,240 (2003).

<sup>183</sup> See International Rescue Committee, Trafficking in the United States, Special Considerations for Working with Victims of Trafficking, (March 2004), <http://www.theirc.org/index.cfm/wwwID/1886> (hereinafter “IRC Special Considerations for Working with Victims of Trafficking”).

<sup>184</sup> See Shelly Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55.98 (2001).

<sup>185</sup> See International Rescue Committee, US Department of Justice Civil Rights Division, Trafficking Watch, p.1 Issue 4 (Spring 2004).

<sup>186</sup> See *id.*

<sup>187</sup> See *id.* at 2.

often endure and the complexities of the criminal justice system, “cases should not be won at the cost of a victim’s well-being.”<sup>188</sup>

The greatest challenges with regard to human trafficking are identifying and locating victims.<sup>189</sup> Trafficking is, by its very nature, unpredictable.<sup>190</sup> Victims can be in any community or location without warning, numbering anywhere from a few individuals to groups of a hundred or more.<sup>191</sup> The needs of trafficking victims are often distinct, severe and extensive.<sup>192</sup> 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 another labor situation.<sup>193</sup> 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.<sup>194</sup> Security risks can also arise within the trafficking context, as victims are involved in the investigation and prosecution of trafficking cases.<sup>195</sup>

Even if a system is in place to provide services to victims, these services cannot be offered until the victims are found.<sup>196</sup> The “TVPA” mandates that the Department of State and the Department of Justice be trained in identifying victims of severe forms of trafficking and must provide for the protection of such victims.<sup>197</sup> However, many local law enforcement agencies are not aware of human trafficking activity in their

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<sup>188</sup> *See id.*

<sup>189</sup> *See 2004 Assessment of U.S. Activities to Combat Trafficking in Persons, supra note 11 at 22.*

<sup>190</sup> *See IRC Special Considerations for Working with Victims of Trafficking, supra note 182.*

<sup>191</sup> *See id.*

<sup>192</sup> *See id.*

<sup>193</sup> *See id.*

<sup>194</sup> *See id.*

<sup>195</sup> *See id.*

<sup>196</sup> *See International Rescue Committee, US Department of Justice Civil Rights Division, Trafficking Watch, p.1 Issue 3 (Winter 2004) (hereinafter “Winter 2004 Trafficking Watch”).*

<sup>197</sup> *See 18 U.S.C. §7105 (c)(4) Trafficking victims regulations. Training of Government personnel.*

jurisdictions, nor are they aware that trafficking is a federal crime.<sup>198</sup> Without the proper education and training, police officers, health care workers, government officials and non-government organizations (NGO's) may routinely come into contact with victims, yet remain unable to recognize them.<sup>199</sup> Others possess knowledge of trafficking rings, but fail to report them to federal, state or local law enforcement.<sup>200</sup> Anti-trafficking organizations can increase awareness within local law enforcement and can advocate taking steps to fight trafficking.<sup>201</sup>

In order to control their victims and reduce their own risk of getting caught, traffickers often physically abuse, rape and threaten their victims.<sup>202</sup> Traffickers brainwash their victims into believing that the people who are trying to help them are their enemies and they force their victims to lie to police and prosecutors.<sup>203</sup> As a result of their experiences, victims often exhibit signs of post-traumatic stress disorder.<sup>204</sup> It is important that prosecutors, law enforcement officials and NGO's be cognizant of these factors and take measures, such as not wearing firearms during interviews with victims, to ensure that victims feel secure and unthreatened.<sup>205</sup>

#### **D. THE NEED FOR COORDINATED COLLABORATION**

No single agency can meet all the needs of trafficking victims.<sup>206</sup> Services must be mobilized and coordinated to respond to the varied health, psychosocial, vocational,

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<sup>198</sup> See Winter 2004 Trafficking Watch, *supra* note 195 at 1.

<sup>199</sup> See *id.* at 2.

<sup>200</sup> See *id.*

<sup>201</sup> See *id.* at 1.

<sup>202</sup> See *id.* at 3.

<sup>203</sup> See *id.*

<sup>204</sup> See *id.*

<sup>205</sup> See *id.*

<sup>206</sup> See *IRC Special Considerations for Working with Victims of Trafficking*, *supra* note 182.

legal, cultural, and linguistic needs of victims of trafficking.<sup>207</sup> Collaboration among law enforcement organizations at all levels and with NGO's is also critical to ensure that the best interests of trafficking victims are advanced during the investigation and prosecution of trafficking cases.<sup>208</sup>

This collaboration is illustrated by immigration status issues, which are often at the forefront of a victim's concern. State anti-trafficking laws can criminalize human trafficking and provide many benefits, services and protections for victims; however, it is the federal government, specifically the United States Citizenship and Immigration Services which falls under the umbrella of the Department of Homeland Security, which is responsible for immigration issues. No state agency or NGO can grant a change in immigration status without official federal involvement.

## VI. CONCLUSION

In order to fight trafficking in the United States effectively, legislation at the state level, in addition to the 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, it is important that each state 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 laws into a trafficking chapter, similar to the structure of the federal criminal code.<sup>209</sup> It should be noted that "there is a strong need for uniformity in definitions and concepts across state lines to minimize confusion as trafficking victims

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<sup>207</sup> *See id.*

<sup>208</sup> *See id.* Law enforcement organizations include FBI, U.S. Attorneys offices, Justice Department Civil Rights Division/Criminal Section, Bureau of Immigration and Customs Enforcement, and the Labor Department.

<sup>209</sup> *See Model State Anti-Trafficking Criminal Statute notes p. 8 (U.S. Dep't of Justice 2004).*

in state prosecutions begin to seek the victim protections available through the federal Departments of Health and Human Services and of Homeland Security.”<sup>210</sup>

Thirteen states have already enacted anti-trafficking legislation<sup>211</sup> and thirteen states have pending legislation.<sup>212</sup> Thus, more than half of the states have taken action or are taking action in this area since the State of Washington enacted legislation in 2003. Many more states have acknowledged the need for legislation at the state level. Once the legislation is in place, the focus must be on education and training of law enforcement, non-governmental agencies, and the public, and the facilitation of collaboration across agencies. Only then can we hope to prevent the countless “horror” stories such as the “tragedy” that occurred in Hudson County, New Jersey – right in “our own backyard.”

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<sup>210</sup> Model State Anti-Trafficking Criminal Statute notes p. 7 (U.S. Dep’t of Justice 2004).

<sup>211</sup> Arizona, Colorado, Florida, Idaho, Illinois (effective January 1, 2006), Kansas, Louisiana, Missouri, New Jersey, Oklahoma, Texas and Washington have adopted some type of legislation criminalizing human trafficking whether it is trafficking in general, sex trafficking, or the trafficking of children.

<sup>212</sup> Alaska, Arkansas, California, Indiana, Iowa, Maine, Maryland, Minnesota, Montana, New Mexico, New York, Oregon, Pennsylvania and Wisconsin currently have bills pending in their state legislatures.