2013 Analysis of State Human Trafficking Laws

Polaris Project

For a World Without Slavery

An analysis of twelve categories of state laws that are critical to a basic legal framework that combats human trafficking

August 2013

www.polarisproject.org/policy

Table of Contents

2013 State Ratings on Human Trafficking Laws 1

Category Descriptions 4

Sex Trafficking 5

Labor Trafficking 9

Asset Forfeiture for Human Trafficking 14

Investigative Tools for Law Enforcement 18

Training for Law Enforcement 23

Human Trafficking Commission or Task Force 26

Posting a Human Trafficking Hotline 30

Safe Harbor – Protecting Sexually Exploited Minors 33

Lower Burden of Proof for Sex Trafficking of Minors 37

Victim Assistance 39

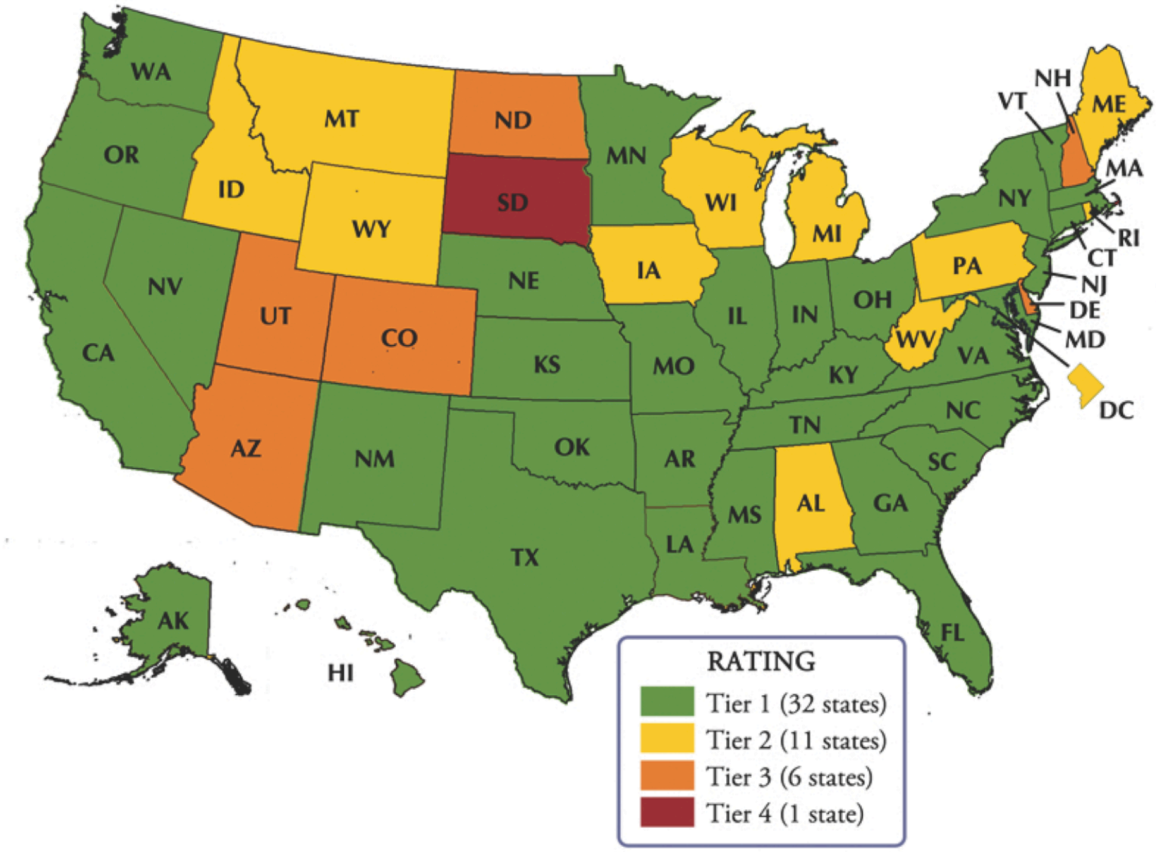
Access to Civil Damages 46

Vacating Convictions for Sex Trafficking Victims 51

POLARIS PROJECT IS GRATEFUL TO LATHAM & WATKINS FOR SUPPORTING THE CREATION OF THIS REPORT.

2013 State Ratings on Human Trafficking Laws

Polaris Project
For a World Without Slavery



Perfect Score

All 10 categories passed

New Jersey

Washington

Most Improved

Arkansas (+8.5)

Wyoming (+8)

Mississippi (+8)

New Jersey (+6)

Polaris Project has rated all 50 states and the District of Columbia based on 10 categories of laws that are critical to a basic legal framework that combats human trafficking, punishes traffickers, and supports survivors. These ratings are based on statutes enacted by July 31, 2013.

www.polarisproject.org/2013stateratings

TIER 1

32 STATES
(7+ categories): State has passed significant laws to combat human trafficking, and should continue to take additional steps to improve and implement its laws.

	TOTAL POINTS	Sex Trafficking Provision	Labor Trafficking Provision	Asset Forfeiture (AF) and/or Investigative Tools (IT)	Training (TR) and/or Human Trafficking Task Force (TF)	Posting Human Trafficking Hotline	Safe Harbor: Protecting Minors	Lower Burden of Proof for Sex Trafficking of Minors	Victim Assistance	Access to Civil Damages	Vacating Convictions for Sex Trafficking Victims	NEGATIVE POINTS
Alaska	7	$			TR							
Arkansas	10.5	$					.5				*	
California	9	$			TR		*					
Connecticut	10.5	$					.5					
Florida	9.5	$			TR		.5					
Georgia	8	$			TR							
Hawaii	8	$										
Illinois	9	$										
Indiana	8	$			TR							
Kansas	9.5	$					.5				*	
Kentucky	9	$			TR							
Louisiana	10	$			TF						*	
Maryland	7	$										
Massachusetts	10	$										
Minnesota	10	$			TR							
Mississippi	11	$					*					
Missouri	7	$		AF	TR							
Nebraska	9	$		IT								
Nevada	9	$			TR							
New Jersey	12	$										
New Mexico	7	$									*	
New York	8	$		IT								
North Carolina	10	$										
Ohio	9	$			TR						*	
Oklahoma	8	$					*				*	
Oregon	7	$			TR						*	
South Carolina	8	$		AF								
Tennessee	9.5	$			TF		.5					
Texas	10	$					*					
Vermont	9	$		*	TF							
Virginia	7	$		IT	TR							
Washington	12	$										

LEGEND:

- AF **Asset Forfeiture** - State has an asset forfeiture statute, but does not have key investigative tools.
- IT **Investigative Tools** - State has authorized key investigative tools, but does not have an asset forfeiture statute.
- * State has passed a law that meets partial requirements of the category.

TIER 2

11 STATES AND D.C.
(5-6 categories): State has passed numerous laws that combat human trafficking, and should take more steps to improve and implement its laws.

	TOTAL POINTS	Sex Trafficking Provision	Labor Trafficking Provision	Asset Forfeiture (AF) and/or Investigative Tools (IT)	Training (TR) and/or Human Trafficking Task Force (TF)	Posting Human Trafficking Hotline	Safe Harbor: Protecting Minors	Lower Burden of Proof for Sex Trafficking of Minors	Victim Assistance	Access to Civil Damages	Vacating Convictions for Sex Trafficking Victims	NEGATIVE POINTS
Alabama	6	$		AF								
D.C.	6	$		AF								
Idaho	6	$			TR							
Iowa	6	$		AF	TR							
Maine	5	$		AF								
Michigan	5.5	$					.5					
Montana	5	$										
Pennsylvania	5				TF							-1
Rhode Island	6	$			TF							
West Virginia	5	$			TR						*	
Wisconsin	5	$		IT								
Wyoming	6	$			TR							

TIER 3

6 STATES
(3-4 categories): State has made nominal efforts to pass laws to combat human trafficking, and should take major steps to improve and implement its laws.

Arizona	4	$		IT							*	
Colorado	4				TF							-1
Delaware	4	$		IT								
New Hampshire	3	$		AF								
North Dakota	4	$		IT								
Utah	4	$		IT	TF							

TIER 4

1 STATE
(0-2 categories): State has not made minimal efforts to enact a basic legal framework to combat human trafficking, and should actively work to improve its laws.

South Dakota	2	$										

Total States (per category)	**49**	**51**	**AF 37**	**TR 29**	**22**	**18**	**43**	**33**	**30**	**14**
			IT 38	**TF 20**						

TR **Training** - State law has mandated or encouraged training for law enforcement, but does not have a statute to create or encourage a dedicated task force or commission.

TF **Human Trafficking Task Force** - State law has created or encouraged a dedicated task force or commission, but has not mandated or encouraged training for law enforcement.

.5 **Half Point** - State law does not provide both services for the child and immunity from prosecution/diversion from juvenile delinquency proceedings.

Category Descriptions

SEX TRAFFICKING: A statute that criminalizes sex trafficking and includes elements of inducing another through force, fraud, or coercion to engage in a commercial sex act. Some states have related laws in the prostitution code and were given credit if they had the same criminal elements.

LABOR TRAFFICKING: A statute that creates the crime of labor trafficking or trafficking in persons, in which a person is compelled through force, fraud, or coercion into providing labor or services.

ASSET FORFEITURE FOR HUMAN TRAFFICKING: A statute that provides for the forfeiture of assets used in the course of the crime or acquired with proceeds from the crime of human trafficking.

INVESTIGATIVE TOOLS FOR LAW ENFORCEMENT: A statute that amends existing Racketeering (RICO) statutes to include the crime of human trafficking or authorizes the use of wiretapping by law enforcement in human trafficking investigations.

TRAINING FOR LAW ENFORCEMENT: A statute that mandates or encourages law enforcement to be trained in human trafficking issues and the law.

HUMAN TRAFFICKING COMMISSION OR TASK FORCE: A statute that creates, establishes, or encourages a task force, commission or advisory committee dedicated to addressing human trafficking.

POSTING A HUMAN TRAFFICKING HOTLINE: A statute that mandates or encourages the public posting of a human trafficking hotline, such as the National Human Trafficking Resource Center hotline or a state human trafficking hotline.

SAFE HARBOR – PROTECTING SEXUALLY EXPLOITED MINORS: A statute that recognizes sexually exploited individuals under 18 as victims of a crime in need of protection and services by granting immunity from prosecution or diverting minors from juvenile delinquency proceedings, and instead directing them to child welfare services. In order to receive full credit, the state must have provisions that relate to both immunity or diversion and services for the child.

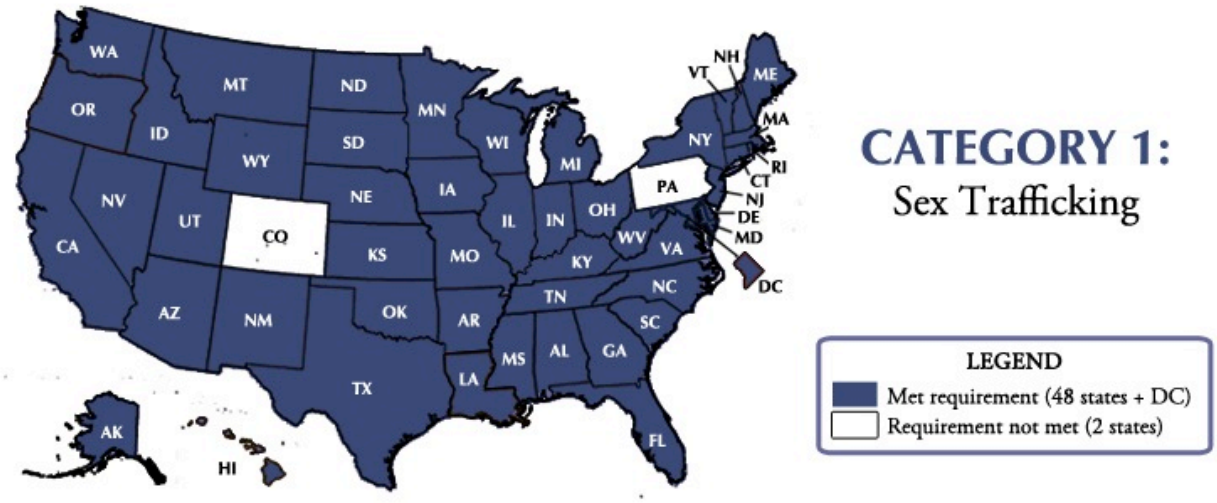
LOWER BURDEN OF PROOF FOR SEX TRAFFICKING OF MINORS: A statute that ensures that the elements of force, fraud, or coercion are not required for a trafficker to be prosecuted for the sex trafficking of a minor. This statute must be under the sex trafficking section in order for the state to receive credit.

VICTIM ASSISTANCE: A statute that provides assistance, mandates the creation of a victim services plan, or funds programs to help victims of human trafficking. Victim services and protection may include counseling, job assistance, housing, continuing education, legal services, and/or a human trafficking caseworker privilege.

ACCESS TO CIVIL DAMAGES: A statute that provides victims of human trafficking with the ability to seek civil damages from their traffickers.

VACATING CONVICTIONS FOR SEX TRAFFICKING VICTIMS: A statute that permits victims to have convictions for prostitution that were committed as a result of being trafficked vacated from their criminal records.

$ Sex Trafficking



I. INTRODUCTION

Sex trafficking is one manifestation of modern-day slavery and exists where one person uses force, fraud, or coercion to compel another to engage in commercial sex acts, except where the individual is a minor, in which case force, fraud, or coercion need not be shown. Individuals can be convicted of sex trafficking if they either use force, fraud, or coercion to compel an adult to engage in commercial sex acts or if they benefit or help facilitate sex trafficking by any means. Individuals can also be convicted of sex trafficking by the mere inducement of a minor to engage in a commercial sex act. It is important that every state have laws explicitly criminalizing sex trafficking.

II. SEX TRAFFICKING UNDER FEDERAL LAW

The Trafficking Victims Protection Act of 2000 (TVPA) and its subsequent reauthorizations, is the primary federal trafficking law in the United States. The TVPA makes human trafficking a federal crime. It was enacted in response to global efforts to eradicate human trafficking for sex and labor. The laws strive to provide the three Ps: prevention, protection and prosecution.

Under the TVPA, if a trafficking crime results in death or if the crime includes kidnapping, an attempted kidnapping, aggravated sexual abuse, attempted aggravated sexual abuse, or an attempt to kill, the trafficker can be sentenced to life in prison. Traffickers who exploit children (under the age of 14) using force, fraud or coercion, for the purpose of sex trafficking also can be imprisoned for life. If the victim was a child between the age of 14 and 18 and the sex trafficking did not involve force, fraud, or coercion, the trafficker can receive up to 20 years in prison.

The TVPA also provides services and benefits to victims. For example, up to 5,000 victims a year can receive permanent resident status through the T Visa program under the Department of

Homeland Security. Upon certification of their trafficking status, adult victims may have access to cash, medical assistance and social services. Minors are not required to be certified to receive these benefits. Other federal laws that focus on child exploitation or immigration laws touch on the issue as well; however the TVPA is the primary law in this realm.

III. SEX TRAFFICKING UNDER STATE LAW

Almost every state has criminalized sex trafficking in some form (the exceptions are Colorado and Pennsylvania). Most states define sex trafficking as a distinct crime; however, some states (*e.g.*, Montana and New Hampshire) instead recognize it as another form of "labor" trafficking that ultimately involves the exploitation of "services." While the specifics of state statutes vary, each such statute defines the nature of the crime—including what constitutes a commercial sex act and force, fraud or coercion; identifies which persons are subject to prosecution for their participation in such activity; and imposes fines and penalties, with varying degrees of severity. In addition, a growing number of states are adding protections for victims who are minors.

A. Commercial Sex Act Requirement

Much like the TVPA, state statutes typically define sex trafficking as the compulsion of a commercial sex act. "Commercial sex act" generally is defined to include prostitution, sexual servitude, or any sex act performed in exchange for something of value. In several states participating in pornography and stripping are considered commercial sexual acts for the purpose of the sex trafficking statute. A few states have broadened the scope of sex trafficking to include personal sexual servitude in the mail-order bride context. The commercial sex act requirement distinguishes sex trafficking from other crimes such as sexual assault or rape within a marriage. The former demands that a person profit from the sexual exploitation of another.

B. Force, Fraud or Coercion

States typically require proof of force, fraud, or coercion on the part of the perpetrator in sex trafficking cases. These terms are vague and subjective. They can be read narrowly—for example, to be limited to physical and objective coercion. Alternatively, they can be interpreted broadly to include the subtle means used by traffickers to manipulate their victims, such as non-physical coercion or forms specific to the gender, age, education level, personal history, disability, or culture of a victim. More specifically, methods of such subtle coercion may include: the confiscation of government identification documents or visas, threats of deportation, threats of harm to family members, withholding of necessities (*e.g.,* food, clothes and shelter), damage to personal property, and threats to expose secrets and other forms of blackmail.

26 states—Arizona, California, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Missouri, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, Texas, Utah, Virginia, Washington and Wisconsin—and the District of Columbia have enacted statutes that specifically define what constitutes force, threat or coercion in the context of sex trafficking. The relevant definitions typically use a broad approach, encompassing acts or omissions (or threats thereof) that, individually or collectively, could create a context of coercion. Minnesota has taken a different approach, and does not require proof of force, fraud, or coercion at all. Rather, the use by a perpetrator of physical

force or threat is treated as an aggravating factor that could result in more severe fines or imprisonment.

C. Fines and Sentencing

While much of the language in state statutes is modeled on the TVPA, penalties available under state law often are less severe and potential services less expansive. The penalties specified in state sex trafficking statutes vary widely. For example, California provides for prison sentences of between 3 and 5 years in cases involving the sex trafficking of adults. By contrast, Montana's statute provides for automatic life imprisonment for sex trafficking offenses. Most states, however, impose maximum sentences in the range of 10 to 20 years.

If the sex trafficking involves a minor or is otherwise aggravated (*e.g.*, by physical injury or death of the victim), punishments are more severe. For example, a perpetrator convicted of the sex trafficking of a minor in Missouri may face life imprisonment, with the possibility of parole only after 25 years have been served. Other states—including Michigan, Montana, New Jersey, Vermont, and Virginia—also permit life imprisonment in such cases.

States generally permit the imposition of monetary fines in addition to, or in lieu of, imprisonment where deemed appropriate. The maximum fines permitted in most states range from $10,000 to $50,000 for the sex trafficking of an adult, with higher fines permitted for aggravated cases of sex trafficking or the sex trafficking of a minor. Vermont's statute stands out, as it permits maximum fines of $500,000, which may be increased to $600,000 with aggravating factors. By contrast, Maryland imposes a maximum fine of $5,000 for adult sex trafficking, which is increased to $15,000 for sex trafficking of minors.

Another penalty is asset forfeiture, which is discussed in greater detail in Thematic Report 3a.

D. Treatment of Minors

Sex trafficking victims who are minors often have additional protections afforded to them by the state however, the scope of protection varies. The term "minor" is defined differently across states for purposes of sex trafficking. The requirements to convict a perpetrator of the offense vary as well. In some cases, trafficking a minor is considered to be a distinct offense, for example. In others it is simply an aggravating factor that affects sentencing.

To illustrate, compare New Mexico's statute, which has harsher penalties when victims are younger than 16 or 13 years old, to Illinois, which provides the added protection for all victims under 18. Illinois also has an option for aggravated punishment for trafficking victims 17 and younger. In 2012, Alaska became the first state to not require proof of force, fraud, or coercion in cases where the victim is less than 20 years of age. In that instance, the vulnerabilities of all teenagers, including those that have reached the age of majority, was considered in determining that it was necessary to afford greater protection to this unique population.

E. Other Sex Trafficking Actors

29 states and the District of Columbia have enacted statutes that specifically subject those who facilitate sex trafficking to the same punishment as those who use direct force or coercion to compel commercial sex acts. The term "facilitator" may include those who recruit, harbor, transport,

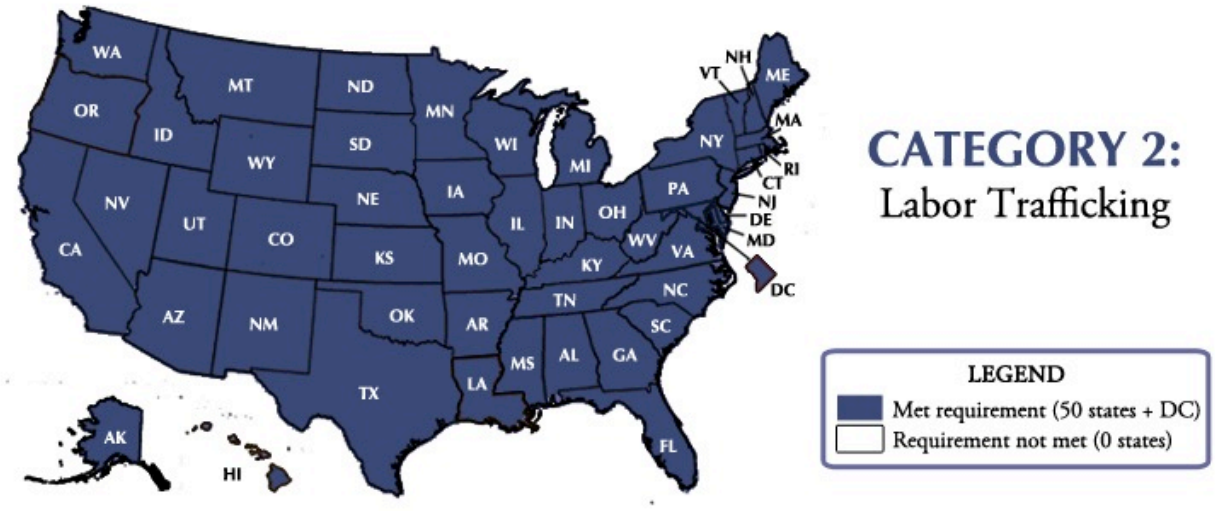
provide, or obtain victims for the purpose of commercial sexual exploitation. It also includes those who benefit (financially or by receiving anything of value) from participating in a venture that has engaged in sex trafficking. The states with strong facilitator laws are Arkansas, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, and Washington.

By contrast, Alabama, Alaska, Hawaii, Kentucky, Nebraska, Nevada, South Dakota, and Virginia impose lesser penalties on facilitators. In Alaska, for example, human trafficking is treated as a Class A felony whereas facilitating human trafficking is treated as a Class B felony. In the Polaris Project Model Law, we distinguish between involuntary servitude which is a Class A felony aimed at those who use force, fraud, or coercion to compel someone to engage in a commercial sex act and human trafficking which is a Class B felony and is aimed at those who facilitate or benefit from the involuntary sexual servitude of another.

IV. CONCLUSION

Sex trafficking represents a serious violation of human rights. It is a form of a modern-day slavery that has yet to be eradicated in the 21st century. While the TVPA is far-reaching and most states have adopted statutes criminalizing the crime, such acts are only a start. The laws could be much more expansive and consistent. Polaris Project will continue to advocate for the adoption and implementation of improvements, and invites all interested parties to join our efforts to eradicate this grave human rights abuse and serious crime.

Labor Trafficking



I. INTRODUCTION

Labor trafficking is one manifestation of modern-day slavery and exists where one person uses force, fraud, or coercion to compel another to engage in labor or services. Individuals can be convicted of labor trafficking if they either use forceful or coercive means to obtain labor or services or if they benefit or help facilitate labor trafficking by any means. It is important that every state have laws explicitly criminalizing labor trafficking.

II. LABOR TRAFFICKING UNDER FEDERAL LAW

The TVPA was enacted in 2000 in response to global efforts to eradicate human trafficking for labor and sex. The TVPA makes human trafficking a federal crime, and focuses on the prevention of human trafficking, the protection of victims, and the prosecution of traffickers. Prevention measures include the authorization of educational and public awareness programs. Protection and assistance for victims include making housing, educational, healthcare, job training, and other federally-funded social service programs available to victims of human trafficking. The TVPA also establishes the T Visa, which enables victims of human trafficking to become temporary residents of the United States. And, to assist with prosecuting traffickers, the TVPA creates law enforcement tools to strengthen the prosecution and punishment of traffickers by making human trafficking a federal crime with harsh penalties. For example, a trafficker could be sentenced to life in prison if the crime results in death or if the crime includes attempted or completed kidnapping, attempted or completed aggravated sexual abuse, or an attempt to kill.

Other relevant federal legislation includes the Migrant and Seasonal Agricultural Worker Protection Act of 1983 ("MSAWPA"), which was created specifically to protect agricultural workers from exploitation. The MSAWPA requires farm labor contractors and each of their workers who will be performing farm labor contractor activities to obtain certificates of registration from the U.S.

Department of Labor before work begins. The MSAWPA also requires that information regarding wages, hours, working conditions, and housing be provided in writing, and that, if provided, housing and transportation meet safety and health standards.

The U.S. Government also has ratified 14 of the ILO's Conventions. These include Convention No. 105 on the Abolition of Forced Labor (ratified in 1991) and No. 182 on the Elimination of the Worst Forms of Child Labor (ratified in 1999).

III. LABOR TRAFFICKING UNDER STATE LAW

Notwithstanding the existence of the statutes discussed above, federal efforts to combat labor trafficking face significant obstacles that limit their effectiveness. While labor trafficking frequently involves the interstate or international recruitment and transportation of victims, once victims have reached their ultimate destination they often are enslaved in a localized area. For this reason, the identification of labor trafficking victims normally is more effectively handled by local law enforcement officers during routine inspections and investigations, as well as through local tips and surveillance of local businesses.

Simply stated, state and local enforcement officers are in a better position to detect instances of labor trafficking, and to assist victims post-adjudication through local non-governmental organizations and follow-up medical and psychological care and education. Consequently, while the criminalization of labor trafficking under federal law is helpful, similar legislation under state law is critical.

Every state has enacted a statute criminalizing labor trafficking in some form. While the specifics vary, each statute: (i) defines the nature of the crime—including what constitutes labor or involuntary servitude, as well as (ii) defines force, fraud or coercion; (iii) identifies which persons are subject to prosecution for their participation in such activity; and (iv) imposes fines and penalties, with varying degrees of severity.

A. "Labor" Requirement

Many states—including Alabama Alaska, Arizona, California, Connecticut, Florida, Indiana, Maine, Nevada, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee and Virginia—have enacted statutes defining labor trafficking as trafficking for the purpose of exploiting a person's "labor or services" or "work" under threats, violence, or coercion. The term coercion is meant to be kept fairly broad and includes both physical as well as psychological harm to better enable law enforcement and prosecutors to target a broad range of actors who are obtaining forced labor.

While some states have attempted to define terms like "work" or "services," such definitions do not necessarily serve a limiting function. For example, Oregon defines "services" as "activities performed by one person under the supervision or for the benefit of another person"—a definition that covers a vast array of conduct. That said, other states—including Arkansas, Iowa, Maryland, Michigan, Minnesota, Missouri, New Hampshire, North Carolina, North Dakota, Utah, West Virginia, and Wisconsin, among others—have enacted statutes that define, with greater specificity, conduct that would satisfy the "labor" element—*e.g.,* involuntary servitude, peonage, debt bondage, slavery, marriage, and even adoption.

Ideally, state laws would recognize that a person may be a victim of labor trafficking despite the fact that he or she is paid for his or her labor. Colorado has explicitly recognized this fact by defining "involuntary servitude" to include servitude in exchange for compensation as long as such servitude is coerced.

B. Force, Fraud or Coercion

States typically have defined labor trafficking to require elements of force, fraud, or coercion. In some state statutes, these terms are vague, and could be read narrowly—for example, so as to exclude non-physical coercion or forms of coercion specific to the gender, age, education level, personal history, or culture of a victim.

For example, in *United States v. Kozminski*,[1] a case decided prior to the enactment of the TVPA, the U.S. Supreme Court found that a federal statute on involuntary servitude, 18 U.S.C. § 1584, should be narrowly read, absent a broader definition provided by Congress. As a result, the statute was interpreted to criminalize servitude brought about only through use or threatened use of physical restraint, physical injury, or legal coercion. Such interpretation excludes other conduct that can have the same purpose and effect, including non-physical forms of coercion such as psychological coercion of vulnerable individuals. In *Kozminski*, this narrow interpretation resulted in no convictions under the statute for defendants who were found with two mentally challenged men laboring on their farm in poor health, in squalid conditions, and in relative isolation from the rest of society, working seven days a week, often 17 hour days, for little to no pay.

Conversely, in some states, these terms are evolving to fit the subtle means often used by traffickers. Such statutes take the trafficking victim's particular vulnerability into consideration by viewing the force, fraud and/or coercion not from the perspective of a "reasonable person," but from the particular subjective experience of a trafficking victim in the same or similar circumstances.

29 states—Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Missouri, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, as well as the District of Columbia, provide additional guidance on what would constitute force, fraud, deception, or coercion in the context of labor trafficking. The relevant definitions typically encompass not only physical restraint or physical harm, but also various acts or omissions (or threats thereof) that, individually or collectively, could create a context of coercion. Such acts or omissions include: the confiscation of government identification documents or visas, threats of deportation, threats of harm to family members, withholding of necessities (*e.g.,* food, clothes, and shelter), damage to personal property, and threats to expose secrets and other forms of blackmail.

The more expansive use of the term "coercion" is in harmony with federal law, which has adopted a broad interpretation of the criminal elements of forced labor. For example, the federal statute making forced labor a crime defines the term "serious harm," as "any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background

[1] *United States v. Kozminski*,487 U.S. 931 (1988).

and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm."[2]

C. Other Labor Trafficking Actors

The federal TVPA criminalizes not only the acquisition of a person for labor or services, but also the recruitment, transportation, harboring and provision of that person. In other words, those who facilitate labor trafficking and/or financially benefit from such conduct may be just as legally culpable as those who benefit directly from the labor of victims. Most states—including Arkansas, Arizona, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Washington, Wisconsin, and the District of Columbia—have adopted a similar approach in their statutes.

In contrast, some states—including Alabama, Alaska, Hawaii, Kentucky, Nebraska, Nevada, South Dakota, and Virginia—impose weaker penalties on those who financially benefit from human trafficking offenses, as compared to primary perpetrators.

D. Fines and Sentencing

While much of the language in state statutes is modeled on the TVPA, penalties available under state law often are less severe than those available under the TVPA (which permits the imposition of fines and/or maximum prison sentences of 20 years). The penalties specified in state labor trafficking statutes vary widely.

For example, California provides for prison sentences of only between 5 and 12 years in cases involving the labor trafficking of adults. At the other end of the spectrum, New Jersey's statute provides for life imprisonment for labor trafficking offenses. Most states, though, impose maximum sentences in the range of 10 to 20 years.

States generally permit the imposition of monetary fines in addition to, or in lieu of, imprisonment where deemed appropriate. The maximum fines permitted in most states range from $10,000 to $50,000 for the labor trafficking of an adult, with higher fines permitted for aggravated cases of labor trafficking or the labor trafficking of a minor. Vermont's statute stands out, as it permits maximum fines of $500,000, which may be increased to $600,000 with aggravating factors, including the sex trafficking of a minor. In contrast, Maryland imposes a maximum fine of $5,000 where the value of lost wages exceeds $500, and $500 if the value of lost wages is less than that amount.

Asset forfeiture also may be available. For more information regarding this topic, please see Polaris Project's Thematic Report No. 3a on Asset Forfeiture.

IV. CONCLUSION

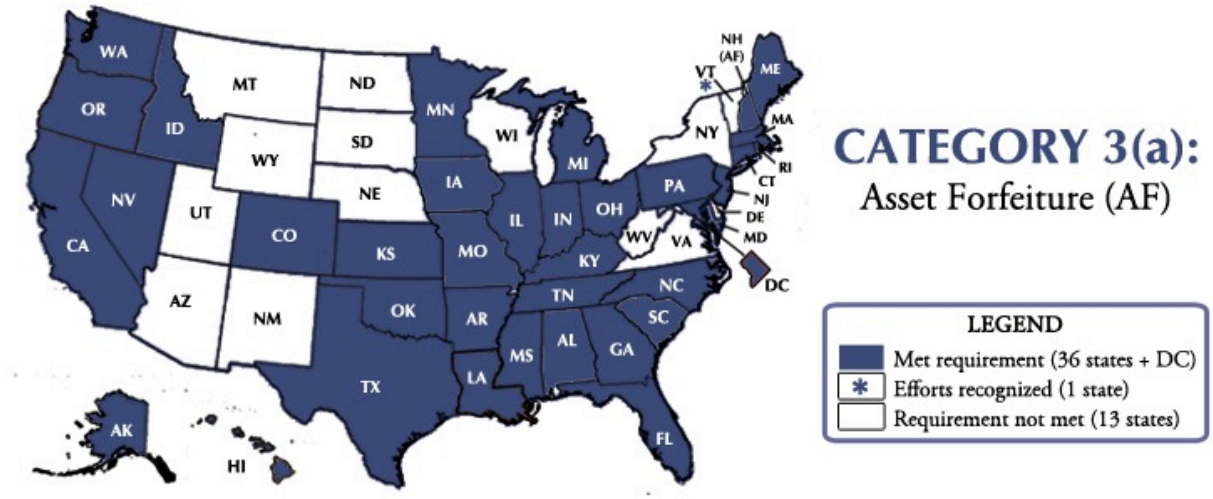
Slavery was abolished in the United States in 1865 by the 13th Amendment to the U.S. Constitution. However, modern-day slavery has yet to be eradicated in the 21st Century. Labor trafficking

---

[2] 18 U.S.C. § 1589(c)(2). For example, the District of Columbia has adopted this definition of "serious harm" with regards to coercion. *See* D.C. Code Section 22-1831.

represents a serious violation of human rights. While every state has adopted a statute criminalizing labor trafficking in at least some form, some have done a better job than others. Even a cursory review of state statutes reveals that there is much room for improvement. Polaris Project will continue to advocate for the adoption and implementation of such improvements, and invites all interested parties to join our efforts to eradicate this grave human rights abuse and serious crime.

Asset Forfeiture
for Human Trafficking



I. INTRODUCTION

Asset forfeiture enhances the deterrent value of incarceration by allowing the state to seize the ill gotten gains of traffickers, as well as property they used to facilitate the crime. In addition to deterring perpetrators, asset forfeiture laws also provide an avenue for victims to actually receive court-ordered restitution as a result of their trafficking situation. States should enact asset forfeiture laws to prevent traffickers from profiting from their crime and allow victims to actually recover from their restitution orders.

II. ASSET FORFEITURE UNDER FEDERAL LAW

The federal Trafficking Victims Protection Act (TVPA), enacted in 2000, provides for mandatory asset forfeiture where a person is convicted of a human trafficking offense. The 2008 amendments to the TVPA significantly strengthened its financial provisions to ensure that financial gains from criminal activity are disgorged. The amended TVPA states that the following are subject to forfeiture and no property right shall exist in them for the trafficker:

- Any property, real or personal, **used or intended to be used** to commit or to facilitate the commission of the trafficking or related crimes; and

- Any property, real or personal, which **constitutes or is derived from proceeds** traceable to the trafficking or related crimes.

Assets forfeited under the amended TVPA are no longer directed to the U.S. Treasury; instead, the assets are paid to the trafficking victims through a "restoration and remission" process.

Courts have ordered the forfeiture of assets using these provisions of the TVPA in several dozen human trafficking cases. For example, in *United States v. Sabhnani*, the Federal District Court for the Eastern District of New York convicted a married couple of two counts each of forced labor and other counts for conspiring to harbor in their home two domestic servants whom they couple brought to the United States illegally from Indonesia.[3] The jury found that the defendants conspired to and did hold the two women in peonage, keeping their travel documents, and forcing them to perform household chores while depriving them of sufficient food and proper living quarters. The court sentenced one defendant to 40 months' imprisonment plus three years of supervised release thereafter, and ordered him to pay a $12,500 fine and a $1,200 special assessment. It sentenced the other defendant to 132 months' imprisonment plus three years of supervised release thereafter, and ordered a payment of a $25,000 fine and a $1,200 special assessment. The court also required both defendants to pay $936,546 in restitution to the victims, and to forfeit their ownership interests in their home, where they held the victims.

Similarly, in *United States v. Kaufman*, the District Court for the District of Kansas found that husband and wife defendants violated federal forced labor and involuntary servitude statutes.[4] The couple claimed to run a home and farm for the chronically mentally ill, and billed Medicare and the residents' families for therapy. However, over a period of more than 15 years, the defendants had directed the residents to perform sexually explicit acts and farm labor in the nude, sometimes videotaping them. The husband was sentenced to 360 months and the wife to 84 months in prison. The jury further found that the couple should forfeit $85,188 for their fraud crimes and the houses and the farm used to facilitated the offenses.

Another example of asset forfeiture is seen in *United States v. Lewis*.[5] In that case, a federal grand jury indicted a defendant for sex trafficking of minors by force, fraud, or coercion, and interstate transportation of minors for purposes of prostitution. The defendant pled guilty to four counts of sex trafficking of children, admitting that for more than two years he prostituted four girls beginning when they were each 12, 13, 14, and 16 years old. In his plea agreement, the defendant acknowledged that the court would impose mandatory restitution for the full amount of the victims' compensable losses (ranging from $680,590 to $1,215,000 per victim), and would impose mandatory forfeiture of any proceeds that he obtained as a result of his offenses, including a money judgment. The prosecution then sought forfeiture of two cars, a pistol, miscellaneous knives, a collection of antique coins, and $462 in currency, for a total value of $949,355. The court also sentenced the defendant to 240 months of incarceration followed by a lifetime of supervised release.

III. ASSET FORFEITURE UNDER STATE LAW

While asset forfeiture is a valuable tool under the TVPA, it is not one that can be used by the federal government to combat human trafficking in all cases. Federal law enforcement officials are limited in their ability to prosecute perpetrators at the state and local level, both for jurisdictional and practical reasons. Moreover, state and local law enforcement officers often are in a better position to combat human trafficking given its localized nature.

---

3 *United States v. Sabhnani*, 539 F. Supp. 2d 617, 2008 U.S. Dist. LEXIS 22593 (E.D.N.Y., 2008). *See also United States v. Sabhnani*, 599 F.3d 215 (2nd Cir. 2010) (affirming forfeiture of property).

4 *United States v. Kaufman*, 546 F.3d 1242 (10th Cir. 2008).

5 *United States v. Lewis*, 791 F. Supp. 81 (D.D.C. 2011).

36 states and the District of Columbia have enacted statutory provisions allowing courts to seize the assets of those found guilty of human trafficking offenses: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and Washington. While the exact language of these statutes varies, the relevant provisions can be grouped into a few broad categories.

A. States Permitting Forfeiture Only of the Proceeds of Human Trafficking

Six states—Alabama, Indiana, Michigan, Minnesota, North Carolina, and Rhode Island—have enacted statutes allowing forfeiture only of the proceeds of human trafficking. These statutes generally also permit the forfeiture of real and personal property purchased using such proceeds. For example, Alabama's statute provides that a perpetrator "shall forfeit to the State of Alabama any profits or proceeds and any interest in property that he or she has acquired or maintained that the sentencing court determines to have been acquired or maintained as a result of committing human trafficking . . . ."

To date, there is no published court opinion applying any of these forfeiture statutes in the human trafficking context. However, where used effectively, these asset forfeiture provisions should limit the ability of human traffickers to profit from their illicit activities. Moreover, these provisions can redirect the substantial profits from human trafficking to victim relief and law enforcement efforts, where they can do significant good. That said, these provisions may be of limited deterrent value, as perpetrators may be willing to risk a mere loss of profits—particularly if they are left in a position to "try again" with existing operational assets.

B. States Permitting Forfeiture Only of Assets Used in the Commission of Human Trafficking Offenses

A handful of states, including Arkansas, Colorado, Florida, Louisiana, Maryland, Mississippi, and New Hampshire, allow forfeiture only of assets used in the commission of human trafficking offenses (*e.g.,* real estate and land used to house and vehicles used to transport human trafficking victims). For example, New Hampshire's statute permits the forfeiture of all materials, products, equipment, property interests, moneys, coin, currency, negotiable instruments, securities, other investments, books, records, ledgers, research materials, and real property used in the commission of human trafficking offenses.

To date, there is no published court opinion applying any of these forfeiture statutes in the human trafficking context. However, where used effectively, these asset forfeiture provisions should undermine the ongoing operations of human trafficking networks. Moreover, the proceeds from the sale of seized assets can be used to fund victim relief and law enforcement efforts. However, if the profits from the trafficker's crimes are sufficiently large and left in the hands of the traffickers, they could be used to replace seized assets and/or reconfigure network operations.

C. States Permitting Forfeiture of the Proceeds of Human Trafficking *and* Assets Used to Commit Human Trafficking Offenses

21 states and the District of Columbia allow the forfeiture of both the proceeds of human trafficking *and* the assets used to commit human trafficking offenses. These states are: Alaska, Connecticut, the District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Missouri, Nevada, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, and Washington. Where used effectively, these provisions can be used to both: (i) limit the ability of human traffickers to profit from their illicit activities; and (ii) undermine the ongoing operations of human trafficking networks. Notably, the statutes in certain states do not cover all types of human trafficking offenses.

These statutes have rarely been applied to date within the human trafficking context, but have been very effective when applied. For example, in 2010 a Pennsylvania court ordered forfeiture of $134,682 in seized currency, a Toyota Highlander, and the contents of two bank accounts after a defendant pled guilty to forced labor charges relating to two trafficking victims she helped enter the United States from Vietnam in 2000 to work in her nail salon without remuneration.[6]

D. States that Have Not Enacted Any Provision Permitting Asset Forfeiture in Cases of Human Trafficking

14 states have not enacted any provision permitting asset forfeiture in cases of human trafficking. These states are: Arizona, Delaware, Montana, Nebraska, New Mexico, New York, North Dakota, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

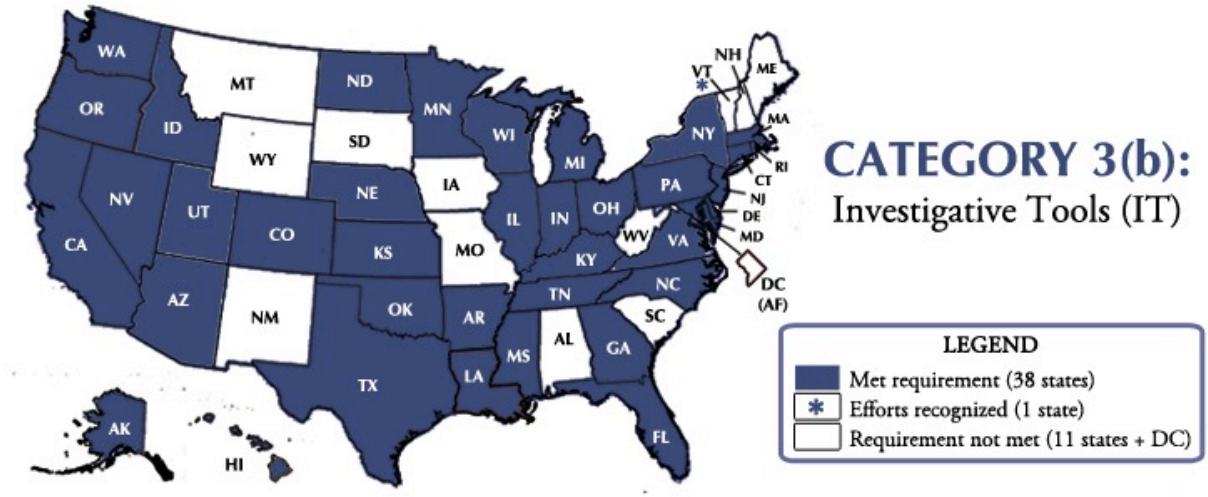
IV. CONCLUSION

Asset forfeiture statutes provide states with a valuable mechanism for combating human trafficking. This is true regardless of the specifics of any given state statute. That said, statutes that permit the seizure of both the proceeds, as well as assets used in the commission of human trafficking offenses, offer the greatest flexibility to courts and law enforcement officials. States are encouraged to examine their asset forfeiture schema and to adopt the most effective form to address the low-risk, high-profit nature of human trafficking. Polaris Project will continue to advocate for the adoption and implementation of such statutes, and invites all interested parties to join these efforts.

---

6 *Phan v. Bureau of Prof'l & Occupational Affairs*, 2012 Pa. Commw. Unpub. LEXIS 318 (Pa. Commw. Ct. May 7, 2012)

Investigative Tools
for Law Enforcement



I. INTRODUCTION

Investigative tools such as the use of wiretapping and including human trafficking within state RICO statutes exponentially increases law enforcements ability to investigate, disrupt, and dismantle sophisticated trafficking networks. Traffickers have become adept at working in secrecy and sometimes have multiple actors performing different tasks that help keep victims in their trafficking situation. Whether it is taking down an individual trafficker or organized crime, gangs, and criminal syndicates that have increasingly turned to human trafficking to make a profit, states must enact legislation that gives law enforcement investigative tools that will make it easier for them to successfully investigate traffickers.

II. RICO STATUTES

Human trafficking networks often extend beyond the specific group of individuals targeted by human trafficking laws, and can include accountants, investors, financiers, security guards, drivers, and customers who know that illegal activity is happening but who do not engage in the activities covered by state human trafficking laws. In such cases, law enforcement must use alternative methods to ensure their ability to bring down the entire network or gang.

One particularly powerful tool for accomplishing this objective is a statute that targets so-called "racketeer influenced corrupt organizations," commonly referred to as a RICO statute.[7] RICO

7 States may also employ criminal gang offenses statutes, rather than RICO statutes, to target human trafficking networks. For example, an Idaho statute includes human trafficking as a definition of "pattern of criminal gang activity."

statutes typically provide harsher penalties and asset forfeiture for crimes that qualify as "racketeering activity" and are committed as part of a larger criminal enterprise. Racketeering activities may include committing, attempting to commit, conspiring to commit, soliciting, coercing, or intimidating another person to commit a specified crime.

Statutes that establish human trafficking offenses as predicate "racketeering" activities for RICO purposes allow law enforcement officials to use the flexibility and broad powers conferred by the RICO statute to pursue perpetrators. For example, RICO conspiracy provisions allow prosecutors to charge an individual who knew about or participated in the trafficking enterprise even if he or she did not commit acts sufficient to trigger the direct application of the human trafficking law. Moreover, the increased penalties available under the RICO statute allow:

- Courts to impose additional jail time for racketeering crimes;
- Prosecutors to seek the forfeiture of assets resulting from the racketeering activity as well as from the criminal enterprise itself; and
- Victims to bring civil actions against the criminal enterprise for the injuries suffered.

The penalties available under RICO statutes make engaging in human trafficking a riskier endeavor than it would be under human trafficking laws alone.

A. The Federal RICO Statute as an Investigative Tool

The federal Racketeer Influenced and Corrupt Organizations Act (commonly referred to as the "RICO Act") provides for enhanced penalties for human trafficking and other criminal acts performed as part of an ongoing criminal organization. The RICO Act focuses specifically on racketeering, and, among other things, allows the prosecution of the leaders of a syndicate for the crimes of their subordinates.

The RICO Act has been used effectively to prosecute human traffickers and to impose significant prison time and high restitution orders. In the first federal case in which labor trafficking was charged as part of a RICO Act conspiracy, Abrorkhodja Askarkhodjaev, a Uzbek national, was sentenced in May 2011 to 12 years in prison, three years of supervised released, and payment of restitution of $172,000 in addition to restitution for harm caused by other aspects of his criminal enterprise.[8] Askarkhodjaev led a multinational criminal enterprise that arranged for the recruitment and exploitation of at least dozens of workers from Jamaica, the Dominican Republic, the Philippines, and elsewhere. These workers were held in overcrowded apartments and forced to work in service and hospitality jobs in more than a dozen states. The members of the criminal enterprise withheld much of the workers' earnings, and threatened them with deportation and financial penalties if they did not comply with demands. Co-defendants were convicted of various activities, including racketeering, racketeering conspiracy, wire fraud, and fraud in foreign labor contracting. They were sentenced to between 21 months and 60 months in prison.

---

8 *See* Department of Justice, Justice News: *Uzbek Man Sentenced for Role in Multi-National Racketeering and Forced Labor Enterprise*, May 9, 2011, available at http://www.justice.gov/opa/pr/2011/May/11-crt-589.html.

In *United States v. Pipkins*, the RICO Act was used to prosecute 15 pimps in Atlanta, Georgia, for engaging in the sex trafficking of minors.[9] One defendant, Pipkins, was found guilty of conspiring to participate in a juvenile prostitution enterprise affecting interstate commerce through a pattern of racketeering activity. He also was found guilty of enticing juveniles to engage in prostitution, using interstate facilities to carry on prostitution, extortion, involuntary servitude, transfer of false identification documents, and distributing marijuana and cocaine to minors. Pipkins was sentenced to a total of 30 years of imprisonment.

In *United States v. Ibrahim*, a married couple was prosecuted under the RICO Act for holding a girl in a state of domestic servitude for twenty months, beginning when she was only ten years old. The couple was found to have fraudulently obtained a visa for the Egyptian girl to come to the United States, where they held her in a section of their garage from 2000 to 2002 and forced her to work 16 hour days as a domestic servant while threatening and physically abusing her. When the girl was discovered and the couple was questioned by the FBI and Immigration and Customs Enforcement, the husband defendant attempted to justify the arrangement by showing the agents the handwritten, notarized contract he and the girl's parents had signed stating that she would work for the defendants for ten years for a stipend to her parents of $30 a month. The defendants were charged with conspiracy, compelling involuntary servitude, obtaining labor of another person unlawfully, and harboring an alien. Under the terms of a plea deal with federal prosecutors, the husband and wife were sentenced to three years and 22 months in prison, respectively. The couple also was ordered to pay the girl $76,137, and both were deported to Egypt upon release.

B. State RICO Statutes as Investigative Tools

More than half of states have enacted RICO statutes that treat human trafficking as a predicate "racketeering" activity or criminal offense sufficient to sustain a conviction under such statutes. These states include: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Utah, Virginia, and Wisconsin.

Some state RICO statutes include human trafficking, but only to a limited extent. For example, Minnesota's RICO statute treats sex trafficking—but not other types of human trafficking—as sufficient to sustain a conviction under the statute. Similarly, Rhode Island's RICO statute is implicated only in cases of "child exploitation for commercial or immoral purposes"—a category that certainly could encompass sex trafficking of minors.

To date, there is no published court opinion discussing the application of a state RICO statute in the human trafficking context.

The remaining 17 states and the District of Columbia do not treat human trafficking of any kind as predicate "racketeering" activity under the state RICO statute. These states include: Alabama, Alaska, Arizona, the District of Columbia, Iowa, Kansas, Maine, Missouri, Montana, New Hampshire, New Mexico, South Carolina, South Dakota, Texas, Vermont, Washington, West Virginia, and Wyoming.

---

9 *U.S. v. Pipkins*, D.C. Docket No. 01-00074 CR-1-1 (11th Cir. Aug. 2, 2004).

III. WIRETAPPING AUTHORITY

Telecommunications networks are increasingly ubiquitous, and have dramatically lowered the costs of conducting business both within a given organization and with external parties. Unfortunately, not all uses of these networks are benevolent; often, they facilitate the ability of criminals such as human traffickers to operate effectively, even across great distances. Moreover, these telecommunications networks permit criminals to complete transactions without ever meeting in the open, making it more difficult for law enforcement officials to detect and gather evidence with respect to criminal activity.

Statutes that authorize law enforcement officials to utilize wiretapping, or other forms of electronic interception, can transform such telecommunications networks from assets into liabilities for the perpetrators of human trafficking offenses. Using such interceptions, law enforcement officers can gather evidence without being in direct contact with the perpetrators and, many times, without the perpetrators knowing that they are under surveillance. Among other benefits, this reduces the risk of harm to law enforcement officers.

A. Wiretapping as an Investigative Tool under Federal Law

The Federal Wiretap Act was enacted in 1968 and expanded in 1986. The Act establishes procedures through which courts can authorize the real-time surveillance of electronic communications (including telephone calls and data transmissions) during criminal investigations. Federal law enforcement officers may request authorization to conduct such surveillance only when investigating specific categories of crime enumerated in the Act. The Act does not explicitly cover labor trafficking offenses, but does cover sex trafficking and related crimes involving children, conspiracy to harm persons or property overseas, passport fraud, and interstate and foreign travel or transportation in aid of racketeering enterprises.

The Federal Wiretap Act has been employed to help investigate, prosecute, and convict traffickers. For example, the FBI and the Vice Division of the Houston Police Department began investigating several individuals in 2005, resulting in charges of conspiracy; sex trafficking by force, fraud, or coercion; transportation; sex trafficking of children, transportation of minors; and coercion and enticement.[10] The Houston Vice Division police officers obtained wiretap evidence when one victim made numerous telephone calls to one of the defendants during a sting operation where an undercover officer arranged a "sex date" with the victim.

Similarly, in *United States v. Williams*, wiretap evidence was used to convict a defendant of taking part in a prostitution ring involving adolescent girls and young women.[11] Specifically, the defendant was convicted of conspiracy to transport, coerce and entice women to travel interstate for prostitution, and to engage in interstate travel in aid of racketeering; interstate travel in aid of racketeering; sex trafficking; and transport of a minor for prostitution. The wiretap provided evidence of the defendant providing counseling to, and planning with, multiple co-conspirators.

---

10 *United States v. Butler*, 477 Fed. Appx. 217 (5th Cir. 2012).

11 *United States v. Williams*, 428 Fed. Appx. 134 (3rd Cir. 2011).

B. Wiretapping as an Investigative Tool under State Law

At least 14 states have enacted statutes authorizing law enforcement personnel to intercept electronic communications in the course of investigating human trafficking offenses, with a duly authorized court order. These states include: Arizona, Arkansas, Connecticut, Florida, Hawaii, Illinois, Indiana, Kansas, Louisiana, Maryland, New York, Texas, Washington, and Wisconsin. Generally, these states have enacted statutes that enumerate a list of offenses, including human trafficking offenses, for which interceptions may be authorized. Florida, Illinois, and Indiana permit the use of interceptions in cases of human trafficking broadly defined, including both sex and labor trafficking. Hawaii and New York restrict the use of interceptions to cases of labor trafficking—although the underlying labor trafficking statutes could be read to encompass some forms of sex trafficking as well. In contrast, Washington restricts the use of interceptions to cases involving the commercial sexual abuse of a minor.

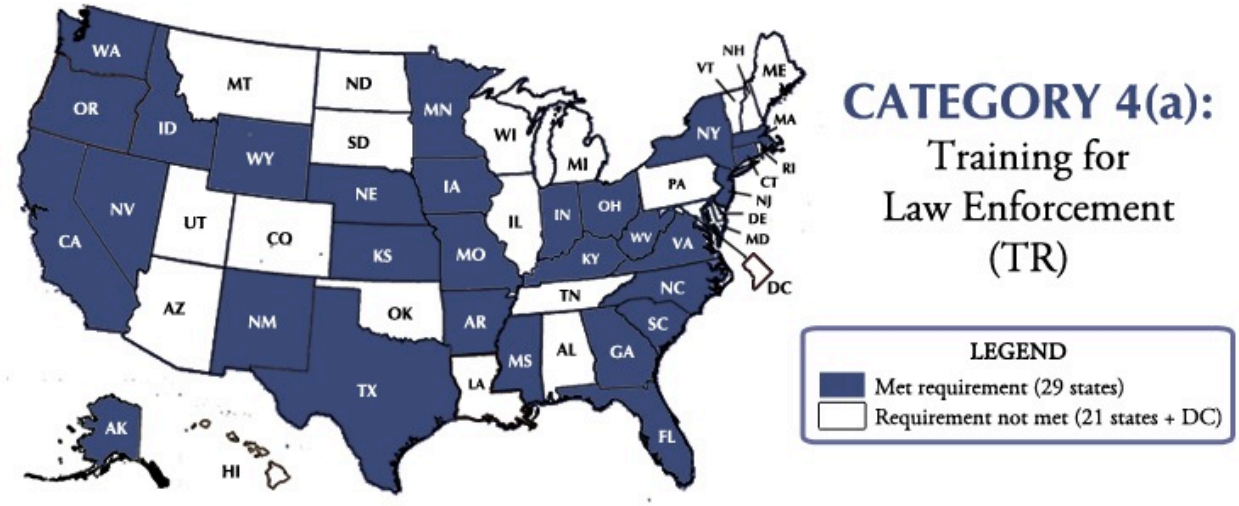
Arizona has enacted a statute authorizing the use of wiretapping and similar techniques in investigating any type of criminal activity.

To date, there is no published court opinion discussing the application of a state statute permitting wiretapping in the human trafficking context.

IV. CONCLUSION

RICO statutes and wiretapping authority are valuable tools that can assist law enforcement officers in overcoming the special challenges inherent in the investigation of human trafficking offenses. While many states have now leveraged their RICO statutes to facilitate the prosecution of human trafficking offenses, a large number of states have not yet taken this step. Moreover, only a handful of states have authorized the use of wiretaps and other forms of electronic interception to assist the investigation of human trafficking offenses. Thus, there is much room for reform and improvement. Polaris Project stands ready to assist policymakers in passing and implementing these investigative tools at the state level.

Training
for Law Enforcement



V. INTRODUCTION

It is of critical importance that law enforcement officers receive training on how to identify victims of human trafficking and investigate trafficking cases. In order to effectively implement human trafficking laws passed by the state legislature, law enforcement officers must be trained on how to use them.

VI. TRAINING UNDER FEDERAL LAW

The federal Trafficking Victims Protection Act (TVPA) includes provisions related to training. Specifically, the TVPA directs the Department of Justice (DOJ) and Department of State (DOS) to develop internal programs to train appropriate personnel in identifying victims of severe forms of trafficking and providing for the protection of such victims. The DOJ (through the Bureau of Justice Assistance) has developed programs for federal, state, and local law enforcement, courts, health service providers, and crime prevention personnel. Similar programs have been developed by the Department of Homeland Security and the DOS.

VII. TRAINING UNDER STATE LAW

A little more than half of all states have enacted statutes requiring or encouraging law enforcement personnel to receive training regarding human trafficking-related matters. While the specifics vary, the approaches taken by these states can be grouped into the following: (i) states that require human trafficking awareness training and define specific curricula by statute, (ii) states that require training without defining specific curricula by statute, (iii) states that permit but do not require human

trafficking awareness training and (iv) states that have failed to enact any statutory provision with respect to human trafficking awareness training.

A. States that Require Human Trafficking Awareness Training and Define Specific Training Curricula by Statute

Twelve states—Arkansas, California, Georgia, Indiana, Kentucky, Minnesota, Nebraska, Nevada, New Jersey, New York, Ohio, and Wyoming—have enacted statutes: (i) requiring that a state agency or task force train law enforcement personnel with respect to human trafficking-related matters and (ii) specifying topics to be covered in the course of such training.

Typical of this approach is Indiana's statute, which requires that law enforcement personnel receive training with respect to: (i) human and sexual trafficking laws; (ii) identification of human and sexual trafficking (iii) communicating with traumatized persons; (iv) therapeutically appropriate investigative techniques; (v) collaboration with federal law enforcement officials; rights of and protections afforded to victims; (vi) the provision of documentation satisfying federal legal requirements; and (vii) community resources available to assist human and sexual trafficking victims. Arkansas, California, Georgia, Nebraska, and Ohio have adopted similar approaches.

Minnesota also has established a detailed curriculum for training about trafficking-related matters, but goes further in two important respects. First, Minnesota requires state officials to develop training curricula in light of human trafficking data collected in the state. Second, such data must be used to inform not only *law enforcement* training, but also a public awareness campaign (*i.e.,* "training" for the general public).

New Jersey and Kentucky are slightly less inclusive as their statutes limit training requirements to police and attorneys, respectively. However, New Jersey does define the topics to be covered to include items such as response procedures and best practices when conducting investigations. Similarly, Kentucky encourages training on topics related to services, referrals and protocol for dealing with child trafficking victims.

B. States that Require Human Trafficking Awareness Training, Without Defining Specific Training Curricula by Statute

Nine states—Connecticut, Florida, Iowa, Missouri, New Mexico, Texas, Washington, Alaska, and Mississippi —have enacted statutes that require a state agency or task force to train law enforcement personnel with respect to human trafficking-related matters, but that do not identify specific topics to be covered in the course of such training. Instead, the relevant state agency or task force is afforded discretion to develop a program that it deems appropriate. Mississippi, for example, allocates money from the Relief of Victims of Human Trafficking Fund specifically to training purposes.

The approach of these states provides greater flexibility in crafting their training curricula—particularly as new issues arise or new approaches become available. However, it is unclear whether such flexibility would be precluded by the more specific statutes enacted in states like Indiana. Such statutes tend to identify general topics to be covered, but do not provide an exhaustive list of subtopics to be covered, nor do they exclude coverage of additional topics or mandate how time and training resources must be allocated between them.

C. States that Permit But Do Not Require Human Trafficking Awareness Training

Eight states—Idaho, Kansas, Massachusetts, North Carolina, Oregon, South Carolina, Virginia, and West Virginia—have enacted laws permitting, but not requiring, a state agency or task force to train law enforcement personnel with respect to human trafficking-related matters. For example, Massachusetts' statute provides that the relevant state agency "*may*, subject to appropriation, contract with non-governmental organizations or entities with experience working with sexually exploited children to train law enforcement officials likely to encounter sexually exploited children in the course of their law enforcement duties." Many states are sensitive to creating unfunded mandates by requiring training, which may be one reason for their more permissive laws. New York requires an interagency task force to evaluate the effectiveness of training programs on human trafficking and make recommendations for improving the quality and effectiveness of such programs without guaranteeing that these recommendations will be implemented.

These states acknowledge the potential value of human trafficking training. However, they should be closely monitored to determine whether they are implementing these laws. Indeed, officials in these states could choose to forego training in favor of competing priorities without running afoul of any state legal requirement. Where that decision is made, law enforcement is in no better position than their counterparts in states that have failed to enact any statutory provision at all with respect to training.

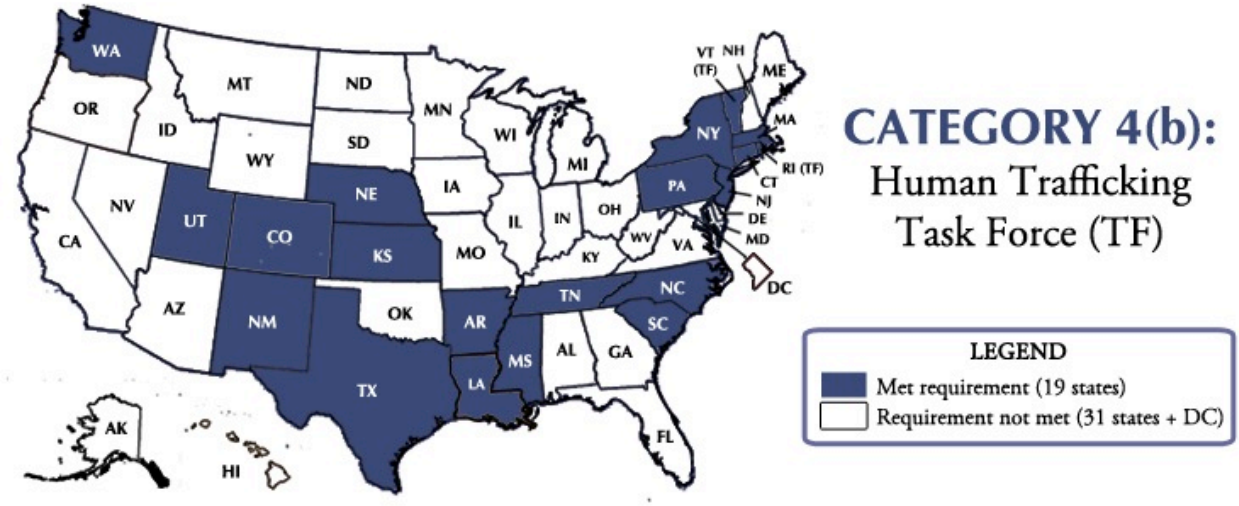
D. States that Have Failed to Enact Any Statutory Provision with Respect to Human Trafficking Awareness Training

Many states and the District of Columbia have failed to enact any statutory provision with respect to human trafficking awareness training. These states are: Alabama, Arizona, Colorado, Delaware, Hawaii, Illinois, Louisiana, Maine, Maryland, Michigan, Montana, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, and Wisconsin. This does not necessarily mean that training is unavailable in these states, however. Indeed, training programs may have been implemented by agencies on their own initiative (without explicit statutory direction), or through non-profit organizations. That said there is no substitute for the official imprimatur of state law, which not only signals a state's lasting commitment to training initiatives, but also provides a measure of protection against the vicissitudes of the political and budgetary process.

VIII. CONCLUSION

Training has the potential to play an important role in state efforts to combat human trafficking. Polaris Project, though its National Training and Technical Assistance Program (NTTAP), stands ready to assist states in implementing and institutionalizing their anti-trafficking efforts.

Human Trafficking Commission or Task Force



I. INTRODUCTION

Human trafficking commissions or task forces are indispensable tools for states seeking to end human trafficking. Commissions and task forces create the space for a coordinated, multi-agency response to trafficking, and usually include members representing law enforcement, prosecutors, victim service providers, survivors, and relevant state agencies like Social Services, Education, Agriculture, Labor and Industry, and Public Safety. Coordinated efforts through human trafficking task forces has resulted in better victim service responses, coordinated law enforcement strategies, and greater public awareness to prevent human trafficking.

II. THE TASK FORCE CONCEPT UNDER FEDERAL LAW

The seminal federal law on human trafficking, the Trafficking Victims Protection Act of 2000 (TVPA), established the President's Interagency Task Force to Monitor and Combat Trafficking (PITF)—a cabinet-level entity that coordinates federal anti-trafficking efforts. It is chaired by the Secretary of State and includes representatives from a number of other executive agencies. The task force meets annually.

The TVPA charges the PITF with: (i) coordinating the implementation of the TVPA; (ii) evaluating progress in the U.S. and abroad in combating human trafficking and assisting victims; (iii) expanding interagency procedures to collect and organize data; (iv) engaging in efforts to facilitate international cooperation in combating human trafficking; (v) examining the role of the international "sex tourism" industry in the trafficking of persons and in the sexual exploitation of women and children around the world; (vi) engaging in consultation and advocacy with governmental and NGOs, among

other entities, to advance the purposes of the TVPA; and (vii) reporting to Congress on progress in such efforts.

In addition, the Bureau of Justice Assistance (BJA) and Office for Victims of Crime (OVC)—divisions of the Department of Justice—have created a joint program that provides funding for task forces in 25 states and American territories. Recently, the BJA and OVC revised the funding model to the Enhanced Collaborative Model to Combat Human Trafficking. The goals of the new model are to: (i) conduct proactive investigations of sex trafficking and labor trafficking crimes within each task force location in coordination and collaboration with local, state, tribal, regional, and federal law enforcement and regulatory agencies; (ii) identify victims of all forms of human trafficking within each task force site and offer a comprehensive array of restorative services to meet each victim's individualized needs; and (iii) enhance community capacity to identify and report trafficking crimes by conducting training, public awareness, and outreach activities. Similarly, the Department of Health and Human Services, though the Administration for Children and Families, has implemented the Campaign to Rescue & Restore Victims of Human Trafficking, which funds coalitions against human trafficking in 32 states and Puerto Rico.

III. THE TASK FORCE CONCEPT UNDER STATE LAW

Only 20 states—Arkansas, Colorado, Connecticut, Kansas, Louisiana, Massachusetts, Mississippi, Nebraska, New Mexico, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, and Washington—have enacted statutes that create or provide for state task forces (or similar bodies) to address human trafficking-related issues. These statutes typically prescribe the mandatory and voluntary duties of the task force, as well as its membership. The substantive mandates of these state task forces vary, but tend to fall into the following categories: (i) evaluation and formulation of recommendations with respect to human trafficking issues; (ii) coordination of law enforcement efforts; (iii) coordination of social services and outreach; (iv) coordination of data collection and analysis; and (v) non-statutory task forces. Still, some states merely appoint a person or body to coordinate efforts without providing additional guidance. For example, Mississippi's short provision creates a human trafficking coordinator position in the Attorney General's office, but provides no further direction.

A. Evaluation and Formulation of Recommendations With Respect to Human Trafficking Issues

Several states have created task forces designed to evaluate human trafficking-related issues and formulate state-specific recommendations to better address them. For example, Louisiana's statute creates the "Human Trafficking of Minors Study Group" in order to study and make recommendations to the legislature on how to eliminate trafficking of minors in Louisiana. Similarly, New York has directed its task force to consult with government organizations and NGOs to discover ways to strengthen state and local efforts to prevent trafficking, protect and assist victims and prosecute traffickers. Other states that focused on developing policy recommendations through their task forces include Arkansas, Connecticut, Massachusetts, Nebraska, New Jersey, North Carolina, Pennsylvania, Tennessee, and Washington.

B. Coordination of Law Enforcement Efforts

The coordination of law enforcement efforts is one of the most important responsibilities of state task forces. Utah's law creates a "strike force," which is directed by statute to focus its efforts on detecting, investigating, deterring, and eradicating violent and other major felony criminal activity related to illegal immigration and human trafficking. New York's task force has a broader mandate, with responsibilities that include: (i) coordinating with other bodies to strengthen state and local efforts to prevent trafficking; (ii) establishing interagency protocols and collaboration between federal, state, and local law enforcement; and (iii) evaluating the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel. Similarly, the Texas legislature has directed its task force to work with U.S. attorneys and agents from the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Immigration and Customs Enforcement Agency, and the Department of Homeland Security. Kansas recently established an advisory board with representatives from 16 different agencies, bodies or organizations to take charge the state's human trafficking efforts. New Mexico, North Carolina, and several other states have task forces focusing on law enforcement as well.

C. Coordination of Social Services and Outreach

Many states direct their task forces to work to improve the provision of social services to human trafficking victims. For example, Vermont's statute authorizes the creation of a task force to assist social service providers, victim service providers, and several other agencies and NGOs to develop a statewide protocol for providing services to Vermont trafficking victims. The task force may contract with third parties for the provision of victim services such as: (i) case management; (ii) emergency temporary housing; (iii) health care; (iv) mental health counseling; (v) drug addiction screening and treatment; (vi) language interpretation and translation services; (vii) English language instruction; (viii) job training and placement assistance; (ix) post-employment services for job retention; and (x) immigration services. Massachusetts charges its task force with evaluating whether existing health, education, job training and legal services and facilities meet the needs of victims of human trafficking. The task force also must review approaches to increase public awareness about human trafficking. New Jersey has established a Human Trafficking Survivor's Fund and directs the Attorney General to consult with the state's task force before deciding which service providers to allocate the funds. Other states calling for social service coordination include Connecticut, Louisiana, and Texas.

D. Coordination of Data Collection and Analysis

The collection, analysis, and dissemination of data regarding human trafficking are also vital responsibilities of state task forces. In New York, for example, a task force collects and organizes data on the nature and extent of trafficking to evaluate progress in meeting the state's anti-trafficking goals. Similarly, Texas has directed its task force to collect and periodically publish statistical data on the nature and extent of human trafficking in the state. Massachusetts' task force must coordinate the collection and sharing of human trafficking data among government agencies. South Carolina also has formed a task force dedicated to the collection and dissemination of information on human trafficking. Colorado requires a commission to submit a report of its findings on human trafficking prosecutions and convictions to the House and Senate Judiciary Committees by January 1, 2014.

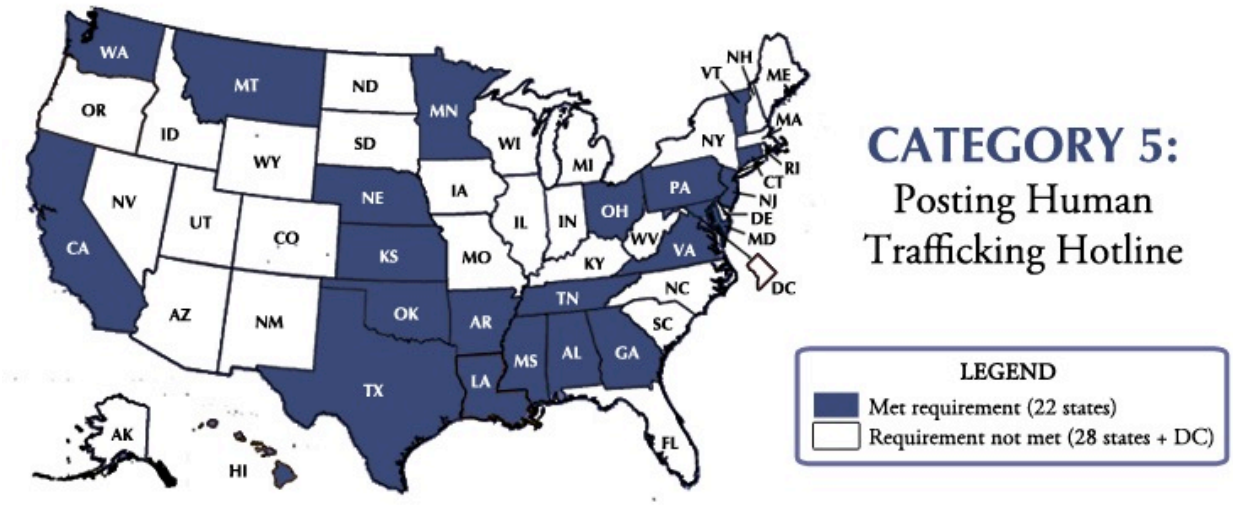
E. Non-Statutory Task Forces

In addition to the statutory task forces discussed in previous sections, many states have established "ad hoc" task forces to address human trafficking-related issues. Typically, these groups are formed at the instigation of one or more state agencies, as opposed to the legislature. They may lack the same level of permanence and resource commitment enjoyed by statutorily authorized task forces; however, this is not always the case—particularly for those task forces that have acquired an independent funding stream. Still, a task force statute still holds value in states where legislative direction, not the availability of funding, dictates the work of the task force.

IV. CONCLUSION

Task forces are valuable tools that can be used to coordinate and mobilize statewide efforts to combat human trafficking and assist its many victims. While non-statutory, "ad hoc" task forces also play a valuable role, they lack the official imprimatur conferred by legislation, and are more vulnerable to the vicissitudes of state politics and budgetary cycles. By contrast, the creation of a task force by statute can serve to underscore and safeguard a state's long-term commitment to improving the formulation and implementation of human trafficking-related policies and procedures. Polaris Project stands ready to assist policymakers in establishing or enhancing the operation of task forces at the state level.

Posting a Human Trafficking Hotline



I. INTRODUCTION

Hotlines such as the National Human Trafficking Resource Center hotline (NHTRC) are valuable tools for providing law enforcement with critical information related to trafficking cases and assisting victims escape from their traffickers. Since 2007, the NHTRC hotline has fielded over 80,000 calls, identified over 9,000 potential victims of trafficking, and sent over 3,500 tips to local, state, and federal law enforcement agencies which have resulted in the successful arrest and prosecution of traffickers. States that have enacted NHTRC hotline posting laws have given victims a lifeline to help and increased the chances that traffickers will be apprehended by law enforcement officials.

II. THE HOTLINE CONCEPT AT THE FEDERAL LEVEL

The NHTRC hotline is supported and copyrighted by the U.S. Department of Health and Human Services (HHS). Polaris Project receives funding from HHS to operate the hotline for the U.S. government and to provide vital resources to law enforcement, service providers, community members, and human trafficking victims across the country. The hotline is maintained and operated 24 hours a day, 7 days a week, 365 days a year and is accessible in over 170 languages.

The NHTRC hotline has connected thousands of human trafficking victims to crucial support services. Its call volume has increased steadily each year from a couple hundred calls in 2007 to over 20,000 in 2012. This dramatic success is due, in part, to state legislation incentivizing or mandating the display of posters and other materials relating to the hotline at locations where victims are likely

to see them. The NHTRC hotline posters lead to higher call volumes and greater access to services for victims. They also serve as an investigative and prosecutorial resource for law enforcement.

The U.S. Congress mandated that people entering the United States under valid work visas be provided information on their legal rights, including information relating to the NHTRC hotline. More specifically, the U.S. Department of State (DOS) published a pamphlet entitled "Are You Coming to the United States Temporarily to Work or Study?" This pamphlet advises new entrants as follows:

> "If you believe your rights are being violated, the hotlines listed in this pamphlet can help you reach local organizations that can provide further assistance. Do not be afraid to contact these organizations! They are here to help you."

Federal agencies, including DOS and HHS, also publicize the existence of the hotline through a variety of publications and on their respective websites. Specifically, the HHS Rescue and Restore campaign and the Department of Homeland Security (DHS) Blue Campaign—both designed to combat human trafficking—reference the NHTRC hotline. The White House also publicizes the NHTRC hotline number on its website in order to help raise awareness and fight human trafficking.

III. THE HOTLINE CONCEPT AT THE STATE LEVEL

A. State Requirements to Post Information about the NHTRC Hotline

22 states have enacted legislation providing for the posting of information about state or national hotlines, including the NHTRC hotline. Evidence suggests that mandatory posting of the NHTRC hotline increases call volume, which in turn leads to more tips. In 2007, Texas became the first state to mandate posting of the NHTRC hotline in outfits with liquor licenses and lodging establishments cited for nuisance violations. Today, more than 35,000 establishments in Texas post materials relating to the hotline and it is now one of the states from which the NHTRC hotline receives the most calls.

Notably, in most states the majority of callers learn about the NHTRC hotline online. In contrast, in Texas callers most often report learning about the hotline by seeing posters. This suggests that the NHTRC hotline posting laws work and can have a tangible impact in helping to successfully identify victims of trafficking and facilitate their escape from their trafficking situations.

Since 2007, the following states have followed Texas' lead: Alabama, Arkansas, California, Connecticut, Georgia, Hawaii, Kansas, Mississippi, Louisiana, Maryland, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Pennsylvania, Vermont, Virginia, and Washington. The majority of these states require the creation of a poster containing specific information about the NHTRC hotline—including its toll-free telephone number, 24/7 operating schedule, confidential nature, and the availability of translators. Indeed, the statutes enacted by Alabama, Arkansas, California, Georgia, Hawaii, Kansas, Louisiana, Maryland, Montana, Ohio, Pennsylvania, and Vermont include detailed descriptive language that must be posted. Nebraska and Virginia have delegated to state officials the task of developing such language, while Washington's weaker statute provides only that state officials *may* work with victim advocates to develop language to be included in a hotline poster.

Only Alabama, Arkansas, California, Connecticut, Georgia, Hawaii, Louisiana, Maryland, Pennsylvania, Texas, and Virginia *require* that certain establishments post hotline information. Typically, such a law extends to establishments likely to be frequented by victims of human trafficking or those with whom they have contact (*e.g.,* bars, hotels found to be prostitution and drug nuisances, strip clubs, rest stops, bus depots and train stations). Maryland, for example, requires postings in all truck and rest stops as well as lodging establishments where arrests led to convictions for prostitution, solicitation of a minor, or human trafficking. Similarly, Alabama, Georgia, and Pennsylvania require all strip clubs, truck and rest stops, airports, train stations, bus stations, hotels and personal service establishments cited as nuisances for prostitution, and some with a wine, beer, or liquor licenses, to display NHTRC information in English and Spanish. Other states rely on the willingness of business owners to post information about the NHTRC hotline voluntarily—an approach that may be of limited value where a business owner himself or herself is engaged in human trafficking activity.

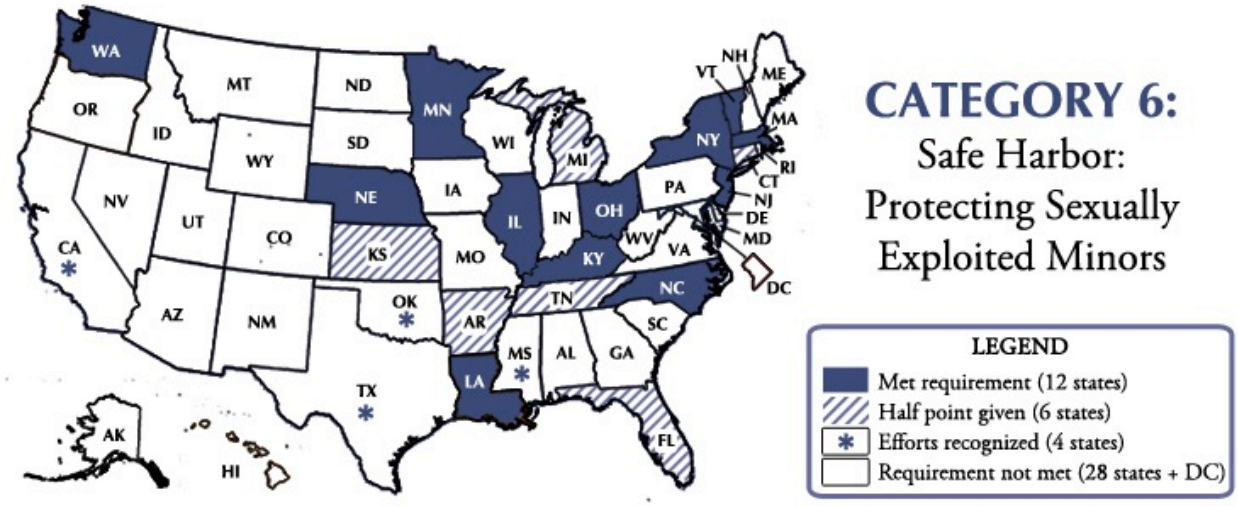
B. States That Do Not Have Posting Requirements Yet Do Have Legislation About Hotlines

Three states—Minnesota, Tennessee, and Oklahoma—have not established any requirement with respect to the posting of hotline information. However, these states have enacted legislation addressing the creation of state human trafficking hotlines. Minnesota's statute requires the state to contract with a non-profit entity to ensure the provision of hotline services, and demands that the hotline offer language interpreters, screen trafficking victims and provide appropriate referrals to attorneys and victims' services organizations. Similarly, Tennessee's law requires the state bureau of investigation to establish a law enforcement-run hotline and encourages certain establishments to post the hotline. Oklahoma's statute merely provides that the state *may* create such a hotline if it wishes to do so. Mississippi simply creates a human trafficking coordinator who is responsible for promoting public awareness about services, including national hotline information. It does not specifically require any posting of information about NHTRC.

IV. CONCLUSION

Statutes mandating or incentivizing the display of posters and other informational material relating to the NHTRC hotline is extremely effective in increasing visibility and awareness of the hotline. Despite the success of NHTRC posting statutes and their indispensability to prosecutors and law enforcement, the vast majority of states still have not enacted NHTRC posting statutes. Expanding the implementation of the NHTRC hotline posting laws to these states is a critical component in providing vital services to victims and an invaluable resource for law enforcement in the fight against human trafficking. Polaris Project stands ready to continue its analysis of hotline data from NHTRC and around the world and to assist policymakers in drafting and implementing hotline legislation at the state level.

Safe Harbor –
Protecting Sexually Exploited Minors



I. INTRODUCTION

Children that have been induced or forced to engage in commercial sex are the victims of abuse, but because prostitution generally is illegal these victims are at risk of being prosecuted. When their activities are discovered they often face incarceration or detention, and are left without access to child services or victim assistance programs. Lawmakers can alleviate the harm caused to child victims who are criminalized by adopting "safe harbor" laws for minors who have been exploited through prostitution. Such legal protections should: (i) define trafficked and commercially sexually exploited children as victims of abuse and neglect, triggering a child protective response; and (ii) grant immunity from prosecution for prostitution-related offenses for any person under 18 and establish the use of safe houses as an alternative means to house these children, rather than juvenile detention; or (iii) divert arrested children from juvenile delinquency proceedings to child protection proceedings where they will have access to specialized services.

II. "SAFE HARBOR" PROVISIONS UNDER FEDERAL LAW

The federal Trafficking Victims Protection Act (TVPA)—the principal federal statute addressing human trafficking-related issues—treats those coerced into participating in commercial sex activities as victims, even if they have engaged in criminal activity. Notably, the TVPA affords these victims access to social and protective services, including medical care and safe housing.

The federal government more generally has recognized sexually exploited children—those that have third-party pimps or controllers, as well as those who do not—–as victims of a crime. Chris

Swecker, Assistant Director in the Criminal Investigation Division of the FBI, described the federal law enforcement position on children exploited through prostitution as follows:

> "Children can never consent to prostitution. It is always exploitation."

It is critical that state laws are in parity with federal laws and the federal government's view that children who are engaged in prostitution are victims of exploitation.

III. "SAFE HARBOR" PROVISIONS UNDER STATE LAW

Only 18 states—Arkansas, Connecticut, Florida, Illinois, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, North Carolina, Ohio, Tennessee, Vermont, and Washington—have enacted statutes providing some measure of safe harbor protection to minor victims of human trafficking and commercial sexual exploitation. These statutes vary in scope as described in detail below.

A. Age-Based Immunization from Prosecution

Most state safe harbor laws define what a "minor" is by specifying a maximum age under which a victim will be treated differently. Such provisions reflect the presumption that minors who have participated in criminal activity have been exploited and sexually abused.

Illinois, Nebraska, and Tennessee have enacted the most protective statutes in this regard. All state statutes provide prosecutorial immunity to anyone under the age of 18 who has engaged in prostitution-related offenses. In Illinois, an officer must refer any such case to the Illinois Department of Children and Family Services as soon as he realizes that a person charged with prostitution is a minor. In Tennessee, the officer must provide the minor with the telephone number for the National Human Trafficking Resource Center hotline and then release the victim into the custody of his or her parent or legal guardian.

Connecticut prohibits the prosecution of minors under the age of 15 engaged in prostitution-related offenses, a less protective approach than that described above. With respect to 16- and 17-year-olds, Connecticut has adopted a rebuttable presumption that such minors were coerced into prostitution—and thus lack the *mens rea* necessary to support a finding of criminal culpability.

Other states treat age as an important factor in evaluating prostitution-related activity or creating certain presumptions, but do not provide complete immunity to minors. For example, in Minnesota and New York children under the age of 16 who are engaged in or have engaged in commercial sex acts are eligible to participate in conditional diversion programs (discussed in section II.B) rather than automatic immunity. In Kansas, when a law enforcement officer reasonably believes a person under 18 is a victim of human trafficking or otherwise being exploited sexually, he must take him or her into protective custody and deliver the child to a staff secure facility—the minor will not be placed in a juvenile detention facility in such cases. Louisiana presumes that a child under the age of 18 who has engage in commercial sex acts is a victim in need of appropriate care and services. Arkansas' law simply recognizes that the criminal justice system is inappropriate for sexually exploited children—defined as persons

under the age of 18—and states that they should be diverted toward welfare, crisis and housing services whenever possible. Michigan's law reflects the bare minimum—rather than create a safe harbor law, it simply states that a person who solicits prostitution must be 16 years of age or older to be guilty of a crime.

While Texas has not enacted a statute providing a safe harbor to exploited children that have engaged in prostitution, one has been established by case law. The Texas Supreme Court has held that a child under the age of 14 may not be charged with prostitution because, under statutory rape laws, children may not legally consent to sex. This ruling represents a victory for child trafficking victim advocates. That said, children aged 14 and older remain completely vulnerable in Texas to prosecution for prostitution-related offenses.

B. Conditional Diversion

The ideal safe harbor law would completely protect any minor who is engaged in prostitution; however, most state statutes that provide some measure of protection to minors seek to divert them from prosecution if certain conditions are satisfied. For example, in Ohio, diversion is available if the minor first completes "diversion actions" (*e.g.,* treatment) established by a court. In such a case, the court will dismiss and expunge the underlying criminal charge. In Massachusetts, a child who engages in prostitution-related acts is recognized under the law as a "sexually exploited child" eligible to participate in certain diversion programs and entitled to access to an advocate. Once the minor completes certain court-ordered programs, the criminal charges will be dismissed. In Kansas, the court may direct a child to be held in protective custody upon verified application that the child has been subjected to human trafficking or commercial sexual exploitation.

In other states, diversion programs may be unavailable to a minor that is a prior offender. New York's statute *allows* diversion in such cases—at the discretion of the sitting judge—but does not *require* such diversion. Similarly, Washington permits the prosecutor to determine whether diversion is appropriate in a given case. In Louisiana, a child may be diverted to specialized services upon petition if the commercial sex act charge is his or her first offense. If it's not a first offense, however, whether or not to continue with a delinquency proceeding with be within the discretion of the district attorney. Vermont's statute provides even greater discretion to the state, establishing that it *may* divert *any* minor defendant into a Child In Need of Supervision program, despite the fact that children are granted immunity from prosecution under the state's criminal statutes.

C. Funding

Several states with safe harbor laws do not provide for funding for services for child trafficking victims. Arkansas, Florida, Illinois, Kansas, Kentucky, Louisiana, and Washington, however, do include such provisions, which could serve as models for other states. Illinois and Washington create steep fees for impounding the cars of "Johns" who have been arrested for solicitation. In Illinois, the John will be charged $1,000 to reclaim his car, $500 of which will be deposited into the Violent Crime Victims Assistance Fund and used to provide services to victims. In Washington, the safe harbor statute creates a $2,500 fine for impounding vehicles (a recent jump from $500) to provide funds for a prostitution prevention and intervention account. All those

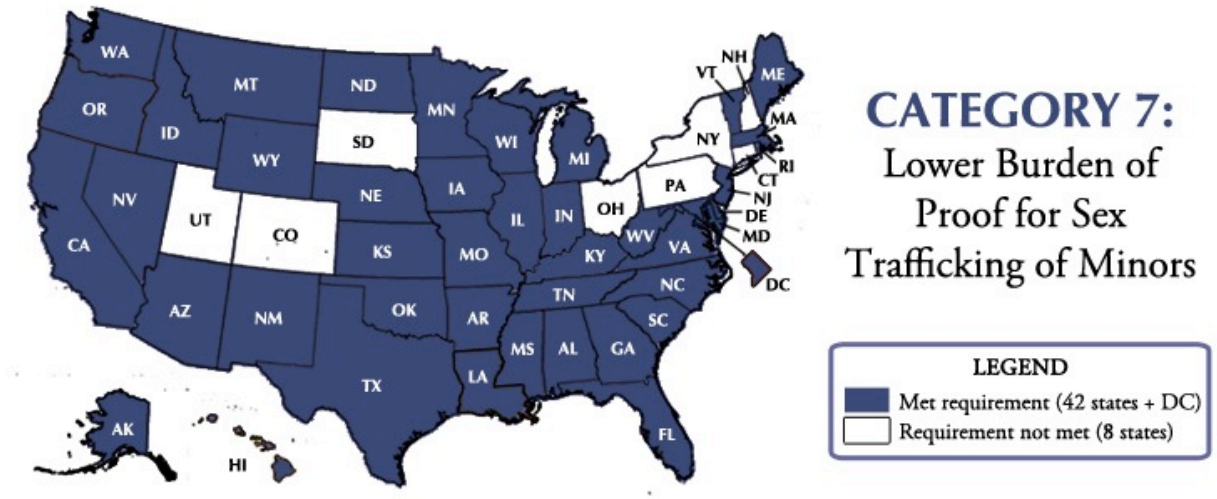
convicted of trafficking children for sexual purposes in Louisiana will be required to pay $2,000 in addition to any other fines or penalties. Florida takes a broader approach, fining all Johns $5,000 for violating prostitution laws, whether their cars were impounded or not. Approximately $4,500 of that fee will be deposited in the Operations and Maintenance Trust Fund of the Department of Children and Family Services for the sole purpose of funding safe houses and services. Arkansas provides that any person who pays for sexual activity or engages in sexual solicitation must—in addition to his or her sentence—pay $250 that will be deposited into the Safe Harbor Fund for Sexually Exploited Children.

IV. CONCLUSION

The reality is that most of the country has failed to recognize that children who are engaged in acts of prostitution and related activities are *victims*, and not *criminals*. As a result, many minors are left at the mercy of the criminal justice system, without access to critical social services. Polaris Project stands ready to assist policymakers to develop and implement fulsome "safe harbor" laws to ensure that children receive the protection and assistance that they need and deserve.

Lower Burden of Proof

for Sex Trafficking of Minors



I. INTRODUCTION

Requiring prosecutors to show that force, fraud, or coercion has been used to compel a child to perform a commercial sex act makes it more difficult for the state to obtain a conviction against the trafficker and is incongruent with the notion that children are unable to consent to commercial sexual activity. By eliminating the need to prove force, fraud, or coercion in cases involving the sex trafficking of minors, it will be easier for states to successfully prosecute traffickers and protect children within their borders.

II. THE BURDEN OF PROOF UNDER FEDERAL LAW

The Trafficking Victims Protection Act (TVPA), enacted in 2000 and amended in 2003, 2005, 2008, and 2013, defines the sex trafficking of a victim aged 18 years or younger as a "severe form of trafficking," and provides that in such cases the prosecution need not establish that a perpetrator compelled the victim's participation through force, fraud or coercion. The TVPA reasons that because minors lack the capacity to consent to sexual activity, any commercial sex act involving a minor is *per se* coerced. The TVPA does not adopt the same approach with respect to minors who are victims of labor trafficking. In such cases, the prosecution must prove that the child was forced to work under threat of serious harm or physical restraint, or threatened with as much.

III. THE BURDEN OF PROOF UNDER STATE LAW

42 states and the District of Columbia have enacted statutes providing for a lower burden of proof in cases of sex trafficking involving minors. These states include: Alabama, Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,

Montana, Nevada, Nebraska, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The statutes in each of these states criminalize the trafficking of a minor with the intent to cause the minor to engage in a commercial sex act—regardless of whether the child was forced, defrauded, or coerced into performing that act. Other states may have statutes with lower burdens that are found within their prostitution or promoting prostitution statutes—especially those that deal with the exploitation of minors.

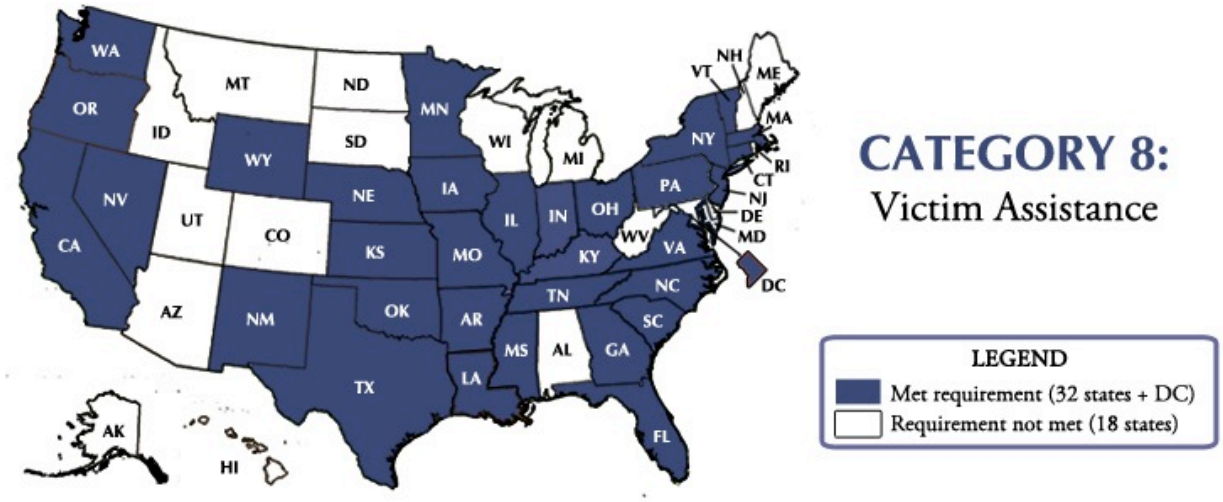
In 2012, Indiana amended their sex trafficking statute to eliminate the criminal elements of force, fraud, or coercion for minors ahead of the 2011 Super bowl, which subsequently resulted in the prosecution of a pimp who was exploiting a 15 year old girl. Prosecutors noted that had it not been for this law, they would not have been able to successfully prosecute the trafficker.

Some states—including Alabama, Alaska, Florida, Louisiana, Minnesota, Missouri, North Dakota, Rhode Island and Texas—also have enacted statutes explicitly providing that the prosecution need not establish that a perpetrator had actual knowledge of a minor's age in order to be convicted of the sex trafficking of a minor. In Alabama, for example, actual knowledge of the minor victim's age is not required and a reasonable mistake in estimating the age of a victim is not a defense. Similarly, Missouri's statute provides that a perpetrator's lack of actual knowledge of a victim's age is not an affirmative defense.

IV. CONCLUSION

Statutes establishing a lower burden of proof in cases involving the sex trafficking of minors protect these victims from further trauma, while also harmonizing human trafficking statutes with statutory rape laws and the underlying diminished capacity of minors. These laws also make it easier for law enforcement and prosecutors to target those who engage in the sex trafficking of minors. Polaris Project stands ready to assist other policymakers in enhancing and implementing such statutes at the state level.

Victim Assistance



I. INTRODUCTION

In order to have a comprehensive and effective legal framework to combat human trafficking, state legislature's need to enact legislation that assists victims in recovery and provides them with services such as counseling, housing, educational and vocational training, and medical and legal assistance. By providing such services, states are giving victims the best possible chance of recovering from their trafficking situation. Both the federal government and states can help to ensure the availability of funding for victim assistance programs, as well as coordinate the delivery of services through the creation of victim assistance plans.

II. VICTIM ASSISTANCE UNDER FEDERAL LAW

The United States federal government provides assistance to victims both directly and indirectly by funding state, local, and tribal programs.

A. The Trafficking Victims Protection Act

Under the federal Trafficking Victims Protection Act ("TVPA"), enacted in 2000 and amended on several subsequent occasions, the U.S. Department of Health and Human Services ("HHS") is authorized to grant federal and state benefits to foreign victims of human trafficking. The HHS may grant such benefits to foreign victims to the same extent that such benefits are available to refugees admitted to the United States. Certification and Eligibility Letters—which facilitate access to the benefits—are issued to victims of trafficking by the HHS Office of Refugee Resettlement ("ORR"). ORR also provides funding for services to foreign victims of trafficking and potential victims in the United States. The ORR National Human Trafficking Victim Assistance Program funds comprehensive case management for foreign victims of trafficking and potential victims in the United States seeking HHS/ORR certification throughout the country.

In 2008, the TVPA was amended to correct a "service gap" between domestic trafficking victims (U.S. citizens and Lawful Permanent Residents "LPRs") and foreign national trafficking victims. Under prior versions of the TVPA, domestic victims were not provided specialized services that were offered to foreign national victims, even when the victims were subject to the same human rights violations. The 2008 reauthorization of the TVPA directed HHS to, within one year of the reauthorization's being signed into law, submit a report to Congress regarding the service gap, with the aim of identifying and ending the gap and providing justification for appropriations to fund all TVPA-authorized programs for domestic and foreign national victims. While there is authorization for funding for U.S. citizens and LPRs, as of the release of this report, no money has been appropriated for this program. Thus, the gap in services remains.

B. The Crimes Victims Fund

The federal government also assists victims of human trafficking through the Office of Victims of Crime ("OVC"), which is part of the U.S. Department of Justice. The OVC was established in 1988 through an amendment to the Victims of Crime Act of 1984 ("VOCA"), and is charged with administering the Crime Victims Fund (the "Fund"). The Fund, which is financed by fines and penalties paid by convicted federal offenders, reached a balance of more than $8 billion as of September 30, 2012. The OVC provides grants and set-asides to federal, state, and tribal assistance programs to support a wide variety of services and programs that help victims deal with the immediate aftermath of crimes against them and with rebuilding their lives in the longer term.

C. The Justice Assistance Grant Program

The Edward Byrne Memorial[12] Justice Assistance Grant ("JAG") Program is administered by the Bureau of Justice Assistance (another part of the U.S. Department of Justice) and is the leading source of federal justice funding to state and local governments. The JAG Program provides state, local, and tribal governments with funding to support programs for crime victim and witness initiatives, law enforcement, prosecution, courts, crime prevention and education, corrections, drug treatment and enforcement, planning, evaluation, and technology improvement.

Crime victim and witness protection programs receiving grants from the JAG Program provide activities including legal, medical, counseling, advocacy, or educational services to crime victims. The programs also offer training through instruction and distribution of training materials appropriate for crime victims and/or witnesses.

III. VICTIM ASSISTANCE UNDER STATE LAW

More than half of all states, as well as the District of Columbia, have enacted statutes that target assistance to victims of human trafficking. These states include Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wyoming. Each of these states has enacted a statute that addresses one

[12] The JAG Program is named after Police Officer Byrne, who was killed at the age of 22 by a violent drug gang in New York City while guarding the home of a witness who had agreed to testify in court against local drug dealers.

or more of the following topics, which are critical to a victim's ability to adjust to life after trafficking: (i) living assistance; (ii) educational and employment services; (iii) immigration and citizenship services; (iv) certification and documentation; (v) funding; and (vi) caseworker privilege. Furthermore, some states have enacted statutes that implement plans for future assistance.

Additionally, several states—including Alabama, Arizona, Hawaii, Idaho, Illinois, Indiana, Iowa, Missouri, New Hampshire, Pennsylvania, Tennessee, and Wyoming—have enacted statutes that facilitate restitution for victims of human trafficking. While these statutes may not provide specific services or funds to victims, they still provide valuable assistance by allowing courts to order offenders to pay restitution to victims.

A. Living Assistance

Most states that provide assistance to victims of human trafficking provide at least some form of living assistance. These state statutes provide a diverse range of benefits, with varying levels of financial and administrative support from the state. Some of these benefits include:

Financial assistance. Several states—including California, Florida, Georgia, Illinois, Iowa, Minnesota, New Mexico, South Carolina, Texas, and Virginia— provide direct financial assistance to trafficking victims. New Jersey's statute limits financial assistance to victims who have suffered personal injury. Other states, such as Massachusetts, Missouri, North Carolina, and New York, provide financial assistance indirectly by giving funds to local non-profit organizations and/or community-based programs, which then provide funds to victims.

Medical services. A number of states have enacted statutes that facilitate the provision of physical and/or psychological medical services to victims of human trafficking. These states include: Florida, Minnesota, New Jersey, North Carolina, Oklahoma, Virginia, and Washington. It is worth noting that California recently expanded its statute to provide voluntary tattoo removal services to victims who were tattooed for identification purposes in trafficking or prostitution. State statutes vary with regard to when and how medical services are provided. For example, New Mexico provides medical services including mental health counseling. Missouri provides medical benefits, but only indirectly by funding local non-profit and community-based centers, which then provide such services to trafficking victims.

Assistance securing housing and/or food. Several states, including Florida, Ohio, Oklahoma, South Carolina, Virginia, and Washington, help victims to secure food and/or housing, sometimes through shelters. Missouri and Texas provide such benefits indirectly by providing funds to local non-profit and community-based centers, while New Mexico provides such benefits only until federal assistance is made available to victims.

Legal services. Some states provide for or coordinate the delivery of various legal services to trafficking victims. For example, Minnesota has enacted a statute instructing state officials to recommend a plan that would coordinate legal and other services. Oklahoma's statute expressly states that human trafficking victims should be given access to legal assistance, information about their rights, and translation services, as necessary. And the New Mexico statute entitles victims to case management and legal assistance services.

Protection from traffickers. A number of states have enacted laws that are meant to provide additional protections to trafficking victims. For example, Indiana passed a statute that aims to ensure that the names and identifying information of victims and victims' families are not disclosed to the public. Similarly, South Carolina's statute punishes, by fine and/or imprisonment, persons who publish, disseminate, or otherwise disclose the location of a trafficking victim or trafficking shelter without authorization. Furthermore, South Carolina requires that trafficking shelters post signs stating that trespass is forbidden. A Vermont statute also allows victims to enter into an address confidentiality program run by the Secretary of State. And a Wyoming statute provides that, in the prosecution of a human trafficking offense, the police and prosecuting agencies must keep the identity of the victim and the victim's family confidential, and the prosecutor must take reasonable steps to protect the victim and his or her family from being revictimized.

Family reunification. An important but rarely-supplied service is assistance locating and reuniting with family members. Tennessee's statute offers such assistance.

In addition to enumerating the availability of the benefits described above, some state statutes discuss the logistics of how such assistance is provided and accessed. A number of states—such as Connecticut, Georgia, Missouri, North Carolina, Ohio, Tennessee, Texas, Virginia, and Washington—have enacted statutes providing for coordination among various state departments to improve the success of victim assistance programs. For example, Connecticut's statute provides for a "coordinated response system" to assist victims. Similarly, Georgia has tasked its Criminal Justice Coordinating Council with coordinating the activities of "various law enforcement agencies, the courts, and social service delivery agencies."

Furthermore, Nebraska enacted a statute establishing a task force within the Nebraska Commission on Law Enforcement and Criminal Justice to investigate and study human trafficking, the methods for advertising human trafficking services, and the victimization of individuals coerced to participate in human trafficking. Part of the tasks force's mission is to research and recommend a model of rehabilitative services for victims of human trafficking that includes input from the areas of law enforcement, social services, the legal profession, the judiciary, mental health, and immigration.

B. Educational and Employment Services

Many states offer various educational and employment services to victims of human trafficking, including the following:

Employment and/or educational services for victims. Several states provide job placement, job training, job retention, and/or educational services to trafficking victims to help them achieve stable and independent lives. These states include: California, Florida, Minnesota, New Mexico, Ohio, and Washington.

Access to Information about traffickers. Many victims of human trafficking fear for their safety or that of their family members, even after their traffickers have been arrested. As a result, several states have enacted laws that facilitate the provision to victims of information about the status of legal proceedings against their traffickers. For example, Georgia, New Jersey, and North Carolina have enacted statutes that provide victims with access to information about a trafficker's possible pretrial release, and/or educate victims about their rights and roles in the state criminal justice process. Such provisions help to empower victims of human trafficking offenses.

Education about rights and benefits. A number of states—including New Jersey, North Carolina, Oregon, Tennessee, Texas, and Virginia—have enacted statutes providing for victims of human trafficking to be informed about benefits available through the state or through community-based centers, and/or their rights under the state legal system. For example, a Texas statute provides for the creation of a searchable database to include assistance and grant programs.

Public awareness. Several states—including Connecticut, Missouri, Ohio, Tennessee, and Texas—disseminate information to various state agencies and/or their state legal systems regarding the rights of, and ways to assist, victims of human trafficking. Some states also focus on disseminating information to local centers and organizations to improve their public services. Other states, such as Florida, Virginia, and Washington, work to educate the general public to raise awareness about human trafficking with the hope of protecting potential victims, identifying current victims, and providing assistance to freed victims. Interestingly, Mississippi law creates a specific position of a statewide human trafficking coordinator within the Attorney General's office, whose duties include collecting data on human trafficking and promoting public awareness about human trafficking, among other duties.

C. Immigration and Citizenship Services

A number of state statutes provide services related to the immigration and/or citizenship status of victims of human trafficking. Many victims enter the United States without identifying legal documentation, which may prevent them from being eligible for federal or state benefits and protections. Approximately a dozen states have enacted statutes to address this issue.

For example, California, Florida, and Missouri have enacted statutes establishing that non-citizen victims of human trafficking are entitled to receive the same benefits and services as refugees. Similarly, Iowa, New Mexico, and North Carolina have enacted statutes providing victims of human trafficking with the same rights as other victims of a crime, regardless of their immigration status.

Other states, such as Louisiana, Minnesota, New Jersey, New York, and Vermont, have enacted statutes providing immigration and/or translation services to victims. Immigration services may include assistance with the U.S. Citizenship and Immigration Service ("USCIS") Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons, or assistance with obtaining the certifications or endorsements necessary to receive federal benefits or services. Finally, Virginia's statute offers victims assistance in returning to their places of origin if they so desire.

D. Certification and Documentation

Certain federal and state benefits and legal protections may be available to victims only after their status is certified, documented, or otherwise established. Several states have enacted statutes intended to facilitate this process.

For example, California's statute requires law enforcement agencies to document the basis for a victim's status as such, using a specified form, within 15 business days of encountering that victim. Similarly, North Carolina's statute states that the Attorney General must issue to the victim a letter of certification of eligibility or other relevant documentation for benefits and services within 96 hours of receiving notification. Missouri's statute is less detailed, and simply requires law

enforcement officials to "notify" relevant state agencies about a victim's status "as soon as possible" so that those agencies can determine whether the person may be eligible for state and/or federal services, programs, or other assistance. Indiana, Kansas, New York, and Vermont also have adopted notification and assessment requirements.

An Illinois statute requires that a prosecutor or law enforcement official certify in writing to the U.S. Department of Justice or other federal agency circumstances in which a trafficking victim is willing to cooperate with an ongoing investigation. This enables the victim to qualify for an appropriate special immigrant visa and access available federal benefits if otherwise eligible.

E. Funding

As discussed above, many states provide medical services, housing assistance, job training, and direct financial assistance to victims and to organizations that assist victims of human trafficking. Such benefits require funding. Several states have enacted statutes that explicitly provide funding for these purposes.

A number of these statutes specify that state funds will be used to support such services to the extent that federal funding is not available. For example, California's statute instructs agencies to rely on federal funding in the first instance, but explains that state funding shall support the provision of victim assistance and services to the extent needed. Florida's statute requires the Florida Department of Children and Family Services to create state-funded social services programs to provide victim services during the period before federal processing is complete. Similarly, a New Mexico statute explains that victims will be eligible for benefits and services from the state until they qualify for benefits and services authorized by federal statute.

The Massachusetts statute is more expansive, and provides for the establishment of a Victims of Human Trafficking Trust Fund. The fund is supported by fines and proceeds from the sale of assets seized and forfeited from violators of trafficking laws. Mississippi, Nevada, Ohio, Tennessee, and Texas have established similar funds by statute.

F. Caseworker Privilege

Victims must disclose certain information to their caseworkers in order to receive assistance. But communicating this information is often painful, embarrassing, or frightening for victims of human trafficking. Moreover, such information may expose victims to potential criminal liability for crimes they were forced or coerced to commit (such as violation of prostitution, begging, or other such statutes). It therefore is critical for victims to have confidence that their caseworkers are on their side and will keep such information confidential.

Some states have adopted laws providing for a "caseworker privilege" similar to the attorney-client or doctor-patient privilege. For example, the District of Columbia's statute provides that a human trafficking counselor may not disclose a confidential communication from a victim except where specifically required by statute or court of law, where authorized in writing by the victim, where necessary to protect the victim or others from a substantial risk of imminent and serious physical injury or kidnapping, where aggregated for statistical purposes and stripped of personal identifying information, or where necessary to defend against a lawsuit filed by the victim. Similarly, Kentucky's statute provides that a human trafficking victim may refuse to disclose, and may prevent any other

person from disclosing, confidential communications made to a counselor, psychotherapist, or person employed to render services to trafficking victims.

G. Plan for Assistance

Arkansas does not currently provide services specifically intended for victims of human trafficking. However, the state recently enacted a statute directing the state Department of Human Services to develop a state protocol for assisting victims of human trafficking with applying for federal and state benefits and services to which the victims may be entitled.

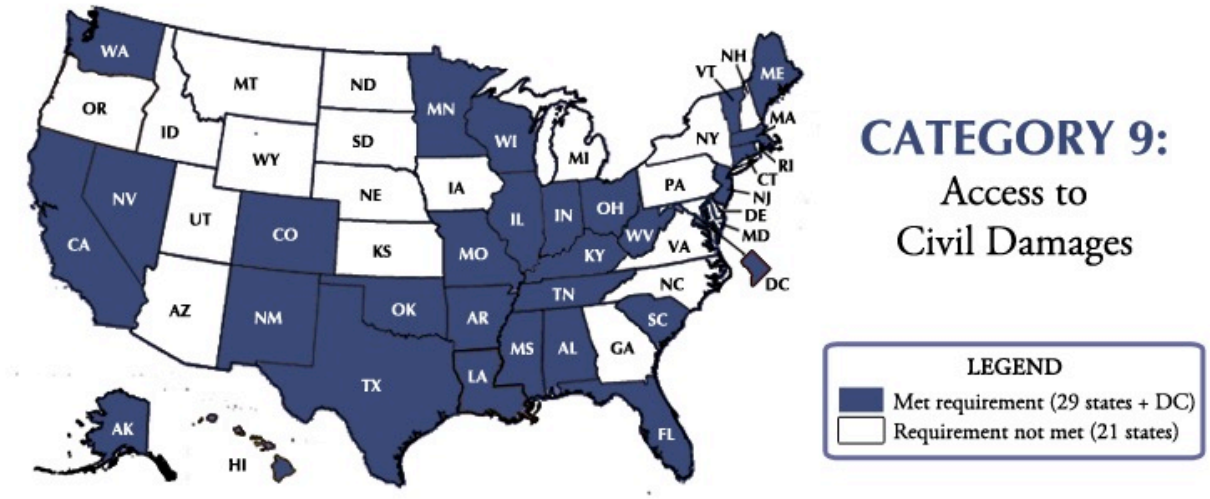
Similarly, Louisiana enacted a statute directing the state Department of Children and Family Services, in conjunction with the state Department of Health and Hospitals, to develop a plan for the delivery of services to child victims of human trafficking. That plan will include provisions for identifying victims; assisting with applying for federal and state benefits and services; coordinating the delivery of health, housing, education, job training, child care, legal, and other services; preparing and disseminating educational materials; and other victim assistance.

Pennsylvania also enacted a statute requiring the development of a plan for a coordinated response system to the extent federal or state funds are available. The statute explains that the plan should address services such as housing, psychological counseling, medical assistance, substance abuse counseling, child care, access to employment and educational opportunities, legal assistance, and social case management.

IV. CONCLUSION

Although there is no "one-size-fits-all" solution when it comes to assisting victims of human trafficking, all states would be well-served by a statutory framework that provides services and assistance to such victims. The ideal statute would ensure that state agencies develop and implement a comprehensive and cohesive plan to provide victims with assistance securing critical services—including but not limited to housing, food, and medical, psychological, legal, employment, educational, and immigration services. The ideal statute also would ensure the effectiveness of these programs by establishing a "caseworker privilege" and guaranteeing necessary funding. Polaris Project stands ready to assist policymakers in developing and implementing such statutes and programs at the state level.

Access to Civil Damages



I. INTRODUCTION

Civil litigation is an enormously powerful tool for victims of human trafficking seeking redress from those who have harmed them. Through the use of civil remedies victims can recover actual damages, compensatory damages, punitive damages, injunctive relief, and attorney's fees and costs. Since victims drive the decision-making process in civil courts, the ability to file a law suit against one's trafficker can be a very empowering tool for survivors. States should make these legal mechanisms available to all victims of human trafficking.

II. ACCESS TO CIVIL DAMAGES UNDER FEDERAL LAW

The federal Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA") provides a specific mechanism allowing many trafficking victims to file civil law suits in an appropriate federal district court and recover damages (actual and punitive) and reasonable attorney fees and costs. Under the TVPRA, the claim must allege one of three kinds of harm: (i) forced labor; (ii) trafficking into servitude; or (iii) sex trafficking by force, fraud, or coercion, or of a child under the age of 18. Punitive damages in such cases can be extensive, so the ability to file such a claim can provide a victim with a valuable opportunity to receive compensation. High punitive awards also may deter other current or would-be traffickers. The TVPRA does not indicate a statute of limitations for filing human trafficking civil suits, permitting victims to bring actions for civil damages years later.

For example, in *Gurung v. Malhotra*, a recent case in the Southern District of New York, the plaintiff employed Section 1595 of the TVPRA to obtain civil damages.[13] The plaintiff in that case moved from India to the United States to work for the defendants, a married couple, after they promised to pay her approximately $108 per month for three years in exchange for light cooking and cleaning

[13] 851 F. Supp. 2d 583 (S.D.N.Y. Feb. 22, 2012).

and occasional assistance with house parties. However, over the course of approximately 40 months, the defendants forced the plaintiff to work 16 hour days completing more difficult and humiliating tasks, withheld food to the point that the plaintiff lost more than 60 lbs and became severely underweight, and seized her passport and visa. During this time, the defendants only paid the plaintiff a single payment of less than $120. The plaintiff managed to escape her captors, but became very sick, which she attributed to the stress, abuse, and malnutrition she experienced at the hands of the defendants.

The plaintiff brought a total of twenty claims under various federal and state human rights and labor statutes, as well as under common law. She sought damages for emotional distress under the TVPRA, for which the court awarded $500,000. Furthermore, the court recommended punitive damages of $300,000. After considering other claims for damages, the court recommended that the plaintiff be awarded a total of $1,228,797, plus $220,898 and $8,640 in legal fees and costs, respectively.

Also in 2012, a district court in the Eastern District of Virginia awarded large civil damages under the TVPRA. In *Doe v. Howard*, the court found that the defendants, another married couple, violated the TVPRA by inducing the plaintiff to travel from Yemen to Japan and forcing her to provide involuntary labor and sexual services.[14] The court further noted that the husband used physical force to restrain the plaintiff, and that both defendants psychologically manipulated the plaintiff to compel her labor and services, limited her contact with the outside world, and verbally, physically, and mentally abused her. The court determined that the plaintiff was entitled to $1,250,000 in compensatory emotional distress damages for the forced sexual servitude, $44,500 in compensatory damages for forced labor and trafficking, and $2 million in punitive damages for the defendants' "intentional egregious and outrageous conduct." After considering wage restitution and unjust enrichment damages, the court awarded a judgment in the plaintiff's favor for a total of more than $3.3 million.

Another federal court in the Southern District of Florida awarded more than $13.5 million in damages to 18 plaintiffs for violations of the TVPRA. In *Magnifico v. Villanueva*, the court found that the two defendants fraudulently recruited the plaintiffs from the Philippines and the United States to work in country clubs and hotels.[15] The defendants forced the plaintiffs to live in severely overcrowded housing, work overtime without compensation, and accept high deductions from their paychecks for food, housing, and transportation. The defendants threatened the plaintiffs such that they believed they had no other choice but to continue working and living in these conditions. Based on these facts, the court awarded each of the 18 plaintiffs between $342,208 and $1,283,018.

III. ACCESS TO CIVIL DAMAGES UNDER STATE LAW

Twenty-nine states and the District of Columbia have enacted statutes allowing trafficking victims to pursue civil remedies against their traffickers. These states are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin.

---

14 2012 U.S. Dist. LEXIS 125414 (E.D.VA Sept. 4, 2012).

15 2012 U.S. Dist. LEXIS 158544 (S.D. FL Nov. 2, 2012).

Although Kentucky and Mississippi allow for civil damages, they do so only in the event of a criminal conviction of the defendant. Conversely, a New Jersey statute explicitly states that the fact that a prosecution for human trafficking against the defendant has not been instituted or, whenever instituted, terminated without a conviction, does not preclude a civil action.

Two critical issues discussed by these statutes are: (A) the types and amounts of damages available; and (B) the periods within which a civil action must be brought so as not to be time-barred.[16]

A. Types and Amounts of Civil Damages

Nearly all of the states that have enacted statutes enabling victims to pursue civil remedies allow for the award of actual damages. Yet only approximately one-third of these states allow victims to pursue compensatory damages, and only approximately half have enacted statutes allowing victims to pursue injunctive relief, punitive damages, attorney's fees, or costs. Alabama, Arkansas, California, Florida, Louisiana Massachusetts, Mississippi, Nevada, New Mexico, South Carolina, Washington, West Virginia, and Wisconsin have each enacted statutes permitting a court to award treble damages where the defendant's acts were demonstrably willful and malicious. Texas' statute is unique in that it explicitly permits an award of damages based on a victim's mental anguish, even in the absence of other injury.

Minnesota's statute permits damages to be assessed against business entities, in addition to individual defendants. More specifically, the statute allows victims to seek civil damages from business entities, and provides that a court may order, when appropriate: (i) the dissolution or reorganization of a business entity; (ii) the suspension or revocation of any license, permit, or prior approval granted to the business entity by a state agency; or (iii) the surrender of the business entity's charter (if it is organized under Minnesota law) or the revocation of the business entity's certificate to conduct business in Minnesota (if it is not). Washington's statute similarly permits victims to seek civil damages from business entities involved in human trafficking, while Illinois' statute permits the same with respect to entities that have recruited, harmed, profited from, or maintained a victim in the sex trade.

In contrast, a number of states have enacted statutes that explicitly limit the damages that may be awarded to trafficking victims. For example, Connecticut, Missouri, and Washington have statutes that explicitly cap the amount of civil damages that may be awarded to a victim; Connecticut's statute limits damages to $1,000 for each day the victim was held; Missouri's statute limits damages to $50,000 for each offense; and Washington's statute limits damages to $250,000 (plus costs and attorney's fees). Hawaii's statute restricts the damages that may be awarded to economic damages proximately caused by trafficking activity. Florida's statute is more restrictive and explicitly bans punitive damages, and further provides that the *victim* must pay the reasonable attorney's fees and costs of the defendant if the court finds that the victim raised a claim which lacked substantial factual or legal support.

Some state statutes explicitly address legal fees. For example, Kentucky's statute states that, if the plaintiff prevails, he or she is entitled to attorney's fees and all other costs incurred in bringing the

---

16 State and federal employment law protections—including wage and hour laws, anti-discrimination and anti-harassment statutes, and tort remedies—also may provide victims with much-needed economic resources, in addition to penalizing the trafficker financially.

action, including but not limited to the services of expert witnesses, testing and counseling, medical and psychological treatment, and other expenses reasonably incurred as a result of the criminal act. Similarly, a Louisiana statute states that a prevailing plaintiff shall be awarded court costs and attorney fees. And a Mississippi statute provides for attorney's fees in the trial and appellate courts and reasonable costs for investigation and litigation.

B. Time Limits for Filing a Civil Suit

Although most of the states identified above have not explicitly limited the period within which a victim may bring a civil suit against a trafficker, the following states have imposed such limitations periods:

California. A victim must bring a civil suit within five years of the date on which he or she was freed from the trafficking situation, or, if the victim was a minor at such time, within eight years after the date he or she attains the age of majority.

Indiana. A victim must bring a civil suit not more than two years after the date on which the perpetrator was convicted of the underlying human trafficking offense.

Maine. A victim must commence the civil suit within ten years of the date on which he or she was freed from the trafficking situation.

Massachusetts. A victim must commence a civil suit within three years of the date on which he or she was freed from the trafficking situation or, if the victim was a child during the commission of the offense, within three years of the date on which he or she attains the age of eighteen.

Missouri. A victim must bring suit within ten years of the later of: (i) the issuance of a final order in the related criminal case; (ii) the victim's emancipation from the trafficking situation; or (iii) the victim's eighteenth birthday.

New Mexico. A victim must file the action within ten years from the date on which: (i) the defendant's human trafficking actions occurred, or (ii) the victim attains eighteen years or age if the victim was a minor when the defendant's actions occurred.

Washington. A victim (or the state) must commence civil proceedings within three years after discovering that a perpetrator has been engaged in a pattern of criminal profiteering activity, or after such pattern should reasonably have been discovered, or within three years of the final disposition of any criminal charges relating to the underlying human trafficking offense (whichever is later).

Several of these statutes explain that the limitations period may be tolled by a victim's disability, other circumstances resulting from the trafficking situation (such as psychological trauma or cultural or linguistic isolation), or the victim's status as a minor.

C. States as Parties to Civil Actions against Perpetrators of Human Trafficking Offenses

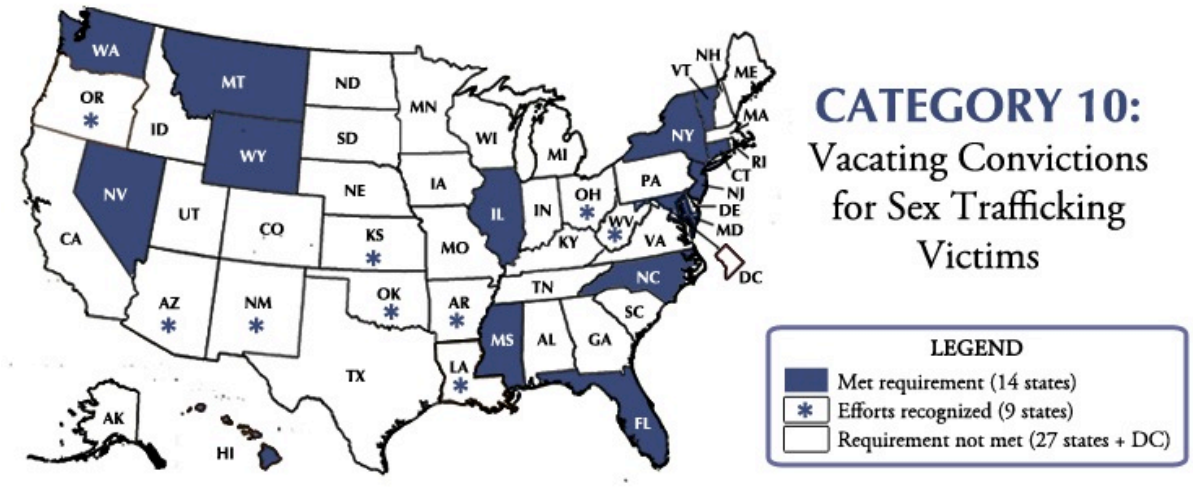
Both the District of Columbia and Washington have enacted statutes permitting the state to commence or join a civil suit against a trafficker. The District of Columbia's statute permits it to sue a trafficker for damages or restitution, or to sue third parties for damages (although any right to

receive compensation is subrogated to those of victims). Washington's statute permits the state attorney general to appear as amicus curiae or to intervene in a victim's civil suit. Upon such intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

IV. CONCLUSION

State laws permitting a victim to seek civil damages from the perpetrators of human trafficking serve a number of important objectives. Such laws not only help victims to secure some measure of compensation, but also serve to empower victims while increasing the likelihood that perpetrators are punished and potential traffickers are deterred. Polaris Project stands ready to assist policymakers to develop and implement such laws at the state level.

Vacating Convictions
for Sex Trafficking Victims



I. INTRODUCTION

Sex trafficking victims often are compelled to engage in prostitution and other criminal activity, but are not always identified as victims when they are arrested, detained, prosecuted, convicted, and/or plead guilty to these crimes. The resulting criminal records inhibit the ability of these victims to move forward with their lives because they can no longer obtain certain jobs or loans, or go to school as a result of the stigma that is attached to having to report a conviction for prostitution. States can help victims to rebuild their lives by enacting statutes that permit courts to vacate convictions for prostitution-related offenses and other non-violent crimes that victims of human trafficking were forced to commit.

II. VACATING CONVICTIONS UNDER STATE LAW

Fourteen states have enacted statutes that permit their courts to vacate the convictions of human trafficking victims. These states are: Connecticut, Florida, Hawaii, Illinois, Maryland, Mississippi, Montana, Nevada, New Jersey, New York, North Carolina, Vermont, Washington, and Wyoming.

A. The New York Statute

New York was the first state to enact legislation to provide victims of human trafficking with the ability to seek the vacatur of convictions for related criminal activity. More specifically, New York's statute, enacted in 2010, permits a victim of sex trafficking to file a motion in state court seeking to vacate his or her conviction for prostitution and related offenses where the victim's participation in the underlying illicit activity resulted from his or her status as a victim of sex trafficking. Once a judgment is vacated, it is legally null and void as if it had been overruled by a higher court.

The Criminal Court of the City of New York, Queens County, decided a motion to vacate certain convictions in *New York v. G.M.*, 32 Misc. 3d 274 (Criminal Court of the City of New York, Queens County, Apr. 29, 2011). That case involved a native of the Dominican Republic who had been forced to prostitute herself, carry drugs, and commit other crimes for her abusive husband under threat of further harm or actual violence to herself, her children, or others close to her if she did not comply. In a single five-month span during years of abuse, the woman was arrested on six separate occasions—twice each for prostitution, criminal trespass, and criminal possession of a controlled substance. The woman pled guilty in each of these cases. Years later, after the victim had suffered much physical and emotional abuse her captor abandoned her and the victim was able to seek assistance. She received a T Visa (T-1 Nonimmigrant Classification Status) after proving to the federal government that she was a victim of human trafficking. However, she still was terminated from her job as a home health care attendant after the Department of Health ("DOH") discovered her criminal convictions during a background check. The woman had to fight for nearly three years, with the help of public legal assistance, to successfully contest the DOH's decision and be approved to work again.

The woman applied to vacate the convictions to clear her criminal record. The court found that she had provided "a very compelling narrative of the circumstances surrounding all of her arrests, demonstrating that they were the product of years of brutal physical, psychological and sexual violence by her husband, which resulted in having been trafficked by him." The court therefore vacated the woman's convictions on all six counts. In doing so, the court explained that although only the two convictions that were for prostitution offenses technically were covered by the New York vacatur statute, that statute "allows the court to 'take such additional action as is appropriate in the circumstances.'" The court found that, based on the circumstances presented in this case, the woman was entitled to have all of her convictions vacated. This decision exemplifies why it is beneficial to afford judges broad discretion to vacate convictions not just for prostitution but also for other criminal acts committed as a result of human trafficking.

B. Statutes in Other States

The thirteen other states identified above have enacted statutes that mirror New York's in important respects. That said, some of these statutes make it more difficult for victims to obtain relief.

1. Scope of Vacatur

Most of the state statutes regarding vacatur of convictions have not been interpreted by a court. As a result, it is unclear how many of these statutes will be read as broadly as the New York statute discussed above.

Some state statutes explicitly reference prostitution convictions, but not other related crimes, suggesting that they may apply to fewer types of convictions than the New York statute. For example, the Connecticut statute references convictions entered pursuant to Section 53a-82 of the state's general statutes, which defines prostitution as a Class A misdemeanor. Similarly, Montana's statute states that a court may vacate a person's conviction of the offense of prostitution. North Carolina's statute also specifically references convictions for prostitution, and does not reference other crimes or convictions.

Conversely, the Florida statute is broad, and discusses "any conviction for an offense committed while he or she was a victim of human trafficking." Wyoming's statute uses very general terms,

including "a conviction," and "vacate the conviction," suggesting that any conviction that was the result of being a victim of human trafficking may be vacated. And New Jersey's statute addresses convictions of "prostitution and related offenses," suggesting it may be read broadly.

2. Time Period For Requesting Vacatur

Some state statutes limit the time period within which a victim may seek to vacate a prior conviction. For example, the Maryland statute provides that a motion to vacate convictions related to human trafficking must be filed "within a reasonable period of time after the conviction[s]." Similarly, the statutes in Hawaii, Montana, and New Jersey require that the motion to vacate be filed within a reasonable period of time after the person ceases to be a victim of trafficking or involved in trafficking. Although these statutes provide that a motion to vacate may be filed at a later time where there are reasonable concerns for the victim's safety, this exception may not be of much use to victims who may have been living in a safe environment for years without discovering the roadblocks created by their previous convictions.

In contrast, some state statutes allow victims to file motions to vacate a conviction "at any time" after the entry of a judgment. This is the case in Connecticut, Illinois, Mississippi, New York, North Carolina, and Wyoming.

3. Burden and Standard of Proof

State statutes also vary with respect to the burden of proof they impose and other obstacles to relief. Connecticut, Hawaii, and Maryland have enacted statutes that explicitly place the burden of proof on the trafficking victim seeking to vacate a prior conviction. Washington's statute goes further and does not permit a trafficking victim to have his or her record for conviction for prostitution vacated if: (i) there are any criminal charges currently pending against him or her in any court; (ii) the victim has been convicted of another crime since the date of the conviction at issue; or (iii) the victim has ever had the record of another prostitution conviction vacated.

The evidentiary standard of proof in some states also may represent an insurmountable obstacle for some trafficking victims. The statutes enacted by Vermont and Maryland, for example, require that a victim's motion to vacate a conviction describe supporting evidence with particularity, and provide documentary evidence showing that the victim is entitled to relief. Some victims will not have access to such information. Moreover, these statutes require victims to disclose sensitive information that may be painful or embarrassing for them.

However, other states have created a rebuttable presumption that should be useful to victims of human trafficking attempting to prove their cases. For example, Mississippi, Montana, New Jersey, and Wyoming provide that official documentation from a federal, state, or local government agency as to the person's status as a victim at the time of the offense creates a presumption that his or her participation in the offense was a result of being a victim of human trafficking.

4. Affirmative Defenses

Similarly, several states explicitly permit a defendant to assert his or her status as a human trafficking victim as an affirmative defense to prostitution and other criminal charges. For example, a New Jersey statute provides that "it is an affirmative defense to prosecution for [prostitution and related

offenses] that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking . . . ." However, many of the states that provide this defense do not provide a mechanism for vacating a previous conviction.

C. Vacating Versus Expunging Convictions

Several of these state statutes—including those enacted in Hawaii, Illinois, Maryland, Nevada, New York, Washington, and Wyoming—focus on *vacating* as opposed to *expunging* convictions (which would not only render those convictions null and void, but also would seal the records of earlier law enforcement and judicial processes making them unavailable through state and federal repositories).

On the other hand, the statute enacted in Vermont permits judges to vacate convictions of human trafficking victims and expunge the records related to such convictions. That statute explains that, if the victim's motion is granted:

> [T]he court shall vacate the conviction, strike the adjudication of guilt, and expunge the record of the criminal proceedings. The court shall issue an order to expunge, or redact the moving party's name from, all records and files related to the moving party's arrest, citation, investigation, charge, adjudication of guilt, criminal proceedings, and probation for the offense.

This statute is particularly beneficial to trafficking victims because it not only allows their personal records to be cleared of trafficking-related convictions, but also allows the removal or redaction of their names and personal information from other legal records. The New Jersey statute similarly addresses both vacatur and expunging convictions. It provides that a person may apply to have a conviction vacated, and also in the same application seek an order for the expungement of any reference to the person's arrest, conviction, and any proceedings for prostitution in any records.

Statutes in California, Florida, and Ohio similarly permit courts to expunge records to protect victims of human trafficking. The California statute requires that courts grant petitions to seal records where a petitioner has shown that her violations were the results of human trafficking. Similarly, the Ohio statute allows a victim of human trafficking to petition the adjudicating court to expunge her record of adjudication. And the Florida statute permits courts to expunge convictions, and explains that a conviction expunged under the statute is deemed to have been vacated due to a substantial defect in the underlying criminal proceedings.

III. CONCLUSION

State statutes that allow victims to seek the vacatur of criminal convictions for trafficking-related activity recognize that these individuals are not responsible for the illicit activities in which they have been forced to engage. Polaris Project stands ready to assist policymakers in developing and implementing such statutes at the state level.

About Polaris Project

Polaris Project is a leading organization in the global fight against human trafficking and modern-day slavery. Named after the North Star "Polaris" that guided slaves to freedom along the Underground Railroad, Polaris Project is transforming the way individuals and communities respond to human trafficking, in the U.S. and globally. By successfully pushing for stronger federal and state laws, operating the National Human Trafficking Resource Center hotline (1-888-373-7888), conducting trainings, and providing vital services to victims of trafficking, Polaris Project creates long-term solutions that move our society closer to a world without slavery.

Contact Us:

P.O. Box 53315
Washington, DC 20009
202-745-1001
policy@polarisproject.org
www.polarisproject.org/policy

Get Help. Report a Tip. Request Information and Training.
Call The National Human Trafficking Resource Center at
1-888-373-7888 or Text **BeFree (233733).**