

HUMAN TRAFFICKING: THE NEED FOR STRONGER LEGISLATION IN LOUISIANA TO PROTECT VICTIMS

I. INTRODUCTION	688
II. MODERN DAY SLAVERY AND HOW IT HAPPENS	691
A. METHODS OF RECRUITMENT	692
B. THE TYPES OF SLAVE WORK ONCE A VICTIM HAS BEEN TRAFFICKED	694
C. CONTRIBUTING FACTORS.....	697
D. THE STATISTICS	699
III. LEGISLATION AND ANALYSIS.....	701
A. FEDERAL LEGISLATION	702
1. THE MANN ACT	702
2. THE PROTECT ACT.....	704
3. THE TRAFFICKING VICTIMS PROTECTION ACT (TVPA).....	705
B. LOUISIANA STATE LEGISLATION.....	709
1. SEX AND LABOR TRAFFICKING STATUTE.....	709
2. ASSET FORFEITURE AND INVESTIGATIVE TOOLS....	711
3. TRAINING FOR LAW ENFORCEMENT AND HUMAN TRAFFICKING TASK FORCE.....	712
4. HUMAN TRAFFICKING HOTLINE.....	713
5. SAFE HARBOR AND SEXUALLY EXPLOITED CHILDREN	715
6. VICTIM ASSISTANCE, CIVIL REMEDY, AND VACATING CONVICTIONS.....	715
IV. LOUISIANA LEGISLATURE'S 2014 LEGISLATIVE SESSION	716
A. NEWLY ENACTED LEGISLATION	717
B. VETOED LEGISLATION	720
C. PENDING LEGISLATION	721
IV. POSITIVE ASPECTS OF THE NEW LEGISLATION AND PROPOSAL FOR FUTURE CHANGES	721
A. SUPPORT FOR THE NEWLY-ENACTED LEGISLATION	722

B. FURTHER CHANGES TO LEGISLATION.....	723
V. CONCLUSION.....	725

I. INTRODUCTION

In October 2007, the Committee on the Judiciary of the House of Representatives heard the story of a young woman named Katya. As a university student in Ukraine, Katya was elated when she learned she would be given the opportunity to come to America for a summer program to study the English language. The “program director” told Katya she would be living in Virginia Beach during her summer in the U.S. However, once Katya arrived in Washington, D.C., someone from the “program” immediately instructed Katya to take a bus to Detroit, where three men met her, waiting to take her captive. The men took all of Katya’s identification documents and told her that she was indebted to them for over \$20,000 for her travel expenses. Her captors forced her to work six nights a week in a strip club, handing over thousands of dollars to them each week. If she refused to work, they beat her. If she did not make enough money, her captors threatened her with weapons and beat her even more. Katya and another young girl shared a small apartment, which they were not permitted to leave without supervision. The men forced her to call home once every few weeks to tell her family she was doing just fine, all the while listening in to ensure that she did not relay any signs of distress. Katya was, for all intents and purposes, a twenty-first century slave.¹

Unfortunately, the story of Katya is just one among thousands of similar stories of human trafficking. Although many Americans may presume that these horrors only occur in developing countries, or places with lax border control, the United States is a top destination country for trafficking. Human trafficking occurs in the United States at an alarming rate, anywhere from suburban neighborhoods, to rural farmlands, to

1. *Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs: Hearing on H.R. 3887 Before the H. Comm. on the Judiciary*, 110th Cong. 4-6 (2007) (statement of Katya) [hereinafter *Combating Modern Slavery*], available at <http://www.gpo.gov/fdsys/pkg/CHRG-110hrg38640/pdf/CHRG-110hrg38640.pdf>.

2014] **Call for Stronger Human Trafficking Legis.** 689

dense urban cities. For several reasons, trafficking dramatically increased in the second half of the twentieth century.² After World War II, the global population increased from two billion to six billion, and while parts of the world were enriched by changes in national economies and politics, many places were simultaneously impoverished.³ Corrupt government and local law enforcement, combined with poverty, limited individuals' ability to protect themselves from trafficking and slavery.⁴ In the absence of protection from law enforcement or the government, traffickers can move thousands of people per year like products, treating individuals as objects and placing them in a market for consumption and disposal.⁵ Modern day slavery is a global problem, and the United States is not an exception. This Comment, however, will address the issues with human trafficking legislation and enforcement within the United States and, more specifically, in Louisiana.

First, it is important to understand the vocabulary associated with the trafficking problem and other human rights issues. The terms "human trafficking" and "slavery" are not interchangeable, although they may at times overlap. Trafficking does not always amount to slavery, and certainly not all slaves have been trafficked. This Comment focuses on the subsection of those individuals who have been trafficked into slavery and how the laws in Louisiana can be better drafted to aid those victims within the state.

Although it is difficult to identify exactly how many victims are being trafficked at any given time, in 2007, the Department of Justice approximated that upwards of 800,000 individuals are trafficked across international borders each year.⁶ Fortunately, the United States and nations around the world have legislative tools and law enforcement programs in place to help combat the trafficking phenomenon. Katya, for example, was able to escape from her captors with the help of Immigration and Customs

2. KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY 127 (2005).

3. *Id.*

4. *Id.*

5. Linda Smith & Samantha Healy Vardaman, *A Legislative Framework for Combating Domestic Minor Sex Trafficking*, 23 REGENT U. L. REV. 265, 266-67 (2011).

6. Polaris Project, *Human Trafficking Statistics*, CAI.ORG, <http://www.cicatelli.org/titlex/downloadable/human%20trafficking%20statistics.pdf> (last visited Sept. 26, 2014).

Enforcement officials and a strip club patron.⁷ While these laws are in place in the U.S., changes and additions to legislation are necessary to better protect victims and combat the human trafficking problem.

The state of Louisiana has implemented multiple recommended pieces of legislation.⁸ Although this has been a great start in combatting the larger trafficking issue, the problem requires further steps to fully eradicate trafficking and give victims the protection and legal attention they need. Specifically, Louisiana does not allow a victim's conviction to be fully vacated. This means that a trafficking victim may still be deemed a criminal under state law, even though a captor forced the criminal activity upon him or her. In these circumstances victims are not given the counseling and aid needed to stop the cycle of slavery because there is currently no training provided to law enforcement or judges on how to identify trafficked victims or how to treat victims once they have been detained. Because law enforcement cannot readily identify human trafficking victims, victims are placed in jail, never given the resources to recover, and placed back out on the street so that they are directly returned to their captors. Because federal legislation has been misinterpreted and misapplied, state legislation is needed to fill in the gaps.

Part II of this Comment provides general information regarding human trafficking in the United States and the factors that tend to contribute to its pervasiveness. Part III discusses the controlling legislation in the United States, first at the federal level, and second at the state level. This section also assesses the problems involved with those laws. Part IV presents the recently proposed changes to Louisiana's legislative framework made during the 2014 legislative session, and explains the newly enacted legislation and why pending provisions need to be adopted. Part V elaborates on further changes that need to be adopted in the state's legislation, such as allowing victims' criminal convictions to be vacated and a mandatory reflection period for those suspected of being trafficked. These changes will help combat some of the issues associated with trafficking

7. *Combating Modern Slavery*, *supra* note 1, at 5.

8. Nongovernmental organizations such as the Polaris Project make recommendations regarding the scope of legislation to fully address trafficking issues. Part II of this Comment further addresses this legislation.

2014] **Call for Stronger Human Trafficking Legis.** 691

legislation and, at a minimum, raise public awareness about trafficking occurring in Louisiana. The state of Louisiana needs to strengthen the legislation in place to better protect victims and to address the causes and contributing factors of the human trafficking problem.

II. MODERN DAY SLAVERY AND HOW IT HAPPENS

Slavery was made illegal in the 1800s; however, since its creation, the United States has yet to see a day where it has been free of the evils of slavery.⁹ Where slavery was once open, legal, and notorious, the current forms of slavery are kept secret, hidden from the general public and law enforcement.¹⁰ Human trafficking is defined as the movement of people across borders, either internationally or within a country, for the purpose of using individuals as slaves. It is a modern and pervasive form of slavery, which deprives persons of their freedom and basic human rights.¹¹ This section of the Comment discusses the different forms of slavery that exist once victims have been trafficked, and explores the ways in which captors continually restrict the freedom of their victims. This section examines the methods of recruitment used by traffickers, the types of slave work victims are exposed to, the factors that contribute to the persistence of human trafficking, and the startling statistics of victims in the United States and Louisiana.

For the purposes of this Comment, it is important to initially define “trafficking.” When victims are “trafficked,” they are eventually, if not immediately, deprived of their freedom and basic human rights and compelled to perform labor or commercial sexual acts.¹² The act of trafficking leads to a position of slavery. The core attributes of slavery are the same today as they were hundreds of years ago: the captor exercises a state of control over the victim by means of violence or threats, there is no form of payment to the victim, resulting in the theft of labor or other qualities of the victim, all for the purpose of the captor’s economic

9. Michelle Crawford Rickert, *Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level*, 4 LIBERTY U. L. REV. 211, 215 (2010).

10. *Id.*

11. Scott Davidson Dyle, *Chapter 515: Combating Human Trafficking by Enhancing Awareness Through Public Postings*, 44 MCGEORGE L. REV. 583, 583 (2013).

12. *See* Dyle, *supra* note 11, at 583.

gain.¹³ Trafficking is distinct from human smuggling, which is the illegal crossing of international borders.¹⁴ Smuggling usually involves a facilitator, and once the operation is complete, the smuggled person is free to leave the facilitator.¹⁵ While a human smuggling operation involves parties who are all complicit in the act, human trafficking is a method of slavery perfected by force, fraud, and coercion.¹⁶ Trafficking and smuggling can sometimes overlap, for example, when a vulnerable foreign national engaged in smuggling becomes a victim of trafficking during the process.¹⁷ Importantly, however, this Comment will address human trafficking.

A. METHODS OF RECRUITMENT

In the United States today, trafficked victims may be subject to forced prostitution, hard labor, and domestic servitude.¹⁸ The most significant factors contributing to a person's likelihood of becoming trafficked are hopelessness and never-ending poverty.¹⁹ Traffickers, who promise a better life, select victims with no employment or educational opportunities in their hometowns.²⁰ Traffickers recruit victims by exploiting this need for a better future. After being trafficked, recruited individuals are forced into work using different methods of coercion.²¹

One of these labor-forcing methods is known as "debt bondage." Under this method, captors force victims who travel into the United States to pay off a "never-ending cycle of debt" to their captors.²² For example, once Katya arrived in Detroit her captors told her she was indebted to them for \$12,000 for travel expenses and \$10,000 for identification documents and that she

13. BALES, *supra* note 2, at 9.

14. Eileen Overbaugh, *Human Trafficking: The Need for Federal Prosecution of Accused Traffickers*, 39 SETON HALL L. REV. 635, 639 (2009).

15. Rickert, *supra* note 9, at 232-33.

16. Overbaugh, *supra* note 14, at 639.

17. *Id.*

18. See Stephanie L. Mariconda, Note, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 B.C. THIRD WORLD L.J. 151, 155 (2009).

19. *Id.* at 163.

20. *Id.*

21. Cindy Braspenning, *Human Trafficking in the Netherlands: The Protection of and Assistance to Victims in Light of Domestic and International Law and Policy*, 1 INTERCULTURAL HUM. RTS. L. REV. 329, 331 (2006).

22. Mariconda, *supra* note 18, at 157.

2014] **Call for Stronger Human Trafficking Legis.** 693

would be required to pay that money back quickly.²³ Her captors physically restrained her and monitored her movements to make sure she did not leave until she paid this debt.²⁴ In many situations her captors added additional amounts to the debt balance for everyday expenses like food, medicine, and toilet paper, but also for underperformance or insubordination.²⁵ Because captors forbid many of these victims from keeping track of their debt and give victims little to no money of their own, captors retain control over their freedom.²⁶

Another method of recruiting victims is known as the “loverboy” method.²⁷ Loverboy captors, i.e., “pimps,” recruit young females by seducing them, giving them compliments, and showering them with presents and attention.²⁸ After making sure that the young girls have fallen in love, the pimp causes the girls to grow increasingly dependent emotionally.²⁹ Once accomplished, the pimp begins forcing the girls to engage in prostitution to repay him for gifts, often through threats of violence, rape, and social isolation.³⁰ Because of the established emotional dependence, the girls sometimes contribute to the status quo out of fear of being beaten, emotionally isolated, or left homeless.³¹ For example, in 2002, police discovered four teenage girls working as prostitutes in a brothel in New Jersey.³² The traffickers had met the girls in small Mexican towns, promised marriage, and convinced the girls to leave their families and homes.³³ Unfortunately, this was not an isolated incident. In 2010, two brothers plead guilty to charges of sex trafficking, harboring, and obstruction.³⁴ The men had traveled to Mexico and recruited women, including two minors, by promising love

23. *Combating Modern Slavery*, *supra* note 1, at 5.

24. *Id.*

25. *E.g.*, U.S. DEP'T. OF STATE, TRAFFICKING IN PERSONS REPORT 26 (2007) [hereinafter 2007 TIP REPORT], *available at* <http://www.state.gov/g/tip/rls/tiprpt/2007/> (explaining that women were overcharged significantly for food and necessities).

26. Mariconda, *supra* note 18, at 157.

27. Braspenning, *supra* note 21, at 331-32.

28. *Id.* at 332.

29. *Id.*

30. *Id.*

31. *Id.*

32. Overbaugh, *supra* note 14, at 640.

33. *Id.*

34. *United States v. Cortes-Meza*, 411 F. App'x 284, 285 (11th Cir. 2011).

and at times offering marriage.³⁵ After illegally gaining entry into the U.S., captors forced the women into prostitution, visiting over twenty clients each night.³⁶

Among the most heartbreaking stories are those situations in which victims are sold by their families. As mentioned above, the trafficker recruits victims by exploiting the promise of a better life and the victim's impoverished status. Because these people may not have access to, or an understanding of, their legal rights, traffickers perceive them as more easily taken advantage of and less likely to flee.³⁷ Traffickers or recruiters tell the victim's parents that their child will be given opportunities for education and employment.³⁸ In 2001, for example, rescuers found a twelve-year-old girl in Laredo, Texas shackled to a chain link fence, days away from death.³⁹ Her captors had traveled to Mexico under the guise of offering the child's family an opportunity for their daughter to receive an education and medical care in exchange for working as a maid in their home.⁴⁰ However, upon arrival in Texas the captors beat the child, left her in the sun for days, and starved her so often that she resorted to eating dirt to survive.⁴¹ Fortunately, neighbors called the police upon hearing "strange noises" coming from the backyard, leading to the rescue of the child.⁴² Traffickers recruit victims by exploiting weakness and poverty. This is true of victims of all ages and genders, and it is necessary to recognize how the trafficking problem begins to better combat the problem.

B. THE TYPES OF SLAVE WORK ONCE A VICTIM HAS BEEN TRAFFICKED

After the captors have deprived a victim of his or her freedom, they may require the victim to work as a prostitute, perform hard labor, or work as a domestic servant, among other things. The most prominent form of slavery in the world is sexual

35. United States v. Cortes-Meza, 411 F. App'x 284, 286 (11th Cir. 2011).

36. *Id.*

37. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 357 (2007).

38. Rickert, *supra* note 9, at 212.

39. Mariconda, *supra* note 18, at 151-52.

40. *Id.* at 152.

41. *Id.*

42. *Id.* at 151 n.1.

2014] **Call for Stronger Human Trafficking Legis.** 695

slavery.⁴³ The commercial sex industry involves prostitution, stripping, live sex shows, pornography, military prostitution, and sex tourism.⁴⁴ The World Tourism Organization defines sex tourism as trips organized through the tourism sector with the primary purpose of engaging in a commercial sexual relationship with a person in the destination.⁴⁵ Tourism itself often leads to an increase in sexual exploitation, specifically in locations drawing large numbers of people for special events. For example, the NBA All-Star Game attracted thousands of tourists to New Orleans in late February of 2014. During that time, law enforcement officials made thirty arrests in connection with sex trafficking.⁴⁶ The arrests also resulted in the rescue of a minor believed to have been exploited since age fourteen.⁴⁷

Even more disturbing is the amount of minors involved in the commercial sex industry in the United States. The average age at which a minor is first prostituted is thirteen years old.⁴⁸ A 2007 study revealed that 41% of the women interviewed entered the market of prostitution as minors.⁴⁹ Some of these children, like the nine-year-old Haitian girl rescued from a life of rape and starvation in suburban Miami, come from impoverished countries.⁵⁰ On the contrary, other children are victims of trafficking from within the borders of the U.S. In 2009, police discovered the body of a five-year-old North Carolina girl, and later discovered that her mother had sold her to a man for the purpose of prostitution.⁵¹

Although sex slavery is often what the media focuses on,

43. See 2007 TIP REPORT, *supra* note 25, at 27; see also Haynes, *supra* note 37, at 356.

44. Mariconda, *supra* note 18, at 157.

45. Jonathan Todres, *Prosecuting Sex Tour Operators in U.S. Courts in an Effort to Reduce the Sexual Exploitation of Children Globally*, 9 B.U. PUB. INT. L.J. 1, 2-3 (1999).

46. *30 Arrested in All-Star Weekend Sex Trafficking*, WASHINGTON TIMES (Feb. 22, 2014), <http://www.washingtontimes.com/news/2014/feb/22/30-arrested-in-all-star-weekend-sex-trafficking/> [hereinafter *All-Star*]. Of those arrested, twenty-two were women and four were men. *Id.* Four additional men were arrested for using computers to solicit sex with minors. *Id.* The women are believed to have traveled from across the country for this specific event. *Id.*

47. *Id.*

48. Smith & Vardaman, *supra* note 5, at 270.

49. *Id.*

50. See Rickert, *supra* note 9, at 212.

51. *Id.* at 213.

captors subject victims in the U.S. to other types of indentured servitude. The focus on the commercial sex industry leads the public to believe that only one type of trafficking is recognizable or relevant.⁵² However, victims of human trafficking are also subjected to domestic servitude and forced hard labor. In fact, domestic servitude comprises over 27% of the trafficking cases in the U.S., making it second to sexual exploitation.⁵³ Racism, classism, and sexism further taint these types of slavery.⁵⁴ Employers specifically seek out migrant workers who are of a different race and do not speak English to keep the social gap more manageable.⁵⁵ More often, captors subject victims of domestic servitude to psychological coercion rather than physical abuse.⁵⁶ Such psychological coercions include threats of deportation, derogatory comments as to the class and social status of the worker, and general dehumanization of the worker.⁵⁷ Typically, captors subject victims to informal work in a private residence.⁵⁸ Because captors keep workers within the confines of the residence, they are easily isolated from the world, creating an environment conducive to exploitation.⁵⁹ Furthermore, police and law enforcement cannot readily inspect a residence.

Much of the hard-labor slavery can specifically be found in the agricultural and industrial sectors.⁶⁰ Oftentimes these victims agree to work for an employer for a specific wage and time period, but the situation turns into one of slavery once they are in the control of the employer. Once the employer exploits human labor by such means, the individual's previous consent

52. Haynes, *supra* note 37, at 356.

53. Kevin Shawn Hsu, Note, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purpose of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL'Y 489, 490 (2007).

54. *Id.*

55. Haynes, *supra* note 37, at 357-58.

56. Hsu, *supra* note 53, at 490.

57. *Id.* at 494.

58. U.S. DEP'T. OF STATE, TRAFFICKING IN PERSONS REPORT 34 (2013) [hereinafter 2013 TIP REPORT], available at <http://www.state.gov/documents/organization/210737.pdf>.

59. *Id.*

60. FREE THE SLAVES & HUMAN RIGHTS CENTER, HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 5 (2004), available at https://www.law.berkeley.edu/files/HRC/Publications_Hidden-Slaves_09-2004.pdf.

2014] **Call for Stronger Human Trafficking Legis.** 697

with the trafficker is irrelevant.⁶¹ In 2013, a jury awarded over \$3,000,000 to a group of thirty-two men who were subjected to abuse while working for a turkey processing plant in Iowa.⁶² The men were all intellectually disabled in some way, and captors severely beat and verbally abused them on a regular basis.⁶³ Although the men were as productive as other workers in the plant, they were paid forty-one cents per hour (roughly fifteen dollars per week) and required to live in bunk houses infested with cockroaches.⁶⁴

C. CONTRIBUTING FACTORS

As with any market, a driving factor is demand. If there were no buyers, then sex trafficking and trafficking in general would cease to be profitable.⁶⁵ Traffickers move victims to the market like products, essentially viewing people as dehumanized “things” for consumption and disposal.⁶⁶ Evidence suggests that there is an increasing demand for younger “products” that appear to be healthier.⁶⁷ Recent studies also suggest that those people purchasing the services are aware of the status, nationality, and relative power positions of those sought out.⁶⁸ For example, some users view foreign migrant sex workers as less desirable because they do not speak English and appear to be forced into prostitution.⁶⁹ This places them at the “cheap end of the prostitution market.”⁷⁰ Other purchasers take the perspective that because the trafficked persons are of another race or ethnicity, they are of a lower class of human being, and their work as a sex slave is “natural,” making the purchasers sexual exploitations justified.⁷¹

Directly related is the endless supply for the market.⁷² The supply serves as the fuel for the slave trade and increases to meet

61. 2013 TIP REPORT, *supra* note 58, at 29.

62. 2013 TIP REPORT, *supra* note 58, at 34.

63. *Id.*

64. *Id.*

65. Smith & Vardaman, *supra* note 5, at 266-67.

66. *Id.* at 267.

67. *Id.*

68. Haynes, *supra* note 37, at 357.

69. *Id.*

70. *Id.*

71. *Id.*

72. Mariconda, *supra* note 18, at 163.

demand.⁷³ At the same time, advancements in technology and transportation aid criminal traffickers in moving people across borders.⁷⁴ Increased permeability of borders, better and more varied methods of transport, and increased secure communications all contribute to the meeting of supply and demand.⁷⁵

Furthermore, a culture of tolerance surrounds the human trafficking industry.⁷⁶ Historically, there has been a reluctance to group “prostitution” into the same legal categories as forced labor, the slave trade, or enslavement.⁷⁷ Because prostitution has been defined as consensual and because of the stigmatization of prostitutes, male-directed law enforcement separated trafficking for prostitution from “real” slavery, and therefore it has been tolerated in many countries.⁷⁸ Developing countries in particular have been found to implicitly condone human trafficking while law enforcement “voluntarily look[s] the other way.”⁷⁹ The level of tolerance varies from country to country; however, the essence of this tolerance is the same: “societal acceptance backed by political tolerance.”⁸⁰ Even in countries where governments are willing and able to act, combatting trafficking on the local level still requires resources that may not be available.⁸¹

The U.S. is not an innocent party, and its culture of tolerance is most apparent when looking at the truck stops across the country.⁸² Passing truckers are able to engage in commercial sex transactions on major highways throughout the country.⁸³ In 2005, law enforcement rescued over twenty women from a truck stop in Pennsylvania where captors forced women to work as prostitutes.⁸⁴ The youngest girl was just twelve years old and had been trafficked in from Ohio.⁸⁵

73. Smith & Vardaman, *supra* note 5, at 267.

74. BALES, *supra* note 2, at 128.

75. *Id.*

76. Smith & Vardaman, *supra* note 5, at 268.

77. BALES, *supra* note 2, at 127.

78. *Id.*

79. Mariconda, *supra* note 18, at 164.

80. Smith & Vardaman, *supra* note 5, at 268.

81. Mariconda, *supra* note 18, at 164.

82. Smith & Vardaman, *supra* note 5, at 268.

83. *Id.*

84. *Id.*

85. *Id.*

2014] **Call for Stronger Human Trafficking Legis.** 699

The public's lack of awareness further contributes to the ongoing problem of human trafficking. As noted above, the media often focuses on activities of the commercial sex industry because those stories are more "sellable" than the stories that focus on domestic servitude.⁸⁶ The public does not hear the stories about how these problems are created. "We hear about sex slavery, forced marriage, child pornography, and female genital mutilation[,] . . . but rarely about the social and economic disparity issues that may give rise to the problems."⁸⁷ This lack of awareness also affects the people of the victim's home country. Because victims are often ashamed of their prostitution or forced labor, they are typically afraid to talk about their experiences with friends and family.⁸⁸ This means that individuals from the victim's home country are not aware of the dangers of trafficking and may easily be lured into the same trap.⁸⁹

Furthermore, the lack of awareness amongst law enforcement contributes to the ongoing cycle of the industry. Victims are often not readily identifiable because of their concealment and their trepidation with law enforcement once they have been arrested.⁹⁰ Officers need to be properly trained on methods for identifying someone as a victim of trafficking. Additionally, police officers need to be trained on how to appropriately handle victims of trafficking so that, once a victim has been identified, police can properly interview him.⁹¹ Oftentimes, traffickers will threaten to harm victims' family members if they ever speak with police.⁹² Therefore, it is important that officers speak with trafficking victims in a more sensitive manner than victims of other crimes.

D. THE STATISTICS

Social scientists estimate that as many as twenty-seven million men, women, and children are victims of trafficking at any given time across the globe.⁹³ However, studies identified

86. Haynes, *supra* note 37, at 355.

87. *Id.*

88. Mariconda, *supra* note 18, at 165.

89. *See id.*

90. Rickert, *supra* note 9, at 277.

91. *See id.*

92. *Id.* at 279.

93. 2013 TIP REPORT, *supra* note 58, at 7.

only 40,000 victims worldwide in the last year.⁹⁴ Accurate information about trafficking levels is difficult to obtain, and much of the information available is generated by specific cases.⁹⁵ Looking specifically to the U.S., as of 2013, the Walk Free Foundation estimated that 57,000 to 63,000 people are trafficked into the United States each year.⁹⁶ The amount of people actually identified is significantly less than this estimate, however. Although the Department of Justice (the Department) lists a 360% increase in convictions from the fiscal years 2001 through 2007, the Department does not list actual numbers of convictions.⁹⁷ From 2009 to 2011, the Department brought an average of *twenty-four* forced labor cases annually, more than doubling the average from the previous three-year period.⁹⁸ Although these convictions are undoubtedly a success, there still remain *hundreds of thousands* of victims unaccounted for.

At the state level, statistics are more readily available. In 2013, Senator Long presented Concurrent Resolution 27 to the Louisiana Senate, highlighting the statistics of human trafficking within the state.⁹⁹ The legislation indicated that between 2006 and 2008, there were more than 100 minors that were victims of sex trafficking in the Baton Rouge and New Orleans metro areas alone. Since 2009, Louisiana has found 140 victims of sex trafficking, mostly in Baton Rouge and New Orleans. Louisiana has the highest rate of child homelessness in all fifty states and studies show that 30% of youth from homeless shelters and 70% of youth on the street are victims of commercial sex exploitation.

The vulnerability of people in Louisiana is also heightened by the state's poverty level. For the last ten years, Louisiana has ranked among the highest in levels of poverty, with approximately 20% of the population living below the poverty line.¹⁰⁰ In the wake of Hurricane Katrina, the New Orleans area

94. 2013 TIP REPORT, *supra* note 58, at 7.

95. BALES, *supra* note 2, at 135.

96. LAURA T. MURPHY & BRIAN EA, THE LOUISIANA HUMAN TRAFFICKING REPORT 6 (2014), available at <http://www.admin.loyno.edu/webteam/userfiles/file/LA%20HT%20Report%20final.pdf>.

97. U.S. Dep't of Justice, *Human Trafficking Prosecution Unit Overview*, JUSTICE.GOV, <http://www.justice.gov/crt/about/crm/htpu.php#cas> (last visited Mar. 14, 2014) [hereinafter *Human Trafficking Prosecution Unit*].

98. *Id.*

99. S. Con. Res. 27, 2013 Leg., Reg. Sess. (La. 2013).

100. ALMAYEHU BISHAW, U.S. CENSUS BUREAU, POVERTY: 2002 TO 2012:

2014] **Call for Stronger Human Trafficking Legis.** 701

became a hot spot for trafficking victims for hard labor.¹⁰¹ Researchers estimate that at least 3,750 people were identified as trafficking victims in the gulf region in the years following the devastation.¹⁰² In New Orleans, for example, law enforcement identified a group of Thai workers as trafficked victims.¹⁰³ The captors initially recruited the men to work in the agricultural sector in North Carolina, and after a few months, moved the men to New Orleans to do demolition work.¹⁰⁴ Captors took the victims' passports and visas and forced the men to live in unrehabilitated buildings without access to money or food.¹⁰⁵

Captors recruit victims of human trafficking and subject them to a life of slavery. Captors exploit a victim's weakness, making empty promises of a better life. Although the root causes of this problem are difficult to fix with legislation, strong laws criminalizing trafficking can serve as a deterrent and save the lives of victims. But punishing captors is only part of healing victims and allowing them to regain a sense of control over their lives. The next section will detail the current legislation and the shortcomings in these laws.

III. LEGISLATION AND ANALYSIS

In the 1990's Federal and State governments passed multiple pieces of legislation to complement the Thirteenth Amendment's prohibition of slavery.¹⁰⁶ These statutes allow prosecutors to convict traffickers of multiple offenses. By invoking other provisions of criminal law, a trafficker may be found guilty not only of trafficking, but also of document forgery, kidnapping, rape, extortion, money laundering, etc.¹⁰⁷ This section of the Comment will describe and analyze these pieces of legislation, first at the federal level, then at the state level.

AMERICAN COMMUNITY SURVEY BRIEFS 3 tbl.1 (2014), available at <https://www.census.gov/prod/2013pubs/acsbr12-01.pdf>.

101. MURPHY & EA, *supra* note 96, at 9.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. Mariconda, *supra* note 18, at 167.

107. See BALES, *supra* note 2, at 130, 134.

A. FEDERAL LEGISLATION

1. THE MANN ACT

Congress enacted the Mann Act, formally known as the White Slave Traffic Act,¹⁰⁸ in 1910 to supplement immigration control, with the aim of breaking up the worldwide prostitution market.¹⁰⁹ The Act was the first in a line of legislative acts that target traffickers. Section 2421 of the Mann Act reads:

Whoever knowingly transports any individual in interstate or foreign commerce . . . with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.¹¹⁰

This section of the Act has been used to prosecute individuals who transport prostitutes in interstate or foreign commerce. The Act does not require proof of force, fraud, or coercion, which lowers the burden of proof on the government for convicting accused traffickers.¹¹¹ Moreover, the Mann Act penalizes even the attempt to move people through foreign commerce for prostitution purposes. For example, in 2008, officials charged a group of defendants with Mann Act violations, including conspiracy to transport individuals in interstate commerce.¹¹² The defendants offered undercover police officers sex in exchange for money, a large amount of sexual paraphernalia, and the traffickers engaged in phone calls with the taxi driver who provided the prostitutes at various locations.¹¹³ Although there was no actual movement of a victim across borders, the defendants had attempted to engage in the illegal activity by offering such services to the undercover officers.

108. See BALES, *supra* note 2, at 167 (stating that at this time in history there was official concern over the enslavement of white women for prostitution).

109. Note, *Interstate Immorality: The Mann Act and the Supreme Court*, 56 YALE L.J. 718, 725 (1947).

110. 18 U.S.C. § 2421 (2012).

111. Mohamed Y. Mattar, *Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later*, 19 AM. U. J. GENDER SOC. POL'Y & L. 1247, 1251 (2011).

112. Mattar, *supra* note 111, at 1251-52 (citing *United States v. Daneman*, No. 06 Cr. 717 (AKH), 2008 U.S. Dist. LEXIS 42725, at *1 (S.D.N.Y. May 30, 2008)).

113. *Id.*

2014] **Call for Stronger Human Trafficking Legis.** 703

Critics of the Mann Act have taken the view that it was an attempt by Congress to legislate morality or even inhibit the rights of women, the class of people it was intended to protect.¹¹⁴ Early interpretations of the act reflect that its purpose was to protect “weak women from bad men.”¹¹⁵ Nonetheless, discounting the usefulness of a statute simply because of its potentially misogynistic roots would act as a disservice to the victims of trafficking. The Mann Act is like many other pieces of legislation throughout history that have been misinterpreted and misapplied. The statute should be analyzed not by its history but by its effectiveness in prosecuting traffickers and protecting victims.

Congress intended the Mann Act to apply to the sex industry of interstate transportation for commercial purposes, not to ordinary prostitution.¹¹⁶ In one sense, the Mann Act serves to protect victims by not requiring them to testify for their accused trafficker to be found guilty.¹¹⁷ Instead, circumstantial evidence can suffice to find a trafficker guilty.¹¹⁸ This allows the victim to avoid facing the trafficker again in a public forum and prevents the victim from being required to rehash the trafficking experience in front of a judge or jury, essentially protecting the victims’ privacy and emotional wellbeing.

Conversely, one main flaw of the Mann Act when applied to trafficking cases is that it only covers victims of the commercial sex industry, and does not apply to those forced into domestic servitude or forced labor. For the Mann Act to apply in these cases, the government must prove that sexual activity was one of the compelling purposes for transporting the individual across state lines.¹¹⁹ Therefore, in modern day human trafficking cases, the Mann Act only covers limited situations for prosecution purposes. Although sex trafficking does make up a large portion of human trafficking cases, the Mann Act still leaves a large hole in federal legislation to prosecute those convicted of domestic servitude and hard-labor human trafficking. Subsequent legislation has functioned to fill in some of these gaps.

114. *Todres*, *supra* note 45, at 5.

115. *Id.*

116. *Id.* at 5-6.

117. DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* § 18.02, at 158 (Donald T. Kramer, ed., 2d rev. ed. 2013).

118. *Id.*

119. *Id.* at 159-60.

2. THE PROTECT ACT

Congress enacted the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act in 2003 as a complement to the Mann Act.¹²⁰ The PROTECT Act covers a gap left in Mann Act, prosecuting and deterring those who engage in sex tourism operations.¹²¹ It differs from the Mann Act in that it applies to crimes committed against minors. Initially enacted to prosecute those engaged in sexual abuse and kidnapping, the law is applicable to U.S. citizens or permanent residents who commit the offenses within the U.S. or abroad.¹²² A person may be convicted of a crime even if the act is not illegal in the foreign country.

First, the Act makes it a crime for an individual to arrange or procure a third party to travel in interstate or foreign commerce to engage in sexual conduct.¹²³ Section C of the statute specifically states, “Any United States citizen or alien admitted for permanent residence who travels in foreign commerce . . . and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.”¹²⁴ Second, § (A) of the statute also criminalizes moving minors across state lines with the intent to engage in criminal sexual activity.¹²⁵

The PROTECT Act takes the provisions of the Mann Act but expands on the criminalized activity and heightens the sentencing for those who commit these crimes with or against minors. Still, many of the same critiques of the Mann Act apply to the PROTECT Act. The statute does not allow for the prosecution of someone who has moved a child across state lines for the purpose of subjecting them to domestic servitude or forced hard labor. Although the act does criminalize kidnapping, situations where families sell their children or freely send them to the United States are not covered by the legislation.

The statute also allows the accused to use the defense that he or she did not reasonably believe the victim was under the age

120. Mariconda, *supra* note 18, at 167.

121. *Id.*

122. *Id.* at 168.

123. *Id.* at 167.

124. 18 U.S.C. § 2423(c) (2012).

125. *Id.* § 2423(a).

2014] Call for Stronger Human Trafficking Legis. 705

of eighteen years.¹²⁶ This is a huge flaw in the act. If a trafficker can show that he or she did not reasonably believe the victim to be a minor, the trafficker can escape the provisions of the PROTECT Act. Then, prosecutors only have the Mann Act as a legislative tool. The difference in sentencing maximums is twenty years, enough of an incentive for anyone prosecuted under the PROTECT Act to use the defense.

As a whole, the Mann Act and the PROTECT Act cannot serve to adequately address human trafficking problem. As noted above, captors subject many victims to hard labor and domestic servitude, neither of which is covered by these pieces of legislation. The PROTECT Act only extends to children under the age of eighteen, and a defendant could sidestep even that if able to show that the victim did not appear to be a minor. Although the Mann Act serves as a safety net to catch those traffickers who escape criminalization under the PROTECT Act, the sentencing under the Mann Act is significantly less than under the PROTECT Act. While these statutes were a necessary foundation for federal human trafficking legislation, prosecutors needed a more comprehensive statute to work in conjunction with these laws. The PROTECT Act and the Mann Act are still tools available to prosecutors today, but the statutes do not provide a full, comprehensive base for all trafficking violations.

3. THE TRAFFICKING VICTIMS PROTECTION ACT (TVPA)

The Trafficking Victims Protection Act, enacted in 2000, recognized trafficking in persons as a specific offense for the first time.¹²⁷ The initial piece of legislation recognized crimes to include: forced labor; trafficking with respect to peonage; slavery; involuntary servitude; sex trafficking of children by force, fraud, or coercion; unlawful conduct with respect to documents; and attempting to commit any of these acts.¹²⁸ The Reauthorization Act of 2005 expanded the recognized crimes to include trafficking of persons committed by federal contractors outside the United States.¹²⁹ Finally, the 2008 Reauthorization Act criminalized conspiring in the act of trafficking, benefitting financially from

126. *Id.* § 2423(g).

127. Mattar, *supra* note 111, at 1250.

128. *Id.*

129. *Id.*

slavery, and fraud in foreign labor contracting.¹³⁰

Congress wrote the TVPA to accomplish three goals: the prosecution of traffickers, the prevention of a developing industry for trafficking, and the protection of victims.¹³¹ Congress divides these activities amongst three primary federal agencies—the Department of Justice, the Department of State, and the Department of Homeland Security.¹³² The Department of Justice primarily handles prosecution of traffickers.¹³³ Using the TVPA as a prosecutorial tool, traffickers may be charged with a multitude of federal crimes, which can result in a life sentence.¹³⁴ The reauthorization acts strengthened the ability to prosecute under the TVPA by making the Act multi-faceted.¹³⁵ First, the Act made any trafficking offense a predicate offense under the Racketeer Influenced Corrupt Organizations Act (RICO).¹³⁶ Second, the Act created a private right of action for trafficking victims to bring civil actions in federal district court to recover damages and attorney’s fees.¹³⁷ Finally, the Act established a grant program to assist law enforcement efforts in establishing and expanding their programs to investigate trafficking.¹³⁸

The prevention efforts incorporated into the statute are used to counteract the reasons for victimization at the national level. The TVPA requires that the President implement international programs or initiatives to “enhance economic opportunities for potential victims, including programs that provide job training and counseling to adults and programs to keep children in elementary and secondary schools.”¹³⁹ The President is also tasked with implementing programs “to heighten public awareness on the issue of human trafficking.”¹⁴⁰ Furthermore, the TVPA permits sanctions for countries as a method of

130. *Id.*

131. Mariconda, *supra* note 18, at 169.

132. Haynes, *supra* note 37, at 345.

133. *Id.*

134. Mariconda, *supra* note 18, at 169. A life sentence is permitted when, during the commission of the crimes, there is an actual or attempted murder, kidnapping, or aggravated sexual abuse. *Id.*

135. *Id.* at 170.

136. *Id.*

137. *Id.*

138. Mariconda, *supra* note 18, at 170.

139. *Id.* at 170-71.

140. *Id.* at 171.

2014] **Call for Stronger Human Trafficking Legis.** 707

prevention. The U.S. government is similarly allowed to withhold financial assistance to nations that “do not adequately combat human trafficking within their own borders.”¹⁴¹

Victims of human trafficking can be granted certain protections under the TVPA if the requirements are met. First, the victim must have been subjected to a severe form of trafficking. The legislation defines this as:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁴²

If a victim falls into the category of § (A), and is above eighteen years of age, he or she must also be certified by the Secretary of Health and Human Services.¹⁴³ The certification requires that the individual be willing to assist the investigation and prosecution of the trafficker.¹⁴⁴ Additionally, the Act requires that the person make an application for visa, or his or her presence be ensured by the Secretary of Homeland Security to effectuate prosecution.¹⁴⁵ Once eligibility is established, the victim is given access to translation services and is entitled to a number of federal and state benefits, similar to that of an alien admitted as a refugee.¹⁴⁶

Although the initial intention of the TVPA was to protect victims from the horrific acts of trafficking, the Act has ultimately protected only victim witnesses who are useful in prosecution matters.¹⁴⁷ Early drafters warned that the “unnecessarily narrow

141. *Id.*

142. 22 U.S.C.A. § 7102(9) (West 2004 & Supp. 2014); *see also* 22 U.S.C. § 7105(b)(1)(c) (2012) (providing the definition of a victim of a severe form of trafficking in persons).

143. Mariconda, *supra* note 18, at 172.

144. 22 U.S.C. § 7105(b)(1)(E)(i) (2012).

145. *Id.* § 7105(b)(1)(E)(i)(II).

146. Mariconda, *supra* note 18, at 172-73.

147. *See* Haynes, *supra* note 37, at 358.

requirements and conditions” would be a disservice to victims.¹⁴⁸ However, the fear of “opening the floodgates” has persisted and is evidenced by the fact that there were Congressional insistences that a cap be placed on T-visas available to victims, at only 5,000 a year.¹⁴⁹ The logic behind this fear is as follows: if the law allows for a victim to become a citizen, all illegal aliens will try to become a victim.¹⁵⁰ This fear drives statutory interpretation and regulatory practice and causes the narrow restriction of the TVPA.¹⁵¹ Victims are only allowed to claim victim status and the rights and benefits that follow when they fit a particular “victim profile.”¹⁵²

The TVPA requires a showing that a victim has suffered a severe form of trafficking.¹⁵³ Although the legislation is silent as to the burden of proof, the Department of Homeland Security (DHS) has determined that it requires “conclusive proof of the intent of the traffickers to exploit.”¹⁵⁴ This serves as an extreme limitation on a victim’s ability to receive services under federal law. In essence, a victim must be rescued from a present exploitative state for the rescuers to attest to the fact that it was the intent of the trafficker to exploit the victim.¹⁵⁵

Even if a victim can fulfill this burden, the Secretary of Health and Human Services must certify the victim if he or she is over the age of eighteen.¹⁵⁶ To be certified, the victim must be willing to aid in the investigation and prosecution of the trafficker.¹⁵⁷ Unfortunately, victims are often uneager to assist law enforcement officers for fear that their former captor will retaliate.¹⁵⁸ Many victims also have a general distrust of law enforcement, making cooperation impossible.¹⁵⁹ If the victim is

148. Haynes, *supra* note 37, at 359.

149. Haynes, *supra* note 37, at 359.

150. *Id.* at 363-64. Haynes interviewed a journalist for her article, during which interview the journalist expressed this precise logic. *Id.*

151. *See id.* at 359.

152. *Id.* at 358.

153. Haynes, *supra* note 37, at 360. Although the TVPA is silent as to who bears the burden, DHS has determined this lies with the victim. *Id.*

154. *Id.* at 360-61.

155. *See id.* at 361.

156. Mariconda, *supra* note 18, at 172.

157. 22 U.S.C. § 7105(b)(1)(E)(i) (2012). A person who is unable to cooperate due to physical or psychological trauma may be exempt from this requirement. *Id.*

158. Rickert, *supra* note 9, at 237.

159. *Id.*

2014] **Call for Stronger Human Trafficking Legis.** 709

willing to cooperate, the entire case may rest on the victim's ability to adequately articulate all of the exploitations that he or she has suffered.¹⁶⁰ To gain the protection of the law, a victim who has already suffered such horrible atrocities must prove the traffickers intent and relive his horrors. The statute is therefore severely limited in its ability to protect victims.

B. LOUISIANA STATE LEGISLATION

Federal legislation is not the only answer to this problem and should not be the only form of law the nation relies on to combat human trafficking. National laws, law enforcement strategies, and services to victims must address the different types of trafficking, from small-scale local trafficking to large-scale transnational trafficking.¹⁶¹ According to the Polaris Project, Louisiana is a "Tier 1" state, meaning that it has enacted significant recommended legislation to combat human trafficking effectively.¹⁶² The Polaris Project is a national non-profit organization whose purpose is to advance laws that increase services for victims and provide tools for law enforcement.¹⁶³ The following section examines and analyzes Louisiana's statutes on human trafficking and is broken down into six categories that are evaluated by the Polaris Project. The Polaris Project provides the most clear and concise evaluation of statewide legislation and offers a comprehensive framework for looking at the tools used by states. The organization uses a total of ten categories, but categories have been condensed for this section.¹⁶⁴

1. SEX AND LABOR TRAFFICKING STATUTE

The Louisiana Criminal Code specifically outlaws human trafficking and creates a new criminal offense for traffickers under state law. Section 46.2(B)(2) states:

160. *Id.*

161. BALES, *supra* note 2, at 129.

162. Polaris Project, *2013 State Ratings on Human Trafficking Laws*, POLARISPROJECT.ORG, <http://www.polarisproject.org/2013stateratings> (last visited Sept. 26, 2014).

163. *Id.*; *see also* Polaris Project, *National Human Trafficking Resource Center*, POLARISPROJECT.ORG, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview> (last visited Sept. 26, 2014).

164. *See* Polaris Project, *2013 State Ratings on Human Trafficking Laws*, POLARISPROJECT.ORG, <http://www.polarisproject.org/2013stateratings> (last visited Sept. 26, 2014).

Whoever commits the crime of human trafficking when the services include commercial sexual activity or any sexual conduct constituting a crime under the laws of this state shall be fined not more than fifteen thousand dollars and shall be imprisoned at hard labor for not more than twenty years.¹⁶⁵

The statute incorporates other sexual offenses under state law and adds the element of trafficking as a separate and possibly harsher offense. The statute defines commercial sexual activity as “any sexual act performed . . . when anything of value has been given, promised, or received by any person.”¹⁶⁶

Labor trafficking is also a crime under § 42.2, making it unlawful in Louisiana to “knowingly recruit, harbor, transport, provide, solicit, obtain, or maintain the use of another person through fraud, force, or coercion to provide services or labor.”¹⁶⁷ Because these terms could potentially be read too narrowly so as to only include physical abuse, the Louisiana legislature has defined what is encompassed in force, fraud, and coercion. “Force, fraud, or coercion” could mean any of the following:

- (a) Causing or threatening to cause serious bodily injury;
- (b) Physically restraining or threatening to physically restrain another person;
- (c) Intentionally destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; or
- (d) Extortion as defined in R.S. 14:66.¹⁶⁸

The codification of the basic definitions relating to trafficking is necessary to criminalize human trafficking. Further defining what is included in “force, fraud, and coercion” takes into account

165. LA. REV. STAT. ANN. § 14:46.2(B)(2) (2007 & Supp. 2014).

166. *Id.* § 14:46.2(C)(1).

167. LA. REV. STAT. ANN. § 14:46.2(A)(1) (2007 & Supp. 2014), *amended by* Act of June 9, 2014, No. 564, § 46.2(A)(1) (to be codified as amended at LA. REV. STAT. ANN. § 14:46.2(A)(1)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

168. *Id.* § 14:46.2(C)(2), *amended by* Act of June 9, 2014, No. 564, § 46.2(C)(2) (to be codified as amended at LA. REV. STAT. ANN. § 14:46.2(C)(2)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

2014] **Call for Stronger Human Trafficking Legis.** 711

the methods of recruitment used by traffickers. Specifically, including in the statutory definition of “force, fraud, and coercion” the destruction and confiscation of passports and immigration documents accounts for the real-life situations that victims may be placed in. This portion of the statute takes into account the methods of recruitment and allows for prosecution of traffickers who use multiple techniques in restraining victims. Because physical restraint is not the only type of force used by traffickers, a broad scope for criminalization is necessary. Regarding sex- and labor-trafficking statutes, Louisiana meets the recommended criteria.¹⁶⁹

2. ASSET FORFEITURE AND INVESTIGATIVE TOOLS

Louisiana law allows for the public sale or public auction of the personal property of the trafficker forfeited under the provisions of § 46.2.¹⁷⁰ Furthermore, Louisiana allows for the proceeds from the sale to first be applied to any restitution granted to the victim¹⁷¹ to ensure that the victim is redressed financially before allowing money to pass to the government. Three parties split the remaining proceeds: 25% to the seizing agency, 25% to the prosecuting agency, and 50% to the Exploited Children’s Special Fund.¹⁷²

The crime of human trafficking also triggers § 1308, which authorizes the interception of wire or oral communications in ongoing investigations.¹⁷³ In the past, officials used the statute to prosecute violations under the Uniform Controlled Dangerous Substance Act and other serious offenses such as first- and second-degree murder, aggravated kidnapping, and extortion,

169. See Polaris Project, *Louisiana State Report: State Ratings 2013*, POLARISPROJECT.ORG, http://www.polarisproject.org/storage/documents/Louisiana_State_Report_2013_08_01_16_53_35_439.pdf (last visited Sept. 26, 2014) [hereinafter *Louisiana State Report*].

170. LA. REV. STAT. ANN. § 15:539.1(A) (2012 & Supp. 2014), *amended by* Act of June 9, 2014, No. 564, § 539.1(A) (to be codified as amended at LA. REV. STAT. ANN. § 15:539.1(A)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

171. LA. REV. STAT. ANN. § 15:539.1(E) (2012 & Supp. 2014), *amended by* Act of June 9, 2014, No. 564, § 539.1(E) (to be codified as amended at LA. REV. STAT. ANN. § 15:539.1(E)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>. However, the proceeds granted to the victim are applied “after the costs of the public sale or auction, court costs, and fees related to seizure and storage have been satisfied.” *Id.*

172. *Id.* § 15:539.1(E)(1)-(3).

173. LA. REV. STAT. ANN. § 15:1308(A)(2)(q) (2005 & Supp. 2014).

among other crimes.¹⁷⁴ The legislature amended the statute to include human trafficking in 2010.

These tools are necessary as deterrents for traffickers and as an additional method for prosecutors to penalize offenders. The asset forfeiture also serves to protect the victim by applying any of the funds received to restitution damages. Although monetary damages may do little to make the victim “whole” again, these funds can serve to place the victim in a situation where recovery is possible. Additionally, any funds received by the Exploited Children’s Special Fund will be put toward aiding minor victims in their recovery. These legislative tools serve to protect victims of trafficking.

3. TRAINING FOR LAW ENFORCEMENT AND HUMAN TRAFFICKING TASK FORCE

During the regular session of 2013, Senator Long proposed Senate Concurrent Resolution 27 to create and provide for a Joint Human Trafficking Study Commission for the state.¹⁷⁵ The proposed Commission would study the needs, conditions, issues, and problems related to human trafficking in Louisiana and recommend action or legislation.¹⁷⁶ The seventeen-member group would consist of people from different sectors of the government, including two judges, a public defender, senate appointees, and a sheriff appointee.¹⁷⁷ Resolution 27 further required that the Commission study current law and policy within the state, elicit views from experts, and hear input from victims.¹⁷⁸ The Speaker of the House signed legislation on May 30, 2013, and sent to the Secretary of State on June 7, 2013.

Louisiana does not have training for law enforcement on identifying human traffickers or their victims.¹⁷⁹ The importance of training law enforcement is significant and can have positive prevention and prosecution effects, particularly during times of high tourism. For example, preceding the 2014 Super Bowl at Metlife Stadium, New Jersey officials set up training programs to assist law enforcement, hospitality workers, high school students,

174. *Id.* § 15:1308(A)(1)-(2).

175. S. Con. Res. 27, 2013 Leg., Reg. Sess. (La. 2013).

176. *Id.*

177. *Id.*

178. *Id.*

179. *Louisiana State Report*, *supra* note 169.

2014] **Call for Stronger Human Trafficking Legis.** 713

and airport employees in identifying the signs of trafficking.¹⁸⁰ In the two-week operation leading up to the event, authorities identified sixteen minors who had been forced into prostitution and were subsequently rescued.¹⁸¹ The lack of victim identification training may be the biggest gap in the Louisiana legislation. If officers and judges are not trained on how to identify a victim of trafficking, an arrested victim may make her way through the justice system without any form of assistance and eventually end up back in the hands of captors upon release.

4. HUMAN TRAFFICKING HOTLINE

As the trafficking problem has become more widespread, national human rights organizations have developed resources for reporting possible incidents of slavery. One of the more effective resources has been the development of human trafficking hotlines. State law requires certain Louisiana establishments to post the National Human Trafficking Resource Center hotline number, as well as information about the organization.¹⁸² The postings must be in English, Louisiana French, and Spanish.¹⁸³ State law requires postings prominently inside and outside of the following premises:

- (1) Every massage parlor, spa, or hotel that has been found to be a public nuisance for prostitution
- (2) Every strip club or other sexually oriented business
- (3) Every highway truck stop or highway rest stop.¹⁸⁴

The Department of Revenue and the Department of Transportation and Development must notify these locations of their requirements and provide sample postings on their websites to be available for download.¹⁸⁵

180. *All-Star*, *supra* note 46.

181. *Id.*

182. LA. REV. STAT. ANN. § 15:541.1(A) (Supp. 2014), *amended by* Act of June 9, 2014, No. 565, § 541.1(A) (to be codified as amended at LA. REV. STAT. ANN. § 15:541.1(A)), *available at* <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913732>.

183. *Id.* § 15:541.1(B)(2).

184. LA. REV. STAT. ANN. § 15:541.1(A) (Supp. 2014), *amended by* Act of June 9, 2014, No. 565, § 541.1(A)(4) (to be codified as amended at LA. REV. STAT. ANN. § 15:541.1(A)(4)), *available at* <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913732> (amending the statute to also include outpatient abortion facilities).

185. *Id.* § 15:541.1(C), *amended by* Act of June 9, 2014, No. 565, § 541.1(C) (to be

These types of postings seek to increase public awareness by detailing that trafficking is illegal and highlighting that there are organizations with the purpose of helping victims.¹⁸⁶ Likewise, studies show that community members report incidents of trafficking more often than the victims themselves.¹⁸⁷ This supports the idea that postings located in areas not necessarily used for the commercial sex industry may still have a significant impact.

Statistics from the National Human Trafficking Resource Center (NHTRC) tend to show that the dissemination of information on these resources has led to an increase in the reporting of potential trafficking violations. In 2012, the NHTRC received a total of 233 calls, roughly half of which were reporting a crisis, conveying tips, or identifying people in high-risk environments.¹⁸⁸ During the first half of 2013, the hotline received a reported 227 calls in Louisiana, again with roughly half of these calls reporting possible violations.¹⁸⁹ Between 2012 and 2013, there was potentially a 100% increase in the number of reports called in to the National Hotline.¹⁹⁰ Although this may

codified as amended at LA. REV. STAT. ANN. § 15:541.1(C)), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913732> (amending the statute to include the Department of Health and Hospitals).

186. See Dyle, *supra* note 11, at 584 (discussing California legislation similar to the postings requirement in Louisiana).

187. S. Judiciary Comm., *Bill Analysis*, Ca. S.B. 1193, 2011-2012 Reg. Sess. (Ca. 2012). Statistics from the National Human Trafficking Resource Center (NHTRC) for 2012 corroborate this information as well. In the state of Louisiana in 2012, 233 calls were received to report a possible trafficking incident. *National Human Trafficking Resource Center (NHTRC) Data Breakdown, Louisiana State Report: January 1st, 2012 to December 31st, 2012*, POLARIS PROJECT, <http://www.polarisproject.org/state-map/louisiana> (follow “2012 Annual Report” hyperlink) (last visited Sept. 26, 2014). Of those calls, community members made ninety-two, while potential victims made fifty-six. *Id.*

188. *National Human Trafficking Resource Center (NHTRC) Data Breakdown, Louisiana State Report: January 1st, 2012 to December 31st, 2012*, POLARIS PROJECT, <http://www.polarisproject.org/state-map/louisiana> (follow “2012 Annual Report” hyperlink) (last visited Sept. 26, 2014). Of the 233 calls, 59 were made from the Baton Rouge area, 41 made from the New Orleans area, and 2 from Metairie. *Id.*

189. *National Human Trafficking Resource Center (NHTRC) Data Breakdown, Louisiana State Report: 1/1/2013-6/30/2013*, POLARIS PROJECT, <http://www.polarisproject.org/state-map/louisiana> (follow “2013 January – June Report” hyperlink) (last visited Sept. 26, 2014).

190. The 2013 Annual Report from the National Human Trafficking Resource Center shows that 422 calls were made in Louisiana in the 2013 year. *2013 Statistical Overview: Overview of Incoming Signals*, NATIONAL HUMAN TRAFFICKING RESOURCE CENTER, <http://www.traffickingresourcecenter.org/sites/default/files/NHT>

2014] Call for Stronger Human Trafficking Legis. 715

seem to be a small impact when looking to the larger scheme of trafficking, every victim saved takes Louisiana a step closer to eradicating trafficking.

5. SAFE HARBOR AND SEXUALLY EXPLOITED CHILDREN

Article 725 of the Louisiana Children's Code specifically identifies the reasons for, and purpose of, safe harboring children. The legislature recognizes that prosecuting and incarcerating children re-traumatizes them and makes the process of recovery more difficult.¹⁹¹ Rather than prosecuting minors for criminal acts related to prostitution, minors are to be diverted into services that address their needs, including welfare services, counseling, crisis intervention, and emergency housing services.¹⁹² Article 839 of the Code allows for the District Attorney to effect an "informal adjustment agreement" if it is the minor's first offense and the minor is willing to cooperate and receive the particular specialized services.¹⁹³ However, if it is not the minor's first offense or the minor does not want to cooperate with the specialized services, it is within the District Attorney's discretion to continue with a delinquency proceeding.¹⁹⁴

Article 725.3 requires the Department of Public Safety and Corrections to develop a statewide protocol for delivering these services to sexually exploited minors.¹⁹⁵ The department may operate or contract with a nongovernmental agency (to the extent that funds are available) to operate one or more safe houses in an appropriate area.¹⁹⁶ To effectuate the operation of safe houses, the law permits the agency to apply for and accept grants, gifts, bequests, and any funds from private individuals, foundations, or the federal government.¹⁹⁷ The law provides many opportunities for minors to receive assistance, but there are also many gaps in the law that make it possible for a child to proceed through the legal system with no assistance or counseling.

6. VICTIM ASSISTANCE, CIVIL REMEDY, AND VACATING

RC%202013%20Statistical%20Overview.pdf (last visited Oct. 8, 2014).

191. LA. CHILD. CODE ANN. art. 725 (2014).

192. *Id.*

193. *Id.* art. 839(D)(1).

194. *Id.* art. 839(D)(2).

195. *Id.* art. 725.3.

196. LA. CHILD. CODE ANN. art. 725.2 (2014).

197. *Id.*

CONVICTIONS

In addition to the previously discussed remedies, the state of Louisiana has limited resources for victim assistance. The Department of Children and Family Services, along with the Department of Health and Hospitals, must develop a plan for the delivery of services to children found to be victims of human trafficking. The plan must include provisions for identifying victims, assisting victims with applying for federal and state benefits, coordinating the delivery of services,¹⁹⁸ preparing and disseminating educational programs, and assisting victims with family reunification.¹⁹⁹ If a law enforcement agency, district attorney's office, or office of the attorney general reasonably believes a person to be a trafficking victim, it must notify the Crime Victims Services Bureau of the Department of Public Safety and Corrections assess whether the victim meets the criteria for certification as a victim.²⁰⁰ If the victim is a minor, he will be referred to the appropriate services, including legal service providers.²⁰¹ If the victim is an adult and in need of protective services, he will be referred to an agency in accordance with the Adult Protective Services Act.²⁰²

Victims of human trafficking have a civil cause of action in Louisiana district court for actual damages, compensatory damages, punitive damages, and injunctive relief.²⁰³ A plaintiff-victim may also be awarded court costs and attorney's fees.²⁰⁴ Louisiana law does not, however, allow for the vacation of convictions for trafficked victims, other than the provisions discussed above, which allow for certain minors to participate in an informal adjustment agreement.

IV. LOUISIANA LEGISLATURE'S 2014 LEGISLATIVE SESSION

In March 2014, during the regular legislative session,

198. These services include: "health, mental health, housing, education, job training, child care, victim's compensation, legal, and other services." LA. REV. STAT. ANN. § 46:2161(A)(3) (Supp. 2014).

199. *Id.* § 46:2161(A)(4), (A)(6).

200. *Id.* § 46:2162(A)(1)-(2).

201. *Id.* § 46:2162(A)(2)(a).

202. *Id.* § 46:2162(A)(2)(b).

203. LA. REV. STAT. ANN. § 46:2163 (Supp. 2014).

204. *Id.*

2014] **Call for Stronger Human Trafficking Legis.** 717

lawmakers proposed six bills that would affect human trafficking legislation at the state level. As of August 5, 2014, three of these bills have been enacted, one has been vetoed, and two are still pending.²⁰⁵ This section of the Comment will summarize the proposed and enacted changes to Louisiana's current legislation and explain why some of these changes are important and necessary.

A. NEWLY ENACTED LEGISLATION

Sponsored by Representative Stokes, House Bill 569 was enacted to amend R.S. 13:587.4 and allow for the creation of human trafficking courts.²⁰⁶ The bill, now effective as Act 554, allows judges to be trained on human trafficking issues and the services available to victims.²⁰⁷ Procedurally, all prostitution-related offenses will be identified at arraignment and, if not resolved, transferred to the newly created human trafficking court.²⁰⁸ If the presiding judge determines that the victim needs services after a contradictory hearing, the victim shall receive appropriate support services, if available.²⁰⁹ Additionally, if the victim receives services, he or she will have the opportunity to receive noncriminal disposition or dismissal of the case.²¹⁰ The legislation does not create the specialty court outright, but rather allows for a majority vote of judges sitting en banc to designate the specialized division.²¹¹

205. The Louisiana legislation has established and maintained a website whereby state legislation may be monitored. See LOUISIANA STATE LEGISLATURE, <http://www.legis.la.gov/legis/Home.aspx> (last visited Sept. 26, 2014).

206. Act of June 9, 2014, No. 554 (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913721>. LA. REV. STAT. ANN. § 13:587.4 provides for the designation of a specialized division or section of the court. LA. REV. STAT. ANN. § 13:587.4(A) (2011 & Supp. 2014).

207. Act of June 9, 2014, No. 554, § 587.4(C)(1) (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4(C)(1)), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913721>.

208. *Id.* § 587.4(C)(2) (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4(C)(2)).

209. *Id.* § 587.4(C)(3)(a) (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4(C)(3)(a)).

210. *Id.* § 587.4(C)(3)(b) (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4(C)(3)(b)).

211. Act of June 9, 2014, No. 554, § 587.4(A) (to be codified as amended at LA. REV. STAT. ANN. § 13:587.4(A)), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=913721>.

Trafficking victims need the types of services that can transform their lives. To provide those services, judges, lawyers, and law enforcement must collaborate to link victims with those services. The creation of specialized human trafficking courts stops the shuffle of victims in and out of criminal courts and addresses the real reason they are there in the first place.²¹² Under this new court system, potential victims who are identified by law enforcement will be reassigned to the human trafficking court where a judge will determine if they are eligible for services and possibly vacate the conviction. The specialized court will serve two main functions: to expedite cases, and to aid victims in addressing the underlying concerns of human trafficking.²¹³

The State of New York announced in 2013 that it would implement a similar court system after conducting three pilot programs in New York City.²¹⁴ Fortunately, Louisiana has followed in the footsteps of New York and joined the initiative to treat people charged with prostitution offenses as victims rather than defendants. It cannot be overlooked, however, that specialty courts do come with a host of problems and have been highly criticized. They are often more vulnerable to funding cuts due to higher evaluation and training expenses compared to traditional adjudication.²¹⁵ Nonetheless, scattered evidence shows that when advocates of the courts are closely allied with funders, the courts tend to fare better.²¹⁶ Evidence shows that the funding problem is often a political one rather than a genuine lack of resources. Louisiana has taken great steps in the past ten years to enact stronger trafficking legislation, and many advocates make their voices heard in the legislature. If Louisiana politicians continue to place an emphasis on eradicating trafficking, the specialty courts should remain in place and flourish.

212. Chief Judge Jonathan Lipman, Announcement of New York's Human Trafficking Initiative: Remarks at the Citizens Crime Commission (Sept. 25, 2013), available at <http://www.courtinnovation.org/research/announcement-new-yorks-human-trafficking-intervention-initiative>.

213. These two functions are identified as core goals for specialized courts by the National Institute of Justice. *Specialized Courts*, NATIONAL INSTITUTE OF JUSTICE, <http://www.nij.gov/topics/courts/Pages/specialized-courts.aspx> (last updated Mar. 14, 2013).

214. Lipman, *supra* note 212.

215. Gordon M. Griller, *The Quiet Battle for Problem Solving Courts*, NATIONAL CENTER FOR STATE COURTS, <http://www.ncsc.org/sitecore/content/microsites/future-trends-2011/home/specialized-courts-services/3-1-the-quiet-battle-for-problem-solving-courts.aspx> (last visited May 1, 2014).

216. *Id.*

2014] **Call for Stronger Human Trafficking Legis.** 719

Lawmakers enacted House Bill 1025 as Act 564. The new law amends the current Human Trafficking statute, R.S. 14:46.2, discussed above. Included in these changes are the statutory definition of the term “debt bondage” and the broadening of the criminalization of human trafficking to include the “threatened” destruction of passports and immigration documents.²¹⁷ The legislation also expands the crime of trafficking to include the acts of receiving, isolating, and enticing another person to engage in the prohibited activity.

House Bill 1025 functions to broaden the conduct that is criminalized under the current human trafficking legislation. Incorporating debt bondage into the legal terminology of the state allows attorneys and judges to prosecute traffickers in the recruitment stages. Most importantly, § (F) of the Bill allows for a victim of trafficking who is convicted of prostitution or a similar crime to have an affirmative defense for those unlawful acts committed as a direct result of trafficking.²¹⁸ Although previous Louisiana legislation allowed for minors to use this affirmative defense, the newly enacted legislation allows all victims to bring forth evidence of their statuses as trafficked persons. The new law will ideally decrease the chances that a victim will be criminalized and thereafter have a conviction on his or her record. Because most jobs require an applicant to disclose any criminal history, past victims that are able to use the affirmative defense and avoid conviction will be able to enter the job market with a clean slate.

Along with this defense, the new law requires a person to be notified of the services available to them as a victim, something that in the past has only been available for minors. The law also amends the basic rights afforded to victims by requiring confidentiality of the identity of a victim of human trafficking. The law disallows a public official from disclosing the victim’s name, address, or identity.²¹⁹

217. Act of June 9, 2014, No. 564, §§ 46.2(C)(2), (C)(3)(f) (to be codified as amended at LA. REV. STAT. ANN. §§ 14:46.2(C)(2), (C)(3)(f)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

218. Act of June 9, 2014, No. 564, § 46.2(F) (to be codified as amended at LA. REV. STAT. ANN. § 14:46.2(F)), *available at* <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

219. All “public officers and officials” includes (and is not limited to) “law enforcement agencies, sheriffs, district attorneys, judicial officers, clerks of the court, the Crime Victims Reparations Board, and the Department of Children and Family

To generate funds for the training of law enforcement, the newly enacted legislation allows for up to 50% of the funds from these convictions to go to the Louisiana Commission on Law Enforcement and the Administration of Criminal Justice. Act 564 also requires the Council on Peace Officer Standards to provide a training course for this purpose.

House Bill 732 was signed into law on June 12, 2014 and became effective as Act 634. The new legislation allows for the waiver of a minimum sentence requirement for certain types of sex offenses and crimes of violence. The legislation excludes the crimes of human trafficking and sex trafficking a minor from this waiver.²²⁰ The legislation may be viewed as a positive or a negative change in the criminal law. But excluding human trafficking violations from this change ensures that traffickers will be required to serve the minimum sentence required and further enforces the idea that the legislatures of Louisiana are not taking the trafficking problems lightly. Although the bill has little effect on current trafficking laws, the new legislation still protects the existing scheme.

B. VETOED LEGISLATION

The Governor vetoed House Bill 682, which was substituted as House Bill 1255, on June 19, 2014.²²¹ The law would have served to amend current criminal and sentencing guidelines regarding eligibility for parole.²²² Assuming an offender had met certain criteria, the offender would have been required to serve only 75% of the sentence, as opposed to the previously required 85%.²²³ The legislation would have specifically disqualified certain types of offenders from receiving this reduction in time

Services" LA. REV. STAT. ANN. § 46:1844(W)(1)(a) (2010 & Supp. 2014), amended by Act of June 9, 2014, No. 564, § 1844(W)(1)(a) (to be codified as amended at LA. REV. STAT. ANN. § 46:1844(W)(1)(a)), available at <http://www.legis.la.gov/legis/BillInfo.aspx?s=14RS&b=ACT564&sbi=y>.

220. Act of June 12, 2014, No. 634, § 890.1(D) (to be codified as amended at LA. CODE CRIM. PROC. ANN. art. 890.1(D)), available at <http://www.legis.la.gov/legis/ViewDocument.aspx?d=914203>.

221. H.R. 1255, 2014 Leg., Reg. Sess. (La. 2014) (enrolled), available at <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=911136>.

222. *Id.*

223. *Id.* Among the requirements, an offender must complete her GED certificate program, obtain a low-risk level determination by the Secretary of the Department of Public Safety and Corrections, and complete 100 hours of prerelease programming. LA. REV. STAT. ANN. § 15:574.2(C)(2) (2012 & Supp. 2014).

2014] Call for Stronger Human Trafficking Legis. 721

served. One of the exclusions included persons found guilty of trafficking children for sexual purposes.²²⁴ Similar to the enacted House Bill 732, Bill 682 would not have changed current human trafficking law, but would have preserved the current scheme and sentencing requirements. Even so, the bill is an important illustration that the legislature intends to keep building the human trafficking laws without detracting from the punishment of traffickers.

C. PENDING LEGISLATION

House Bill 731, if enacted, would allow for the designation of trafficking children for sexual purposes and human trafficking in general as crimes of violence in the minutes of the court.²²⁵ This designation has consequences to those convicted, including the inability for a sentence to be suspended or deferred and the inability to participate in the drug division probation program for any future offenses.²²⁶

Senate Bill 286 again reiterates the proposal that human trafficking and sex trafficking of a minor are crimes of violence. If convicted of a crime of violence, the offender will not be eligible for certain programs, including the drug division probation program, parole eligibility, and the entrepreneurial education curriculum.²²⁷ From a victim-centered perspective, these bills make sense. If a victim of trafficking is often not afforded the ability to recover, undergo counseling, and receive aid in transitioning back into normal life, it would seem rather backwards to afford those same opportunities to his captors. Human trafficking is a violent crime, as victims are often beaten and always held against their will. Although scholars may argue that the rehabilitation programs should extend to those who have committed violent crimes, it would be a poor distribution of resources to spend taxpayer money on rehabilitating the trafficker before aiding the victim.

IV. POSITIVE ASPECTS OF THE NEW LEGISLATION

224. H.R. 1255, 2014 Leg., Reg. Sess. (La. 2014) (enrolled), *available at* <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=911136>.

225. H.R. 731, 2014 Leg., Reg. Sess. (La. 2014) (original), *available at* <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=879524>.

226. *Id.*

227. S. 286, 2014 Leg., Reg. Sess. (La. 2014) (original), *available at* <http://www.legis.la.gov/Legis/ViewDocument.aspx?d=877773>.

AND PROPOSAL FOR FUTURE CHANGES

As evidenced by current and pending legislation, Louisiana is taking the human trafficking problem seriously. The Louisiana legislation has provided a sound starting point for combating the main issues of trafficking. However, there need to be changes to the law to better serve victims. Some of these changes will occur by way of the newly enacted legislation, specifically House Bills 1025 and 569. Still, more measures will be needed to fully combat the human trafficking problem.

A. SUPPORT FOR THE NEWLY-ENACTED LEGISLATION

The 2014 Louisiana legislative session produced many positive changes in the line of human trafficking laws. However, it is imperative that the legislatures continue to monitor the progress made towards ending human trafficking. Many national and local resources provide the public with statistics on trafficking and updates to state law. These resources need to be continually monitored to ensure that Louisiana is moving in a positive direction towards eradicating trafficking. Equally as important, legislatures must ensure that the new laws are actually carried out in an effective manner. The law that creates the human trafficking courts leaves at least one gap that pose a potential problem. Although this legislation has been adopted, it requires the support of a majority vote of judges sitting en banc to actually designate the courts. Therefore, if the courts are not designated before the 2015 legislative session, the language of House Bill 569/Act 554 should be revisited to require less of a showing to designate the specialty court for human trafficking. Alternatively, the legislature could approve a bill that would create the court outright instead of leaving the ability to create the court within previously existing legislation

The creation of the human trafficking court is a positive step for victims. Cases will be resolved more quickly, and professionally trained judges will be able to give specialized attention to victims. As stated above, the contributing factors to the human trafficking problem include a high supply and demand, a culture of tolerance, and a lack of awareness. The creation of these courts may not be able to solve issues of poverty and the unnerving demand for modern-day slaves. However the legislature has shown that Louisiana will not remain a state with a culture of tolerance. Awareness of the problem is also growing as judges and law enforcement will receive training, increasing

2014] Call for Stronger Human Trafficking Legis. 723

knowledge at the ground level. The new legislation will function to limit contributing factors and hopefully address the real obstacles of returning victims to independence.

B. FURTHER CHANGES TO LEGISLATION

Although Louisiana has a solid foundation of human trafficking legislation, more can be done to better serve the victims of these horrible crimes. State legislation should be amended to require local police officers in identified “hot spot” locations to be trained on victim identification and interviewing techniques. These hot spots could be identified using reliable data from a third-party nongovernmental organization, such as the Polaris Project. Although the current proposed legislation would allow for the training of judges, it is of the utmost importance that local law enforcement officers are trained because they are in the field and initially interacting with victims. This would help alleviate some of the contributing factors, specifically the lack of awareness by officers, but also may work to limit the supply of victims by taking them out of the trafficking world. If law enforcement can appropriately identify victims, and if victims are given proper resources, it is more likely that victims will be able to recover and move on with life.

As stated above, sex trafficking often obscures the equally important issue of labor trafficking. If a victim of labor trafficking is not arrested by law enforcement but eventually placed in front of a judge, it is unclear whether that person will be provided with the services a “victim defendant” would receive. Therefore, R.S. 15:539 needs additional provisions that require the Crime Victims Services Bureau of the Department of Public Safety and Corrections to inform a labor trafficking victim of the organizations that can help him or her and what services may be available. Furthermore, the newly enacted Act 554 should be revisited and amended to allow for the human trafficking courts to hear cases involving labor trafficking and issues of domestic servitude. Although commercial sex trafficking is the largest market in the trafficking problem, opening up the new courts to other types of victims will increase awareness, rehabilitate victims through services offered, and allow for some leniency for victims charged with any offenses as a result of status as a slave.

Legislation should further be amended to allow for the vacatur of prostitution-related convictions for trafficked victims after an appeals process. Although affirmative defenses will help

those convicted after the legislation takes effect, those with recent convictions will still be left with a criminal record and a possible jail sentence. Therefore, Louisiana should adopt legislation similar to the state of New York, which allows for vacatur. The language of the statute should read that vacatur of conviction may be entered upon motion by defendant upon the ground that:

The judgment is a conviction where the arresting charge was under section R.S. 14:82 (prostitution) or related offenses provided that:

- (i) a motion under this paragraph shall be made with due diligence, after the defendant ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and
- (ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state, or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.²²⁸

Vacating a victim's conviction will allow the individual to attempt to return to normal life without a criminal record. If a victim tries to enter the job market with a prostitution offense on his or her record, it could prevent her from obtaining a valid and legal position. A criminal record may prevent a victim from obtaining loans, going to school, or simply moving on with her life. Although critics may be concerned that those who have purposefully engaged in prostitution will misuse the vacatur of convictions, the statute would require that an individual be deemed a "victim" by the court. If Louisiana were to adopt legislation allowing for the human trafficking court, well-trained and impartial judges would designate people as victims and would serve as the gatekeepers in determining whether a

228. This is modeled after a New York statute. *See* N.Y. CRIMINAL PROCEDURE LAW § 440.10 (McKinney 2012) (emphasis added).

2014] Call for Stronger Human Trafficking Legis. 725

conviction could be vacated. Ultimately, this would lessen the supply of victims. Victims would have the chance to enter to job market and pull themselves out of poverty, which is what they were likely trying to do in the first place.

Additionally, Louisiana should also adopt a required reflection period for those who have been detained by police and are suspected of being victims. During this time period, the arrestee will have the chance to decide whether he would like to cooperate with police in the investigation of the possible trafficking offense. Because many of the services available to victims are only received if the victim agrees to aid prosecutors, this reflection period would give the victim breathing room to consider his or her options. The reflection period is recommended in international treaties and is used in European countries, including the Netherlands.²²⁹ The time can range from one month up to three months and allows law enforcement to gain the trust of the victim, explain the victim's rights, and present her with options.²³⁰ A reflection period will not only better serve the mental health of the victim by giving him or her time to make an informed decision, it will also give police officers more time to gather important information through informal meetings with victims. The more information that law enforcement can gain on traffickers, the better the chances those people will be caught and prosecuted.

The above changes will help shift the focus of the current line of legislation from solely punishing the trafficker to rehabilitating the victim. By focusing on the victims and their needs, the legal system can aid in ending a cycle that often places victims back into the grasp of their captors. Because the human trafficking problem victimizes people of all ages, from all around the globe, and of both genders, the solutions to the problem will vary. Each training program, specialty court, and social worker can make a difference, so long as the legislature provides the tools to appropriately combat the problem.

V. CONCLUSION

While identifying and prosecuting traffickers is an essential component in fighting human trafficking, victim protection and

229. Braspenning, *supra* note 21, at 340.

230. *Id.*

rehabilitation is key to the solution. Federal legislation and Louisiana legislation do not fully address the human trafficking problem. So long as local officers are not trained in victim identification, victims will continue to fly under the radar. By implementing training programs and enacting proposed legislation regarding the creation of specialty courts, Louisiana can address one of the contributing factors to the trafficking problem, a lack of awareness. Furthermore, by vacating the convictions of victims and clearing their criminal records of prostitution-related offenses, victims would have the chance to integrate back into society with the potential of receiving jobs, going back to school, or applying for loans.

Ultimately, there is no quick and easy way to eradicate human trafficking. However, by using legislation to address contributing factors and to protect victims, the government can build a foundation to combat the problem.

Rachel M. Scarafia