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THE NEXT STEP: THE FUTURE OF NEW YORK STATE'S HUMAN TRAFFICKING LAW

*Marisa Nack**

INTRODUCTION

In March 2008, Woody Gaston, 22, approached a Queens, New York teenager walking home from school.¹ Gaston lured her back to his apartment with the offer of new clothes and a trip to the beauty salon.² He then held her captive for two weeks, raped her, and forced her to have sex with almost 200 men.³ Gaston advertised her services on Craigslist.⁴ The victim was lucky enough to escape Gaston's apartment and contact her aunt for help.⁵ Gaston was arrested in June 2008.⁶

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¹ Nicole Bode, *Pimp First to Face Spitzer's Law*, N.Y. DAILY NEWS, June 18, 2008, available at http://www.nydailynews.com/news/ny_crime/2008/06/18/2008-06-18_pimp_first_to_face_spitzers_law.html.

² *Id.*

³ *Id.*

⁴ *Id.* Craigslist is a popular Internet site that provides classifieds and forums for housing, personal services, local community, and events. See generally Craigslist Home Page, <http://www.craigslist.org> (last visited Mar. 23, 2010).

⁵ Bode, *supra* note 1.

⁶ *Id.*

The victim in this tragic story is just one of millions forced into human trafficking each year.⁷ Human trafficking is a form of “modern day slavery.”⁸ It is a crime that “deprives people of their human rights and freedoms, increases global health risks, fuels growing networks of organized crime, and can sustain levels of poverty and impede development.”⁹ The International Labor Organization (“ILO”)¹⁰ estimates that there are currently at least 12.3 million people worldwide working in domestic servitude, labor trafficking, or sex trafficking.¹¹ Approximately 17,500 foreign nationals are trafficked into the United States each year.¹² Many U.S. citizens also fall prey to trafficking.¹³

New York is a major hub for human trafficking.¹⁴ For example, in May 2007, a couple from Muttontown, New York

⁷ See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REP. 7 (2009) [hereinafter TIP REPORT 2009], available at <http://www.state.gov/documents/organization/123357.pdf>.

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ The International Labour Organization (ILO) is the “global body responsible for drawing up and overseeing international labour standards.” About the ILO, http://www.ilo.org/global/About_the_ILO/lang--en/index.htm (last visited Mar. 23, 2010). The ILO is devoted to advancing “decent and productive work in conditions of freedom, equity, security and human dignity.” *Id.*

¹¹ TIP REPORT 2009, *supra* note 7, at 8.

¹² PolarisProject.org, What is Human Trafficking?, <http://www.polarisproject.org/content/view/26/47/> (last visited Mar. 5, 2010).

¹³ See, e.g., PolarisProject.org, Domestic Trafficking Within the U.S., <http://www.polarisproject.org/content/view/60/81/> (last visited Jan. 31, 2010); see generally FREE THE SLAVES & HUMAN RIGHTS CTR., UNIV. OF CAL. BERKELEY, HIDDEN SLAVES: FORCED LABOR IN THE U.S. (2004), available at <http://www.freetheslaves.net/Document.Doc?id=17>. Determining the exact number of victims is very difficult due to the hidden nature of trafficking. The data compiled by the United States government counts the number of trafficking survivors who receive federal assistance but does not take into account the actual number of trafficking victims in the United States. *Id.* at 10.

¹⁴ See Kathleen K. Hogan, Comment, *Slavery in the 21st Century and in New York: What Has the State’s Legislature Done?*, 71 ALB. L. REV. 647, 651 (2008).

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was arrested for keeping two Indonesian women in domestic servitude for five years.¹⁵ The women were forced to work day and night and sleep on mats in the closet, never allowed to leave the house, barely fed, beaten with household objects, threatened, and burned with cigarettes and boiling water.¹⁶ In November 2008, David Brown was indicted for sex trafficking of a 19-year-old girl.¹⁷ Brown told the victim that she could not talk to her family or friends or leave the apartment without him or “he would beat her and cut her body up to pieces and make sure that no one would know she was dead.”¹⁸ The girl was taught how to use Craigslist to advertise her services and how to avoid undercover police officers.¹⁹ All of the proceeds of the prostitution went to Brown.²⁰ When the victim tried to escape she was hit, choked and raped by Brown and his accomplice.²¹

¹⁵ Paul Vitello, *From Stand in Long Island Slavery Case, a Snapshot of a Hidden U.S. Problem*, N.Y. TIMES, Dec. 3, 2007, available at <http://www.nytimes.com/2007/12/03/nyregion/03slavery.html>.

¹⁶ *Id.* Varsha Sabhnani was convicted in Federal Court on 12 counts, including forced labor, peonage, involuntary servitude, and harboring aliens, and sentenced to 11 years in prison. Her husband, Mahender Sabhnani, was sentenced to 3 years and 4 months in prison and fined \$12,500. See Eric Koningsberg, *Couple's Downfall is Cumulating in Sentencing in Long Island Slavery Case*, N.Y. TIMES, June 23, 2008, available at <http://www.nytimes.com/2008/06/23/nyregion/23slave.html>; *Man in Slave Case Sentenced to 3 Years*, N.Y. TIMES, June 28, 2008, available at <http://www.nytimes.com/2008/06/28/nyregion/28slave.html?scp=19&sq=varsha+sabhnani&st=nyt>; *Women in Slave Case is Sentenced*, N.Y. TIMES, June 27, 2008, available at <http://www.nytimes.com/2008/06/27/nyregion/27slave.html?scp=2&sq=varsha+sabhnani&st=nyt>.

¹⁷ Press Release, Queens County District Attorney, D.A. Brown: Alleged Pimp and Prostitute Indicted in Kidnapping, Rape, and Sex Trafficking of a 19-year-old Girl (Nov. 6, 2008), available at http://www.queensda.org/newpressreleases/2008/november/brown_isadadze_11_06_2008_ind.pdf.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* David Brown was convicted in Queens County on December 1, 2009 of sex trafficking and kidnapping and additional charges, and he received a sentence of 25 years to life in prison. This was the first conviction

In February 2009, Jamaal Watkins was indicted for luring a 14-year-old girl into prostitution and forcing her to have sex with over 500 men in a period of just two months.²² Watkins met the victim on an online chat site when she was only 13-years-old and living in a state-funded group home.²³ Watkins advertised the victim's services by posting indecent photographs of her under Craigslist's "dates" listings.²⁴ And, in May 2009, Joseph Yannai, a prominent author from Westchester County, was indicted on charges of sexual abuse and labor trafficking.²⁵

for sex trafficking since the offense was created in 2007. See Joseph Berger, *Despite Law, Few Trafficking Arrests*, N.Y. TIMES, Dec. 4, 2009, available at <http://www.nytimes.com/2009/12/04/nyregion/04trafficking.html?scp=1&sq=despite+law%2C+few+trafficking+arrests&st=nyt>; Press Release, Queens County District Attorney, D.A. Brown: Queens Man First in New York State to be Sentenced Under Sex Trafficking Statute: Victim Made to Work as Prostitute While Defendant Acted as Her Pimp 1 (Feb. 9, 2010), available at http://www.queensda.org/newpressreleases/2010/february/brown_sen_2_9_2010.pdf.

²² Nicole Bode, *Queens Man Accused of Pushing 14-year-old into Prostitution*, N.Y. DAILY NEWS, Feb. 27, 2009, available at http://www.nydailynews.com/news/ny_crime/2009/02/26/2009-02-26_queens_man_accused_of_pushing_14yearold_.html. Watkins was arraigned on February 24, 2009, on a 95-count indictment charging him with the crimes of second-degree promoting prostitution, second- and third-degree rape, second-degree criminal sexual act, promoting an obscene sexual performance by a child, promoting a sexual performance by a child, possessing an obscene performance by a child, possessing a sexual performance by a child and endangering the welfare of a child. If convicted, Watkins faces up to 15 years in prison. Press Release, Queens County District Attorney, D.A. Brown: Alleged Pimp Indicted for Promoting Prostitution (Feb. 26, 2009), available at http://www.queensda.org/newpressreleases/2009/february/watkins_02_25_09_ind.pdf.

²³ *Supra* note 22.

²⁴ *Id.*

²⁵ Terence Corcoran & Sean Gorman, *Author Accused of Keeping Sex Slave*, J. NEWS (Westchester), May 19, 2009, at 1A. The case against Joseph Yannai is currently pending at the Westchester County District Attorney's Office. Press Release, Westchester County District Attorney, Pound Ridge Author Charged with Labor Trafficking and Sex Abuse Involving Personal Assistant (May 18, 2009), available at http://www.westchesterda.net/press_releases/90518prsaarraign.htm.

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Yannai would find his victims on international employment websites and bring them into the United States under the guise of hiring them as his personal assistant.²⁶ The police were alerted to Yannai's conduct when his most recent victim, a 21-year-old woman from Hungary, managed to contact a friend, who then helped her escape.²⁷ The girl had been enslaved in Yannai's home, with little access to phone calls or email and no access to transportation.²⁸ Photographs with six or seven other women were found in Yannai's bedroom.²⁹ These stories are only a glimpse into the hidden world of human trafficking in New York.

In response to the pervasive problem of human trafficking, the New York legislature passed New York's first Human Trafficking Law on June 6, 2007.³⁰ At the time of enactment, commentators praised the legislation as one of the nation's strongest and most comprehensive anti-trafficking laws.³¹ This note examines whether New York's Human Trafficking Law has been effective in the two years since its enactment. Part II provides the reader with an overview of trafficking in the United States. The discussion includes information on human trafficking, the federal anti-trafficking legislation, the importance of state legislation, and an examination of New York's Human Trafficking Law. Part III explains how the New York state government, law enforcement, and non-governmental organizations ("NGO") have worked together to fulfill their

²⁶ See Corcoran, *supra* note 25.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Press Release, New York State Executive Chamber, Legislation to Prevent Human Trafficking Signed Into Law (June 6, 2007), *available at* <http://www.state.ny.us/governor/press/0606071.html>.

³¹ See, e.g., Editorial, *Targeting Human Trafficking*, N.Y. TIMES, May 21, 2007, *available at* http://www.nytimes.com/2007/05/21/opinion/21mon3.html?_r=1&scp=1&sq=targeting%20human%20trafficking&st=cse; Danny Hakim & Nicholas Confessore, *Albany Agrees on Law Against Sexual and Labor Trafficking*, N.Y. TIMES, May 17, 2007, *available at* <http://www.nytimes.com> (Search "Trafficking May 17, 2007" into "Search" then follow the hyperlink).

obligations under the Human Trafficking Law to increase awareness of sex trafficking, locate victims, initiate prosecutions, and provide victim services. Yet, there is still much work to be done in the areas of professional training, public awareness, victim services, and prosecution. This Note offers suggestions for changes in the New York state trafficking laws that will increase their effectiveness.

I. BACKGROUND

A. *The Problem of Human Trafficking in the United States*

Human trafficking is:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.³²

The ILO ranks human trafficking as the third largest criminal industry in the world, behind drug trafficking and arms dealing.³³ The trafficking industry generates \$32 billion per year, with sex trafficking accounting for \$7 billion.³⁴ In New York, human trafficking is most prevalent in prostitution, massage parlors, strip clubs, live-sex shows, hotels, pornography, domestic servitude and restaurants because these industries are subject to minimal government interference and are characterized by a demand for low-wage workers.³⁵

³² This is the universal definition of human trafficking articulated by the United Nations. UNODC.org, Human Trafficking, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited Dec. 1, 2009).

³³ TIP REPORT 2009, *supra* note 7, at 8.

³⁴ *Id.*

³⁵ See JANICE G. RAYMOND & DONNA M. HUGHES, COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES 8 (2001), http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf;

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Human trafficking is not only promoted by large-scale criminal organizations, but by informal networks and individuals as well.³⁶ Within these networks, the perpetrators include recruiters, document forgers, transporters, employers, pimps, and purchasers.³⁷ Noncriminal businesses also facilitate the trafficking industry.³⁸ Such facilitators, such as landlords, hotel and motel owners, and magazine owners, may be unaware of their role in trafficking,³⁹ but those who participate willingly have much to gain financially and suffer a very low risk of prosecution.⁴⁰

Traffickers prey on vulnerable women and children who are easily persuaded by false promises of a better life.⁴¹ Pimps also recruit women in clubs by drugging them and then using the drug or alcohol dependency to maintain control over the victims.⁴² Traffickers frequently maintain control by isolating

Note, *Remedying the Injustice of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2577 (2006).

³⁶ See DANIEL WERNER & KATHLEEN KIM, CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING 23 (Southern Poverty Law Center 3d ed. 2008); RAYMOND & HUGHES, *supra* note 35, at 48–50; Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 6 (2004); Adam S. Butkus, Student Work, *Ending Modern-Day Slavery in Florida: Strengthening Florida's Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 315 (2007).

³⁷ See WERNER & KIM, *supra* note 36, at 23; Kim & Hreshchyshyn, *supra* note 36, at 6.

³⁸ Non-criminal businesses that facilitate trafficking include motels and hotels, airlines, buses, railroads, advertisers, restaurants, and landlords. See PolarisProject.org, Human Trafficking 101, http://actioncenter.polarisproject.org/index.php?option=com_content&view=article&id=52&Itemid=64 (last visited Feb. 10, 2010) [hereinafter *Human Trafficking 101*]; RAYMOND & HUGHES, *supra* note 35, at 49–50.

³⁹ See *Human Trafficking 101*, *supra* note 38.

⁴⁰ *Id.*

⁴¹ People are vulnerable to trafficking situations because of high rates of unemployment, crime, discrimination, poverty, and cultural acceptance of the practice. See TIP REPORT 2009, *supra* note 7, at 16; RAYMOND & HUGHES, *supra* note 35, at 51.

⁴² RAYMOND & HUGHES, *supra* note 35, at 53. This phenomenon was

their victims from the outside world, often confiscating their identification papers and threatening them with deportation or punishment if they seek help.⁴³ Human trafficking victims suffer physical and psychological abuse at the hands of their traffickers, resulting in severe physical disabilities, drug addictions and mental health problems, such as rape trauma, post-traumatic stress disorder, depression, and memory loss.⁴⁴

A global demand for cheap labor and prostitution, combined with an ample supply of victims, fuels the success of the human trafficking industry.⁴⁵ The current global financial crisis has contributed to an increase in both the supply and the demand for human trafficking.⁴⁶ Globalization has also contributed to an

portrayed in the popular 2008 film *Taken*. Despite being a fictional film, *Taken* depicts a realistic method of recruitment by sex traffickers. In the film, traffickers targeted female tourists, drugged them, and sold them for sex.

⁴³ Note, *supra* note 35, at 2577; Butkus, *supra* note 36, at 307–08.

⁴⁴ *Combating Modern Slavery: Reauthorization of Anti-Trafficking Programs: Hearing Before the H. Comm. on the Judiciary*, 110th Cong. (2007) [hereinafter *Hearing*] (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services), available at <http://action.web.ca/home/catw/readingroom.shtml?x=113289> (“Sex trafficking victims typically suffer from rape trauma, post traumatic stress disorder, severe depression, acute feelings of worthlessness and shame, memory loss, and/or suicidal ideations and acts. Victims of sex trafficking experience all of the trauma battered women and rape victims sustain, often at significantly higher levels.”); see also Shashi Irani Kara, Note, *Decentralizing the Fight Against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking By State Agencies and Local Non-Governmental Organizations*, 13 *CARDOZO J.L. & GENDER* 657, 661–62 (2007); Stephanie L. Mariconda, Note, *Breaking the Chains: Combating Human Trafficking at the State Level*, 29 *B.C. THIRD WORLD L.J.* 151, 165–66 (2009).

⁴⁵ See Mariconda, *supra* note 44, at 162–63. See generally CAPTIVE DAUGHTERS & THE INT’L HUM. RIGHTS L. INST. OF DEPAUL U. C. OF L., *DEMAND DYNAMICS: THE FORCES OF DEMAND IN GLOBAL SEX TRAFFICKING* (Morrison Torrey & Sara Dubin eds., 2003), http://www.law.depaul.edu/centers_institutes/ihrl/downloads/demand_dynamics.pdf [hereinafter *DEMAND DYNAMICS*].

⁴⁶ See, e.g., TIP REPORT 2009, *supra* note 7, at 8–9; *Poverty Boosting Human Trafficking—U.S. Report*, *IRISH TIMES*, June 17, 2009, available at <http://www.upi.com/turl-450fdc/> (“Persons who are under economic stress

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increase in human trafficking in the United States.⁴⁷ Specifically, the Internet has made the business increasingly accessible, affordable, and efficient.⁴⁸ Sex traffickers fill the supply and demand side of the business by recruiting vulnerable teenagers through employment ads or chat rooms and then prostituting them over the same websites.⁴⁹ The use of online forums has placed teenagers in every “spectrum of society” at increased risk of abduction by traffickers.⁵⁰

Due to the hidden nature of human trafficking, many citizens are oblivious to the fact that many human trafficking victims live among us.⁵¹ Even worse, local police frequently come across trafficking crimes, but lack the training to recognize the offenses as more than routine prostitution or labor law violations.⁵² For example, prostitutes are often arrested without consideration that they may be victims of the commercial sex trade, and, as a result, the traffickers escape punishment.⁵³ So long as trafficking remains profitable for its perpetrators and the likelihood of detection remains low, human trafficking will continue to

are more likely to fall prey to the wiles of the traffickers who often get their victims through promises of a better life . . .”).

⁴⁷ See Mariconda, *supra* note 44, at 162–64; Kim & Hreshchyshyn, *supra* note 36, at 5–6.

⁴⁸ JARED COHEN ET AL., SEX TRAFFICKING: RECOMMENDATION FOR RESOLUTION 2 (MANHATTAN YOUNG DEMOCRATS POLICY PAPER 2009), available at <http://gomyd.com/index.php?s=policy+paper+sex+trafficking>.

⁴⁹ See *id.*

⁵⁰ Kevin Poulson, *Pimps Go Online to Lure Kids Into Prostitution*, WIRED, Feb. 25, 2009, <http://www.wired.com/threatlevel/2009/02/pimping>; see also Suzanna L. Tiapula & Allison Turkel, *Identifying the Victims of Human Trafficking*, 42-JUN PROSECUTOR 10 (2008).

⁵¹ See, e.g., Vitello, *supra* note 15; DEMAND DYNAMICS, *supra* note 45.

⁵² Moira Heiges, Note, *From the Inside Out: Reforming State and Local Prostitution Enforcement to Combat Sex Trafficking in the United States and Abroad*, 94 MINN. L. REV. 428, 450–51 (2009) (“On the surface, victims of sex trafficking may be indistinguishable from ‘voluntary’ persons in prostitution.”); see also Kara, *supra* note 44, at 668; Butkus, *supra* note 36, at 311.

⁵³ See, e.g., Heiges, *supra* note 52, at 450; Kara, *supra* note 44, at 662; Butkus, *supra* note 36, at 306.

thrive.⁵⁴

B. Legislative Efforts to Combat Human Trafficking

Recognizing the scope of human trafficking within the U.S. and the inadequacy of existing legislation to bring justice to its victims, Congress enacted the first federal anti-trafficking legislation, the Trafficking Victims Protection Act (“TVPA”) in 2000.⁵⁵ The TVPA adopted a victim-centered approach to combating human trafficking, with a focus on prosecuting traffickers, protecting victims, and preventing future trafficking.⁵⁶ The TVPA strengthened the federal government’s ability to prosecute traffickers.⁵⁷ Most notably, the TVPA expanded the definition of coercion to include psychological coercion.⁵⁸ The TVPA added four new criminal offenses to the

⁵⁴ See Mariconda, *supra* note 44, at 165.

⁵⁵ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (codified as amended in scattered sections of 8, 18, & 22 U.S.C. (2000)).

⁵⁶ Trafficking Victims Protection Act of 2000 § 102 (codified as amended at 22 U.S.C. § 7101(a) (2000)); see also Donna M. Hughes, *Combating Sex Trafficking: A Perpetrator-Focused Approach*, 6 U. ST. THOMAS L.J. 28, 36 (2008).

⁵⁷ Prior to the passage of the TVPA there was no comprehensive law in place to penalize the range of offenses involved in the trafficking scheme. Trafficking Victims Protection Act of 2000 § 102 (codified as amended at 22 U.S.C. § 7101(b) (2000)). The TVPA provided the government with the tools necessary to prosecute traffickers for the full extent of their crimes. Trafficking Victims Protection Act of 2000 § 111 (codified as amended at 18 U.S.C. §§ 1581a, 1583, 1584, 1589-1592 (2000)).

⁵⁸ The requirement of physical force or restraint had hindered the government’s ability to prosecute traffickers for crimes such as peonage and involuntary servitude. See, e.g., Mark Sidel, *Richard B. Lilich Memorial Lecture: New Directions in the Struggle Against Human Trafficking*, 17 J. TRANSNAT’L L. & POL’Y 187, 199 (2008). The TVPA defines coercion as: “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.” Trafficking Victims Protection Act of 2000 § 103 (codified as

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U.S. Criminal Code: (1) forced labor; (2) trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; (3) sex trafficking and (4) the unlawful seizure of documents in furtherance of trafficking.⁵⁹ The TVPA also created an Interagency Task Force to monitor trafficking and consult with NGOs to create programs to raise public awareness of trafficking in the United States.⁶⁰

Subsequent amendments to the TVPA have increased the protections available to trafficking victims.⁶¹ For example, the Trafficking Victims Protection Reauthorization Act of 2005 created a grant program to assist state and local government and NGOs in their efforts to “establish, develop, expand, and strengthen assistance programs.”⁶² On December 10, 2008, the House and the Senate passed the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, which further increased the government’s ability to prosecute traffickers.⁶³

amended at 22 U.S.C. § 7102(2) (2000)); *see also*, U.S. v. Bradley, 390 F.3d 145 (1st Cir. 2004) (stating that the TVPA was intended to encompass “subtle psychological methods of coercion”).

⁵⁹ Trafficking Victims Protection Act of 2000 § 111 (codified as amended at 18 U.S.C. §§ 1589–1592 (2000)).

⁶⁰ Trafficking Victims Protection Act of 2000 § 105 (codified as amended at 22 U.S.C. § 7103 (2000)).

⁶¹ *See generally* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, 117 Stat. 2875 (codified as amended in scattered sections of 8, 18, & 22 U.S.C.); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109–164, 119 Stat. 3558 (codified as amended in scattered sections of 18, 22, & 42 U.S.C.); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110–457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, 22, & 42 U.S.C.).

⁶² Trafficking Victims Protection Reauthorization Act of 2005 § 202, 42 U.S.C. § 14044a (2006).

⁶³ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110–457, 122 Stat. 5044 (codified as amended in scattered sections of 8, 18, 22, & 42 U.S.C.) Provisions of the Act include: (1) prosecutors no longer need to prove that a defendant knew a victim was a minor; (2) proof of force, fraud or coercion need only be established for the offense of aggravated sex trafficking; (3) force, fraud or coercion will no

Around the year 2000, the Federal Government and other groups began to push for states to enact their own legislation and develop more anti-trafficking resources at the local level.⁶⁴ State trafficking legislation is wise policy for several reasons. First, federal laws are best equipped to detect large-scale human trafficking operations.⁶⁵ However, human trafficking frequently occurs on a smaller scale.⁶⁶ Accordingly, state statutes fill in the gaps as local officials are better situated to detect smaller human trafficking incidents.⁶⁷ Second, local officials tend to begin trafficking investigations because emergency service phone numbers connect to the local police.⁶⁸ Thus, state criminalization of human trafficking allows for more efficient prosecutions because local officials do not have to interrupt an investigation to give the case over to federal agents.⁶⁹ Third, local media coverage of state arrests and prosecutions brings human trafficking to the attention of the general public, trafficking victims, and the traffickers themselves.⁷⁰ If traffickers perceive the probability of detection and potential punishment to be substantial, they may be deterred from committing future trafficking offenses.⁷¹

longer be judged by a “reasonable person” standard, instead gauged using the same background and circumstances of the victim; and (3) victims may now obtain civil damages from anyone benefitting from engaging in federal peonage, slavery or trafficking in persons crimes. *See* §§ 221–222, 122 Stat. at 5067–71.

⁶⁴ Sidel, *supra* note 58, at 199.

⁶⁵ *See* Kara, *supra* note 44, at 670–71.

⁶⁶ *Id.*

⁶⁷ State law enforcement officials are “most familiar with the locations, victims, and perpetrators of these crimes in their jurisdiction.” Kara, *supra* note 44, at 667.

⁶⁸ *Id.*; *see also* Hogan, *supra* note 14, at 655 (“Because law enforcement officials are often the first responders to reports of criminal activity,’ states should mandate anti-trafficking legislation that educates and trains officers to identify trafficking situations, and effectively investigate and prosecute these cases.”).

⁶⁹ Kara, *supra* note 44, at 667.

⁷⁰ Hogan, *supra* note 14, at 655.

⁷¹ *Id.*

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Today, forty-two states have criminalized human trafficking.⁷² Overall, however, there is little evidence that these laws have exposed more trafficking networks and rescued more victims.⁷³ In fact, state laws have gone largely unused as the majority of trafficking cases are prosecuted under federal laws.⁷⁴ However, state anti-trafficking legislation that goes beyond criminalization, for instance, by mandating research and data collection, the creation of human trafficking task forces, and training of law enforcement, has the potential to be an effective weapon for combating trafficking.⁷⁵

C. New York's Legislative Efforts to Combat Human Trafficking

New York State passed its first anti-trafficking legislation on June 6, 2007.⁷⁶ Prior to the enactment of the Human Trafficking Law, sex trafficking victims were often arrested for prostitution while labor trafficking victims without immigration status were deported.⁷⁷ The legislature sought to shift the paradigm from arresting trafficking victims to protecting them and prosecuting their oppressors.⁷⁸ The legislature did this in three ways: first,

⁷² For a complete list of states that have human trafficking laws, see Center for Women Policy Studies: Enacted Laws by State, <http://www.centerwomenpolicy.org/programs/trafficking/map/statelist.cfm?linktype=1> (last visited Dec. 1, 2009).

⁷³ Sidel, *supra* note 58, at 201.

⁷⁴ Ellen Overbaugh, Comment, *Human Trafficking: The Need For Federal Prosecution of Accused Traffickers*, 39 SETON HALL L. REV. 635, 656 (2009). Mark Sidel refers to much of the existing state anti-trafficking law as “expressive legislation” that is intended to express revulsion and condemnation but lacks “strong teeth.” Sidel, *supra* note 58, at 202–03.

⁷⁵ Sidel, *supra* note 58, at 202–03.

⁷⁶ DENISE E. O'DONNELL & DAVID A. HANSELL, N.Y. STATE INTERAGENCY TASK FORCE ON HUMAN TRAFFICKING, A REPORT BY THE INTERAGENCY TASK FORCE: IMPLEMENTATION OF THE 2007 LAW (2008), http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf.

⁷⁷ *Id.* at 16.

⁷⁸ *See id.* at 7.

by creating new crimes and amending existing crimes to encompass the methods used by traffickers; second, by providing social services to victims without immigration status; and third, by establishing an interagency task force to coordinate implementation of the laws and monitor the State's efforts to combat human trafficking.⁷⁹

New York's Human Trafficking Law created the new felony offenses of Labor Trafficking and Sex Trafficking.⁸⁰ While the new law imposes harsh sentences to deter traffickers, it also provides that victims will not be prosecuted as accomplices to the illegal acts they engaged in as a result of being trafficked.⁸¹ The Human Trafficking Law also amended existing legislation to address the demand for prostitution.⁸² First, the lowest grade

⁷⁹ *Id.*

⁸⁰ N.Y. Penal Law § 230.34 Sex Trafficking (McKinney 2007) (A person is guilty of the sex trafficking if he or she "intentionally advances or profits from prostitution by" one of five alternatives methods (1) unlawfully providing drugs with the intent to impair the person's judgment; (2) making material false statements or omissions to persuade a person to engage, or continue to engage in prostitution; (3) withholding, destroying or confiscating any government identification with the intent to impair that persons freedom of movement; (4) requiring prostitution be performed to repay a real or purported debt; and (5) "using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized." Sex trafficking is a class B felony, punishable by up to 25 years imprisonment); N.Y. Penal Law §135.35 Labor Trafficking (McKinney 2007) ("A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally" engaging in one the following acts: (1) unlawfully providing a controlled substance to a person with the intent to impair his or her judgment; (2) requiring labor be performed to repay a real or purported debt that the trafficker has caused by ongoing conduct intended to defraud the victim; (3) withholding, confiscating, or destroying any government identification; and (4) using force or coercion to compel a person to engage or continue to engage in forced labor by instilling fear in the person. Labor trafficking is a class D felony, punishable by up to seven years imprisonment).

⁸¹ Denise O'Donnell, *Outside Counsel*, 238 N.Y. L.J. 4 (2007) [hereinafter *Outside Counsel*].

⁸² O'DONNELL & HANSELL, *supra* note 76, at 9.

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offense—patronizing a prostitute—was increased from a B to an A misdemeanor.⁸³ Harsher punishments for prostitution patrons “combats the trafficking problem on a vital financial level;”⁸⁴ the more persons discouraged from purchasing illegal sex acts, the less revenue traffickers will receive.⁸⁵ Second, the crime of promoting prostitution in the third degree was expanded to include the operation of a sex tour business,⁸⁶ regardless of whether prostitution was legal or illegal in the destination country.⁸⁷ Only four other states have statutes regulating sex tourism.⁸⁸

An Interagency Task Force on Human Trafficking (“Task Force”) was created in order to unify the efforts of various New York agencies.⁸⁹ The Task Force is co-chaired by the Division of Criminal Justice Services (“DCJS”), which focuses on criminal investigations, and the Office of Temporary and Disability Assistance (“OTDA”), which focuses on victim services.⁹⁰ New York law requires law enforcement to notify the DCJS and the OTDA after a first encounter with a suspected

⁸³ N.Y. Penal Law § 230.00 (McKinney 2007).

⁸⁴ Hogan, *supra* note 14, at 659.

⁸⁵ *Id.*

⁸⁶ N.Y. Penal Law § 230.25 (McKinney 2007) describes sex tourism as “a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute.”

⁸⁷ N.Y. Penal Law § 230.25 (McKinney 2007). “This provision acknowledges that sex tour businesses operating in New York State increase global sex trafficking activity and that New York State must act as a responsible global citizen to fight sex trafficking.” O’DONNELL & HANSELL, *supra* note 76, at 9.

⁸⁸ Alaska, Hawaii, Missouri, and Washington also have statutes regulating sex tourism. *See* Center for Women Policy Studies: Enacted Laws by State, <http://www.centerwomenpolicy.org/programs/trafficking/map/statelist.cfm?linktype=1> (last visited Dec. 1, 2009).

⁸⁹ N.Y. Social Services Law § 483 (McKinney 2007).

⁹⁰ Denise O’Donnell, co-chair of the Task Force, described part of her job as helping to “educate the law enforcement, victim, advocacy and legal communities about the new law and its potential to both punish the purveyors of human trafficking and assist the victims.” *Outside Counsel*, *supra* note 81.

victim of human trafficking.⁹¹ The OTDA then determines whether the person is a “victim of a severe form of trafficking” who is eligible for services such as immigration assistance, safe housing, physical and mental health treatment, and job training.⁹² Such services are indispensable to facilitate victims’ reentry to society.⁹³ The social service provisions of the Human Trafficking Law, combined with the criminal statutes, created a strong foundation to address the crisis of human trafficking in New York.

II. ANALYSIS

Criminalization of human trafficking is only a first step. Implementation requires “a coordinated effort by various agencies to ensure that the services promised under the legislation are available, that law enforcement and service providers are adequately trained and that victims and their advocates are aware of the protections and benefits provided.”⁹⁴ Overall, New York has advanced many of its anti-trafficking goals, but now it must increase education and outreach programs, redirect resources towards victims’ services, and reorganize its prosecutorial structure in order to conduct more efficient trafficking investigations. In addition, New York should make improvements to the existing Human Trafficking Law. First, New York should eliminate the requirement of proving force, fraud or coercion to establish the offense of sex trafficking because this element has been the primary impediment to indicting sex traffickers under the statute. Second, New York should create a private right of action for victims of sex trafficking and labor trafficking. A private right of action will afford monetary relief to trafficking survivors whose oppressors were not successfully prosecuted. Moreover, a

⁹¹ N.Y. Social Services Law § 483 (McKinney 2007).

⁹² N.Y. Social Services Law § 483-cc (McKinney 2007).

⁹³ New York State Anti-Trafficking Coalition, Safe Harbor Act, <http://www.stophumantraffickingny.org/2008-campaigns/> (last visited Mar. 25, 2010).

⁹⁴ O’DONNELL & HANSELL, *supra* note 76, at 16.

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private right of action serves as a financial deterrent to traffickers.

A. Implementation of the Human Trafficking Law

The unique nature of trafficking makes implementation of New York's legislation extremely challenging.⁹⁵ Trafficking victims are often isolated from society and do not have an opportunity to report the crimes perpetrated against them.⁹⁶ When victims are discovered, they are often too psychologically and physically traumatized to discuss the crimes with the police.⁹⁷ Immediate access to shelter, health care, and immigration assistance is vital to ensure that survivors are not lured back into trafficking.⁹⁸ The New York state government has begun to devote the additional time and resources necessary for trafficking cases.⁹⁹ Specifically, the Task Force has collaborated with other agencies to conduct educational training sessions, promote public awareness, conduct successful criminal investigations, and provide services to trafficking victims.¹⁰⁰

1. Training

Prior to New York's anti-trafficking legislation, trafficking

⁹⁵ Interview with Lauren Hersh, Assistant Dist. Attorney, Kings County District Attorney, in Brooklyn, N.Y. (Oct. 26, 2009); Telephone Interview with Anthony M. Communiello, Special Proceedings Bureau Chief, Queens Dist. Attorney, in Queens, N.Y. (Nov. 12, 2009); *see also* Tiapula & Turkel, *supra* note 50; Sidel, *supra* note 58, at 187.

⁹⁶ *See generally* DONNA M. HUGHES, WOMEN STUDIES PROGRAM UNIV. OF R.I., HIDING IN PLAIN SIGHT: A PRACTICAL GUIDE TO IDENTIFYING VICTIMS OF TRAFFICKING IN THE U.S. 7-8 (2003), http://www.uri.edu/artsci/wms/hughes/hiding_in_plain_sight.pdf [hereinafter HIDING IN PLAIN SIGHT].

⁹⁷ *See generally* MELISSA DITMORE, SEX WORKERS PROJECT, KICKING DOWN THE DOOR: THE USE OF RAIDS TO FIGHT TRAFFICKING IN PERSONS 8 (2009), <http://www.sexworkersproject.org/downloads/KickingDownTheDoor.pdf>.

⁹⁸ *See generally* O'DONNELL & HANSELL, *supra* note 76, at 19.

⁹⁹ *See generally id.*

¹⁰⁰ *See generally id.*

was largely ignored because state and local law enforcement agencies and prosecutors were not adequately informed about its existence.¹⁰¹ This posed a problem because awareness and training are essential to overcome what is currently the greatest challenge for implementation of anti-trafficking policy—locating and identifying victims.¹⁰² To date, most trafficking incidents are exposed after victims have been able to escape and contact the police; however, most victims are unable to escape.¹⁰³ Uncovering victims is currently the primary means for law enforcement to access the traffickers.¹⁰⁴ The Task Force and NGOs have worked together to implement training and awareness sessions for professionals.¹⁰⁵ The initiatives of the Task Force to educate law enforcement and health care providers are of particular importance because individuals in these professions are likely to come into contact with trafficking victims.¹⁰⁶

Workers in hospital emergency rooms, health clinics, and abortion clinics must be aware of indicators for identifying trafficking victims.¹⁰⁷ OTDA is currently working with the

¹⁰¹ *Id.* at 5–6.

¹⁰² Jennifer S. Nam, Note, *The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims*, 107 COLUM. L. REV. 1655, 1678 (2007) (citing U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 22 (2004)).

¹⁰³ HIDING IN PLAIN SIGHT, *supra* note 96, at 7–8.

¹⁰⁴ Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁰⁵ As early as November 6, 2007, the Freedom Network Training Institute sponsored a training attended by participants from the New York State and U.S. Departments of Labor, Catholic Charities Immigrant Services, Jobs With Justice, Long Island Human Trafficking Task Forces, and other Long Island organizations. *Human Trafficking and Modern-Day Slavery on Long Island: Practical Tools for an Effective Response, Summary of the November 6, 2007 Freedom Network Training Institute at the Sweet Hollow Presbyterian Church*, <http://www.pcusa.org/fairfood/pdf/freedomnetwork.pdf>. For a full discussion of the training and outreach programs that have been implemented, see O'DONNELL & HANSELL, *supra* note 76, at 20–30.

¹⁰⁶ *See generally* HIDING IN PLAIN SIGHT, *supra* note 96.

¹⁰⁷ *Id.* at 9.

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Department of Health (“DOH”) to develop staff training for local health departments.¹⁰⁸ The training model will be based on current domestic violence/child abuse models and will instruct health departments how to recognize and report human trafficking.¹⁰⁹ This is appropriate because trafficking victims suffer the same types of injuries as battered women and rape victims.¹¹⁰ DOH should require local health departments to visit health clinics and emergency rooms regularly to ensure that employees are educated pursuant to the new training model. In addition, fliers and pamphlets should be made available in waiting rooms, in order to alert patients to the indicators of human trafficking and the options available to victims.

Meanwhile, DCJS has focused its training efforts on teaching law enforcement to recognize trafficking offenses and how to interact with trafficking victims.¹¹¹ Training law enforcement is extremely important because it has been found that persons who are approached by police without the threat of arrest are more likely to later confide in law enforcement and cooperate in prosecutions.¹¹² DCJS has conducted regional trainings across New York, as well as smaller trainings for individual state government agencies, such as the New York Prosecutors Training Institute, Inc., the Office of Alcoholism and Substance Abuse Services, and the Office of Court Administration.¹¹³ Additionally, DCJS has trained prosecutors throughout New York on investigative techniques that can uncover human trafficking victims and lead to the arrest of traffickers.¹¹⁴ Resources, such as a 50-minute informational DVD, are

¹⁰⁸ O’DONNELL & HANSELL, *supra* note 76, at 25.

¹⁰⁹ *Id.*

¹¹⁰ HIDING IN PLAIN SIGHT, *supra* note 96, at 9.

¹¹¹ O’DONNELL & HANSELL, *supra* note 76, at 20.

¹¹² *See, e.g.*, DITMORE *supra* note 97, at 10–11, 29–35.

¹¹³ Press Release, N.Y. State Division of Criminal Justice Services, Enhancing Public Safety and Improving Criminal Justice (Apr. 9, 2009), available at http://criminaljustice.state.ny.us/pio/press_releases/2009-04-09_pressrelease.html.

¹¹⁴ O’DONNELL & HANSELL, *supra* note 76, at 21.

available on a secure website for law enforcement agencies.¹¹⁵

The New York Division of State Police (“State Police”) has aided in educating law enforcement on human trafficking.¹¹⁶ All State Police personnel received bulletins summarizing the Human Trafficking Law and the obligations of law enforcement under this law.¹¹⁷ The Crime Victim Specialist¹¹⁸ from every State Police Troop has been assigned to develop a training program on the Human Trafficking Law for Senior Investigators in the Bureau of Criminal Investigations in each Troop.¹¹⁹ Additionally, the referral form to notify the Task Force of suspected victims of trafficking has been placed online for law enforcement agencies and district attorneys’ offices.¹²⁰

Due to the admirable initiatives of DCJS and the State Police, there has been some success in sensitizing police officers.¹²¹ Yet, prostitutes continue to be arrested even though they may be victims of trafficking.¹²² Such arrests “have ripple effects . . . beyond those directly affected by law enforcement activity, increasing fear and driving sex work and undocumented people further underground and farther beyond reach of assistance . . . and immigrants less likely to turn to law enforcement when they experience violence or coercion.”¹²³ To address these secondary effects, DCJS and service providers should continue to train law enforcement,¹²⁴ but additionally, a mandatory protocol should be created for police officers to

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 26.

¹¹⁷ *Id.*

¹¹⁸ Crime Victim Specialists are specially trained officers who provide support to victims and their families throughout the criminal justice process. For more information refer to the New York State Division of State Police website, http://www.troopers.state.ny.us/Crime_Prevention/Violence/Crime_Victims_Specialists.

¹¹⁹ O’DONNELL & HANSELL, *supra* note 76, at 26.

¹²⁰ *Id.*

¹²¹ Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹²² See DITMORE, *supra* note 97, at 8; see also Butkus, *supra* note 36, at 327.

¹²³ DITMORE, *supra* note 97, at 10.

¹²⁴ See generally notes 111–20.

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question possible victims and record the interview in their police reports. The protocol for each police precinct should be designed with flexibility to meet the varying needs of different geographic areas.

Identifying trafficking victims in our communities requires us to view incidents that may implicate trafficking in a new light.¹²⁵ We must learn to look past the public façade of prostitute, erotic dancer, housekeeper, etc., and recognize the subtle indicators of victimization.¹²⁶ Once trafficked persons are identified, they must be protected from re-victimization through successful prosecutions of their perpetrators.¹²⁷ Police officers must understand that victims are often too scared to speak out against their aggressors.¹²⁸ When questioning suspected victims, police officers must deviate from their normal methods of interrogation.¹²⁹ In order to build rapport with victims, law enforcement and service providers must be cognizant of the intense physical and psychological trauma and manipulation suffered by these victims.¹³⁰ Interviewers must be patient, but at the same time, ask a lot of questions to gather the information necessary to prosecute the traffickers.¹³¹ Interviewers must tread carefully; they must be thorough, but not aggressive.¹³² Effective communication with victims will yield increased cooperation in prosecutions and, hopefully, encourage more victims to turn to law enforcement for help.

¹²⁵ See O'DONNELL & HANSELL, *supra* note 76, at 8; Heiges, *supra* note 52, at 459.

¹²⁶ See *Outside Counsel*, *supra* note 81.

¹²⁷ The three P's of anti-trafficking policy are punishment of traffickers, protection of victims, and prevention of human trafficking. See TIP REPORT 2009, *supra* note 7, at 25–32.

¹²⁸ See generally Tiapula & Turkel, *supra* note 50; *Hearing*, *supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services).

¹²⁹ See Tiapula & Turkel, *supra* note 50, at 13–14.

¹³⁰ *Id.* at 14.

¹³¹ See *id.* at 12, 14.

¹³² See *id.* at 14; DITMORE, *supra* note 97, at 59.

2. Raising Public Awareness

Many trafficking victims rarely interact with outsiders in the absence of their traffickers or cannot speak English well enough to communicate to people that they are in danger.¹³³ It is imperative that ordinary citizens learn how to identify victims who are “hiding in plain sight”¹³⁴ and how to report suspected victimization.¹³⁵ For this reason, New York should increase awareness campaigns to inform residents of the prevalence of human trafficking. The Task Force has begun to educate the general public by posting informational brochures on their website, speaking at conferences sponsored by NGOs, and creating a 30-minute informative program for public access television.¹³⁶ The Mayor’s office is in the process of developing a city-wide human trafficking awareness advertisement campaign. The campaign was launched in November 2009 with the opening of “Journey,” a unique art installation depicting seven stages of a trafficked woman’s experience in the sex industry.¹³⁷ While “Journey” was a positive step towards raising social awareness of human trafficking, Greenwich Village art connoisseurs are a small fraction of society. The city-wide informational campaign must reach a larger slice of the population.

In order to expand the scope of advertising, New York and NGOs should enter into partnerships with television networks, radio stations, magazines and newspapers.¹³⁸ It is especially

¹³³ See Hogan, *supra* note 14, at 670.

¹³⁴ See generally HIDING IN PLAIN SIGHT, *supra* note 96.

¹³⁵ *Id.*

¹³⁶ O’DONNELL & HANSELL, *supra* note 76, at 21–24.

¹³⁷ Mayor Bloomberg Launches “Plight of Human Trafficking” Exhibition, NOW NEW YORK, Nov. 11, 2009, available at <http://www.now-ny.com/news/mayor-bloomberg-launches-plight-of-human-trafficking-exhibition-14/>. “Journey” was produced in partnership with actress Emma Thompson, the Helen Bamber Foundation, the City of New York, and the City of London. *Id.*

¹³⁸ The federal government has begun to enter into such partnerships. TIP REPORT 2009, *supra* note 7, at 10. For example, the “government partnered with Priority Films to make the film ‘Holly’ about child sex

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important to advertise on television channels and in magazines that target populations known to have high percentages of trafficked persons among them.¹³⁹ Informational messages should also be placed on billboards, at rest stops, and public transportation. Creative advertising techniques will help publicize the issue of human trafficking and make it more difficult for traffickers to conceal their crimes.

3. Victim Rehabilitation

Once rescued from trafficking, victims need assistance reintegrating into society. For a majority of victims, entry into trafficking was a means of survival to escape extreme poverty or abusive situations.¹⁴⁰ Consequently, victims of human trafficking are at a high risk of re-victimization.¹⁴¹ Safe housing is important to ensure that victims do not return to their traffickers.¹⁴² Unfortunately, finding emergency shelters for victims is a huge problem in New York City.¹⁴³ Even worse, many domestic violence shelters have regulations that restrict them from admitting sex workers.¹⁴⁴ As a result, the Office for the

trafficking LexisNexis, an online database service, partnered with the U.S. National Human Trafficking Resource Center to develop a national database of social service providers for the Center's hotline Wyndham Hotel Group partnered with the anti-trafficking NGO Polaris Project to provide rooms to trafficking victims in emergency situations." *Id.*

¹³⁹ See Hogan, *supra* note 14, at 671. For example, in New York City trafficking is prevalent in Russian, Korean, Chinese and Central and South American communities. RAYMOND & HUGHES, *supra* note 35, at 33–35.

¹⁴⁰ A study of the New York State Legislature found that "eighty-five percent of these [trafficked] children come from homes involved with the child welfare system and that, in Metro New York, seventy-five percent had been placed in foster homes." Shelby Schwartz, *Harboring Concerns: The Problematic Conceptual Reorientation of Juvenile Prostitution Adjudication in New York*, 18 COLUM. J. GENDER & L. 235, 240 (2008).

¹⁴¹ O'DONNELL & HANSELL, *supra* note 76, at 19.

¹⁴² See *id.*

¹⁴³ Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁴⁴ O'DONNELL & HANSELL, *supra* note 76, at 19.

Prevention of Domestic Violence (“OPDV”), Office of Children and Family Services (“OCFS”) and OTDA have begun to update existing domestic violence shelter regulations to allow access for sex trafficking victims.¹⁴⁵ The Task Force is also in the process of creating housing for male trafficking victims.¹⁴⁶

The OCFS is currently developing safe housing for sexually exploited girls who are in OCFS custody and has adopted a policy to treat all sexually exploited girls in their custody as victims, despite any criminal or juvenile delinquent charges.¹⁴⁷ This policy was adopted by the New York Legislature with the passage of the Safe Harbor for Exploited Children Act in September 2008.¹⁴⁸ The Safe Harbor for Exploited Children Act provides for the presumption that any person under age 16 who is charged for a prostitution offense is a “person in need of supervision,” and orders the creation of emergency safe houses.¹⁴⁹ Effective implementation of this act will require New York to reallocate the funds that it currently spends to incarcerate sex trafficking victims in order to fund safe housing and rehabilitative services.¹⁵⁰

A variety of other services are indispensable to facilitate trafficking victims’ reentry to society.¹⁵¹ The Response to Human

¹⁴⁵ *Id.* at 20.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 27. The safe houses must include twenty-four hour crisis intervention, access to medical treatment, and other services. The Safe Harbor for Exploited Children Act also mandates the creation of at least one safe house for long-term care in a “geographic area that would meet the needs of sexually exploited youth and that cannot be readily accessed by perpetrators of sexual exploitation.” *Id.*

¹⁴⁸ Polaris Project Action Center, New York Safe Harbor for Exploited Children Act, <http://actioncenter.polarisproject.org/take-action/advocate-for-policy/227> (last visited Nov. 5, 2009).

¹⁴⁹ *Id.*

¹⁵⁰ New York State Anti-Trafficking Coalition, Safe Harbor Act, <http://www.stophumantraffickingny.org/2008-campaigns/> (last visited Mar. 25, 2010).

¹⁵¹ See Kara, *supra* note 44, at 662 (discussing the social services benefits a human trafficking victim may receive by a process addressed in the TVPA); *Outside Counsel*, *supra* note 81 (discussing the duty of police and

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Trafficking Program (“RHTP”) was created to provide adult trafficking victims who are illegal aliens with services that they are not eligible for under most existing federal, state, and local programs.¹⁵² Under the RHTP, services that are provided include case management, health care, mental health counseling, drug treatment, English language instruction, job training and placement, and immigration application assistance.¹⁵³ Additionally, the RHTP will refer U.S. citizens, eligible aliens, and juvenile trafficking victims to local social service departments for assistance.¹⁵⁴ However, services need to be made more readily available to trafficking survivors. Currently, illegal immigrants cannot access RHTP benefits until they have been “confirmed” as a victim of a “severe form of trafficking.”¹⁵⁵ Furthermore, victims are not eligible for government services unless they cooperate with law enforcement in prosecuting their traffickers.¹⁵⁶ Prosecution should not be prioritized over the needs of trafficking victims.¹⁵⁷ Providing immediate access to social services can mitigate some of the trauma often associated with being discovered by law enforcement.¹⁵⁸

prosecutors to take steps to help victims of human trafficking obtain benefits).

¹⁵² O’DONNELL & HANSELL, *supra* note 76, at 16.

¹⁵³ *Id.* at 17.

¹⁵⁴ *Id.* at 16.

¹⁵⁵ *Id.*

¹⁵⁶ See Hughes, *supra* note 56, at 37; Press Release, The Urban Justice Center Sex Workers Project, The Sex Workers Project Welcomes Increased Protections for Trafficked Persons (Dec. 12, 2008), *available at* <http://www.sexworkersproject.org/downloads/20081212-tvpra-passage-pr.pdf> (Statement of Andrea Ritchie, Director, Sex Workers Project).

¹⁵⁷ DITMORE, *supra* note 97, at 59; *see also* Press Release, *supra* note 156 (“It is critical that anti-trafficking measures put the needs of the people they are intended to protect first, by adopting approaches that recognize, center, and address the realities and experiences of trafficked people, respecting and protecting the rights of trafficked persons and their communities in investigations and criminal proceedings, facilitating immediate access to services and support, eliminating the use of threats of deportation to coerce cooperation, providing housing that does not feel like a detention center . . .”).

¹⁵⁸ See DITMORE, *supra* note 97, at 10.

4. Prosecution

District attorney's offices have focused more resources on sex trafficking crimes than they did before passage of the Human Trafficking Law.¹⁵⁹ However, it is extremely difficult to prosecute sex trafficking cases.¹⁶⁰ In fact, the first and only conviction for sex trafficking occurred on December 1, 2009.¹⁶¹ As of February 2010, there were only four pending indictments for sex trafficking in New York City: one in Manhattan, one in Queens, and two in the Bronx.¹⁶² The major hurdle in prosecuting sex trafficking cases is locating the victims and securing their cooperation.¹⁶³

Most trafficking is discovered when victims escape and contact a family member or law enforcement official.¹⁶⁴ Prosecutors locate other victims by searching the National Center for Missing Children, communicating with NGOs, canvassing neighborhoods known to have a lot of trafficking activity, and responding to advertisements for prostitution.¹⁶⁵ When prosecutors discover a location where victims are hidden,

¹⁵⁹ Interview with Lauren Hersh, *supra* note 95.

¹⁶⁰ See *Hearing*, *supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services); Heiges, *supra* note 52, at 452-53.

¹⁶¹ See Berger, *supra* note 21. The conviction was of David Brown. See *supra* notes 16-20 and accompanying text.

¹⁶² See Berger, *supra* note 21. For more information please refer to the websites of the respective District Attorney's offices. New York County District Attorney's Office, <http://www.manhattanda.org/> (last visited Mar. 25, 2010); Office of the Bronx District Attorney, <http://bronxda.nyc.gov/frames.html> (last visited Mar. 25, 2010); Queens County District Attorney's Office, <http://www.queensda.org/index2.html> (last visited Mar. 25, 2010); Kings County District Attorney's Office, <http://www.brooklynda.org/> (last visited Mar. 25, 2010).

¹⁶³ Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁶⁴ HIDING IN PLAIN SIGHT, *supra* note 96, at 7; Interview with Lauren Hersh, *supra* note 95.

¹⁶⁵ Interview with Lauren Hersh, *supra* note 95.

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they arrange for the police to raid the location.¹⁶⁶ Such raids, although often the only realistic way to rescue the victims, have been highly criticized as ineffective.¹⁶⁷ There is merit to this concern. In a study conducted by the Urban Justice Center Sex Workers Project of federal and local raids conducted nationwide, sixty percent of the women interviewed had been arrested in raids and none were identified as victims of sex trafficking.¹⁶⁸ Treating victims as criminals further traumatizes victims and decreases the likelihood they will confide in law enforcement.¹⁶⁹ Thus, while law enforcement likely evaluates the success of raids based on evidence collection,¹⁷⁰ a focus on respecting victims' well being during raids might enable victims to more effectively speak about what happened to them. If victims are aware that they will be assisted by law enforcement and not punished, then traffickers will no longer be able to compel their silence by instilling fear of arrest and deportation.

Law enforcement training should aim to educate police on how to conduct raids in a manner that is more consistent with the rehabilitative needs of victims. Prosecutors have begun to arrange for social workers or service providers to be present at raids to communicate with victims in a non-threatening fashion.¹⁷¹ Traffickers teach victims to instinctively distrust anyone connected to law enforcement, and therefore, it is challenging for even trained service providers to build a trusting relationship with victims.¹⁷² Absent a victim's cooperation, the prosecutor cannot obtain sufficient evidence of "force, fraud or coercion" to charge the trafficker with sex trafficking.¹⁷³ Even

¹⁶⁶ This is called an "intervention opportunity for arrest." Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁶⁷ See generally DITMORE, *supra* note 97, at 8.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 36.

¹⁷¹ Interview with Lauren Hersh, *supra* note 95.

¹⁷² *Id.*; Telephone Interview with Anthony M. Communiello, *supra* note 95; see also DITMORE, *supra* note 97 at 34-42.

¹⁷³ *Hearing, supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services); see also

worse, many victims return to their oppressors.¹⁷⁴ Prosecutors try to place victims in emergency housing in order to ensure they do not return to their traffickers.¹⁷⁵ However, due to a lack of emergency shelters in New York,¹⁷⁶ arresting victims is sometimes the only way to keep them off the streets long enough to gain their trust and cooperation.¹⁷⁷

Prosecutors' offices are developing creative investigative tactics without victim cooperation.¹⁷⁸ Among these tactics are: monitoring websites, employing confidential informants, eavesdropping and using video surveillance of trafficking locations.¹⁷⁹ However, often times, covert investigations are abandoned when an opportunity arises to rescue the victims.¹⁸⁰ For this reason, the majority of sex trafficking cases are prosecuted under the lesser offense of promoting prostitution, which does not require proof of force, fraud, or coercion.¹⁸¹

The district attorney's offices in New York should create divisions devoted to trafficking crimes. Currently, the district

Hughes, *supra* note 56, at 37–38.

¹⁷⁴ Telephone Interview with Anthony M. Communiello, *supra* note 95. See generally Tiapula & Turkel, *supra* note 50.

¹⁷⁵ O'DONNELL & HANSELL, *supra* note 76, at 19.

¹⁷⁶ See generally *id.* at 12–20.

¹⁷⁷ New York has created Prostitution Diversion Courts which focus on helping victims of sex trafficking rather than prosecuting them and reducing the psychological harm that often results from going through the court system. See TOULSI GOWIN MEISNER, AMERICAN PROSECUTORS RESEARCH INSTITUTE, NATIONAL CENTER FOR PROSECUTION OF CHILD ABUSE, SHIFTING THE PARADIGM FROM PROSECUTION TO PROTECTION FOR CHILD VICTIMS OF PROSTITUTION (2009), http://www.ndaa.org/publications/newsletters/update_vol_21_no_8.pdf.

¹⁷⁸ O'DONNELL & HANSELL, *supra* note 76, at 21; Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁷⁹ See O'DONNELL & HANSELL, *supra* note 76, at 21; *Hearing*, *supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services); Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁸⁰ Telephone Interview with Anthony M. Communiello, *supra* note 95.

¹⁸¹ *Id.*

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attorney's offices in New York City's five boroughs have people designated to investigate trafficking cases.¹⁸² Attorneys must have special knowledge about how to investigate trafficking, training on how to deal with victims, and the ability to form strong ties with service providers.¹⁸³ Long-term investigations of trafficking must be conducted in order to gather evidence sufficient to hold traffickers accountable for the full extent of their crimes, which often times extend to offenses that can be prosecuted under organized crime statutes in addition to sex trafficking.¹⁸⁴ Investigations should continue after the victim is rescued and the arrested trafficker should be used to find other members of the organization. Larger trafficking organizations are likely spread throughout the State; therefore, there must be more communication among the district attorney's offices.¹⁸⁵ In addition, the creation of formal human trafficking divisions sends the message to traffickers that prosecutors are aggressively enforcing the anti-trafficking laws, which may serve as a potential deterrent to traffickers.¹⁸⁶

B. The Standard of Proof for Sex Trafficking

The evidentiary standard for the offense of sex trafficking

¹⁸² In Kings County, the Rackets Bureau conducts long-term trafficking investigations and Sex Crimes handles reactive trafficking crime. In New York County trafficking cases are handled by Sex Crimes. In Queens County, trafficking cases are handled by the Special Proceedings Bureau. *See supra* note 162.

¹⁸³ *See Outside Counsel, supra* note 81 ("Investigation of human trafficking requires a different way of looking at crime, a different approach to observation and surveillance, a different understanding of the relationship between prostitution and sex trafficking and increased attention to the role played by the demand for prostitution as our front line officers attempt to determine whether what they are dealing with is a promoting prostitution case or something far deeper and more insidious."); Tiapula & Turkel, *supra* note 50.

¹⁸⁴ *See, e.g., O'DONNELL & HANSELL, supra* note 76, at 22.

¹⁸⁵ *See generally* Tiapula & Turkel, *supra* note 50.

¹⁸⁶ *See generally* Kara, *supra* note 44, at 671 (discussing the need for anti-trafficking law at the state and local level to further deterrence).

has hindered prosecutors' ability to obtain convictions.¹⁸⁷ New York should eliminate the element of force, fraud, or coercion for the offense of sex trafficking because it is overly burdensome. The Federal Government has already amended the federal crime of sex trafficking with the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act in 2008.¹⁸⁸ The Act divided the sex trafficking statute into two offenses: sex trafficking (without force, fraud, and coercion) and aggravated sex trafficking (with force, fraud, and coercion).¹⁸⁹ While evidence of force, fraud, or coercion is no longer necessary to get a conviction, these elements will be considered in sentencing.¹⁹⁰

The elimination of force, fraud, or coercion from the New York statute will make prosecuting sex-trafficking easier and more efficient.¹⁹¹ Currently, the primary impediment to prosecuting sex trafficking cases is the inability to procure the victim's testimony,¹⁹² and, even with the victim's testimony, it can sometimes still be difficult to prove force, fraud, or coercion.¹⁹³ For instance, sometimes victims immediately submit to the traffickers' demands out of fear.¹⁹⁴ In other instances, the mental manipulation may have been so subtle that the victim cannot testify specifically as to the coercion that occurred.¹⁹⁵

¹⁸⁷ See Heiges, *supra* note 52, at 452; Hughes, *supra* note 56, at 37–38.

¹⁸⁸ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044.

¹⁸⁹ Donna M. Hughes, *Wilberforce Can Free Again: Protecting Trafficking Victims*, NAT'L REV. ONLINE (Mar. 12, 2008), available at <http://article.nationalreview.com/351239/wilberforce-can-free-again/donna-m-hughes> [hereinafter *Wilberforce Can Free*].

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Interview with Lauren Hersh, *supra* note 95; Telephone Interview with Anthony M. Communiello, *supra* note 95; see also Tiapula & Turkel, *supra* note 50, at 14.

¹⁹³ See *Hearing*, *supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

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Moreover, forcing victims to confront their oppressors further traumatizes them and is counter-productive to their rehabilitative needs.¹⁹⁶ Requiring victims to testify also places them and their families in danger of retaliation by the trafficking organization.¹⁹⁷

By including psychological manipulation within the term coercion, the Federal and New York sex trafficking statutes recognize that traffickers do not always use physical force or direct threats to compel compliance of their victims.¹⁹⁸ In practice, however, it is extremely difficult to establish coercion at trial without testimony of overt statements or acts.¹⁹⁹ Under current law, prosecutions are contingent on the victim, “who must be proved ‘innocent’ of willingly having engaged in prostitution, rather than on traffickers, whose criminal actions should be the focus.”²⁰⁰ To the contrary, the statute was intended to express moral condemnation of this form of contemporary slavery.²⁰¹ This message is meaningless so long as traffickers can

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, Division A, 114 Stat. 1464 (codified as amended in scattered sections of 22 U.S.C.) (finding that “victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion . . . traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.”); N.Y. Penal Law § 230.34 (McKinney 2007).

¹⁹⁹ *Hearing, supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families’ Center for Battered Women Legal Services).

²⁰⁰ *Id.* (comparing the requirement of “force, fraud, or coercion” to the since eliminated requirement of “earnest resistance” in rape case).

²⁰¹ *See, e.g.*, Press Release, New York State Executive Chamber, Legislation to Prevent Human Trafficking Signed into Law (June 6, 2007). Assemblywoman Amy Paulin stated:

Enticing someone into a life of sexual servitude or labor servitude is one of the most horrendous acts that can be perpetrated on one human being by another. Driven by sheer greed and a complete disregard for human decency, these villains have been enslaving mostly women and children into a life of absolute horror. As nations

escape prosecution by scaring their victims into silence.²⁰² In order for the offense of sex trafficking to be a true weapon against traffickers, New York must eliminate the onerous requirement of force fraud and coercion.²⁰³

C. A Private Right of Action for Human Trafficking Crimes

New York should amend the Penal Law to include sex trafficking and labor trafficking in the list of enumerated offenses eligible for criminal forfeiture and create a civil right of action for human trafficking cases. Currently, New York provides some monetary relief to victims of sex trafficking and labor trafficking in the form of civil forfeiture.²⁰⁴ A civil forfeiture claim may be filed against a defendant who has been convicted of trafficking.²⁰⁵ An action for forfeiture may also be

around the world grapple with how to stop this depraved practice, New York can make important steps towards addressing this scourge.

Id.

²⁰² *Hearing, supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services).

²⁰³ Critics of the WTVPRA argue that the elimination of the requirement of coercion essentially equates the practice of sex trafficking with prostitution and federalizes common prostitution offenses. *See, e.g.,* Elizabeth Kaigh, Comment, *Whores and Other Sex Slaves: Why the Equation of Prostitution With Sex Trafficking in the William Wilberforce Reauthorization Act of 2008 Promotes Gender Discrimination*, 12 SCHOLAR 139 (2009). However, the WTVPRA does not target prostitutes, it targets the recruiters and organizers of prostitution/sex trafficking networks. Not every player in pimping schemes directly engages in force, fraud or coercion, and, consequently have been outside the government's reach. The WTVPRA makes it possible to bring multi-defendant cases against pimps. *See Wilberforce Can Free, supra* note 189.

²⁰⁴ N.Y. C.P.L.R. § 1311 (McKinney 1997).

²⁰⁵ N.Y. C.P.L.R. § 1311 (McKinney 1997) states that upon conviction:

[a] civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an

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commenced against a non-criminal defendant,²⁰⁶ but any monetary award will be substantially less.²⁰⁷ While civil forfeiture is an important remedy, it is not enough. In light of the especially pernicious nature of trafficking offenses, New York should make the crimes of sex trafficking and labor trafficking eligible for criminal forfeiture as well. Unlike civil forfeiture, which is a separate civil suit that may only be initiated after a conviction, criminal forfeiture is combined with the criminal action.²⁰⁸ Consequently, criminal forfeiture eliminates the possibility that a prosecutor will neglect to file a claim for civil forfeiture after a verdict is obtained.²⁰⁹

While forfeiture can be an effective tool for trafficking victims to acquire damages, the downfall of forfeiture is that recovery is contingent upon the prosecutor's decision to charge the alleged traffickers and the success of the criminal prosecution.²¹⁰ Since the vast majority of human trafficking cases are not prosecuted, most trafficking survivors are unable to receive adequate compensation under current New York law.²¹¹ Moreover, even when forfeiture is pursued, the amount received is far less than what a victim could obtain in civil litigation.²¹²

There are a number of other options for civil litigation

amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime.

²⁰⁶ A non-criminal defendant is defined as "a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime." N.Y. C.P.L.R. § 1310 (McKinney 1997). Forfeiture may be commenced against a non-criminal defendant to recover property in the amount equal to the proceeds of the crime. *Id.*

²⁰⁷ Kim & Hreshchyshyn, *supra* note 36, at 17.

²⁰⁸ N.Y. Penal Law §§ 480.00 & 460.30 (McKinney 2007).

²⁰⁹ N.Y. Penal Law § 480.10 (McKinney 2007).

²¹⁰ Note, *supra* note 35, at 2583.

²¹¹ *Id.*

²¹² WERNER & KIM, *supra* note 36, at 2. For example, forfeiture does not compensate victims for emotional and physical injuries. Nam, *supra* note 102, at 1666.

against traffickers under federal law as well as under state employment and tort law.²¹³ However, these options contain various limitations. For example, survivors of sex trafficking are barred from bringing a claim under the Fair Labor Standards Act because only persons who were engaged in legal employment are eligible for relief.²¹⁴ This piecemeal approach that is available through federal and state laws has proven inadequate in affording trafficking survivors a complete remedy because the laws were not drafted with trafficking scenarios in mind.²¹⁵ In recognition of this, the Federal Government granted a private right of action to trafficking victims in the Trafficking Victims Protection Reauthorization Act of 2003.²¹⁶ Some states, such as California, have included a similar provision in their respective anti-trafficking statutes.²¹⁷ New York should do the same.

Creating a civil action for human trafficking may aid in the prosecution of human traffickers, prevent human trafficking, and

²¹³ Trafficking survivors have brought civil lawsuits under the Alien Tort Claims Act, Racketeer Influenced and Corrupt Organizations Act, Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and have alleged various torts, such as intentional infliction of emotional distress, false imprisonment, assault, battery, negligent infliction of emotional distress, and breach of contract. *See generally* WERNER & KIM, *supra* note 36.

²¹⁴ Kim & Hreshchyshyn, *supra* note 36, at 24.

²¹⁵ For example, relying on the Fair Labor Standards Act, “bases [the victims’] claim in a law enacted through Congress’s commerce power, [which was] intended to regulate market relationships, not gross human rights abuses.” *Id.* at 25.

²¹⁶ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108–193, 117 Stat. 2875 (codified at 18 U.S.C. § 1595(a) (Supp. IV 2004)). § 1595(a) states: “An individual who is a victim of a violation of section 1589, 1590, or 1591 of this chapter may bring a civil action against the perpetrator in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.” *Id.*

²¹⁷ CAL. CIV. CODE § 52.5(a) (Lexis 2006). (“A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney’s fees and costs.”).

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protect the victims of human trafficking.²¹⁸ In criminal prosecutions, the prosecutor decides whether to pursue prosecution, what charges to bring, and the manner in which the case proceeds.²¹⁹ Conversely, in a civil lawsuit the case belongs to the plaintiff.²²⁰ There is a greater likelihood for success in civil litigation because the burden of proof is lower than the burden in criminal cases.²²¹ Furthermore, evidentiary rules allow civil plaintiffs to use evidence that is often barred in criminal proceedings.²²² For example, plaintiffs may bring in evidence of psychological conditions they suffered as a result of being trafficked, such as post-traumatic stress disorder and rape trauma syndrome.²²³

Moreover, substantial monetary damages may be a stronger deterrent to human traffickers than the threat of jail time.²²⁴ Because human trafficking is a money-driven industry, perpetrators will only engage in trafficking if the benefits of committing the crime outweigh the costs (the probability of detection and the expected sanction).²²⁵ While a prison sentence may serve as a deterrent for the persons most at risk of detection, “one man’s prison sentence does not necessarily cripple a trafficking organization financially because such an imprisonment leaves open the opportunity for a network of traffickers to continue its business.”²²⁶ Civil litigation is a

²¹⁸ Nam, *supra* note 102, at 1656.

²¹⁹ Kim & Hreshchyshyn, *supra* note 36, at 17; *see also* Nam, *supra* note 102, at 1666.

²²⁰ *See* Kim & Hreshchyshyn, *supra* note 36, at 17; Nam, *supra* note 102, at 1666.

²²¹ At trial, civil litigants need only prove their claim by a “preponderance of evidence” while the government must prove a defendant’s guilt “beyond a reasonable doubt.” *See* Kim & Hreshchyshyn, *supra* note 36, at 17; Nam, *supra* note 102, at 1667.

²²² *See* Kim & Hreshchyshyn, *supra* note 36, at 17.

²²³ *Id.*

²²⁴ Note, *supra* note 35, at 2585.

²²⁵ Tomer Broude & Doron Teichmen, *Outsourcing and Insourcing Crime: The Political Economy of Globalized Criminal Activity*, 62 VAND. L. REV. 795, 807–08 (2009).

²²⁶ Butkus, *supra* note 36, at 331.

stronger financial deterrent than forfeiture because the defendants may be held accountable for large punitive damages awards.²²⁷ Additionally, civil litigation has the potential to financially disable the larger entity by holding more people accountable for damages.²²⁸ While prosecutors cannot obtain evidence of probable cause to indict third parties, these individuals may often be joined to a civil suit as joint employers or joint tortfeasors.²²⁹ The more potential sources of payment, the greater the likelihood that the victim will be adequately compensated.²³⁰

Concededly, civil litigation is subject to many of the same barriers as criminal prosecutions, such as lack of evidence, reluctance of victims to bring suit, and difficulty locating traffickers.²³¹ Nonetheless, it is important to give trafficking survivors the option of a private right of action. The ability of survivors to hold their abusers personally accountable will empower victims and help facilitate their adjustment back to society.²³² A private right of action “makes possible the full expression of the trafficked person’s experience . . . [t]hrough individual assertion of the right to be free from slavery, trafficked persons can provide greater substance to the laws that were intended to protect them.”²³³

²²⁷ Nam, *supra* note 102, at 1665.

²²⁸ Kim & Hreshchyshyn, *supra* note 36, at 17.

²²⁹ *Id.*

²³⁰ *See id.*

²³¹ *Id.* at 18.

²³² TIP REPORT 2009, *supra* note 7, at 18. (“Providing the victim with their traffickers’ ill-gotten gains is critical to restoring a victim’s dignity, helping them gain power back from their exploiters who took advantage of their hope for a better life. Restitution and compensation attack the greed of the trafficker and the idea of a human being as a commodity. It is a way to ensure that victims receive access to justice.”); *see also* Kim & Hreshchyshyn, *supra* note 36, at 17 (“[L]itigation may provide the only means by which victims of trafficking may be made whole.”) (internal citations omitted); Nam, *supra* note 102, at 1665–68.

²³³ Kim & Hreshchyshyn, *supra* note 36, at 34–35.

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CONCLUSION

As a hub for human trafficking, New York must adopt a strong anti-trafficking policy. The passage of the Human Trafficking Law sent a strong message that New York will not tolerate the commercial exchange of human beings within its borders.²³⁴ Additionally, the creation of an Interagency Task Force with a clearly defined role gave the Human Trafficking Law teeth.²³⁵ To date, there has been impressive collaboration among agencies in implementing the human trafficking law.²³⁶ The next step is for New York to reexamine its anti-trafficking policy and make improvements. Law enforcement must gain a better understanding of sex trafficking and how to recognize when what appears to be prostitution is actually something much more pernicious. The protection and rehabilitation of victims should take priority over pursuing prosecutions. Currently the requirement of force, fraud, or coercion prioritizes criminal justice proceedings over the needs of victims by forcing them to testify and undergo brutal cross-examination.²³⁷ The elimination of this requirement respects the rights of trafficked persons and enables more successful prosecutions. Additionally, conferring a private right of action provides victims with a means to vindicate their rights in court when they feel emotionally ready to do so. For all these reasons, New York should reevaluate its current Human Trafficking Law and implement changes that will make the law more effective.

²³⁴ This Note has only begun to touch on the efforts of the state government to implement the Human Trafficking Law. *See generally* O'DONNELL & HANSELL, *supra* note 76. For a list of NGOs that provide services to trafficking victims, see New York Anti-Trafficking Coalition, <http://www.stophumantraffickingny.org/> (last visited Mar. 25, 2010).

²³⁵ *See generally* O'DONNELL & HANSELL, *supra* note 76.

²³⁶ *Id.*

²³⁷ *See generally* DITMORE, *supra* note 97, at 51; *Hearing, supra* note 44 (testimony of Dorchen A. Leidholdt, Director, Sanctuary for Families' Center for Battered Women Legal Services).