

COMMENTS

SLAVERY IN THE 21ST CENTURY AND IN NEW YORK: WHAT HAS THE STATE'S LEGISLATURE DONE?

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I. INTRODUCTION**

At this very moment, a young Mexican girl, who was promised a job or marriage, could be coming to New York, only to be forced into dehumanizing prostitution. At this very moment, a migrant farm worker could be toiling away in a labor camp in some rural location in New York, forced to work, held against his will, and living on a pittance. At this very moment, a married couple could be bringing a group of Peruvians to New York, promising them a better future, only to confiscate their passports on arrival and force them to endure grueling labor in a sweatshop under inhumane conditions.

These stories are real-life examples of horrendous human trafficking acts that have occurred and continue to occur in New York State.¹ These degrading human rights violations are a form of modern day slavery, and they are alive and well in the United States, particularly in New York.² Currently, unlike other states,

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** At the time of this publication, the New York State Legislature enacted anti-trafficking legislation during the 2007–2008 legislative session. 2007 N.Y. Laws 602. This new law, effective November 1, 2007, strengthens penalties against human trafficking and provides special social services and assistance to victims. N.Y. SOC. SERV. LAW §§ 483-aa-ee (McKinney Supp. 2008). Now that New York has established the groundwork for this legislation, the next challenge will be implementing these laws and programs.

¹ See *infra* text accompanying notes 17–32.

² See *infra* text accompanying notes 17–32.

New York does not have an anti-trafficking statute that mandates criminal repercussions for traffickers. Several anti-trafficking bills have been proposed, but most have died on the Assembly or Senate floor.³ The present anti-trafficking proposal was introduced in January of 2007, and it is currently being examined by both houses of the State's legislature.⁴

This Note examines the current proposed anti-trafficking statute and other past statutory proposals that have come from the New York State legislature. It assesses their strengths and weaknesses, particularly in comparison with anti-trafficking laws in other states. It offers ways in which to develop a more effective law which will aid in the rehabilitation of the trafficking victims, as well as ways to develop a more effective law enforcement body which will aid in the capture of the traffickers.

Part II of this Note provides an overview of human trafficking with a particular focus on the crisis in New York. Part III considers the anti-trafficking legislation at the federal as well as the state level, and examines the particular importance of specific state-mandated anti-trafficking statutes. Part IV examines the proposed New York State anti-trafficking legislation by analyzing its strengths and weaknesses, while recommending improvements to the proposed legislation. Part V concludes with recommendations for measures that New York State can take with regards to establishing a more comprehensive community approach in combating human trafficking.

II. HUMAN TRAFFICKING IN NEW YORK

Human trafficking is the criminal commercial exchange of human beings, who are subjected to involuntary acts, such as sexual exploitation or forced labor.⁵ Trafficking involves a process of using

³ From the Senate, the proposed bills include bill number 8485 sponsored by Senator Sabini, bill number 3914 sponsored by Senator Padavan, and bill number 5246 sponsored by Senator Volker. S. 8485, 229th Leg., Reg. Sess. (N.Y. 2006); S. 3914, 228th Leg., Reg. Sess. (N.Y. 2005); S. 5246, 228th Leg., Reg. Sess. (N.Y. 2005).

From the Assembly, the proposed bills include bill number 7588 sponsored by Assemblyman Lentol, bill number 9919 sponsored by Assemblyman Townsend, and bill number 1898 sponsored by Assemblyman Dinowitz. Assemb. 7588, 228th Leg., Reg. Sess. (N.Y. 2005); Assemb. 9919, 229th Leg., Reg. Sess. (N.Y. 2006); Assemb. 1898, 228th Leg., Reg. Sess. (N.Y. 2005).

⁴ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (proposed amendment to the Penal Law, section 136.60(1)(A)(I)-(II)). *See infra* Part IV.

⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized

physical force, fraud, deception, or other forms of coercion or intimidation to obtain, recruit, harbor, and transport people.⁶ This involuntary servitude is described as a “form of modern-day slavery.”⁷ Victims include “young children, teenagers, men and women.”⁸ The most widespread form of human trafficking involves involuntary sexual servitude, which includes forcing trafficking victims into prostitution.⁹ Human trafficking is different from unlawful immigration or smuggling in that it involves physical force, intimidation, fraud, and deception, all of which are used by traffickers to exploit the status of undocumented aliens.¹⁰

Crime, G.A. Res. 55/25, Annex II, art. 3(a), U.N. Doc. A/55/383 (Dec. 12, 2000) [hereinafter *Trafficking Protocol*], available at http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf.

⁶ *Id.* During the recruitment phase, traffickers frequently use deception, as opposed to overt force, to gain control over the victims. CTR. FOR THE ADVANCEMENT OF HUMAN RIGHTS, FLA. STATE UNIV., FLORIDA RESPONDS TO HUMAN TRAFFICKING 18 (2003), [hereinafter FLORIDA STATE REPORT] available at <http://www.cahr.fsu.edu/the%20report.pdf> (“Traffickers promise victims a better life, good pay, and any number of believable opportunities.”). Once the trafficked victim is under the sole control of the trafficker, the trafficker uses more overt and exploitative means to further and enforce this control. Aiko Joshi, *The Face of Human Trafficking*, 13 HASTINGS WOMEN’S L.J. 31, 47 (2002). The article states that:

To prevent the victims from escaping . . . traffickers may use violence, force, or the threat of violence and force. The workers are often foreign nationals, poor, disenfranchised within their own home countries, and often have little or no foreign-language skills. This makes them more vulnerable in the hands of traffickers who try to control them through isolation, denial of medical care, placing security guards in front of their places of ‘employment,’ withholding wages, or invoking their fear of arrest or deportation.

Id. (footnotes omitted).

⁷ Office of the Attorney Gen., U. S. Dep’t of Justice, Assessment of U.S. Government Efforts to Combat Trafficking in Persons 1 (Sept. 2006), available at http://www.usdoj.gov/ag/annualreports/tr2006/assessment_of_efforts_to_combat_tip.pdf.

⁸ SafeState.org, California Attorney General’s Crime and Violence Prevention Center, Human Trafficking, <http://safestate.org/index.cfm?navid=442&showPrintable=1> (last visited May 1, 2008).

⁹ Sara Elizabeth Dill, *Old Crimes in New Times: Human Trafficking and the Modern Justice System*, CRIM. JUST., Spring 2006, at 12, 12. It is important to note, however, that people are not trafficked just for prostitution and sexual exploitation. It is estimated that “about one quarter of the entire population of those trafficked are exploited sexually,” which intimates that “the majority are trafficked for other purposes.” TOM OBOKATA, TRAFFICKING OF HUMAN BEINGS FROM A HUMAN RIGHTS PERSPECTIVE: TOWARDS A HOLISTIC APPROACH 27–28 (2006). Many of these individuals are “exploited by transnational corporations, farmers, restaurant owners and others” and are forced to work long hours with little pay not just in brothels, but in factories, sweatshops, farms, and other locations. *Id.* at 125–26.

¹⁰ Human Smuggling and Trafficking Ctr., U.S. Dep’t of State, Distinctions Between Human Smuggling and Human Trafficking 2 (Jan. 2005), available at <http://www.state.gov/documents/organization/49875.pdf>. Smuggling usually only refers to the “transportation phase of migration.” FLORIDA STATE REPORT, *supra* note 6, at 20. After the smuggler illegally transports the individual into another country, the relationship between the two parties ends. *Id.* In human trafficking, however, the relationship between the victim and the trafficker is continuous and exploitative, and it extends beyond the point after the individual has illegally entered another country. *Id.* See also OBOKATA, *supra* note 9, at 21 (noting that “the services of smugglers end when those smuggled have reached their

Human trafficking is a very profitable form of organized crime.¹¹ It is the most profitable form of illegal trade worldwide, second to the trafficking of arms and drugs.¹² Criminal groups make more than nine billion dollars in annual revenue globally from the trafficking of human beings.¹³ Furthermore, it is estimated that 800,000 to 900,000 people are trafficked each year across international borders.¹⁴ The federal government estimates that nearly 18,000 persons are trafficked annually into the United States.¹⁵ International trafficking victims have been identified in

destination, while trafficking can result in people being subsequently exploited"). Many traffickers restrict the "freedom of movement" of their victims. *Id.* at 126. "Traffickers may take identity documents away from those trafficked as a way to gain control over them . . . and threaten them by hinting at the possibility of enforcement action and retaliation against their family members." *Id.*

In addition, another distinction between smuggling and trafficking is that smuggling is a crime for the smuggler and the individual who is smuggled. Nat'l Conference of State Legislatures, 2006 State Legislation Related to Immigration Enacted, Vetoed, and Pending Gubernatorial Action, <http://www.ncsl.org/programs/immig/06ImmigEnactedLegis.htm> (last visited May 1, 2008). With human trafficking, however, it is the trafficker, not the victim, who commits the criminal act. *Id.*

Basically, as the Department of State notes:

[The] key components that will always distinguish trafficking from smuggling are the elements of fraud, force, or coercion. However, under U.S. law, if the person is under 18 and induced to perform a commercial sex act, then it is considered trafficking, regardless of whether or not fraud, force, or coercion is involved.

Human Smuggling and Trafficking Ctr., *supra*, at 4.

¹¹ OBOKATA, *supra* note 9, at 2. A large portion of modern day trafficking is controlled by organized criminal groups:

Groups such as the *Snakeheads* (China), *Yakuza* (Japan), and *Russian Mafia* are known to actively engage in trafficking. Family members, friends and prominent figures in local communities also lure potential victims into the process. Moreover, there is evidence to suggest that members of peacekeeping missions and other inter-governmental organisations (IGOs) also take part in trafficking business.

Id. at 2–3 (footnotes omitted).

¹² Dill, *supra* note 9, at 12. "Trafficking in persons and human smuggling are some of the fastest growing areas of international criminal activity . . ." Human Smuggling and Trafficking Ctr., *supra* note 10, at 1.

¹³ Ellen L. Buckwalter et al., *Modern Day Slavery in Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 407 (2006). Traffickers are not just a part of organized crime groups, however. Robin Hassler Thompson, *Human Trafficking: Seeking to Expose and End Modern-Day Slavery*, INT'L BAR NEWS, Mar. 2004, at 22, 23, available at <http://www.cahr.fsu.edu/seeing%20to%20Expose%20and%20End%20Modern%20Day%20Slavery.pdf>.

Traffickers can also be "farm labour contractors who recruit poor and drug-dependent men from local homeless shelters or they can be the married couple who bring a teenaged girl from their native land to another county and enslave her as a domestic worker." *Id.*

¹⁴ Buckwalter et al., *supra* note 13, at 406. Because human trafficking is illegal and therefore a covert and underground operation, it is difficult, if not impossible, to get a fairly accurate number of trafficking victims. FLORIDA STATE REPORT, *supra* note 6, at 16.

¹⁵ Human Smuggling and Trafficking Ctr., *supra* note 10, at 1. It is important to note though that "[h]uman trafficking does not require the crossing of an international border—it does not even require the transportation of victims from one locale to another. Victims of

twenty states, with the majority located in Florida, California, and New York.¹⁶

New York is a significant hub for trafficking in the United States.¹⁷ Federal officials have uncovered, dismantled, and prosecuted various crime rings across the state involved in human trafficking. The following horror stories are a brief sampling of the examples of human slave activity that have been uncovered in New York. In 2002, the federal government indicted six individuals who participated in a plot to “recruit, transport and harbor undocumented Mexican migrant workers, and then held them in conditions of forced labor at migrant labor camps near Buffalo, New York.”¹⁸ In 2004, a Mexican forced-prostitution ring was discovered operating from Flushing, Queens.¹⁹ The Carreto brothers, the indicted defendants, illegally smuggled a number of Mexican women to New York with the purpose of forcing them into prostitution.²⁰ These women were promised jobs and marriage by the defendants, but were instead forced into prostitution rings.²¹ Prosecutors said that the Carreto brothers would “recruit young, uneducated women and girls from impoverished areas of Mexico and use some combination of deception, fraud, coercion, rape, forced abortion, threats and violence to compel them to prostitute themselves.”²² In

severe forms of trafficking are not all illegal aliens; they may, in fact, be U.S. citizens, legal residents, or visitors.” *Id.* at 3.

¹⁶ FLORIDA STATE REPORT, *supra* note 6, at 27.

¹⁷ Press Release, Office of the New York State Attorney Gen. Andrew M. Cuomo, Legislation Targets “Human Trafficking” (May 16, 2005) [hereinafter NYS Att’y Gen. Press Release], available at http://www.oag.state.ny.us/press/2005/may/may16a_05.html. “New York State’s ports, airports, rail stations and international borders all contribute to New York being a hub for trafficking.” Press Release, Council of the City of New York Office of Comm’n, In Move to Improve Construction Safety, Council to Stiffen Consequences for Construction Violations (Nov. 15, 2006), available at http://www.nycouncil.info/pdf_files/newswire/176_111506_prestated_2.pdf.

¹⁸ Press Release, U.S. Dep’t of Justice, Six Indicted in Conspiracy for Trafficking and Holding Migrant Workers in Conditions of Forced Labor in Western New York (June 19, 2002), available at http://www.usdoj.gov/opa/pr/2002/June/02_crt_360.htm.

¹⁹ Civil Rights Div., U.S. Dep’t of Justice, *Eastern District of New York Anti-Trafficking Activities with Civil Rights Division Intensify*, ANTI-TRAFFICKING NEWS BULL., Mar. 2004, at 3 [hereinafter ANTI-TRAFFICKING NEWS MARCH 2004], available at http://www.usdoj.gov/crt/crim/trafficking_newsletter/antit Traffnews_mar04.pdf.

²⁰ Civil Rights Div., U.S. Dep’t of Justice, *Recent Developments in Notable Prosecutions*, ANTI-TRAFFICKING NEWS BULL., Mar. 2004, at 4, available at http://www.usdoj.gov/crt/crim/trafficking_newsletter/antit Traffnews_mar04.pdf.

²¹ *50-Year Prison Sentences for Sex Trafficking*, ANTI-TRAFFICKING NEWS BULL., Aug. 2006, at 2 [hereinafter ANTI-TRAFFICKING NEWS AUGUST 2006], available at http://www.usdoj.gov/crt/crim/trafficking_newsletter/antit Traffnews_aug06.pdf.

²² William Glaberson, *Sex-Trafficking Pleas Detail Abuse of Mexican Women*, N.Y. TIMES, Apr. 6, 2005, at B3. Subsequently, in April of 2006, the Carreto brothers were sentenced in

2005, Alex Babaev pled guilty in Brooklyn to the sex trafficking of women from Azerbaijani.²³ He admitted to bringing these women to work as prostitutes, taking their passports away, and using “threats of, and actual, violence against the victims to secure their services.”²⁴ During this same year, two defendants were extradited to the United States after serving eight years in a Mexican prison.²⁵ These defendants recruited and smuggled roughly sixty deaf Mexicans to the United States “with the . . . purpose of exploiting and abusing them for profit. . . . The Mexican aliens were forced to work under conditions of servitude, peddling key chain trinkets on the streets and subways of New York City.”²⁶ In 2006, a husband and wife trafficking team were sentenced to prison for orchestrating “a scheme to illegally obtain visas for Peruvian aliens” wanting to come to the United States.²⁷ The couple charged the aliens a smuggling fee “ranging from \$6,000 to \$13,000,” and upon arrival, the team confiscated their passports, and, by threatening to turn them over to law enforcement, forced the aliens to work.²⁸ Just recently, in January of 2007, a man from Queens pleaded guilty to recruiting Korean women to work as prostitutes.²⁹ The defendant operated a network of over twenty-five Korean-owned brothels located throughout the northeastern United States, several of which were located in Queens.³⁰ These brothels were “operated under the cover of legitimate businesses.”³¹ Because there are no laws specific to human trafficking in New York State, these defendants were prosecuted in federal court.³² The following section will discuss statutes that the federal government has created to combat trafficking. In addition, it will examine several state legislatures

federal court to “two of the longest prison sentences ever imposed in a sex trafficking case”—fifty years for the two Carreto brothers and twenty-five years for a third defendant. ANTI-TRAFFICKING NEWS AUGUST 2006, *supra* note 21, at 2.

²³ Civil Rights Div., U.S. Dep’t of Justice, *Case Updates*, ANTI-TRAFFICKING NEWS BULL., Aug. 2005, at 5, available at http://www.usdoj.gov/crt/crim/trafficking_newsletter/antitraffnews_aug05.pdf.

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ ANTI-TRAFFICKING NEWS AUGUST 2006, *supra* note 21, at 11.

²⁸ *Id.*

²⁹ Press Release, U.S. Dep’t of Justice, New York City Man Pleads Guilty to Human Trafficking Charge (Jan. 12, 2007), available at http://www.usdoj.gov/opa/pr/2007/January/07_crt_015.html.

³⁰ *Id.*

³¹ *Id.*

³² See *supra* notes 17–30.

that have enacted anti-trafficking legislation and why there is a strong need for states to establish their own laws rather than simply rely on federal counterparts.

III. ANTI-TRAFFICKING LEGISLATION AT THE FEDERAL AND STATE LEVEL

Human trafficking is a plight that exists not just in New York, but in other states nationwide.³³ In response to this crisis, the federal government and several state legislatures have promulgated anti-trafficking legislation. On the federal level, historically, the Thirteenth Amendment to the U.S. Constitution outlaws slavery and involuntary servitude.³⁴ The government recently established the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA),³⁵ which “supplements existing laws that apply to human trafficking including those passed to enforce the Thirteenth Amendment.”³⁶ The VTVPA strengthens criminal enforcement, prosecution, and penalties against traffickers.³⁷ It provides new protections to victims, and enables victims of severe forms of trafficking to seek benefits and services that will help them rebuild their lives.³⁸ The Trafficking Victims Protection Reauthorization Act of 2003, a set of new amendments made to the VTVPA by the federal government, seeks to increase the penalties for convicted traffickers and strengthen the rights of trafficking victims.³⁹ These amendments empower victims to, among other things, bring federal civil suits against traffickers for actual damages.⁴⁰ The third round

³³ See *supra* text accompanying notes 14–16.

³⁴ U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude . . . shall exist within the United States, or any place subject to their jurisdiction.”).

³⁵ Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–7110 (2000).

³⁶ CIVIL RIGHTS DIV., U.S. DEP’T OF JUSTICE, TRAFFICKING IN PERSONS: A GUIDE FOR NON-GOVERNMENTAL ORGANIZATIONS 2 (2002), <http://www.usdoj.gov/crt/crim/wetf/traffibrochure.pdf>.

³⁷ Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–7110 (2000). This act, known as the “Trafficking Victims Protection Act of 2000,” authorizes specific penalties for traffickers. 18 U.S.C. §§ 1590, 1591. These penalties include a possible life imprisonment for trafficking any person younger than fourteen years old, and a possible twenty years in prison for trafficking those between the ages of fourteen and eighteen. *Id.* § 1591. In addition, a trafficker will also receive life in prison for the death of or for attempting to kill a trafficking victim, with or without intent. *Id.* § 1590.

³⁸ *E.g.*, 22 U.S.C. § 7105(b)(1)(A) (“[A]n alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State program or activity.”).

³⁹ Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C. §§ 7101–7110 (Supp. III 2004).

⁴⁰ 18 U.S.C. § 1595 (Supp. IV 2005).

of amendments to the VTVPA by the federal government produced the Trafficking Victims Protection Reauthorization Act of 2005.⁴¹ These amendments establish programs and initiatives to assist and support trafficking victims, including “local in-country nongovernmental organization-operated hotlines, culturally and linguistically appropriate protective shelters, and regional and international nongovernmental . . . networks and databases on trafficking.”⁴²

On the state level, several legislatures have responded to the human trafficking crisis in the United States. Just in 2006, several state governments enacted various anti-trafficking bills. These states included Colorado, Iowa, Maine, Michigan, Mississippi, and Virginia.⁴³ But Washington State has been at the head of the “state anti-trafficking legislation initiative.”⁴⁴ “Washington was the first state to pass anti-trafficking legislation, and its comprehensive [statute] has served as a model for other states adopting their own legislation.”⁴⁵ Specific elements of Washington’s anti-trafficking law will be discussed later in this Note, mainly the creation of a state task force, as proposals that New York should adopt to strengthen its own anti-trafficking legislation.⁴⁶

Even though legislation exists on the federal level to combat trafficking, it is imperative that states, especially those like New York who are known as “hub[s]” of trafficking,⁴⁷ promulgate anti-trafficking legislation for several reasons. “First, law enforcement

⁴¹ Trafficking Victims Protection Reauthorization Act of 2005, 22 U.S.C. §§ 7101–7110 (Supp. V 2006).

⁴² *Id.* § 7105(a)(1)(A).

⁴³ COLO. REV. STAT. §§ 18-6-402, 18-13-127 (2007) (makes human trafficking a crime); IOWA CODE ANN. §§ 710A.1–710A.5, 915.51 (West Supp. 2007) (makes human trafficking a crime); MICH. COMP. LAWS SERV. §§ 750.462a–750.462i (LexisNexis Supp. 2007) (prohibits forced labor or services by threatening the destruction of immigration documents, and increases penalties for human trafficking); MISS. CODE ANN. §§ 97-3-5495-3-54.4 (West Supp. 2007) (makes human trafficking a crime); VA. CODE ANN. § 18.2-59 (Supp. 2007) (establishes the Human Anti-Trafficking Act, and makes the act of threatening an individual with reporting illegal statute to officials for the purposes of extorting money a class 5 felony); H.R. 893, 122d Leg., 2d Reg. Sess. (Me. 2006) (enacted Apr. 28, 2006) (establishes a task force to investigate human trafficking across borders a crime, provided services for victims of trafficking, and influences of trafficking).

⁴⁴ Buckwalter et al., *supra* note 13, at 418.

⁴⁵ *Id.* at 418–19. “The state legislature passed a bill creating the Washington State Task Force Against the Trafficking of Persons in June 2002 and enacted legislation criminalizing human trafficking in 2003.” *Id.* at 419 (footnote omitted). *See also infra* notes 97–99 and accompanying text.

⁴⁶ *See infra* Part IV.B.1.

⁴⁷ *See* NYS Att’y Gen. Press Release, *supra* note 17; *see also supra* note 17 and accompanying text.

is, [generally], a local issue, and criminal prosecutions are generally a state responsibility.”⁴⁸ 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.⁴⁹ As noted by a director of the Polaris Project, an international anti-trafficking organization, “[i]f the TVPA and TVPRA were the only anti-trafficking laws, there would be fewer prosecutions and the number of cases prosecuted would be insufficient given the magnitude of the problem.”⁵⁰ Second, “federal authorities are not always able, or willing, to prosecute trafficking cases involving only one victim or a small group of victims.”⁵¹ It is crucial that all trafficking offenders be prosecuted so that all trafficking victims can recover damages and begin rehabilitation, and so the states can effectively combat this growing problem. Therefore, “states must have the ability [and opportunity] to prosecute smaller-scale offenders.”⁵² Finally, particular state anti-trafficking legislation is a “preventative measure” that acts as a deterrent.⁵³ Traffickers will be deterred from engaging in human trafficking if they know that state and local law enforcement officials “have the ability to arrest, prosecute, and convict offenders and that they will aggressively enforce the laws.”⁵⁴

IV. NEW YORK’S PROPOSED ANTI-TRAFFICKING STATUTE

There is currently no law that specifically makes human trafficking a crime in New York State. Human trafficking is a

⁴⁸ Buckwalter et al., *supra* note 13, at 425.

⁴⁹ *Id.*; see also *infra* Part IV.B.5 (proposing specific provisions that mandate officer education and training for New York’s anti-trafficking legislation).

⁵⁰ Buckwalter et al., *supra* note 13, at 425.

⁵¹ *Id.* (footnote omitted).

⁵² *Id.* at 426.

⁵³ *Id.*

⁵⁴ *Id.* As an additional argument in favor of particular state legislation, it has been noted that:

[S]tate legislation enables local law enforcement and service providers to more effectively address the particular needs of trafficking victims in their areas of the country. For example, warm clothing is usually not an urgent need for trafficking victims in Hawaii, whereas it certainly is in Alaska. State laws can require that these needs take priority over others.

Id. In relation to New York, a great number of trafficking victims have come from Spanish-speaking countries. See *supra* text accompanying notes 17–28. Particular legislation could be created that would recognize this cultural characteristic, and tailor public awareness campaigns and victim assistance services accordingly.

growing problem in New York and state legislation is needed to criminalize this activity, prosecute the crime, punish the perpetrators, and protect and rehabilitate the victims. Eliot Spitzer, former Governor of New York and former Attorney General, described the presence of human trafficking in the state as a “shocking problem.”⁵⁵ He supported the proposed anti-trafficking legislation and stated that New York’s government cannot “allow the American dream to be turned into a nightmare of exploitation and abuse.”⁵⁶

There have been several forms of anti-trafficking bills proposed in the New York State legislature starting in 2005 and continuing through to the present date.⁵⁷ The current pending anti-trafficking legislation is bill number seventy-eight introduced by Senator Padavan.⁵⁸ The purpose of this legislation is to deter human trafficking and to punish those who engage in human trafficking, the promotion of sex tourism, and the patronization of trafficking victims for prostitution.⁵⁹ This bill amends New York’s Penal Law,⁶⁰ Executive Law,⁶¹ Civil Practice Law and Rules,⁶² and the Criminal Procedure Law with regards to human trafficking.⁶³ It creates three new crimes—Human Trafficking in the second Degree, Human Trafficking in the first Degree, and Promotion of Human Trafficking—and provides for victim assistance for trafficking victims.⁶⁴ The bill additionally includes the component of providing for victims’ services and includes elements that assist victims of trafficking once they are rescued.⁶⁵

“The most effective laws will approach human trafficking comprehensively, offering relief to victims, punishing traffickers and helping to create comprehensive community responses to it”⁶⁶

⁵⁵ NYS Att’y Gen. Press Release, *supra* note 17.

⁵⁶ *Id.*

⁵⁷ *See supra* note 3.

⁵⁸ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007).

⁵⁹ *See id.*

⁶⁰ *Id.* §§ 1, 5 (creating the crimes of human trafficking for involuntary labor servitude and involuntary sexual servitude, promoting human trafficking, patronizing a trafficking victim, and promoting sex tourism, and provides for restitution and assistance to trafficking victims).

⁶¹ *Id.* § 2 (amending the executive law to include trafficking victims in the definition of “victim” for purposes of crime victim compensation).

⁶² *Id.* §§ 3, 4 (amending the civil practice law and rules to provide for the seizure and forfeiture of assets of traffickers).

⁶³ *Id.* § 6.

⁶⁴ *Id.* § 1 (proposed amendments to the Penal Law §§ 136.00–136.50).

⁶⁵ *See id.* (proposed amendment to the Penal Law §§ 136.55, 136.60).

⁶⁶ Thompson, *supra* note 13, at 23.

Senate Bill number seventy-eight touches upon these three legislative goals, but does so in differing degrees. The bill's strength lies in the varied amendments to the Penal Law which would punish traffickers, and its deficiencies lie in the proposals for restitution and services to the victims. The proposed statute's strengths will be discussed, followed by the bill's weaknesses along with suggestions as to improvements.

A. Strengths of Anti-Trafficking Bill

New York's anti-trafficking bill proposes several amendments to the Penal Law that would effectively punish traffickers and other individuals involved in human trafficking. The bill deals with trafficking on a comprehensive level, examining the act of trafficking from the time the victim is introduced to the trafficker, or someone who will transport the victim to the trafficker, to the time when the individual is engaged in the forced servitude. The bill focuses on the various phases of trafficking and seeks to punish those individuals who are involved at the different stages. First, the bill punishes human traffickers and those people who transport the victims to the traffickers. Senate Bill number seventy-eight amends the Penal Law by establishing the crimes of "involuntary labor servitude"⁶⁷ and "involuntary sexual servitude."⁶⁸ The distinction the legislature makes between forced labor and forced sexual servitude is important because human trafficking victims are found in various forms of commerce, not just the sex industry.⁶⁹ Identifying, categorizing, and criminalizing the different forms of human trafficking establishes a sophisticated form of governmental awareness and action in response to a sophisticated slave industry, and broadens the scope of criminal activity that is punishable. The legislature further categorizes the different forms of human trafficking by establishing different degrees of involuntary labor servitude and sexual servitude: involuntary labor servitude in the second degree⁷⁰ and first degree,⁷¹ and involuntary sexual servitude

⁶⁷ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (noting, in § 1 of bill, "[t]he Penal Law is amended by adding a new article 136," which proscribes "involuntary labor servitude" under §§ 136.05 and 136.10 of that article).

⁶⁸ *Id.* (§§ 136.15 and 136.20 of the proposed amendments proscribe "human trafficking for involuntary sexual servitude").

⁶⁹ *See supra* note 9.

⁷⁰ N.Y. S. 78 (proposed amendment to the Penal Law § 136.05). Human trafficking for involuntary labor servitude in the second degree, proposed amendment to the Penal Law § 136.05, makes it a crime to "knowingly . . . place[] another person in a position of involuntary

in the second degree⁷² and first degree.⁷³ The distinction in degrees recognizes the heinous situations that the trafficking victims are subjected to and the various additional crimes that are committed by traffickers during trafficking situations, such as trafficking an individual “who is under the age of eighteen;”⁷⁴ trafficking “an incompetent person;”⁷⁵ trafficking a person who suffers “serious physical injury during the course of” the trafficking;⁷⁶ trafficking three or more individuals;⁷⁷ trafficking a person continually for a period of more than thirty days;⁷⁸ trafficking a person who, as a result of the forced servitude, is involved in or becomes the victim of

labor servitude; or . . . restrain[] or transport[] another person for the purpose of placing such person in a position of involuntary labor servitude.” *Id.* This statute not only punishes the trafficker, but it also penalizes the “middle man” – the person who transfers the victim to the trafficker. *See id.* This crime is a class C felony. *Id.* This means that if the defendant is found guilty of this crime and is sentenced to an indeterminate term, he or she will receive a prison sentence of three to fifteen years. N.Y. PENAL LAW § 70.00(2)(c) (McKinney Supp. 2008).

⁷¹ N.Y. S. 78 (proposed amendment to the Penal Law § 136.10).

A person is guilty of human trafficking for involuntary labor servitude in the first degree when he or she commits the crime of human trafficking for involuntary labor servitude in the second degree: . . . against a person who is under the age of eighteen; or . . . against an incompetent person; or . . . against a person who suffers serious physical injury during the course of such crime; or . . . against more than three persons; or . . . against a person continually for a period exceeding thirty days

Id.

This is a class B felony. *Id.* This means that if the person is found guilty and sentenced to an indeterminate term, he or she will receive a prison sentence of three to twenty-five years. N.Y. PENAL LAW § 70.00(2)(b) (McKinney Supp. 2008).

⁷² N.Y. S. 78 (proposed amendment to the Penal Law § 136.15). Human trafficking for involuntary sexual servitude in the second degree, proposed amendment to the Penal Law § 136.15, makes it a crime to “knowingly . . . place[] another person in a position of involuntary sexual servitude; or . . . [to] restrain[] or transport[] another person for the purpose of placing such person in a position of involuntary sexual servitude.” *Id.* This crime is a class B felony. *Id.* This means that if the person is found guilty and sentenced to an indeterminate term, he or she will receive a prison sentence of three to twenty-five years. N.Y. PENAL LAW § 70.00(2)(b) (McKinney Supp. 2008).

⁷³ N.Y. S. 78 (proposed amendment to the Penal Law § 136.20). Human trafficking for involuntary sexual servitude in the first degree, proposed amendment to the Penal Law § 136.20, makes it a crime for a person to engage in involuntary sexual servitude in the second degree when other factors are involved that intensify the criminality of the trafficking situation, such as trafficking someone who is under eighteen years of age or trafficking a person continually for more than thirty days, among other factors. *Id.* This is a class A-II felony. *Id.* This means that if the person is found guilty of this crime and sentenced to an indeterminate term, he or she will receive a prison sentence of three years to life. N.Y. PENAL LAW §§ 70.00(2)(a), (3)(a)(ii) (McKinney Supp. 2008).

⁷⁴ N.Y. S. 78 (proposed amendments to the Penal Law §§ 136.10(1), 136.20(1)).

⁷⁵ *Id.* (proposed amendments to the Penal Law §§ 136.10(2), 136.20(2)).

⁷⁶ *Id.* (proposed amendments to the Penal Law §§ 136.10(3), 136.20(3)).

⁷⁷ *Id.* (proposed amendments to the Penal Law §§ 136.10(4), 136.20(4)).

⁷⁸ *Id.* (proposed amendments to the Penal Law §§ 136.10(5), 136.20(5)).

another crime;⁷⁹ or trafficking an individual after having previously been convicted of human trafficking within the last ten years.⁸⁰

The proposed anti-trafficking legislation not only includes measures to penalize the actual traffickers and those who transport the victims to the traffickers, but also establishes measures that penalize those persons who promote human trafficking. The bill proposes to amend the Penal Law by establishing the crimes of promoting human trafficking in the second degree⁸¹ and the in first degree.⁸² A person is guilty of these crimes when he or she “knowingly advances or profits from human trafficking” for involuntary labor servitude or sexual servitude.⁸³ This includes individuals who recruit unsuspecting victims by offering false promises of employment and money in New York, or families who sell their children into slavery.

In addition, the anti-trafficking bill targets the individuals who patronize sex-trafficking victims. This includes those persons who support and frequent brothels and strip clubs. The bill establishes the crimes of patronizing a trafficking victim in the second degree⁸⁴ and first degree.⁸⁵ A person is guilty of these crimes when he or she “knowingly patronizes a victim of the crime of human trafficking for

⁷⁹ *Id.* (proposed amendments to the Penal Law §§ 136.10(6), 136.20(6)).

⁸⁰ *Id.* (proposed amendments to the Penal Law §§ 136.10(7), 136.20(7)).

⁸¹ *Id.* (proposed amendment to the Penal Law § 136.25). Promoting human trafficking in the second degree, proposed amendment to the Penal Law § 136.25, is a class D felony. *Id.* This means that if the defendant is found guilty of this crime and is sentenced to an indeterminate term, he or she will receive a prison sentence of three to seven years. N.Y. PENAL LAW § 70.00(2)(d) (McKinney Supp. 2008). In some circumstances, where the person is not a second or persistent felony offender, the court has discretion to impose a prison sentence of one year or less. *Id.* § 70.00(4).

⁸² S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (proposed amendment to the Penal Law § 136.30). Promoting human trafficking in the first degree, proposed amendment to the Penal Law § 136.30, is a class C felony. *Id.* This means that if the defendant is found guilty of this crime and is sentenced to an indeterminate term, he or she will receive a prison sentence of three to fifteen years. N.Y. PENAL LAW § 70.00(2)(c) (McKinney Supp. 2008).

⁸³ N.Y. S. 78 (proposed amendments to the Penal Law §§ 136.25, 136.30).

⁸⁴ *Id.* (proposed amendment to the Penal Law § 136.35). Patronizing a trafficking victim in the second degree, proposed amendment to the Penal Law § 136.35, is a class E felony. *Id.* This means that if the defendant is found guilty and sentenced to an indeterminate term, he or she will receive a prison sentence of no more than three to four years. N.Y. PENAL LAW § 70.00(2)(e) (McKinney Supp. 2008).

⁸⁵ N.Y. S. 78 (proposed amendment to the Penal Law § 136.40). Patronizing a trafficking victim in the first degree, proposed amendment to the Penal Law § 136.40, is a class D felony. *Id.* This means that if the defendant is found guilty of this crime and is sentenced to an indeterminate term, he or she will receive a prison sentence of three to seven years. N.Y. PENAL LAW § 70.00(2)(d) (McKinney Supp. 2008). In some circumstances where the person is not a second or persistent felony offender, the court has discretion to impose a prison sentence of one year or less. *Id.* § 70.00(4).

involuntary sexual servitude.”⁸⁶ Creating these punitive measures against trafficking patrons discourages these persons from supporting businesses that use trafficking victims. This, in turn, decreases the revenue that traffickers receive from engaging in involuntary sexual servitude and combats the trafficking problem on a vital financial level.

Finally, the proposed anti-trafficking legislation contains measures that penalize those who promote sex tourism.⁸⁷ The bill amends the Penal Law by establishing the crimes of promoting sex tourism in the second degree⁸⁸ and in the first degree.⁸⁹ A person is guilty of these crimes when he or she “knowingly sells or offers to sell travel-related services that include or facilitate travel for the purpose of engaging in” human trafficking for involuntary servitude or patronizing a trafficking victim.⁹⁰ This specific crime is a progressive measure, which some states that have active anti-trafficking statutes do not have.⁹¹

B. Weaknesses of Anti-Trafficking Bill and Recommendations for Improvements

While New York’s anti-trafficking bill proposes several amendments to the Penal Law that effectively punish traffickers and other individuals involved in human trafficking, the bill fails to effectively offer relief to victims and create comprehensive government and community responses to the trafficking plight. The bill focuses on the criminal punishment of traffickers and those involved in trafficking, but does not address the rehabilitation of trafficking victims and the ways in which law enforcement and state organizations can work together collectively to identify trafficking

⁸⁶ N.Y. S. 78 (proposed amendments to the Penal Law §§ 136.35, 136.40).

⁸⁷ *Id.* (proposed amendments to the Penal Law §§ 136.45, 136.50).

⁸⁸ *Id.* (proposed amendment to the Penal Law § 136.45). Promoting sex tourism in the second degree, proposed amendment to the Penal Law § 136.45, makes is a class B felony. *Id.* This means that if the person is found guilty and sentenced to an indeterminate term, he or she will receive a prison sentence of three to twenty-five years. N.Y. PENAL LAW § 70.00(2)(b) (McKinney Supp. 2008).

⁸⁹ N.Y. S. 78 (proposed amendment to the Penal Law § 136.50). Promoting sex tourism in the first degree, proposed amendment to the Penal Law § 136.50, is a class A-II felony. *Id.* This means that if the person is found guilty of this crime and sentenced to an indeterminate term, he or she will receive a prison sentence of three years to life. N.Y. PENAL LAW §§ 70.00(2)(a), (3)(a)(ii) (McKinney 2008).

⁹⁰ N.Y. S. 78 (proposed amendments to the Penal Law §§ 136.45, 136.50).

⁹¹ Buckwalter et al., *supra* note 13, at 430 (stating that “[o]nly two states, Alaska and New York, have pending bills that address sex tourism”) (footnotes omitted).

situations, prosecute traffickers, and offer services to trafficking victims. There are several provisions that the bill does not include, specifically those that deal with the creation of a task force to comprehensively assist the victim rehabilitation process; the formation of evidentiary rules which aid trafficking victims who act as witnesses for the prosecution; the procurement of a safe haven for trafficking victims while they participate as witnesses; the establishment of restitution compensation for mental therapy for the victims; the creation of law enforcement training initiatives; and the promulgation of additional causes of action regarding trafficking. The following subsections examine these provisions and recommends them as additions to the current New York anti-trafficking legislation.

1. Establishment of a State-Wide Task Force

Trafficking victims have a multitude of critical needs that require immediate and long-term assistance.⁹² These needs and services include therapy, employment, immigration support, income assistance, interpretation, legal aid, medical assistance, shelter, food, and clothing.⁹³ In order for New York to more effectively service this myriad of needs, the state's proposed legislation should have extensive and explicit provisions regarding the services available to trafficking victims. Past state legislative proposals have even dedicated whole statutes to the benefits and services offered to trafficked persons.⁹⁴ The current proposal provides victims with "information regarding their rights," "available services" including the right to legal representation, and the "right to federal and state benefits and services."⁹⁵ Nonetheless, the bill

⁹² FLORIDA STATE REPORT, *supra* note 6, at 22. Human trafficking victims suffer from psychological damage, malnutrition, extreme stress, sexually transmitted diseases, and severe physical injuries, to name a few. *Id.* New York should be aware of the varied and critical needs of the victims and take steps to treat the victims.

⁹³ Buckwalter et al., *supra* note 13, at 421.

⁹⁴ See Assemb. 9038, 228th Leg., Reg. Sess. (N.Y. 2005). Sponsored by Assemblyman Dinowitz, this proposed statute outlines services that would be provided to trafficking victims such as medical and professional services, social services, and shelter programs. *Id.* It establishes a privileged relationship between a trafficking victim and a trafficking victim counselor. *Id.* It establishes eligibility for state crime victim compensation funds and outlines procedures to assist trafficked persons to secure immigration status and federal benefits. *Id.* It establishes task forces for training, data collection, interagency cooperation, and a liaison to the department of justice. *Id.*

⁹⁵ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (proposed amendment to the Penal Law § 136.60(1)).

does not expound on these services and simply states that the services should be those “such as benefits and services under the [F]ederal [V]ictims of [T]rafficking and [V]iolence [P]rotection [A]ct of 2000.”⁹⁶

In contrast, the State of Washington, as part of its anti-trafficking statute, has created a state task force to identify and focus on particular social services for trafficking victims.⁹⁷ In creating this statute, the Washington legislature recognized that “[v]ictims would be better served if there is an established, coordinated system of identifying the needs of trafficking victims, protocols for training of service delivery agencies and staff, [and] timely and appropriate delivery of services.”⁹⁸ The task force was created to work with different federal and state systems of support to provide services to victims that include health care, “housing, education, legal assistance, job training or preparation, interpreting services, [and] English as a second language classes.”⁹⁹

New York should follow Washington’s lead of enacting this comprehensive approach and amend the proposed legislation to include an equivalent workgroup.¹⁰⁰ New York’s current proposed bill states that the Office of Temporary and Disability Assistance shall “issue a report regarding the effectiveness of existing social services programs in responding to the needs of trafficking victims.”¹⁰¹ This leaves too much uncertainty as to which social service programs need to take action and as to what action the programs should be taking. The mandate to create a task force, even if it is just for the initial years of the enacted law, will allow the state to effectively aid and rehabilitate the trafficking victims through identifying particular social service agencies and groups

⁹⁶ N.Y. S. 78 (proposed amendment to the Penal Law § 136.60(1)(A)(II)).

⁹⁷ WASH. REV. CODE ANN. § 7.68.350 (West Supp. 2007) (statute named the “Washington state task force against the trafficking of persons”).

⁹⁸ *Id.* § 7.68.360 (citing the historical and statutory notes following the statute).

⁹⁹ *Id.* § 7.68.350(4)(b).

¹⁰⁰ It should be noted that prior proposed New York State legislation, specifically senate bill number 8485 sponsored by Senator Sabini, proposed a similar task force. S. 8485, 228th Leg., Reg. Sess. (N.Y. 2006). However, this bill subsequently died in committee. *See* N.Y. S. 8485, 2005 NY S. 8485 (Westlaw). The bill not only proposed that “coordinators of services for victims of human trafficking” be made available by the office of temporary and disability assistance, but it mandated that an “interagency advisory committee on human trafficking” be created to “provide an interagency forum for the collaboration of various state agencies and service providers to develop state policies to meet the varied needs of trafficking victims.” N.Y. S. 8485.

¹⁰¹ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (proposed amendment to the Penal Law § 136.60(4)).

and making them accessible and available for the victims. These victims were brought into this country, into New York, and forced to endure horrific acts of degradation. As a state, New York should not abandon these victims after their traffickers have been captured. The task force should not only identify the social services noted in Washington's statute,¹⁰² but in addition, should also focus on immigration assistance and services which could locate the families of the victims and protect the victims from further harm or threat of recapture. A trafficking victim task force would create a more holistic approach to the anti-trafficking legislation, empowering these victims to take charge of their lives, begin rebuilding, and focus on their future, whether that means returning to their native countries or remaining in the United States.

2. Promulgation of a New Rule of Evidence

New York's proposed legislation should also consider the role of the trafficking victim during the prosecution of the trafficker in sexual servitude cases. The trafficked persons are survivors of criminal activity, not criminals themselves. The state should take measures to protect the trafficked person during the litigation phase while the victim is aiding the prosecution. There was proposed legislation that subsequently died on the Assembly and Senate floor which amended the Criminal Procedure Law by adding a new rule of evidence with regards to victims of human trafficking.¹⁰³ The proposed rule rendered inadmissible any evidence of "a trafficking victim's sexual history, history of commercial sexual activity, or history of conviction for one or more prostitution offenses," the victim's connection to the defendant through marriage, and / or the "consent of or permission by a trafficking victim under seventeen . . . or anyone else on [the] victim's behalf to commercial sexual activity."¹⁰⁴ The proposal also stated that evidence of these facts could not be used as a defense.¹⁰⁵ This important evidentiary amendment helps to ensure that the trafficking victim will not be re-victimized by the strategies of a defense during the litigation. It also helps to ensure that the action is concentrated on the human rights violations perpetrated by the defendant. In order to

¹⁰² See *supra* notes 97–99 and accompanying text.

¹⁰³ Assemb. 1898-D, 228th Leg., Reg. Sess. (N.Y. 2005). This bill, sponsored by Assemblyman Dinowitz, added a new section to § 60.80 of the criminal procedure law. *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

effectuate a more comprehensive statute that protects trafficking victims, encourages victims to participate in the litigation process, and aids the victims in their rehabilitation, the current proposed anti-trafficking bill should include this evidence rule as one of its provisions.

3. Provide Safe Haven for Witnesses

The proposed anti-trafficking statute should additionally offer protections to those victims who serve as witnesses in the prosecution of their traffickers. Human trafficking cases can be difficult to prosecute because “[v]ictims, perpetrators, and witnesses may be hundreds of miles apart or separated by international borders.”¹⁰⁶ Allowing the victims to remain in New York gives prosecutors an opportunity to obtain important evidence and effectively try the case.

For example, the federal government has a provision in “The Victims of Trafficking and Violence Protection Act” (TVPA), which gives it the authority to permit the victims of trafficking to remain in the United States while the investigation and prosecution is pending.¹⁰⁷ In addition, this law takes steps to protect the trafficking victim and his or her family.¹⁰⁸ It gives federal officials involved in the investigation and prosecution of traffickers the authority to “protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.”¹⁰⁹

A witness protection provision is important because it increases the effectiveness of the witness and the prosecution of traffickers while offering the victims and their families a safe haven during a demanding and dangerous time period.¹¹⁰ New York should incorporate this protective measure in its anti-trafficking statute. While it is the independent authority of the federal government to

¹⁰⁶ FLORIDA STATE REPORT, *supra* note 6, at 22.

¹⁰⁷ 22 U.S.C. § 7105(c)(3) (2000) (“Federal law enforcement officials may permit an alien individual’s continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible . . .”).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Buckwalter et al., *supra* note 13, at 429 (“Victim protection may encourage victims to come forward and foster a willingness to cooperate with law enforcement. Victims who are provided with services and shelter are often the first individuals to cooperate with law enforcement.”).

permit alien individuals to remain in the United States, New York should work in conjunction with federal officials to ensure the victim's "continued presence" in the state, at least during litigation, and should collaborate with state agencies and organizations to effectuate and realize this temporary living arrangement.¹¹¹

4. Award Restitution Compensation for Mental Rehabilitation

New York's anti-trafficking legislation should also consider a provision that would award restitution in the form of therapy or some form of mental rehabilitation. The effects of trafficking are profound. Trafficking victims are subjected to severe physical, sexual, and psychological abuse.¹¹² They are beaten, raped, and warned that if they try to leave, either they or their family members will be harmed.¹¹³ "The controlled environment of violence, exhaustion, and isolation induces a state of personal emergency."¹¹⁴ These victims are forced to live in a state where survival is the only focus.¹¹⁵ This has profound long-term, if not life-long, psychological effects on trafficking victims. After victims are physically freed from their captors, intensive psychological rehabilitation is needed in order for the victims to begin their recovery process. Not only should a state's anti-trafficking statute provide for the physical and social recovery of the trafficking victims, it should also provide for their psychological recovery.¹¹⁶ The state legislature should not

¹¹¹ Past New York legislative proposals have supported this idea, specifically bill number 1898-D, sponsored by Assemblyman Dinowitz. Assemb. 1898-D, 228th Leg., Reg. Sess. (N.Y. 2005). This bill recommended the appointment of "an assistant to function as a liaison with the United States [D]epartment of [J]ustice . . . to assist coordinators of services for victims of human trafficking in their work to obtain federal documentation needed for continuous physical presence status, T non-immigrant visas or U non-immigrant visas." *Id.* Concerns have been raised over state statutes that provide certain protections only to victims that are involved in the prosecution of their traffickers and who will be witnesses in the action. FLORIDA STATE REPORT, *supra* note 6, at 63. A past New York legislative proposal dealt with this issue by squarely stating:

[T]he heads of other state agencies, and local service providers are hereby authorized to provide benefits and services to trafficked persons in the state, without regard to the immigration status of such trafficked persons or the ability or willingness of the trafficked person to participate in the investigation or prosecution of his or her trafficker. Assemb. 9038, 228th Leg., Reg. Sess. (N.Y. 2005).

¹¹² Dill, *supra* note 9, at 12.

¹¹³ *Id.* at 14.

¹¹⁴ Alison Cole, *Reconceptualising Female Trafficking: The Inhuman Trade in Women*, 12 CARDOZO J. L. & GENDER 789, 800 (2006) ("The conditions under which a trafficked woman is detained cause her to believe her life is constantly in danger. Her psychological protection mechanism is to 'turn off and stop thinking, her only purpose is survival.'").

¹¹⁵ *Id.*

¹¹⁶ See Elizabeth Warner, *Behind the Wedding Veil: Child Marriage as a Form of*

only make the traffickers responsible for the physical damages they have caused their victims, but also the psychological damages that are arguably more insidious and permanent.

The current proposed legislation orders restitution that includes the cost of medical treatment, and physical and occupational therapy.¹¹⁷ It does not, however, include psychological therapy. There has been, though, past proposed New York legislation that has included this vital restitution factor. Proposed Assembly Bill number 1898 amended the Penal Law by adding specific restitution compensations for psychological assessment and treatment.¹¹⁸ In order to make the traffickers fully responsible for the heinous violations that they committed and to give the trafficked persons an opportunity to fully rehabilitate themselves, New York should include mental rehabilitation restitution in its anti-trafficking statute.

5. Law Enforcement Training

The state's proposed anti-trafficking statute should also include a provision that mandates education and training for local law enforcement entities in identifying and screening for trafficking, and in aiding the victims in accessing local and federal benefit services. Targeted professional training offers a more comprehensive response to proactively combating human trafficking.¹¹⁹ Local law enforcement officials are more likely than federal officials to encounter victims and to uncover trafficking cases simply because of their street-level presence.¹²⁰ As "first responders to reports of criminal activity," these officials are usually the first to come in contact with trafficking victims.¹²¹ Officers must be able to identify these individuals as trafficking victims, as opposed to prostitutes, domestic servants, or laborers, and take the initial necessary steps to get them help.¹²² In 1997, federal officials

Trafficking in Girls, 12 AM. U. J. GENDER SOC. POL'Y & L. 233, 261 (2004). Psychological recovery measures were even a feature in the United Nations Trafficking Protocol, which focused its concern on the victims of trafficking. *Id.* at 261.

¹¹⁷ S. 78, 230th Leg., Reg. Sess. (N.Y. 2007) (proposed amendment to the Penal Law § 136.55).

¹¹⁸ Assemb. 1898, 228th Leg., Reg. Sess. (N.Y. 2005).

¹¹⁹ Thompson, *supra* note 13, at 23–24 (the goal of this professional training is to "create an across-the-board understanding of the reality of human trafficking").

¹²⁰ FLORIDA STATE REPORT, *supra* note 6, at 152.

¹²¹ Buckwalter et al., *supra* note 13, at 425.

¹²² "Law enforcement can also help victims of trafficking access needed services. For

uncovered a trafficking and organized prostitution ring in Florida that consisted of six brothels throughout the state involving twenty-five to forty young Mexican women and girls.¹²³ After being rescued, the victims were interviewed and it was revealed that while the women were held captive, they had several “encounters or ‘near-encounters’ with U.S. law enforcement officials.”¹²⁴ Apparently, on several occasions, local police officials, in response to a report of criminal activity, would go to the brothels.¹²⁵ The traffickers would then force the women to deceive the police officers by having the women tell the police that the traffickers were their husbands or fathers.¹²⁶ In one house, the women were able to dial 911.¹²⁷ They did this several times; however, each time ambulance technicians and firefighters arrived they were unable to speak Spanish, the sole language of the trafficking victims.¹²⁸ Invariably on each occasion, “[o]ne of the traffickers who spoke English told the emergency personnel that there was no problem there and that no one had placed a call.”¹²⁹ The women finally ceased their attempts to call for help because the traffickers were growing suspicious and the women felt it was “too futile and too dangerous” to try again.¹³⁰ This is an example of how there are small windows of opportunity to uncover trafficking operations and rescue trafficking victims. If, in these noted examples, the police officers were trained in detecting trafficking situations, or a Spanish-speaking liaison or officer was available or present, this situation could have turned out very differently and the women could have been rescued sooner. It is crucial that officers who are responding to emergency situations or criminal activity be trained and educated in how to recognize and take action in possible trafficking scenarios.

These officers are on the front lines of the trafficking war and it is imperative that they are able to assess a criminal situation and

instance, the Collier County Sheriff’s Office, Victims Services Unit has provided extensive support and assistance to victims of trafficking, helping them to find housing, providing in-house interpretation services, and providing security.” FLORIDA STATE REPORT, *supra* note 6, at 112–113. “By coordinating with non-profit service providers . . . on the victim’s behalf, . . . law enforcement can help the victim, and prepare him or her to be a witness against the traffickers.” *Id.* at 113.

¹²³ *Id.* at 37–38.

¹²⁴ *Id.* at 47.

¹²⁵ *Id.* at 47–48.

¹²⁶ *Id.* at 48.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

identify the trafficking victims as such and not as consenting participants in criminal activity. In 2004, the United States Embassy in Estonia organized a two-day training program on human trafficking for law enforcement officials including police investigators, prosecutors, and judges.¹³¹ As part of this program, these officials were shown how to “identify the businesses where victims of sex trafficking can be found, how to infiltrate those businesses, and how to build a comprehensive case against a trafficking operation.”¹³²

The training in Estonia of law enforcement officials is the kind of training that local law enforcement officials in New York need in order to proactively combat human trafficking. Connecticut, which has its own anti-trafficking legislation,¹³³ has a particular statute which requires that,

[A state commission], in conjunction with the Police Officer Standards and Training Council, shall develop a training program on trafficking in persons and make such training program available, upon request, to the Division of State Police within the Department of Public Safety, the office of the Chief State’s Attorney, local police departments and community organizations.¹³⁴

A past New York bill proposal on anti-trafficking recommended a special training task force that would be available to law enforcement and other local and state agencies to educate officials on human trafficking, ways to recognize and identify trafficking victims, and methods and procedures for protecting and assisting the victims.¹³⁵ New York’s legislators should recognize the importance of training law enforcement entities on human trafficking and should, like Connecticut and past New York bill proposals, offer legislation that pointedly targets the formation and operation of a training program.

6. Additional Causes of Action

In addition to the proposed criminal causes of action, New York’s anti-trafficking bill should also consider a civil cause of action for

¹³¹ ANTI-TRAFFICKING NEWS MARCH 2004, *supra* note 19, at 3.

¹³² *Id.*

¹³³ CONN. GEN. STAT. ANN. § 52-571i (West Supp. 2007); § 53-21 (West 2007); § 53a-192a (West 2007).

¹³⁴ *Id.* § 46a-4b (West Supp. 2007).

¹³⁵ Assemb. 9038, 228th Leg., Reg. Sess. (N.Y. 2005).

the trafficking victim. The current legislative proposal establishes crimes and penalties as amendments to the Penal Law, but no civil actions.¹³⁶

In fact, past proposed legislation included a civil cause of action for victims. Assembly Bill 1898 established a cause of action for victims against the defendant for “actual damages, compensatory damages, injunctive relief, or any combination thereof.”¹³⁷ Similarly, Connecticut has a statute that allows trafficking victims to bring a civil action against their traffickers for damages.¹³⁸ The state should not be the only party allowed to prosecute traffickers. The actual trafficking victims should have a right and an opportunity to bring a civil action against their traffickers.¹³⁹

Furthermore, New York’s legislature should also consider adding a cause of action for aggravated trafficking for labor and sexual servitude. Trafficking victims are exposed to grave danger, whether it is due to perilous, inhuman working conditions, or violent and abusive traffickers.¹⁴⁰ These dangerous conditions can lead to serious injury or death to the trafficked victims.¹⁴¹ Previous New York statutory proposals imposed consecutive sentences on a defendant for aggravating factors.¹⁴² These aggravating factors included “aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill.”¹⁴³ Consecutive sentences could also be imposed in cases involving more than ten victims.¹⁴⁴ The state legislature should make traffickers responsible for their actions, especially when their actions are

¹³⁶ See S. 78, 230th Leg., Reg. Sess. (N.Y. 2007).

¹³⁷ Assemb. 1898, 228th Leg., Reg. Sess. (N.Y. 2005). This proposal went on to state that “[t]reble damages shall be awarded on proof of actual damages where defendant’s acts were willful and malicious.” *Id.*

¹³⁸ CONN. GEN. STAT. ANN. § 52-571i (West Supp. 2007). The statute states:

Any person aggrieved by a violation of [the state’s trafficking statute] may bring a civil action . . . against the person or persons who committed such violation to recover actual damages, statutory damages of not more than one thousand dollars for each day such person was coerced by another person in violation of [the state’s trafficking statute] and a reasonable attorney’s fee.

Id.

¹³⁹ *Cf.* OBOKATA, *supra* note 9, at 163 (stating that “victims have the right to seek judicial remedies”).

¹⁴⁰ Dill, *supra* note 9, at 12.

¹⁴¹ See *id.* at 12–14.

¹⁴² Assemb. 9919, 229th Leg., Reg. Sess. (N.Y. 2006); see also Assemb. 1898, 228th Leg., Reg. Sess. (N.Y. 2005) (establishing the crimes of aggravated trafficking for labor servitude and aggravated trafficking for sexual servitude).

¹⁴³ N.Y. Assemb. 9919.

¹⁴⁴ *Id.*

particularly egregious and violent. Adding this provision to the anti-trafficking bill is a way for the state to effectively acknowledge the violent atrocities that are committed in trafficking situations.

V. RECOMMENDATIONS FOR ESTABLISHING A COMPREHENSIVE COMMUNITY APPROACH

It is important that New York create an anti-trafficking statute as part of the state's legal framework to fight human trafficking. With that said, other steps outside of the legal structure should be taken to proactively combat trafficking. New York should approach the fight against human trafficking not just on a legal level, but also on a public, societal level. Human trafficking in the form of sexual servitude or labor servitude is occurring in communities throughout New York State, and it is important that the residents of this state are aware of this plight and can actively participate in the fight against it.

New York should offer education and training to health care workers, government officials, and other service providers who might come in contact with victims.¹⁴⁵ Trafficking is by its very nature "clandestine" and secretive.¹⁴⁶ Victims "[s]eldom . . . have [an] opportunity to interact with anyone outside the confines of their 'work,'" and in the rare instances that they do have contact with the public, the victims usually are unable to speak English and cannot communicate with anyone.¹⁴⁷ Because trafficking is such a

¹⁴⁵ In interviews done with trafficking victims, the victims reported that their "traffickers always accompanied [them] to public health clinics and health care personnel did not speak to them alone." Thompson, *supra* note 13, at 23, 24. Furthermore, there were complications when some of these Spanish-speaking women called "911." *Id.* at 24. "[E]mergency dispatch operators could not speak Spanish and did not understand that the person making three '911' emergency calls was a woman who was being held in slavery." *Id.* Furthermore, the emergency responders who arrived at the location could not speak Spanish and "when they arrived at the scene, they were intercepted and lied to by the traffickers." *Id.* If these health care providers and emergency responders were trained to be aware of human trafficking victims and trafficking situations, perhaps these women could have been saved. It is imperative that agencies and service providers receive this training so as not to avoid missing rare and critical intervention opportunities like these.

¹⁴⁶ *Id.* at 22.

¹⁴⁷ Dill, *supra* note 9, at 13–14. In addition, the victims themselves sometimes do not even identify themselves as victims. FLORIDA STATE REPORT, *supra* note 6, at 115. The report states:

It is rare for someone to self-identify as a victim of trafficking. More likely, an individual will come to the attention of a person or agency for some other reason. Therefore, it is vitally important for service providers to have a heightened awareness that a person might be trafficked.

Id.

difficult crime to detect, it is imperative that these people who might have a chance encounter with the victims should be trained to identify them as trafficked persons.¹⁴⁸

New York State should also run public awareness campaigns to strengthen the peoples' understanding of the reality and prevalence of human trafficking. These campaigns can educate the public and inform them that trafficking victims are not simply found in the sex industry, but can be seen working in fields, stores, factories, homes, or the streets in various areas throughout the state.¹⁴⁹ In addition, New York can also disseminate information throughout the state that is geared toward the trafficked victims. Anti-trafficking messages or information on how victims can get help can and should be posted at places where trafficked victims are likely to have access to during their servitude, such as highway rest stops, grocery stores, doctors offices, and other locations.¹⁵⁰ Messages can also be placed in magazines, or be included in radio or television commercials, specifically radio stations or television channels that cater to particular populations that are known to have high numbers of trafficked victims among them.¹⁵¹ This literature should also be published in the language of the trafficked victims so they can read and understand it.

The trafficking of human beings is the slave trade of the twenty-first century. In this state, in this nation, and around the world, human beings are being treated as commodities. In response to this "commodification" of human beings,¹⁵² it is essential that the State

¹⁴⁸ New York should create a state-wide collaboration or network between "victim identifiers, service providers, advocates, lobbyists, consultants, and training providers." Buckwalter et al., *supra* note 13, at 420.

¹⁴⁹ See *supra* note 9.

¹⁵⁰ In a Florida trafficking case uncovered in 1997, interviewers found that the victims, during their sexual servitude, "at certain points had access to [grocery stores], laundromats, Mexican food stores (in the migrant communities), and Western Union offices." FLORIDA STATE REPORT, *supra* note 6, at 37-38, 43. Most of the victims interviewed expressed "a desire that such information should have been available to them, particularly the fact that though they may have been illegal, they still had certain rights in this country." *Id.* at 47. This example suggests that there are places where information can be made available to trafficked victims about their rights.

¹⁵¹ Mexican trafficked victims that were uncovered in Florida and who were interviewed by Florida State University reported that during their time of servitude and captivity, they watched Spanish soap operas and Spanish talk shows, they listened to Spanish radio stations, and they had access to Spanish language editions of Cosmopolitan and the TV Guide. *Id.* at 47.

¹⁵² Cole, *supra* note 114, at 799. The article states:

The effect of the trafficking process is to completely dehumanise trafficked [persons] in the eyes of [their] trafficker, the client, and [themselves]. If this happened to just one [individual], it would be a horror striking at the conscience of humanity. The fact that

establish its own anti-trafficking statute that effectively punishes traffickers, offers relief to victims, and creates a coordinated community approach to assisting victims. In addition, New York should create and foster a level of social awareness that educates the public about this crisis and engages the people of the state in the fight against trafficking. These actions by the State government and residents will make it extremely difficult for traffickers to engage in this activity in New York. New York should work to eradicate this *modern day form of slavery* by passing comprehensive anti-trafficking legislation. Legislators and constituents should make it a state priority to pass this statute.

estimates fall in the range of millions makes the scale of human tragedy intolerable, and the paralysis of the legal system inexcusable.
Id. at 801 (footnote omitted).