

## THE UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING: STATE LAW AND THE NATIONAL RESPONSE TO LABOR TRAFFICKING

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### INTRODUCTION

Human trafficking\* is one of the most lucrative criminal enterprises in the world, with illicit profits rivaling those of the global drug and arms trades.<sup>1</sup> A 2014 survey by the International Labour Organization estimated that revenue from human trafficking grosses as much as \$150 billion annually.<sup>2</sup> Yet, unlike with drugs and weapons, the minimal cost of “purchasing” a human trafficking victim, combined with the fact that the same victim may be sold again and again,<sup>3</sup> makes human trafficking a high-reward, low-risk enterprise.<sup>4</sup>

The hidden nature of human trafficking and continued under-reporting of trafficking cases pose significant challenges in calculating the total number of victims.<sup>5</sup> However, the U.S. government and many non-governmental organizations (hereinafter “NGOs”) estimate that thousands of men, women, and children are trafficked

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\*This Note will employ the term “human trafficking” to reflect the language used in the Uniform Act on the Prevention of and Remedies for Human Trafficking rather than the synonymous term “trafficking in persons,” which is used in the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children of 2000 and the Victims of Trafficking and Violence Protection Act of 2000.

1. See *Human Trafficking Has No Place in Modern World, General Assembly President Says*, U.N. NEWS CENTRE (July 14, 2014), <http://www.un.org/apps/news/story.asp?NewsID=48271#.VDcf2hbCnh8> (stating that human trafficking third most profitable crime after illicit drug and arms trafficking).

2. See INT’L LABOUR ORG., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 12-13 (2014) (using data collected in its 2012 Global Estimate of Forced Labor to aggregate regional profits for three categories of forced labor: labor exploitation outside domestic work, forced domestic work, and forced sexual exploitation (the estimate excluded profits from state-imposed forced labor due to the absence of reliable information)).

3. See *Developments in the Law—Jobs and Borders: The Trafficking Victims Protection Act*, 118 HARV. L. REV. 2180, 2185-86 (2005) (stating that human trafficking victims are good investments because they are cheap, reusable, impose minimal transportation and employment costs, and even pay traffickers charges such as room and board).

4. See *Overview*, HUMAN TRAFFICKING, <http://www.polarisproject.org/human-trafficking/overview> (last visited Apr. 14, 2015); U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 9 (2014) (“[W]ithout robust criminal justice responses, human trafficking will remain a low-risk, high profit activity for criminals.”).

5. See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT (2013) (Letter from Ambassador Luis CdeBaca) (stating that while only 40,000 victims were identified in 2013, social scientists estimate that there are as many as 27 million trafficking victims across the world).

within the United States each year for sex or labor.<sup>6</sup>

Since the passage of the Victims of Trafficking and Violence Protection Act of 2000 (hereinafter “TVPA”), the federal government has gradually but steadily increased its efforts to combat human trafficking.<sup>7</sup> In 2013, federal authorities initiated 1,759 human trafficking-related investigations, prosecuted 161 cases, and secured 174 convictions.<sup>8</sup> However, human trafficking cases are time-consuming, labor-intensive and, therefore, costly.<sup>9</sup> Federal resources alone are simply not sufficient to prevent and combat human trafficking on a national scale.<sup>10</sup> If the United States is to be effective in this fight, individual states must learn to collaborate—both internally among their own state agencies, and externally with other states and with the federal government.<sup>11</sup>

Between 2003 and 2013, all fifty states adopted some form of human trafficking legislation.<sup>12</sup> Some of these laws have been hailed as comprehensive tools for prosecuting traffickers and supporting victims, while others have been criticized as lacking provisions essential to effective human trafficking legislation.<sup>13</sup> However, regardless of the comprehensiveness of their laws, all fifty states share one thing in common: they all have focused almost exclusively on the investigation and prosecution of sex trafficking, while failing to prioritize labor trafficking.<sup>14</sup>

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6. See ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 16-17 (2013) (stating that as many as 17,500 people are believed to be trafficked into the United States each year and that at least 100,000 U.S. citizen children are victims of trafficking).

7. In fiscal year 2001, the federal government filed 10 human trafficking cases and secured 23 convictions. See U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONG. AND ASSESSMENT OF U.S. GOV’T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 64-66 (2011). In fiscal year 2006, the federal government filed 32 human trafficking cases and secured 99 convictions. *Id.* In fiscal year 2012, federal authorities initiated 128 human trafficking prosecutions and secured 138 convictions. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 382-83 (2013).

8. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 398 (2014).

9. See U.S. DEP’T OF JUSTICE, OFFICE FOR VICTIMS OF CRIME, HUMAN TRAFFICKING TASK FORCE E-GUIDE § 5, available at <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/> (last visited Apr. 14, 2015) (“Human trafficking cases are time consuming and difficult, and they pose a challenge to prosecutors, investigators, and victim service providers alike.”).

10. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 398 (2014); ABA CTR. FOR HUMAN RIGHTS, UNIFORM LAW COMMISSION PROJECT PROPOSAL: UNIFORM HUMAN TRAFFICKING LAW 2 (2010) [hereinafter “ABA PROPOSAL”], available at [http://www.uniformlaws.org/shared/docs/Human%20Trafficking/PRHT\\_Final%20Report%20v%20\(5\)\\_Jul10.pdf](http://www.uniformlaws.org/shared/docs/Human%20Trafficking/PRHT_Final%20Report%20v%20(5)_Jul10.pdf).

11. See S. Res. 414, 108th Cong. (2004) (“[E]nactment of comprehensive State laws criminalizing human trafficking and slavery may be necessary to ensure that Federal efforts are accompanied by robust efforts at the State and local levels . . .”).

12. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 381 (2013).

13. See *generally State Ratings on Human Trafficking Laws*, POLICY ADVOCACY (2014), <http://www.polarisproject.org/2014stateratings> (ranking states based on 10 factors the organization deems “critical to a comprehensive anti-trafficking legal framework”).

14. See COLLEEN OWENS ET AL., UNDERSTANDING THE ORGANIZATION, OPERATIONS, AND VICTIMIZATION PROCESS OF LABOR TRAFFICKING IN THE UNITED STATES 193 (2014), available at <http://www.urban.org/publications/413249.html> (finding that state and local law enforcement identified few labor trafficking cases and generally referred such cases to federal authorities, based on a study of 122 labor trafficking victim records and 86 interviews with victims, law enforcement, legal advocates, and service providers); AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECU-

State and local law enforcement face a variety of obstacles when pursuing labor trafficking cases under their respective state laws. Public pressure to focus on sex trafficking, limited state resources, inadequate infrastructure, the geographic or psychological isolation of labor trafficking victims, and lack of immigration authority all weigh heavily against the ability of state authorities to successfully investigate and prosecute labor trafficking cases.<sup>15</sup> As a result of these challenges, very few states have successfully investigated and prosecuted a labor trafficking case under their state's human trafficking laws.<sup>16</sup>

In 2013, in an effort to address the disparities in state legislation and encourage the investigation and prosecution of all forms of human trafficking, the National Conference of Commissioners on Uniform State Laws (hereinafter "Uniform Law Commission") released a Uniform Act on Prevention of and Remedies for Human Trafficking (hereinafter "Uniform Act").<sup>17</sup> Though it has been in existence for fewer than two years, four states—Delaware, Louisiana, New Hampshire, and Pennsylvania<sup>18</sup>—have enacted legislation based on the Uniform Act and thirteen others have introduced bills based on the Uniform Act.<sup>19</sup>

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TION OF STATE AND LOCAL HUMAN TRAFFICKING CASES 32, 189 (2012), available at <http://www.urban.org/publications/412593.html> (finding that none of the identified labor trafficking cases were prosecuted under state human trafficking laws, based on a study involving 166 interviews (72 with local law enforcement, 14 with state or county prosecutors, 18 with federal law enforcement, 15 with federal prosecutors, 40 with victim service providers, and seven with other court officials, legislators or community stakeholders) across 12 study sites in states with either no human trafficking legislation, basic human trafficking legislation, or comprehensive human trafficking legislation); DUREN BANKS & TRACY KYCKELHAHN, U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2008-2010 at 4 (2011) (finding that labor trafficking investigations were more likely to be led by federal law enforcement agency than by state or local authorities).

15. Compare N.J. STAT. ANN. §§ 2C:13-8, :13-9, :13-11, :34-1, :41-1, :44-1.1, :64-1, C.2A:4A-21, :4A-22, :4A-42, :4A-71, :4A-71, C52:4B-44.1, :17B-237, :17B-238 (West, Westlaw through laws effective through L.2015, c. 3) (establishing criminal penalties for sex and labor trafficking; asset forfeiture; specialized tools and training for law enforcement; a human trafficking task force; no requirement of force, fraud, or coercion for minor victims of sex trafficking; a hotline number; safe harbor for minors; victim assistance and support; civil remedies for victims; and vacating of convictions for victims), with S.D. CODIFIED LAWS §§ 20-9-46, 22-24A-15, 22-49-1 to -3 (West Westlaw through the 2014 Regular Session, 2014 general election results, and Supreme Court Rule 14-10) (establishing criminal penalties, asset forfeiture, and a civil remedy for victims, but lacking critical victim support and law enforcement mechanisms); see also Memorandum from Michael J. Wilkins, Chair, Study Comm. on Prevention of and Remedies for Human Trafficking to the Unif. Law Comm'n 6 (2011) [hereinafter "Unif. Law Comm'n Study Comm. Memorandum"] (stating that variances between state laws invite confusion within the law enforcement community and complicates in NGO relief efforts).

16. The author of this Note found only one conviction under state a labor trafficking statute (*Ramos v. State*, No. 13-06-00646-CR, 2009 WL 3210924 (Tex. App. Oct. 8, 2009)). In addition, a 2014 study of 122 labor trafficking victim records and 86 interviews with victims, law enforcement, legal advocates, and service providers found that only a very small number of labor trafficking cases had been brought forward to state prosecutors. The report also noted that at the time the study was conducted, none of the participating state and local law enforcement agencies were pursuing labor trafficking cases due to "significant definitional, structural, and cultural challenges." See COLLEEN OWENS ET AL., *supra* note 14, at 193; AMY FARRELL ET AL., *supra* note 14, at 32, 189; see also BANKS & KYCKELHAHN, *supra* note 14, at 4.

17. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING (2013).

18. See *Legislation, UNIF. LAW COMM'N*, <http://www.uniformlaws.org/Legislation.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking> (last visited Apr. 14, 2015).

19. See *id.* (Alabama, Arizona, Colorado, Florida, Kentucky, Montana, Nebraska, Nevada, North Dako-

This Note will argue that the Uniform Act, while providing a much-improved model of state legislation, contains gaps and ambiguities that will continue to lead to disparate treatment of labor trafficking victims and deprioritization of labor trafficking cases at the state level. Part I discusses the development of modern human trafficking legislation, its enactment in the United States, and its subsequent adoption by individual states. Part II examines the challenges facing state authorities in pursuing labor trafficking cases under state law. Part III describes the development of the Uniform Act and analyzes its improvements over existing state laws. This Part also analyzes several gaps and ambiguities in the Uniform Act that will result in the disparate treatment of labor trafficking victims if left unaddressed. Part IV proposes revisions to the Uniform Act to improve states' capacity to successfully investigate and prosecute labor trafficking cases.

Specifically, Part IV of this Note recommends that the Uniform Act be amended to reflect that all victims of human trafficking, regardless of age, immigration status, or type of exploitation suffered, are eligible for state benefits and services and that they should be referred for those services accordingly. This Note also recommends that a new provision based on statutes enacted in Washington and New York be added to the Uniform Act to require that employment agencies and businesses operating within a state to disclose to foreign national workers the terms of their employment and the rights and resources available to them under state law. Finally, this Note recommends that Congress and the federal government support the prosecution of labor trafficking cases at the state level by improving the process for obtaining immigration relief for foreign national victims, as well as by dedicating resources to encourage state and local authorities to investigate and prosecute labor trafficking under state human trafficking laws.

## I. DEVELOPMENT OF HUMAN TRAFFICKING LEGISLATION IN THE UNITED STATES

### *A Global Problem of Unknown Proportions*

Human trafficking is a global problem that affects every country in the world.<sup>20</sup> The clandestine nature of the crime and the reluctance or inability of victims to come forward make it difficult to gather reliable statistics on human trafficking.<sup>21</sup> Yet, while a conclusive estimate remains elusive, most governments and international organizations agree that millions of individuals are trafficked globally for sex

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ta, Ohio, South Carolina, Virginia, and West Virginia).

20. See generally U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2014) (describing occurrences of human trafficking in 188 countries based on information provided by each country's government and NGOs).

21. *Id.* at 30; see also, e.g., Elizabeth K. Hopper, *Underidentification of Human Trafficking Victims in the United States*, 5 J. SOC. WORK RES. & EVALUATION 125, 130 (2004) (noting that despite a significant increase in the number of trafficking investigations since the passage of the Trafficking Victims Protection Act, many cases likely still go undiscovered since victims do not trust the police and often have severe trauma-related symptoms that decrease the likelihood of self-identification).

or labor.<sup>22</sup>

Calculating the global prevalence of labor trafficking cases has proved especially difficult, and official estimates vary significantly. For instance, the International Labour Organization's 2012 Global Estimate of Forced Labour concluded that sixty-eight percent of trafficking victims across the world are subjected to labor trafficking in activities such as agriculture, construction, domestic work and manufacturing, compared to twenty-two percent of victims forced into sexual exploitation.<sup>23</sup> By contrast, the United Nations Office on Drugs and Crime's 2014 Global Report on Trafficking in Persons estimated that fifty-three percent of trafficking victims globally are exploited for sex, while forty percent are exploited for labor.<sup>24</sup>

Despite estimating that labor trafficking is less prevalent than sex trafficking, the United Nations Office on Drugs and Crime noted in its 2014 Global Report that labor trafficking is becoming ever more prevalent.<sup>25</sup> Although sex trafficking cases are still far more likely to be referred to service providers and law enforcement,<sup>26</sup> the United Nations Office on Drugs and Crime has emphasized that the detection and reporting of labor trafficking cases has been steadily improving.<sup>27</sup> This finding suggests that heightened awareness and improved reporting of labor trafficking rather than a growth in labor trafficking activity may be responsible for future upward revisions of labor trafficking estimates. While achieving a reliable estimate of global human trafficking activity remains an obstacle to fully understanding the extent and nature of labor trafficking, the international community and the United States government have acknowledged human trafficking as one of the most significant criminal threats facing the modern world.<sup>28</sup>

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22. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 2* (2013) (Letter from Ambassador Luis CdeBaca) (stating that there are as many as 27 million victims worldwide); INT'L LABOUR ORG., *ILO GLOBAL ESTIMATE OF FORCED LABOUR 2012* at 13 (2012) (estimating that there are 20.9 million victims of labor trafficking worldwide, including 4.5 million in forced sexual exploitation and 14.2 million in forced labor exploitation).

23. INT'L LABOUR ORG., *ILO GLOBAL ESTIMATE OF FORCED LABOUR 2012* at 13 (2012) (remaining 10 percent are in state-imposed forms of forced labor, such as prisons or state militaries which contravene ILO standards).

24. See U.N. OFFICE ON DRUGS & CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 9* (2014).

25. See *id.* This statement is supported by the United Nations's prior research, which estimated that 79 percent of victims were exploited for commercial sex, while only 18 percent were exploited for labor. See U.N. OFFICE ON DRUGS & CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 6* (2009).

26. U.N. OFFICE ON DRUGS & CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 6* (2009) (stating that 79 percent of victims are exploited for commercial sex while only 18 percent are exploited for labor, but acknowledging that underreporting of labor trafficking cases may result in statistical bias).

27. U.N. OFFICE ON DRUGS & CRIME, *GLOBAL REPORT ON TRAFFICKING IN PERSONS 9* (2014).

28. See Ban Ki Moon, Secretary-General, Remarks at the United Nations General Assembly Meeting on Improving the Coordination of Efforts against Trafficking in Persons (May 13, 2013), *available at* <http://www.un.org/sg/statements/index.asp?nid=6812> ("Thank you for coming together to stop the scandal of human trafficking... this very important yet very serious global challenges..."); President Barak Obama, Remarks to the Clinton Global Initiative (Sept. 25, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-clinton-global-initiative> ("Our fight against human trafficking is one of the great human rights causes of our time...").

### Origins of Modern Human Trafficking Legislation

The modern effort to combat human trafficking began in 2000 with the passage of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereinafter “Palermo Protocol”).<sup>29</sup> At the time the Palermo Protocol was passed, over 154 countries had enacted some form of human trafficking legislation.<sup>30</sup> However, these laws were poorly enforced and provided little support for victims.<sup>31</sup> Moreover, the existing laws focused primarily on sex trafficking, addressing prostitution-related activity while largely ignoring the existence of labor trafficking.<sup>32</sup> In response, the Palermo Protocol set a new international standard by defining human trafficking as the “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, [or] of the abuse of power” to compel a person to engage in labor or commercial sex.<sup>33</sup> The Palermo Protocol entered into force on September 29, 2003 and was widely embraced by the international community, with 185 United Nations members states becoming party to the Protocol—including the United States.<sup>34</sup>

#### *Federal Human Trafficking Legislation*

In 2000, Congress passed the first comprehensive federal legislation to combat human trafficking in the United States: the TVPA.<sup>35</sup> The TVPA’s Purposes and Findings section noted the importance of addressing both sex and labor trafficking, stating, “[t]rafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of

29. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003) [hereinafter “Palermo Protocol”]. The Protocol is commonly called the “Palermo Protocol” for its inception at the 2000 Convention against Transnational Organized Crime in Palermo, Italy. See, e.g., U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 9 (2014).

30. See *The Sex Trade: Trafficking of Women and Children in Europe and the United States: Hearing Before the Comm. on Security and Cooperation in Europe*, 106th Cong. 23 (1999) (statement of Laura Lederer, Director, Protection Project) (stating that only a few countries had developed programs to prevent human trafficking by educating women and children about how to avoid being trafficked).

31. Mohamed Y. Mattar, *Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention*, 14 TUL. J. INT’L & COMP. L. 357, 362 (2006).

32. *Id.* at 369-70 (noting as an example a law in Israel that, as of 2005, defined human trafficking as only including sex trafficking).

33. Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children art. 3, Nov. 15, 2000, 2237 U.N.T.S. 319.

34. See *Status of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, U.N. TREATY COLLECTION, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en) (last visited Apr. 14, 2015).

35. Pub. L. No. 106-386, 114 Stat. 1464 (2000). The United Nations Protocol only applies to international trafficking; therefore, countries must adopt their own legislation to address trafficking occurring within their national borders. See Mattar, *supra* note 31, at 367, n.31.

labor, public health, and human rights standards worldwide.”<sup>36</sup>

Similar to the comprehensive definition of human trafficking provided in the Palermo Protocol, the TVPA defined “severe forms of trafficking in persons” as including:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>37</sup>

Through the TVPA, Congress amended the federal criminal code to include criminal penalties of up to twenty years imprisonment for labor trafficking,<sup>38</sup> involuntary servitude,<sup>39</sup> and sex trafficking.<sup>40</sup> The TVPA also provided prosecutors the option to pursue life imprisonment in cases involving certain aggravating factors.<sup>41</sup>

In addition to criminalizing human trafficking under federal law, the TVPA provided access to federal and state benefits and services for trafficking victims.<sup>42</sup> Moreover, the TVPA created a short-term immigration relief tool to aid law enforcement officers to ensure the “continued presence” in the United States of any foreign national identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of a trafficker (hereinafter “Continued Presence”).<sup>43</sup> The TVPA also created two long-term immigration relief remedies: T nonimmigrant status (hereinafter “T visa”)<sup>44</sup> and U nonimmigrant status (hereinaf-

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36. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(3), 114 Stat. 1464; *see also id.* §102(b)(12) (stating that human trafficking substantially affects interstate and foreign commerce because forced labor affects the national employment network and labor market).

37. *Id.* § 103(5); *see also id.* §102(b)(13) (clarifying that involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion).

38. *See id.* § 112(a)(1)(B) (amending Title 18 of the United States Code to include § 1589, which establishes penalties for forced labor).

39. *See id.* (amending Title 18 of the United States Code to include § 1590, which establishes penalties for peonage, slavery, involuntary servitude, or forced labor).

40. *See id.* (amending Title 18 of the United States Code to include § 1591, which establishes penalties for sex trafficking).

41. *See id.* (aggravating factors include kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill); *see also* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 6(a), 117 Stat. 2875, 2880 (adding human trafficking to the list of crimes that can be charged under the Racketeering Influenced and Corrupt Organizations Act).

42. *See* § 107(b)(1), (c)(3), (e), (f), 114 Stat. at 1475-80. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 clarified that U.S. citizen victims of trafficking were also eligible to receive the benefits provided by the TVPA. *See* Pub. L. No. 110-457, § 213, 122 Stat. 5044, 5064-66

43. *See id.* §107(c)(1)(3) (codified as 22 U.S.C. § 7105(c)(3)); *see also* § 205, 122 Stat. 5044, 5060-63 (expanding law enforcement’s authority to seek Continued Presence for victims of human trafficking).

44. *See id.* § 107(e) (codified as 8 U.S.C. § 1101(a)(15)(T)) (setting forth the requirements for a T visa eligibility, which include being a “victim of a severe form of trafficking in persons” as defined in the TVPA; being physically present in the United States or a U.S. territory; complying with requests for assistance in the investigation or prosecution of acts of trafficking (minors are exempt from this requirement); and being at risk of suffering extreme hardship if removed from the United States).

ter “U visa”).<sup>45</sup> The T visa, which is available only to foreign national victims of human trafficking within the United States, allows victims to remain in the country during the investigation and prosecution of their traffickers, provides federal benefits similar to those available to refugees, and may also allow victims to qualify for lawful permanent residency.<sup>46</sup>

To oversee the federal government’s efforts to combat human trafficking, the TVPA mandated the creation of an interagency task force comprised of cabinet secretaries and other department heads.<sup>47</sup> The task force is responsible for monitoring the United States’ progress in preventing and combatting human trafficking, assisting victims, collecting and analyzing data, coordinating with foreign government partners, and engaging the NGO community.<sup>48</sup> A few years later, the 2003 reauthorization of the TVPA also mandated that the Attorney General report annually to Congress on the efforts of the federal government to combat human trafficking and provide services to victims within the United States.<sup>49</sup>

The Department of State, which leads the interagency task force, has consistently given the United States a Tier 1 ranking in its annual report on countries’ efforts to meet the minimum standards for eliminating human trafficking as set forth in the TVPA.<sup>50</sup> Yet, while Congress emphasized the importance of a strong federal initiative, it also understood that the federal government could not effectively combat human trafficking in the United States alone. In the years since the passage of the TVPA, Congress has encouraged states to enact human trafficking legislation and to participate in the national fight against human trafficking.<sup>51</sup>

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45. See *id.* § 1513(b) (codified as 8 U.S.C. § 1101(a)(15)(U)) (setting forth the requirements for a U visa, which is now available to victims of nearly thirty qualifying severe crimes, including human trafficking).

46. *Id.* § 107(f) (setting forth the requirements for adjustment to lawful permanent resident status).

47. *Id.* § 105(d); see also U.S. DEP’T OF STATE, *President’s Interagency Task Force*, <http://www.state.gov/j/tip/rls/reports/pitf/> (last visited Apr. 14, 2014). Section 6(c) of the 2003 TVPA created a corresponding agency-level Senior Policy Operating Group to regularly coordinate and implement federal government policy to combat human trafficking. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875-2881.

48. § 105(d), 114 Stat. at 1473-74.

49. § 6(a), 117 Stat. at 2880.

50. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 398* (2014). The United States began ranking itself in 2010 and has always received a Tier 1 ranking. *Id.*; but see *Leading U.S. Anti-Slavery Organizations Respond to 2011 Trafficking in Persons Report*, ALLIANCE TO END SLAVERY AND TRAFFICKING (June 28, 2011), [http://www.vitalvoices.org/sites/default/files/uploads/ATEST%202011%20TIP%20Report%20Press%20Release%20\(6.28.11\).pdf](http://www.vitalvoices.org/sites/default/files/uploads/ATEST%202011%20TIP%20Report%20Press%20Release%20(6.28.11).pdf) (arguing that the United States’ Tier 1 ranking fails to account for shortcomings in the United States’ efforts to combat human trafficking, including the incarceration of victims and the limited funding dedicated by the government for victim services). Congress mandated in the TVPA of 2000 that the Department of State submit an annual report assessing all countries based on the extent of their efforts to comply with the minimum standards for the elimination of human trafficking established under U.S. federal law, which are generally consistent with the Palermo Protocol. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 40* (2014).

51. See S. Res. 414, 108th Cong. (2004) (“Enactment of comprehensive State laws criminalizing human trafficking and slavery may be necessary to ensure that Federal efforts are accompanied by robust efforts at the State and local levels”).



### *State Human Trafficking Legislation*

At Congress's urging, in 2004 the Department of Justice drafted and made available a model law for adoption by state legislatures based on the federal TVPA.<sup>52</sup> The Senate unanimously endorsed the Department of Justice's model legislation, and strongly encouraged states to adopt it.<sup>53</sup> However, some members of the NGO community criticized the model law for its gaps and inconsistencies, including its failure to define key terms and address non-physical forms of coercion frequently used by traffickers.<sup>54</sup> Several NGOs responded by creating their own legislation for state legislatures to follow when drafting their respective human trafficking laws.<sup>55</sup> As a result, the Department of Justice's model law was ultimately not widely adopted by the states.<sup>56</sup> Indeed, by the time the Department of Justice released its model law, many states had already enacted human trafficking legislation. In 2003, just three years after the passage of the TVPA, Washington became the first state to enact a human trafficking statute.<sup>57</sup> Texas followed shortly thereafter, also passing legislation in 2003.<sup>58</sup>

Over the following decade, all 50 states enacted some form of human trafficking legislation.<sup>59</sup> Many state statutes included provisions for special law enforcement tools and victim services to incentivize state and local authorities to pursue human trafficking cases.<sup>60</sup> Some states included provisions to strengthen state infrastructure and agency coordination by mandating the establishment of a state human trafficking task force similar to the federal task force created under the TVPA.<sup>61</sup> A

52. MODEL STATE ANTI-TRAFFICKING CRIM. STAT. (U.S. Dep't of Justice 2004).

53. S. Res. 414, 108th Cong. (2004) (encouraging State legislatures to carefully examine the Federal benefits and protections contained in the TVPA and to consider adopting states' laws that, at a minimum, offer these benefits protections to victims).

54. See GLOBAL RIGHTS, STATE MODEL LAW ON PROTECTION FOR VICTIMS OF HUMAN TRAFFICKING 1-2 (2005), available at [http://humantrafficking.unc.edu/files/2011/09/StateModelLaw\\_9.05.pdf](http://humantrafficking.unc.edu/files/2011/09/StateModelLaw_9.05.pdf) (defining key terms missing from the model legislation such as "actor," "debt bondage," "minor," "venture," and "trafficked person" or "victim").

55. See, e.g., MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING (Polaris Project 2010), available at [http://www.polarisproject.org/storage/documents/Final\\_Comprehensive\\_ModelLaw\\_\\_8\\_2010.pdf](http://www.polarisproject.org/storage/documents/Final_Comprehensive_ModelLaw__8_2010.pdf) (Polaris also published model legislation in 2004 and 2006).

56. Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 6. In 2008, Congress again directed the Attorney General to promulgate a model state legislation, this time to better protect domestic victims of sex trafficking by modernizing state and local prostitution and pandering statutes. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 225(b), 122 Stat. 5044, 5072; MODEL STATE PROVISIONS ON PIMPING, PANDERING, AND PROSTITUTION (Dep't of Justice 2008), available at <http://www.justice.gov/olp/model-state-provisions-pimping-pandering-and-prostitution>.

57. See WASH. REV. CODE ANN. § 9A.40.100 (West 2003).

58. See TEX. PENAL CODE ANN. § 20A.02 (West 2003).

59. See *Wyoming Becomes 50th State to Outlaw Human Trafficking*, MEDIA (Feb. 27, 2013), <http://www.polarisproject.org/media-center/news-and-press/press-releases/742-wyoming-becomes-50th-state-to-outlaw-human-trafficking>.

60. See *id.*

61. See PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING 28 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012) (noting that at the time, at least twelve states had legislation creating a task force or similar structure); see also Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 6(c), 117 Stat. 2881 (codified at 22 U.S.C. § 7103).

limited number of states even attempted to go beyond the basic model of the TVPA to provide more robust, proactive anti-trafficking tools such as mandatory disclosure and education initiatives aimed at protecting vulnerable foreign national populations from exploitation.<sup>62</sup>

Despite efforts by all of the states to combat human trafficking within their state lines, the overall strength and effectiveness of state laws varied significantly from state to state. Some states took inconsistent approaches in the way they criminalized labor and sex trafficking, imbedding their labor trafficking statute into existing kidnapping, extortion, or other criminal statutes while creating independent statutes to criminalize sex trafficking.<sup>63</sup> Consequently, while these provisions may provide a legal basis to investigate labor trafficking, they cause confusion over the relationship of labor trafficking to these other crimes.<sup>64</sup> Furthermore, many state human trafficking laws fail to include certain victim-focused provisions considered by some NGOs to be “critical to a comprehensive anti-trafficking legal framework.”<sup>65</sup> These legislative inconsistencies and gaps have resulted in persistently low investigation, prosecution, and conviction numbers at the state level.<sup>66</sup>

## PART II: CHALLENGES TO SUCCESSFULLY COMBATTING LABOR TRAFFICKING AT THE STATE LEVEL

### *Sex Trafficking is Prioritized over Labor Trafficking*

In addition to the lack of comprehensiveness inherent in many state human trafficking laws, a number of environmental and infrastructural challenges have contributed to the low number of state labor trafficking cases. Foremost among these challenges is the historical prioritization of sex trafficking over labor trafficking. This is not a new phenomenon, nor is it unique to state governments. Although the Palermo Protocol and the TVPA address both sex and labor trafficking, human trafficking legislation proposed prior to 2000 generally focused on addressing sex trafficking by preventing the exploitation of women and children in the prostitution industry.<sup>67</sup>

In the years following the passage of the TVPA, the number of federal labor

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62. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 105(d), 114 Stat. 1473 (codified at 22 U.S.C. § 7103) (creating the Cabinet-level President’s Interagency Task); § 6(c), 117 Stat. at 2881 (creating the agency-level Senior Policy Operating Group).

63. ABA PROPOSAL, *supra* note 10, at 3; Unif. Law Comm’n Study Comm. Memorandum, *supra* note 15, at 2.

64. *C.f.* ABA PROPOSAL, *supra* note 10, at 3; Unif. Law Comm’n Study Comm. MEMORANDUM, *supra* note 15, at 2.

65. See generally *State Ratings on Human Trafficking Laws*, POLICY ADVOCACY (2014), <http://www.polarisproject.org/2014stateratings> (finding that 47 states lacked legislation addressing one or more of the 10 key legislative provisions on which the organization annually rates state human trafficking laws: sex trafficking; labor trafficking; asset forfeiture; human trafficking task force; no requirement of force, fraud, or coercion for sex trafficking of minors; posting a hotline; victim assistance; and civil remedy).

66. See ABA PROPOSAL, *supra* note 10, at 2.

67. Mohamed Y. Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 VAND. J. TRANSNAT’L L. 1355, 1387 n.142 (2008).

trafficking prosecutions has consistently been less than half the number of sex trafficking prosecutions.<sup>68</sup> This disparity was acknowledged in the 2006 Attorney General's Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, in which the Attorney General recommended that the federal government "enhance its efforts to monitor and combat labor trafficking both domestically and internationally. . ."<sup>69</sup> However, while the number of federal labor trafficking cases has increased somewhat over the past several years, it remains comparatively low.<sup>70</sup> Similarly, while several states have succeeded in prosecuting sex trafficking cases under state human trafficking laws,<sup>71</sup> there appear to have been very few successful labor trafficking cases.<sup>72</sup>

### *Sex Trafficking Cases Attract Greater Attention from the Media and the Public*

One reason for state and local authorities' disparate treatment of sex and labor trafficking cases is that the media tends to report primarily on sex trafficking. While many labor trafficking victims are subjected by their traffickers to physical violence, sexual assault, and threats to frighten and coerce them into submission,<sup>73</sup> sex

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68. In fiscal year 2013, the Department of Justice initiated 161 federal human trafficking prosecutions, charging 253 defendants. Of these, 222 defendants engaged predominately in sex trafficking and 31 engaged predominately in labor trafficking, though some cases involved both. See DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 398 (2014). In fiscal year 2012, the Department of Justice initiated 128 federal human trafficking prosecutions in fiscal year 2012, charging 200 defendants. Of these, 162 defendants engaged predominately in sex trafficking and 38 engaged predominately in labor trafficking, though some cases involved both. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 382 (2013). In fiscal years 2004 through 2010, an average of 54 federal cases were initiated each year, with an average of 39 sex trafficking cases and 15 labor trafficking cases per year. See U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONG. AND ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 64-66 (2011).

69. See U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONG. AND ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 33 (2006).

70. See *supra* note 68.

71. See, e.g., *People v. Bonaparte*, 7 N.E.3d 132 (Ill. App. Ct. 2014) *appeal denied*, No. 117705, 2014 WL 4794660 (Ill. Sept. 24, 2014) (upholding the defendant's human trafficking conviction for using physical and verbal abuse to force two women to engage in prostitution using Backpage.com); *State v. Donaldson*, 2014 Ohio App. LEXIS 3566 (Ohio Ct. App. Aug. 22, 2014) (upholding the defendant's human trafficking conviction for compelling women to work as prostitutes. Defendant was arrested as a result of a prostitution sting operation).

72. See *supra* note 16.

73. See, e.g., Press Release, Dep't of Justice, East Orange Woman Convicted on All 22 Counts in Forced Labor Case Involving Young West African Women (Oct. 14, 2009), <http://www.justice.gov/usao/nj/Press/files/pdf/2009/afol1014%20rel.pdf> (describing how the defendants recruited 20 girls from poor African villages, forced them to work 14 hours a day at hair braiding salons, turn over all compensation and tips, did not permit them to otherwise leave the defendants' residence; and threatened victims with voodoo curses in addition to physical violence); see also Press Release, U.S. Dep't of Justice, Varsha Sabhnani Sentenced to 132 Months' Imprisonment for Her Conviction in Long Island "Slave" Case (June 26, 2008), <http://www.justice.gov/usao/nye/pr/2008/2008jun26.html> (describing how two victims from Indonesia had their passports and visas confiscated, were forced to work up to 20 hours a day as domestic servants, and were physically and psychologically abused by the defendants); Press Release, U.S. Dep't of Justice, South Dakota Hotel Owners Sentenced for Involuntary Servitude Offenses (Feb. 25, 2008), [http://www.justice.gov/archive/opa/pr/2008/February/08\\_crt\\_139.html](http://www.justice.gov/archive/opa/pr/2008/February/08_crt_139.html) (describing how victims were brought from the Philippines and forced to work 16-18 hour days performing cleaning and front desk duties at the defendants' hotel in Oacoma, South Dakota and how the defendants also required the victims to attend late-night debt meetings where the victims were berated for their ungratefulness).

trafficking is perceived to be more sensational—and, therefore, more newsworthy.<sup>74</sup> This tendency is further evidenced by the media’s publicizing of labor trafficking cases that, while not involving commercial sex, involved sexualized labor such as exotic dancing.<sup>75</sup>

Media attention is a critical tool in raising awareness about human trafficking;<sup>76</sup> however, by reporting solely on sex trafficking, the media presents a contorted picture of human trafficking in the United States.<sup>77</sup> As a result, the media leads the general public, as well as state and local officials, to believe that labor trafficking is a crime that happens in other, less developed countries rather than a problem that occurs in their own communities.<sup>78</sup>

Such media attention, for instance, places a perverse incentive on many police departments to focus their investigative efforts on the types of trafficking that garner the greatest amount of public attention.<sup>79</sup> Accordingly, human trafficking cases involving the sexual exploitation of women and children have been, and continue to be, prioritized by state and local law enforcement.<sup>80</sup> On the other hand, labor trafficking cases, especially those involving men or foreign nationals, do not incite the same public outcry.<sup>81</sup> To the contrary, labor trafficking victims are often perceived as illegal immigrants—lawbreakers who warrant little sympathy.<sup>82</sup> This belief re-

74. See JULIETTA HUA, *TRAFFICKING WOMEN’S HUMAN RIGHTS* 52-54 (2011) (discussing how media coverage of sex trafficking often departs from traditional news reporting and takes on a “sensationalist tabloid” quality).

75. See, e.g., *Human trafficking suspect deported to United States*, CNN (Jan. 27, 2011, 10:05 PM), <http://www.cnn.com/2011/CRIME/01/27/new.york.fugitive/> (covering the story of women from Ukraine who were brought to the United States believing they would be models, but were instead forced to work in a Detroit strip club).

76. See Marissa Nack, Comment, *The Next Step: The Future of New York State’s Human Trafficking Law*, 18 J.L. & POL’Y 817, 828 (2010) (“[L]ocal media coverage of state arrests and prosecutions brings human trafficking to the attention of the general public, trafficking victims, and the traffickers themselves.”) (citing 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, 655 (2008)).

77. See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 30 (2014) (“When media report on only one type of human trafficking, the public is left with only part of the story. Human trafficking includes sex trafficking, child sex trafficking, forced labor, bonded labor, involuntary domestic servitude, and debt bondage.”).

78. See Martina Vandenberg, *Human Trafficking: Ending the Myths, Confronting the Realities*, Address at Walter H. Capps Center for the Study of Ethics, Religion, and Public Life (Jan. 29, 2014), available at <https://www.youtube.com/watch?v=X5EIPDP8b5c> (“[I] think people believe . . . and the media certainly pushes them in that direction . . . people believe that forced labor is something that happens elsewhere. Forced labor is children on looms in India, forced labor is children working in mines in Africa. But that’s false.”).

79. See FARRELL ET AL., *supra* note 14, at 91-92 (quoting a police officer in one study on the treatment of human trafficking cases by state and local law enforcement: “[W]hen we started . . . our purview for our task force [was] labor and sex both, but to be honest, we made a decision [to focus on sex trafficking] . . . Part of it was strategic in that we wanted to get some attention and we knew that that [sex trafficking] would get us better attention . . .”).

80. Amy Farrell & Rebecca Pfeffer, *Policing Human Trafficking: Cultural Blindness and Organizational Barriers*, 653 ANNALS AM. ACAD. POL. & SOC. SCI. 46, 52 (2014) (suggesting that the public does not support labor trafficking investigations because the victims, who are often undocumented, adult, and male, and are not perceived as sympathetic).

81. *Id.*

82. See FARRELL ET AL., *supra* note 14, at 91 (quoting an investigator on his office’s view toward labor trafficking victims: “I think a lot of it has to do with . . . the country’s stance on immigration . . . People are

mains widespread despite evidence suggesting that the many of foreign labor trafficking victims enter the United States on legal work visas.<sup>83</sup> As a result of these perceptions, state and local authorities consistently elect not to involve themselves in labor trafficking cases, choosing instead to focus on investigating the types of trafficking they know have public support.

*States Lack Adequate Resources to Pursue to Labor Trafficking Cases*

State resources provide critical support to the national effort to combat human trafficking.<sup>84</sup> Beyond increasing the overall number of officers dedicated to the effort, state and local law enforcement are generally better situated than their federal counterparts to encounter potential instances of human trafficking because they have close ties to the communities they serve.<sup>85</sup> Unfortunately, most states lack sufficient personnel and funding to effectively address the human trafficking problems in their region.<sup>86</sup> Smaller police departments are often in such need of personnel that the officers are forced to split their time between multiple law enforcement responsibilities.<sup>87</sup>

Because police departments are so under-resourced, unless a department receives federal funding to combat human trafficking through a grant program authorized by the TVPA or through participation in a federally funded task force,<sup>88</sup> the department's human trafficking cases must vie for funding against its myriad other priorities. To avoid overtaxing their state's limited resources, several police de-

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looking ... at these people and saying, 'well they're not victims. They just need to get them out of the country...' So I don't think you're getting a lot of sympathy for the labor trafficking."). Additionally, some law enforcement officers have expressed concern that investigating the labor practices of local businesses would result in a political backlash against their department. *See id.* at 91 (quoting an officer commenting on community leaders' lack of political will to uncover labor trafficking: "I think it is happening in the local farms here and I think that one of the reasons why is because people don't want to ruffle the feathers of the local farmers here, the people that support politicians and their communities. And I think that we do have a problem with labor trafficking here especially with the contractors.").

83. OWENS ET AL., *supra* note 14, at ix, 21, 61 (finding that 71 percent of 122 labor trafficking victim records and approximately 75 percent of 28 victims interviewed indicated the victims had entered the United States with valid immigration documents).

84. *See* AMY O'NEILL RICHARD, CTR. FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME 45 (2000) (finding that the U.S. Attorney's Offices appear to be understaffed and overburdened, making investigations of potential trafficking cases difficult); *see also* Ellen L. Buckwalter et al., *Modern Day Slavery In Our Own Backyard*, 12 WM. MARY J. WOMEN & L. 403, 425 (2006) (noting that federal resources are often limited and inadequate and that the federal government spent only 0.0022 percent of its total budget on anti-trafficking efforts).

85. *See* U.S. DEP'T OF JUSTICE, REPORT TO CONG. FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOV'T EFFORTS TO COMBAT TRAFFICKING IN PERSONS 17 (2004) (noting that state officers are often most familiar with the locations, victims, and perpetrators associated with human trafficking in their jurisdiction and provide critical facts and observations that can lead to larger interstate or international investigations).

86. OWENS ET AL., *supra* note 14, at 189.

87. *Id.*

88. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1241-42, 127 Stat. 149-153 (authorizing grant funding to support state and local law enforcement and NGO efforts to combat sex trafficking).

partments have therefore adopted a policy of automatically referring any identified human trafficking cases to federal authorities rather than pursuing them under state law.<sup>89</sup>

Other states have taken the approach of concentrating their limited resources exclusively on the types of trafficking they feel are most dangerous to the community; namely, the sex trafficking of minors.<sup>90</sup> Yet, regardless of the approach taken by local authorities, the consequence of limited human trafficking resources at the state level is that labor trafficking investigations will either be pursued by federal authorities, or not at all.

### *States Lack the Infrastructure Necessary to Support Labor Trafficking Cases*

Many states lack the infrastructure and training critical to effectively identify and support labor trafficking cases.<sup>91</sup> When states incorporated their new sex trafficking initiatives, state and local law enforcement had some foundation on which to build. Prior to the enactment of modern human trafficking legislation, sex trafficking victims were generally arrested on prostitution charges and processed through a police department's vice crime unit.<sup>92</sup> State and local law enforcement agencies were therefore able to build upon the existing vice crime infrastructure in order to meet their new sex trafficking mandate.<sup>93</sup>

By comparison, state and local law enforcement agencies have had little experience with labor trafficking.<sup>94</sup> Unlike vice crimes, the regulation and inspection of workplaces is not viewed as a traditional duty of local law enforcement.<sup>95</sup> Instead,

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89. See BANKS & KYCKELHAHN, *supra* note 14, at 4 (finding that labor trafficking investigations were more likely to be led by federal law enforcement agency than by state or local authorities); FARRELL ET AL., *supra* note 14, at 32, 189; OWENS ET AL., *supra* note 14, at 193 (finding that despite all states having legal structures to charge labor trafficking, few labor trafficking cases were identified by state officials and those that were identified were primarily referred to federal prosecutors).

90. Farrell & Pfeffer, *supra* note 80, at 51-52; see also *id.* at 55 (quoting an officer interviewed in the study: "It would be great to have folks go out and dig into those [labor trafficking cases], but we don't have the resources. We have more leads than we can handle on sex trafficking so that is where we stop.").

91. See generally Kelly Heinrich & Kavitha Sreeharsha, *The State of State Human-Trafficking Laws*, 52 A.B.A. JUDGES J., no. 1, 2013, available at [http://www.americanbar.org/publications/judges\\_journal/2013/winter/the\\_state\\_of\\_state\\_humantrafficking\\_laws.html](http://www.americanbar.org/publications/judges_journal/2013/winter/the_state_of_state_humantrafficking_laws.html) ("State and local investigators narrowly focus on sex trafficking of U.S. citizen minors, which represents 85 percent of the human-trafficking cases examined in the study. They lack the infrastructure, expertise, and initiative to investigate labor trafficking, whereas sex-trafficking investigations are carried out by vice units, which focus on prostitution-related crimes.").

92. See, e.g., 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 6 (2008), available at [http://criminaljustice.state.ny.us/pio/humantrafficking/human\\_trafficking\\_rpt\\_aug08.pdf](http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf).

93. But see U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REP. 10 (2013) (urging state and local law enforcement agencies to create specialized human trafficking units because vice crime units are likely to focus solely on sex trafficking while ignoring labor trafficking).

94. OWENS ET AL., *supra* note 14, at 166 (noting that state and local officers do not view labor violations as part of their law enforcement mission).

95. Farrell & Pfeffer, *supra* note 80, at 57 (quoting a police officer in one study on the treatment of human trafficking cases by state and local law enforcement: "[W]hen we started our task force our purview was labor and sex both, but we made a decision... Part of it was strategic in that we wanted to get some attention and we knew that that [sex trafficking] would get us better attention.").

local law enforcement depended on federal authorities like the Department of Labor, or state regulators such as those responsible for licensing, to identify potential labor trafficking situations and take appropriate action.<sup>96</sup> When authorities did encounter foreign victims of labor trafficking, they generally turned them over to immigration authorities.<sup>97</sup>

Although all fifty states have now enacted labor trafficking statutes,<sup>98</sup> local police lack appropriate training how on to identify and respond to labor trafficking cases.<sup>99</sup> Officers often do not understand the line of demarcation between poor work conditions and labor trafficking.<sup>100</sup> Additionally, some state and local authorities continue to view foreign nationals as illegal immigrants rather than potential victims of labor trafficking.<sup>101</sup> Some NGOs have echoed these concerns, arguing that potential cases of labor trafficking are still treated by state and local law enforcement as workplace disputes or contract violations rather than as criminal human trafficking cases.<sup>102</sup>

Moreover, while many state and local authorities have established relationships with local NGOs that provide services to sex trafficking victims, there is a scarcity of organizations that offer assistance and services to victims of labor trafficking.<sup>103</sup> Many NGOs provide services only to victims of sex trafficking; others provide services only to women and children.<sup>104</sup> Thus, federal, state, and local law enforcement frequently struggle to find NGOs that will provide services and housing for victims of labor trafficking, particularly male victims.<sup>105</sup> Operating without NGO support to help stabilize and care for identified labor trafficking victims, state and local authorities face an uphill battle in building a successful case.<sup>106</sup>

Without basic infrastructural elements like dedicated human trafficking units,

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96. *Id.*

97. See, e.g., O'DONNELL & HANSELL, *supra* note 92, at 6.

98. See *2014 State Ratings on Human Trafficking Laws*, POLICY ADVOCACY (2014), <http://www.polarisproject.org/2014stateratings>

99. See Farrell & Pfeffer, *supra* note 80, at 57 (noting that because the state and local authorities immediately refer labor trafficking case to federal law enforcement, they do not develop the skills necessary to identify and investigate labor trafficking cases within their own agency); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 360* (2012) (recommending that the federal government foster partnerships to encourage the training of state and local law enforcement agencies).

100. Britta S. Loftus, *Coordinating U.S. Law on Immigration and Human Trafficking: Lifting the Lamp to Victims*, 43 COLUM. HUM. RTS. L. REV. 143, 180-81 (2011).

101. Farrell & Pfeffer, *supra* note 80, at 52 (quoting one detective from the study: "A lot of it has to do with the country's stance on immigration. People look at these people [potential victims] and say, 'Well, they're not victims. They just need to get them out of the country.'").

102. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 401* (2014) (noting that NGOs also expressed concern that some government officials misunderstood complex legal aspects of human trafficking cases, including coercion and consent, and did not consistently take a victim-centered approach).

103. See *id.* (noting that existing services for victims were often disproportionately available to female and child survivors of sex trafficking and not male victims and victims of labor trafficking).

104. See, e.g., THE SEX WORKERS PROJECT, <http://www.sexworkersproject.org> (last visited Apr. 14, 2015).

105. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 401* (2014)

106. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 15* (2013) (noting NGOs' critical role as experts in victim protection and providers of comprehensive victim assistance services).

adequate training for officers likely to come into contact with victims, and support services for identified victims, state and local authorities are only further incentivized to either ignore identified labor trafficking cases or refer them to federal law enforcement.

*Labor Trafficking is Difficult to Detect*

State and local authorities are more likely to come into contact with victims of trafficking than their federal counterparts because of their frequent and intimate contact with the local community.<sup>107</sup> However, these officers rarely identify victims of labor trafficking in the course of their duties; in part because labor trafficking victims are typically exploited in otherwise legitimate business industries.<sup>108</sup> State and local law enforcement seldom conduct proactive operations on local businesses or private homes, waiting instead for labor trafficking tips to be referred by NGOs or Good Samaritans.<sup>109</sup> By contrast, the commercial sex industry is illegal in the United States except for a small number of jurisdictions in Nevada.<sup>110</sup> Therefore, when police conduct routine sting operations and other targeted police activity on suspected prostitution rings, they are more likely to identify victims of sex trafficking and remove them from the trafficking situation.<sup>111</sup>

Local authorities' reactive approach to labor trafficking means that certain victims of labor trafficking are particularly unlikely to be discovered. Some labor trafficking victims, such as domestic servants and agricultural workers, are largely secluded from the outside world and rarely come into contact with people other than their traffickers.<sup>112</sup> As a result of this isolation, it is also less probable that these victims will be identified by private citizens and reported to state and local authori-

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107. See U.S. DEP'T OF JUSTICE, REPORT TO CONG. FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOV'T EFFORTS TO COMBAT TRAFFICKING IN PERSONS 17 (2004).

108. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 397 (2014) (stating that victim are found in U.S. industries including hotel services, hospitality, sales crews, agriculture, manufacturing, janitorial services, construction, health and elder care, and domestic service); U.S. DEP'T OF HEALTH AND HUMAN SERVS., LABOR TRAFFICKING FACT SHEET (2012), available at <http://www.acf.hhs.gov/programs/ort/resource/fact-sheet-labor-trafficking-english>.

109. OWENS ET AL., *supra* note 14, at 166, 171 (noting, however, that such case referrals are rare).

110. See NEV. REV. STAT. ANN. § 244.345 (West, Westlaw through End of 28th Special Session (2014) and all technical corrections received by publisher from Legislative Counsel Bureau) (setting forth the licensing requirements for operating a brothel).

111. See, e.g., Alison Knezevich, *For Human Trafficking Victims, State Offers 'A New Beginning'*, BALTIMORE SUN (Dec. 8, 2014, 6:00 AM), <http://www.baltimoresun.com/news/maryland/bs-md-prostitution-convictions-20141207-story.html#page=1>.

112. See, e.g., FARRELL ET AL., *supra* note 14, at 76 (quoting one officer's description of how local farms isolated victims: "A big sign at one of the migrant farms locally says 'Law enforcement not welcome, Do not enter, You have no right,' stuff like that... [the farms are] wired off and in the middle of nowhere where they [perpetrators] have complete control over them [victims]."); Press Release, U.S. Dep't of Justice, Wisconsin Couple Sentenced for Forcing a Woman to Work as Their Domestic Servant for 19 Years (June 9, 2009), <http://www.justice.gov/opa/pr/wisconsin-couple-sentenced-forcing-woman-work-their-domestic-servant-19-years> (describing how a husband and wife doctors hired a 19-year-old woman from the Philippines to work as a domestic servant and held her in captivity for 19 years, forbidding her to go outside and telling her that she would be arrested and deported if she tried to seek help).



ties.<sup>113</sup>

Other times, labor trafficking victims are visible, and even regularly interact with the public, yet still go undetected. Labor trafficking victims are often exploited in otherwise legal industries such as hotel services, the hospitality industry, sales crews, and janitorial services.<sup>114</sup> In such cases, traffickers use violence, threats, and psychological coercion to prevent these victims from asking for help; even in public settings.<sup>115</sup>

This tendency of victims to remain silent is particularly true of foreign national victims, many of whom live in constant fear of arrest and deportation. Regardless of whether foreign workers have a legal work visa or are illegally present in the country, they are dependent on their employer to remain in the United States.<sup>116</sup> This fear is further exacerbated by traffickers, who use it to control victims and prevent them from reaching out to law enforcement.<sup>117</sup> The combination of state and local authorities' reactive approach to pursuing labor trafficking cases and traffickers' ability to isolate their victims, whether geographically or through psychological coercion, therefore results in fewer labor trafficking cases being detected and pursued.

#### *States Lack Immigration Authority*

The power to regulate immigration is “unquestionably exclusively a federal power.”<sup>118</sup> Consequently, while the federal government has welcomed the involvement of state and local authorities in the fight against human trafficking, Congress has not conferred upon the states the authority to grant immigration relief to foreign victims.<sup>119</sup> This conflict creates a significant obstacle for state and local authorities attempting to combat labor trafficking, as the overwhelming majority of labor trafficking victims in the United States are believed to be foreign nationals.<sup>120</sup>

Foreign nationals are more susceptible than United States citizens to labor trafficking because foreign victims are dependent on their traffickers to remain in the country.<sup>121</sup> This dependency is true both of workers who entered the United States

113. See Farrell & Pfeffer, *supra* note 80, at 57.

114. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 397 (2014).

115. See U.S. DEP'T OF HOMELAND SEC., WHAT CAN YOU DO?: IDENTIFYING VICTIMS AND REPORTING SUSPECTED CASES OF HUMAN TRAFFICKING, *available at* <http://www.dhs.gov/sites/default/files/publications/blue-campaign/BC%20inserts%20Judicial.pdf>.

116. See *infra* Part II.F.

117. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(20), 114 Stat. 1464, 1468 (“Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.”).

118. *De Canas v. Bica*, 424 U.S. 351, 354 (1976).

119. Loftus, *supra* note 100, at 171.

120. See SISKIN & WYLER, *supra* note 6, at 15.

121. See *id.*

on a legal work visa and those workers who entered the country illegally.<sup>122</sup> Many labor trafficking victims enter the United States on temporary or seasonal work visas, which allow a worker to remain in the country as long as they are working for the employer that sponsored them.<sup>123</sup> However, should that worker attempt to quit his or her job, the worker would lose legal status and become removable.<sup>124</sup> Consequently, once a foreign labor trafficking victim flees the trafficker or is removed from the trafficking situation, he or she often no longer has legal status to remain in the country.<sup>125</sup>

Without the ability to provide immigration relief to foreign victims, state and local authorities would be powerless to prevent the victims' deportation. Officers would be at risk of losing the key witnesses in their trafficking investigation.<sup>126</sup> Moreover, foreign victims would be unable to obtain the necessary work authorization to begin to financially support themselves, regain stability, and rebuild their lives.<sup>127</sup> Congress recognized these dangers and sought to remedy them by creating Continued Presence, the T visa, and the U visa under the TVPA.<sup>128</sup> Unfortunately, these tools have been chronically underutilized by state and local authorities.<sup>129</sup>

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122. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 397* (2014) (stating that the Department of State had received reports of United States businesses abusing work-based and other nonimmigrant visa programs to exploit foreign workers).

123. See, e.g., 8 U.S.C. § 1101(a)(15)(H)(ii)(A), (B) (2014) (establishing the "H-2A" seasonal agricultural work visa and the "H-2B" temporary non-agricultural work visa); Michael J. Wishnie, *Labor Law After Legalization*, 92 MINN. L. REV. 1446, 1455 (2008) (citations omitted) (stating that temporary worker visa holders are often prevented from changing jobs because their immigration status is conditioned on continued employment by the employer that sponsored their entry to the United States and noting that this immobility makes the workers particularly susceptible to exploitation).

124. See Wishnie, *supra* note 123, at 1455; see also *id.* at 1455 n.43 (stating that the same dependency and resulting vulnerability is true of nearly all current temporary worker programs). In 2008, in an attempt to remove this threat from traffickers' arsenal, Congress directed the Department of State to prepare an informational pamphlet informing foreign national workers of their rights; however, the problem persists. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 202, 122 Stat. 5044; U.S. DEP'T OF STATE, *WILBERFORCE PAMPHLET*, available at <http://travel.state.gov/content/dam/visas/LegalRightsandProtections/Wilberforce%20Pamphlet%20English%20Online%20Reading%20Version%2012-22-2014.pdf>.

125. See OWENS ET AL., *supra* note 14, at 198, 201 (finding that 71 percent of labor trafficking victims involved in the study had entered on a temporary visa, but 69 percent ultimately lost their immigration status by fleeing their trafficking situation or because their traffickers allowed their visas to expire).

126. See *id.* at 180.

127. See *id.* at 135 (finding that after being rescued, one victim in the study ended up working "under the table" for an associate of her trafficker because she was unable to get work authorization).

128. See *supra* Part I.C.

129. In fiscal year 2013, Continued Presence was granted to 171 victims of sex or labor trafficking involved in a federal or state trafficking investigation (a decrease from 199 in fiscal year 2012). See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 400* (2014). In fiscal years 2006-2011, Continued Presence was granted to an average of 204 victims of trafficking involved in a federal or state investigation. See U.S. DEP'T OF JUSTICE, *ATTORNEY GENERAL'S ANNUAL REPORT TO CONG. AND ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 54* (2011). While Congress set the statutory cap for T visas at 5,000, the highest number of T visas issued in a fiscal year was 848 in fiscal year 2013 (this number excludes derivative T visas for family members of the victim). See 8 U.S.C. § 1184(o)(2) (2000); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 400* (2014). Of the 10,000 U visas available annually, nine were granted to victims of human trafficking in fiscal year 2013. See 8 U.S.C. § 1184(p)(2) (2000); U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 400* (2014).

While some state and local authorities do not utilize tools like Continued Presence because they simply decline to investigate human trafficking cases involving foreign nationals for fear of encroaching on the federal government's jurisdiction over immigration matters,<sup>130</sup> it is far more common that states do not pursue cases involving foreign nationals because the Continued Presence application process is so burdensome. State and local police may only request Continued Presence through a federal law enforcement agency,<sup>131</sup> and in some instances, regional federal law enforcement offices have been unwilling to work with local authorities to process Continued Presence requests.<sup>132</sup> Moreover, even when federal authorities do accept Continued Presence applications from local law enforcement, the applications must then be submitted by the federal authorities to U.S. Immigration and Customs Enforcement headquarters for final approval and authorization.<sup>133</sup>

The Continued Presence application process has been criticized for its bureaucracy and excessive delays.<sup>134</sup> In 2013, Congress sought to address the stagnation in the Continued Presence application process by requiring U.S. Immigration and Customs Enforcement to submit a report on its efforts to improve the processing time for Continued Presence applications.<sup>135</sup> Nevertheless, the delays persist.<sup>136</sup> As a result of these challenges, states consistently turn over labor trafficking cases to federal authorities, or decline to respond to them altogether.<sup>137</sup>

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130. Loftus, *supra* note 100, at 172.

131. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE: TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING, *available at* <http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf> ("Federal officials may submit [Continued Presence] applications on behalf of state or local law enforcement in cases where the victimization meets the federal definition of trafficking as found in the TVPA and at 22 U.S.C. § 7102. When state or local law enforcement officials identify a victim of human trafficking, they should coordinate with their federal law enforcement partners to submit an application for [Continued Presence].").

132. OWENS ET AL., *supra* note 14, at 134 (stating that federal law enforcement agencies may differ in their willingness to support Continued Presence applications).

133. U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, *supra* note 131 (stating that Continued Presence is granted on a year-to-year basis by the U.S. Immigration and Customs Enforcement Law Enforcement Parole Branch).

134. *See* U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 398 (2014) (recommending that the United States "ensure federal law enforcement officials apply in a timely and appropriate manner for Continued Presence, and state and local law enforcement are trained on requesting Continued Presence through a federal law enforcement agency"); OWENS ET AL., *supra* note 14, at 134 (also stating that applications submitted by federal law enforcement agents experienced the same delays as those submitted by state and local authorities and discussing the detrimental effect that such delays have on victims).

135. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 802(5), 127 Stat. 54, 111 ("A description of any actions being taken to reduce the adjudication and processing time, while ensuring the safe and competent processing, of an application described in paragraph (1) or a request for continued presence...."). The report was due to Congress by December 2014; however, as of the date this Note was published, it did not appear that the report had been submitted. *See id.*

136. *See id.*

137. *See* OWENS ET AL., *supra* note 14, at 193 (finding that state authorities primarily referred labor trafficking cases to federal prosecutors rather than pursue them in state court); *id.* at 190 (finding that state and local law enforcement declined to proactively investigate labor trafficking in their community because they felt they were already sufficiently busy with ongoing sex trafficking investigations); *see also* FARRELL ET AL., *supra* note 14, at 32, 189.

### III. THE UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR HUMAN TRAFFICKING

#### *Origins of the Uniform Act*

In July 2010, the American Bar Association Center for Human Rights (hereinafter “ABA Center for Human Rights”) submitted to the Uniform Law Commission a proposal for a model human trafficking law.<sup>138</sup> The ABA Center for Human Rights named three reasons evincing the need for a uniform, comprehensive state human trafficking law: first, federal government resources alone cannot adequately address the human trafficking problem on a national scale; second, providing jurisdiction by enacting state human trafficking laws encourages action by state and local law enforcement; and third, state legislation increases training and awareness among police officers, leads to higher victim identification rates, and results in greater numbers of investigations and prosecutions.<sup>139</sup>

By 2010, forty-two states and the District of Columbia had already passed some form of human trafficking legislation.<sup>140</sup> The ABA Center for Human Rights noted, however, that wide variation between the state laws had resulted in conflicting definitions of trafficking, inconsistent penalties for traffickers, and disparity in the availability of services for victims.<sup>141</sup> The ABA Center for Human Rights argued that a uniform state law would “render the current patchwork of state anti-trafficking laws far more effective by providing a centralized ‘one-stop’ standard that most accurately reflects the actual criminal behavior of traffickers and avoids piecemeal investigations under divergent state statutes. . . .”<sup>142</sup> The ABA Center for Human Rights therefore urged the Uniform Law Commission to create a comprehensive model human trafficking law to resolve the gaps and ambiguities among existing state laws, increase the number of state prosecutions across the country, and build stronger relationships between state and local law enforcement agencies.<sup>143</sup>

In February 2011, the Uniform Law Commission’s Study Committee on Prevention of and Remedies for Human Trafficking issued a memorandum supporting the ABA Center for Human Rights’ proposal to draft a uniform law on the prevention of and remedies for human trafficking.<sup>144</sup> The memorandum outlined the findings of the Study Committee’s feasibility study and concluded that a uniform act would increase the effectiveness of existing resources dedicated to human trafficking and alleviate the confusion caused by the “inconsistent policy and definitional constructs” present in existing state legislation.<sup>145</sup> Despite acknowledging that prior

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138. See ABA PROPOSAL, *supra* note 10, at 2.

139. *Id.*

140. *Id.*

141. See *id.* at 2, 9.

142. *Id.* at 2.

143. See *id.*

144. See Unif. Law Comm’n Study Comm. Memorandum, *supra* note 15, at 2.

145. *Id.* at 1-2.

efforts to create model legislation failed to gain widespread support,<sup>146</sup> the Uniform Law Commission noted that a uniform act would facilitate coordination between state and federal authorities by streamlining and enhancing the national effort to combat human trafficking.<sup>147</sup>

In drafting its model legislation, the Uniform Law Commission started by examining federal and state criminal and civil statutes, victim assistance statutes, and other statutory remedies pertaining to human trafficking.<sup>148</sup> The Uniform Law Commission then laid out a number of observations and recommendations relating to criminal sanctions,<sup>149</sup> victim protection,<sup>150</sup> victim recovery,<sup>151</sup> public awareness,<sup>152</sup> and prevention,<sup>153</sup> which it used to guide its drafting process. The final Uniform Act, published in July 2013, provided a comprehensive model of state legislation that included not only criminal penalties, but also key provisions such as enhanced penalties for aggravating circumstances,<sup>154</sup> asset forfeiture,<sup>155</sup> restitution for victims,<sup>156</sup> and civil remedies<sup>157</sup>—all of which have been underscored by NGOs as essential to effectively combatting human trafficking.<sup>158</sup> The Uniform Law Commission also included expansive definitional language in the Act to “capture the broad range of techniques used by traffickers” and provisions that create eligibility for victim services, expand state resources and infrastructure, enhance training for state and local authorities, and provide for public education and awareness.<sup>159</sup>

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146. *See id.* at 6.

147. *See id.* at 2.

148. *See id.* at 1.

149. *See id.* at 2-3 (noting specific statutory challenges relating to criminal sanctions, such as inconsistent definitions of human trafficking and the absence in many states of a single “umbrella” criminal human trafficking statute).

150. *See id.* at 3 (addressing specific statutory issues related to victim protection such as affirmative defenses for victims, confidentiality and safe reporting, and protection from exploitation).

151. *See id.* at 4 (addressing specific statutory issues related to victim recovery such as social services, private cause of action, incentives for private assistance).

152. *See id.* at 4-5 (addressing specific statutory issues related to public awareness such as data collection and reporting, oversight responsibility, and victim awareness efforts).

153. *See id.* at 5 (addressing specific statutory issues related to prevention of human trafficking such as policy planning projects and law enforcement training).

154. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 9 (2013) (aggravating circumstances include if a defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless).

155. *See id.* § 11 (forfeiture includes any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or was derived from proceeds as a result of the offense).

156. *See id.* § 10 (restitution includes all expenses incurred or reasonably certain to be incurred by the victim as a result of the offense in addition to the financial benefit derived by the defendant).

157. *See id.* § 18 (creating a private right of action for victims, which includes damages, punitive damages, and injunctive relief).

158. *See* 2014 *State Ratings on Human Trafficking Laws*, POLICY ADVOCACY (2014), <http://www.polarisproject.org/2014stateratings> (evaluating the human trafficking laws of all 50 states based on their capacity to address both sex and labor trafficking, as well as their provision of tools including asset forfeiture, task forces, hotlines, victim assistance, and civil remedies).

159. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 1, prefatory note (Nat'l

As of the date this Note was published, Delaware, Louisiana, New Hampshire, and Pennsylvania had enacted laws modeled after Uniform Act, and an additional thirteen states had introduced bills proposing the adoption of legislation based on the Uniform Act.<sup>160</sup> Yet, while the Uniform Act is a significant improvement from many of the state statutes and model laws that preceded it, the Uniform Act still contains certain gaps and ambiguities that, if left unaddressed, will continue to lead to disparate treatment of labor trafficking victims and deprioritization of labor trafficking cases at the state level.<sup>161</sup>

*The Uniform Act Promotes Prioritization of Both Labor and Sex Trafficking*

In drafting the Uniform Act, the Uniform Law Commission noted that some state laws did not treat sex and labor trafficking laws equally.<sup>162</sup> For instance, both the ABA Center for Human Rights' initial proposal and the Uniform Law Commission's initial findings memorandum found that some states had incorporated human trafficking provisions into existing prostitution, kidnapping, extortion, or other statutes rather than create an independent statute.<sup>163</sup> Both documents expressed concern that by failing to provide a separate statute, the states were adding to local authorities' confusion about what activity constituted human trafficking.<sup>164</sup>

To remedy these concerns, the Uniform Act created distinct criminal provisions for labor trafficking,<sup>165</sup> sex trafficking,<sup>166</sup> and sex trafficking involving a minor, which triggers heightened penalties.<sup>167</sup> Likewise, the Uniform Law Commission incorporated into the Uniform Act broad definitions of key terms such as "coercion"<sup>168</sup> and "labor or services,"<sup>169</sup> capable of encompassing a wide array of trafficking situations.<sup>170</sup> As state and local police tend to narrowly define human traf-

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Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012); Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 5; UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING art. IV (2013).

160. See *Legislation, UNIF. LAW COMM'N*, <http://www.uniformlaws.org/Legislation.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking> (last visited Apr. 14, 2015) (Alabama, Arizona, Colorado, Florida, Kentucky, Montana, Nebraska, Nevada, North Dakota, Ohio, South Carolina, Virginia, and West Virginia).

161. See Andrew Hall, Note, *The Uniform Act on Prevention of and Remedies for Human Trafficking*, 56 ARIZ. L. REV. 853 (2014) (analyzing the merits of the Uniform Act on Prevention of and Remedies for Human Trafficking in combatting sex trafficking).

162. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 7-8 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012).

163. See ABA PROPOSAL, *supra* note 10, at 3, 5; Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 2.

164. See ABA PROPOSAL, *supra* note 10, at 3, 5; Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 2.

165. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 4 (2013).

166. *Id.* §§ 5, 6.

167. *Id.* § 7.

168. See *id.* § 2(3) (noting that coercion includes, *inter alia*, the destruction of, taking of, or the threat to destroy or take an individual's identification document).

169. See *id.* § 2(8) (defining labor or services as any activity that has economic value).

170. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 5 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012) (noting that the definition of "coercion" draws from

ficking as only including commercial sexual exploitation,<sup>171</sup> the Uniform Act's inclusive definitions help to address law enforcement's tendency to conflate human trafficking and prostitution.

Beyond bringing criminal sex and labor trafficking provisions into parity, the Uniform Act addressed the "legitimate" facade of the crime by authorizing criminal penalties against businesses engaged in labor trafficking. The ABA's proposal recommended the adoption of punitive civil penalties for businesses that engage in human trafficking; however, the Uniform Law Commission went a step further and included in the Uniform Act the option to pursue criminal penalties.<sup>172</sup> Section 8 of the Uniform Act includes a Business Entity Liability provision that extends criminal liability to a business that knowingly engages in human trafficking or knows its employee or agent is engaging in human trafficking and fails to take effective action to stop the activity.<sup>173</sup>

The Uniform Law Commission found that state laws addressing business liability fell into three general categories: those establishing a liability standard; those naming additional criminal penalties for businesses; and those specifying that businesses can be held liable.<sup>174</sup> In keeping with its goal of broad applicability, the Uniform Law Commission incorporated all three categories into Section 8 of the Uniform Act.<sup>175</sup> Furthermore, Section 8 provides that businesses found to have engaged in human trafficking may be subject to fines, disgorgement, and even debarment from state and local government contracts.<sup>176</sup> Including debarment language in the Uniform Act brings state law into line with the federal provisions under the TVPA that allow the federal government to debar from contracting with the federal government any business that is found to have engaged in human trafficking.<sup>177</sup>

Even though the prospect of criminal penalties under the Uniform Act puts local businesses on notice that labor trafficking will not be tolerated if such acts are identified by law enforcement, a few states have taken a more proactive approach that attempts to educate foreign workers about their rights under state law. The

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states with expansive definitions like Alabama, Vermont, and the TVPA); *see also* ALA. CODE § 13A-6-151(1) (West, Westlaw through the 2014 Regular Session and the 2015 Organizational Session); VT. STAT. ANN. tit. 13 §§ 2651-52 (West, Westlaw through the laws of the Adjourned Session of the 2013-2014 Vermont General Assembly (2014)); Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 103(2), 114 Stat. 1464.

171. *See* Farrell & Pfeffer, *supra* note 80, at 54.

172. *See* ABA PROPOSAL, *supra* note 10, at 8.

173. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 8(a) (2013); *but see* Naomi Jiyoung Bang, *Justice for Victims of Human Trafficking and Forced Labor: Why Current Theories of Corporate Liability Do Not Work*, 43 U. MEM. L. REV. 1047 (2013) (arguing that U.S. companies have been overwhelmingly successful in deflecting human trafficking liability in the global chain setting through the use of independent contractors).

174. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 15-16 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012).

175. *Id.*

176. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 8(b) (2013).

177. *See* Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Exec. Order No. 13627, 77 Fed. Reg. 60,029 (Oct. 2, 2012) (directing the Federal Acquisition Regulatory Council to amend the Federal Acquisition Regulations to strengthen the federal government's "zero-tolerance" policy on human trafficking by federal contractors and subcontractors).

ABA Center for Human Rights highlighted in its initial proposal that Washington had adopted legislation aimed at protecting foreign national workers from exploitation by requiring businesses and labor recruitment agencies operating within the state to provide a disclosure statement to workers divulging the workers' wages and withholdings.<sup>178</sup>

Washington's law requires that the disclosure statement explain the terms and conditions of a worker's employment in a language he or she understands, as well as enumerate any deductions that will be made from the worker's salary.<sup>179</sup> The disclosure statement must also state that the worker has the right to control all travel and labor documents at all times and may not be required to surrender those documents to the employer or recruitment agency, as well as provide the worker with a list of services or the number of a human trafficking hotline.<sup>180</sup> Finally, the Washington law permits a foreign worker to bring a civil suit against an employer or labor recruiter that fails to comply with the state's statutory disclosure requirements.<sup>181</sup>

Like Washington, New York has adopted legislation that requires employers and recruitment agencies to provide foreign workers with a disclosure statement detailing the terms and conditions of their employment. New York law requires employers to provide all workers with a signed disclosure statement at the commencement of their employment, as well as a new statement any time the terms of the worker's rights or benefits are reduced.<sup>182</sup> New York also established special requirements for employment agencies that work with domestic workers<sup>183</sup> and for

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178. See ABA PROPOSAL, *supra* note 10, at 5; see also WASH. REV. CODE §§ 19.320.010-30 (West 2010).

179. See WASH. REV. CODE ANN. § 19.320.020(2) (West, Westlaw current with Chapters 1, 2, and 3 from the 2015 Regular Session) (mandating that the statement be provided in a language the foreign worker understands; explain that the worker may be considered an employee under Washington state law, is subject to state worker health and safety laws, and may be eligible for workers' compensation and unemployment insurance; state that the worker may be subject to both state and federal laws governing overtime and work hours. It must include an itemized list of any deductions the employer intends to make from the worker's pay for food and housing and an itemized listing of the international labor recruitment agency's fees.).

180. *Id.*

181. See WASH. REV. CODE ANN. § 19.320.040 (West, Westlaw current with Chapters 1, 2, and 3 from the 2015 Regular Session) (establishing that a foreign worker may recover between \$200 and \$500 dollars, or actual damages, whichever is greater, as well as other equitable relief at the court's discretion; also providing that a foreign worker who prevails in his or her claim must be awarded court costs and attorneys' fees).

182. See N.Y. LAB. LAW § 195 (McKinney, Westlaw through L.2015, chapters 1 to 4). Until 2014, New York law required employers to issue disclosure statements to workers annually; however, in response to complaints about the burden the reporting requirements placed on businesses operating within the state, the New York state legislature amended the law to only require disclosure at the commencement of employment and when an employer reduces a worker's salary or benefits. See N.Y. Assemb. B. A08106C, 2013-14 Assemb. Reg. Sess. (N.Y. 2013), available at [http://assembly.state.ny.us/leg/?default\\_fld=&bn=A08106&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A08106&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y).

183. See N.Y. LAB. LAW § 691 (McKinney, Westlaw through L.2015, chapters 1 to 4) (requiring that domestic worker be provided with a statement of employee rights and employer obligations prior to placing the worker in an employment situation, and that the employment agency both maintain a record of the signed statement and file a copy with the state's department of labor); *id.* § 692 (requiring employment agencies to provide domestic workers with a signed statement of job conditions, and that the employment agency both maintain a record of the signed statement and file a copy with the state's department of labor); see also N.Y.



employers of agricultural workers.<sup>184</sup> Finally, New York law authorizes state labor inspectors to pursue punitive measures against employment agencies and employers that fail to comply with the state's statutory disclosure requirements.<sup>185</sup>

By going beyond the customary reactive approach to combatting human trafficking employed by most states, the Uniform Act, and even the TVPA, Washington and New York's laws provide stronger protection for foreign workers. These laws aim to educate and empower foreign nationals, who are at a heightened risk of exploitation, by disclosing their rights under state law and by putting businesses on notice of their corresponding legal obligations.<sup>186</sup>

### *The Uniform Act Builds State Infrastructure to Combat Human Trafficking*

Both the ABA Center for Human Rights' proposal and the Uniform Law Commission's initial findings memorandum underscored the importance of uniform state legislation in bolstering existing infrastructure to encourage and support human trafficking investigations.<sup>187</sup> Accordingly, the Uniform Act included several provisions to cultivate a stronger state human trafficking framework.

Section 19 of the Uniform Act calls for the establishment of a human trafficking council comprised of state executive agencies that are likely to come into contact with human trafficking victims or perpetrators, or who work with NGOs that serve trafficking victims.<sup>188</sup> In its proposal, the ABA Center for Human Rights observed that a few state laws already mandated the formation of task forces or councils to enlist appropriate state agencies in a common effort to combat human trafficking.<sup>189</sup> The Uniform Law Commission similarly noted that a coordinating body was necessary to bring together state and local agencies, NGOs, and other partners on a regular basis to create and execute human trafficking policy.<sup>190</sup> In its drafting notes, the Uniform Law Commission also specifically stated that a "key responsibility of the task force is insuring [sic] that the state personnel who may come in

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GEN. BUS. LAW § 185-a(6) (McKinney, Westlaw through L.2015, chapters 1 to 4) (establishing additional requirements for employment agencies that provide transportation for domestic workers).

184. See N.Y. LAB. LAW § 673-a (McKinney, Westlaw through L.2015, chapters 1 to 4) (requiring all employers of farmworkers to provide the workers with an agreement disclosing the conditions of their employment).

185. See *id.* § 693.

186. The importance of providing information to foreign national workers was acknowledged by Congress in 2008 when it directed the Secretaries of State, Homeland Security, and Labor to develop an information pamphlet informing employment- or education-based visas applicants of the rights and resources available to them under federal law. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 202, 122 Stat. 5044, 5055; U.S. DEP'T OF STATE, WILBERFORCE PAMPHLET, *supra* note 124; see also generally Hila Shimar, *A Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. 76 (2012) (arguing that human trafficking policy should shift from a human rights approach to a labor approach that targets the structure of labor markets prone to severely exploitative labor practices).

187. See ABA PROPOSAL, *supra* note 10, at 2-3; Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 1-2.

188. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 19(a) (2013).

189. See ABA PROPOSAL, *supra* note 10, at 8.

190. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 1, prefatory note (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012)

contact with traffickers and victims are trained in the law”<sup>191</sup> —a particularly salient point given the dearth of labor trafficking investigations at the state level.

At the time the Uniform Law was drafted, only a minority of states had enacted legislation creating a state-level council devoted to addressing human trafficking.<sup>192</sup> However, the promotion of interagency coordination on human trafficking dates back to the TVPA of 2000, in which Congress first established an interagency task force comprised of cabinet secretaries and other department heads to direct the federal government’s human trafficking mission.<sup>193</sup> Congress has also encouraged similar interagency coordination at the state level for years through the funding of state and local law enforcement task forces.<sup>194</sup> Federally-funded task forces have demonstrated the benefits of a coordinated interagency effort specifically focused on human trafficking: one study showed that law enforcement agencies that participated in human trafficking task forces tended to think that trafficking was a more serious problem in their community, were more likely to have adopted training, and were more likely to have specialized personnel dedicated to human trafficking cases.<sup>195</sup> Therefore, consistent with this federal model, the Uniform Act charges the human trafficking council with developing a comprehensive state victim services plan; collecting and evaluating state human trafficking data, and reporting annually on its findings; promoting public awareness; and coordinating state human trafficking training and victim services efforts.<sup>196</sup>

The establishment of a state human trafficking council builds state human trafficking infrastructure by cultivating partnerships, both among participating state and local agencies and with local NGOs.<sup>197</sup> Section 23 of the Uniform Act further supports this effort by providing for the funding, where appropriate, of grants and contracts to support NGOs that provide services to trafficking victims within the state.<sup>198</sup> As the ABA Center for Human Rights noted in its proposal for a uniform act, this funding of state- or NGO-run victim assistance programs is a primary way in which states can aid human trafficking victims.<sup>199</sup>

By increasing multilateral collaboration through a state human trafficking council, as provided in Section 19 and through grant and contract programs as provided in Section 23, the Uniform Act strengthens the ties between the state agencies

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191. *Id.* at 30.

192. *See id.* at 28 (finding that at least twelve states had enacted legislation establishing a task force or similar coordinating body).

193. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 105, 114 Stat. 1464, 1473-74.

194. *See* U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONG. AND ASSESSMENT OF U.S. GOV’T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 44 (2011) (noting that as of fiscal year 2011, there were a total of forty active task forces funded by the Department of Justice’s Bureau of Justice Assistance).

195. *See* FARRELL ET AL., *supra* note 14, at 8; ABA PROPOSAL, *supra* note 10, at 8.

196. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 19(c) (2013).

197. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 1, prefatory note (Nat’l Conference of Comm’rs on Unif. State Law, Redline Draft Oct. 8, 2012).

198. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 23 (2013).

199. *See* ABA PROPOSAL, *supra* note 10, at 6.

involved in human trafficking efforts and their NGO partners—not only in traditionally stronger areas of victim services like sex trafficking,<sup>200</sup> but also in less robust areas like services for labor trafficking victims and male victims.<sup>201</sup> The Uniform Act thus provides a foundation that will increase state and local authorities' capacity to combat all forms of human trafficking occurring in their community.

*The Uniform Act Provides Victim Services—At Least for Some*

Section 21 of the Uniform Act establishes a process and criteria for state and local authorities to follow in order to refer eligible human trafficking victims for services.<sup>202</sup> The text of Section 21, however, contains ambiguities that leave open to question whether labor trafficking victims are eligible for services under the Uniform Act.

Section 21(a) of the Uniform Act states generally that human trafficking victims are eligible for benefits and services through the state, regardless of their immigration status.<sup>203</sup> The provision is consistent with the federal TVPA, which provides that both foreign national and domestic victims of human trafficking are eligible for benefits and services under “any Federal or State program or activity funded [through the TVPA].”<sup>204</sup> However, Section 21(b) of the Uniform Act goes on to state that a minor victim engaged in commercial sexual activity is eligible for benefits and services through the state, while stating nothing regarding the eligibility of labor trafficking victims or adult sex trafficking victims.<sup>205</sup> As a result, even if Section 21(b) does not expressly preclude labor trafficking victims and adult victims of sex trafficking, Section 21(b)'s explicit identification of minor sex trafficking victims will likely lead some law enforcement officials to believe that these other victims of trafficking are not eligible for such benefits.<sup>206</sup>

Similarly, Section 21(c) of the Uniform Act requires that a state or local agency that encounters an individual who reasonably appears to be “a victim or a minor en-

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200. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 1, prefatory note (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012) (noting that coordinating victim services and increasing awareness of such services should be included in any uniform act).

201. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 401 (2014) (noting a persistent lack of services for victims of labor trafficking, particularly male victims).

202. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 21 (2013).

203. *Id.* § 21(a) (“A victim is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], including compensation under the [applicable state crime victims compensation fund], regardless of immigration status.”). The Uniform Act defines a victim as “an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this act been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.” *Id.* § 2(15). This definition covers both sex and labor trafficking. See *id.* § 2(6).

204. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 107(b)(1)(A), 114 Stat. 1464, 1475. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 clarified that U.S. citizen victims of trafficking were also eligible to receive the benefits provided by the TVPA. See Pub. L. No. 110-457, § 213, 122 Stat. 5044, 5060.

205. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 21(b) (2013).

206. See Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 1-2 (stating that a Uniform Act is needed to “decrease [the] frustration and confusion engendered by [the] varied and inconsistent policy and definitional constructs that currently exist”).

gaged in commercial sexual activity” inform the appropriate state victim services agency that the individual may be eligible for benefits and services.<sup>207</sup> Section 21(c)’s language can be interpreted at least three different ways: first, that individuals reasonably believed to be victims of any form of trafficking must be referred; second, that only adults and minors believed to be victims of sex trafficking must be referred; and third, that adults who are believed to be victims of any form of trafficking must be referred, while only minors believed to be victims of sex trafficking must be referred. Section 21(c)’s ambiguity therefore risks creating the same confusion among law enforcement and prosecutors that the Uniform Law Commission criticized as being detrimental to the successful investigation and prosecution of human trafficking cases.<sup>208</sup>

Section 21(c) also risks creating uncertainty among other state agencies that may encounter trafficking victims. In drafting the Uniform Act, the Uniform Law Commission recognized that “personnel in the state labor, fair employment, human rights, or agricultural departments may also come into contact with offenders and victims while overseeing state labor and employment laws. . . .”<sup>209</sup> Unfortunately, under Section 21(c) these officials, like law enforcement, could reasonably conclude that labor trafficking victims are not eligible to receive benefits under state law, leaving such victims without access to critical support and recovery services. As a consequence of Section 21’s ambiguous language, the Uniform Act does little to correct the disparate treatment of labor trafficking victims who are identified by state and local authorities.

### *The Uniform Act Mandates Immigration Relief—for Requesting Victims*

Because states lack immigration authority,<sup>210</sup> state and local law enforcement have historically referred labor and sex trafficking cases involving foreign nationals to federal authorities rather than pursue them under state human trafficking laws.<sup>211</sup> The Uniform Act aims to mitigate this aversion to cases involving foreign nationals by providing guidance to law enforcement on how to obtain immigration relief for identified trafficking victims.<sup>212</sup> However, Section 22(a) contains ambiguous lan-

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207. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 21(c) (2013).

208. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 28 (Nat’l Conference of Comm’rs on Unif. State Law, Redline Draft Oct. 8, 2012).

209. *Id.*

210. See *supra* Part II.E.

211. See OWENS ET AL., *supra* note 14, at 193; FARRELL ET AL., *supra* note 14, at 32, 189.

212. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 37 (Nat’l Conference of Comm’rs on Unif. State Law, Redline Draft Oct. 8, 2012). Unlike Continued Presence, law enforcement officers do not apply for T or U visas on behalf of an identified victim. However, a NGO or immigration attorney assisting the victim may request that law enforcement complete a form to accompany a victim’s T or U visa application, certifying that the individual is a victim of a severe form of human trafficking and that he or she has been, or is likely to be, helpful to the investigation and prosecution of the trafficker. See U.S. DEP’T OF HOMELAND SEC., INFORMATION FOR LAW ENFORCEMENT OFFICIALS: IMMIGRATION RELIEF FOR VICTIMS OF HUMAN TRAFFICKING AND OTHER CRIMES (2014), available at <http://www.dhs.gov/sites/default/files/publications/blue-campaign/bc-inf-irle-immigration-relief-for-victims.pdf>.

guage that can be interpreted to condition state and local law enforcement's submission of a Continued Presence application upon a request for such relief by the individual victim.<sup>213</sup> Requiring a trafficking victim to request Continued Presence is inconsistent with Congress's intent in including a short-term immigration relief option under the TVPA, which was to equip law enforcement with a means to ensure victims are able to remain in the country to participate in the investigation and prosecution of their traffickers.<sup>214</sup> Accordingly, it has been the official policy of federal law enforcement to request Continued Presence for any foreign national victim of trafficking encountered in the course of an investigation.<sup>215</sup>

The ambiguous language in Section 22(a) of the Uniform Act may therefore lead state and local law enforcement agencies to adopt a policy that is inconsistent with the intent of the TVPA and with federal policy regarding immigration relief for victims. After all, in leading state and local authorities to believe that it is the responsibility of the victim to request Continued Presence under Section 22(a), state and local law enforcement the Uniform Act places state and local law enforcement at risk of losing the primary witnesses in their human trafficking case; as victims are likely to be unaware that remaining in the country is even an option.<sup>216</sup> Therefore, in its current form, Section 22(a) contravenes the very purpose of its inclusion in the Uniform Act: to "help[] states prosecute trafficking and reduce[] the cost of helping victims by enabl[ing] them to state in the country and help police and prosecutors in their investigations and prosecutions of traffickers."<sup>217</sup>

#### *The Uniform Act Maximizes State Resources by Supporting Data Collection*

In calling for the formation of a state human trafficking council, Section 19 of the Uniform Act charges the agencies assigned to the council with collecting and evaluating data on human trafficking activity within the state.<sup>218</sup> The Uniform Act

213. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 22(a) (2013) ("On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa..., or for continued presence..., the [law-enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and give the individual the [appropriate certification form] provided by the United States Citizenship and Immigration Services on its website, and as a federal [law-enforcement officer] to request continued presence.")

214. See *id.* "[L]aw 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...*" Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 107(c)(3), 114 Stat. 1464, 1475 (emphasis added).

215. See Victims of Trafficking and Violence and Protection Act of 2000, Pub. L. No. 106-386, §107(c)(1)(3), 114 Stat. 1464, 1475; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, CONTINUED PRESENCE: TEMPORARY IMMIGRATION STATUS FOR VICTIMS OF HUMAN TRAFFICKING (2010), available at <http://www.ice.gov/doclib/human-trafficking/pdf/continued-presence.pdf>.

216. See generally U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 18 (2010).

217. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 37 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012) (stating also that "[w]ithout the victims to provide information and testify, it is virtually impossible to have effective criminal cases against traffickers.").

218. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 19(b)(2) (2013).

further requires that the human trafficking council submit an annual report to the governor and state legislature detailing the findings from its data collection efforts.<sup>219</sup> In doing so, the Uniform Law Commission directly confronted the chronic challenge of collecting reliable human trafficking data that has plagued not only state government officials, but also those in the federal government and in the international community.<sup>220</sup>

The Uniform Law Commission's initial findings memorandum emphasized the importance of institutionalized data collection and reporting in guiding states as they form human trafficking policy and set law enforcement priorities.<sup>221</sup> The Uniform Law Commission also stressed that data collection, evaluation, and reporting are helpful in shaping future prevention and enforcement efforts because they provide a better understanding of the victim population, including victims' citizenship, age, sex, ethnic origin, race, and immigration status."<sup>222</sup> Armed with a better understanding of the human trafficking demographic within their community, state and local officials will be better able to focus their limited resources on the most vulnerable populations and industries.<sup>223</sup>

#### *The Uniform Act Promotes Training and Public Awareness*

The lack of adequate training for law enforcement has long been recognized as a primary reason for states' failure to investigate human trafficking cases, particularly cases involving labor trafficking.<sup>224</sup> NGOs—and indeed state and local law enforcement agencies themselves—have raised concerns that officers do not have the training necessary to effectively identify and investigate labor trafficking cases.<sup>225</sup> As a result, when local law enforcement officers do come across labor trafficking cases, they routinely refer them to federal authorities rather than pursue

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219. *Id.*

220. See, e.g., U.N. OFFICE ON DRUGS & CRIME, *supra* note 4, at 13 (finding that an assessment of data provided by governments and NGOs in 155 countries, many either collected no data on human trafficking or did not collect data in a way that “facilitates insight into the national situation, let alone meet[s] standards of international comparability”).

221. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 4 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012).

222. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 49 (Nat'l Conference of Comm'rs on Unif. State Law, Tentative Draft, Feb. 5, 2013).

223. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 360 (2012).

224. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 339 (2010) (recommending that the United States “augment training for state and local law enforcement... to increase anti-trafficking activities and better identify and protect trafficking victims”); U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 398 (2014) (recommending that the United States “strengthen interagency coordination on... training” and “enhance the training of law enforcement and prosecutors to increase focus on labor trafficking”).

225. See U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 401 (2014) (noting that some NGOs also expressed concern that government officials misunderstood the complex legal aspects of human trafficking cases, including coercion and consent, and did not consistently take a victim-centered approach); Farrell & Pfeffer, *supra* note 80, at 57 (discussing how law state and local law enforcement interviewed in the study struggled to distinguish between cases of unfair working conditions and cases of labor trafficking); see also Loftus, *supra* note 100, at 180-81.

them under state law.<sup>226</sup>

The Uniform Law Commission's initial findings memorandum noted that in addition to providing human trafficking training to law enforcement, such training should be provided to prosecutors, health care providers, social services officials, emergency housing officials, and other state authorities who may come into contact with victims of trafficking.<sup>227</sup> The Uniform Law Commission also noted in its drafts of the Uniform Act that at least sixteen states had enacted statutes addressing human trafficking training for state and local officials.<sup>228</sup>

One early draft of the Uniform Act included a separate section on training that directed state and local agencies to conduct annual training for all state and local officers and employees who might come in contact with trafficking victims or perpetrators.<sup>229</sup> The section mandated that the training include guidance on identifying and protecting victims, accessing victim services, and other information on related state protocols.<sup>230</sup> The final Uniform Act, however, did away with the separate training section, directing instead that the state human trafficking council coordinate training on human trafficking prevention and victim services for state and local employees likely to come into contact with victims or perpetrators, while leaving the details of that training to the discretion of the council.<sup>231</sup>

Along with requiring the state human trafficking council to oversee the training of state officials involved in combatting human trafficking, the Uniform Act also mandates that the council launch a state-run initiative to promote public awareness about human trafficking, victim services, and trafficking prevention efforts.<sup>232</sup> Section 19(3) of the Uniform Act specifically charges the council with creating human trafficking awareness signs that provide helpful information to victims, including the number of a human trafficking hotline.<sup>233</sup> Section 20 requires that these public awareness signs be displayed at businesses like strip clubs, job recruitment centers, hospitals, as well as at transportation stations and rest stops, to increase the likelihood that a victim will encounter them.<sup>234</sup> This public awareness effort models similar efforts by the federal government, such as the U.S. Department of Homeland Security's Blue Campaign, which provides posters, public service announcements, and other materials to the general public.<sup>235</sup> However, unlike federal law, the Uni-

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226. See OWENS ET AL., *supra* note 14, at 193 (finding that despite all states having legal structures to charge labor trafficking, few labor trafficking cases were identified by state officials and those that were identified were primarily referred to federal prosecutors); FARRELL ET AL., *supra* note 14, at 32, 189.

227. See Unif. Law Comm'n Study Comm. Memorandum, *supra* note 15, at 5.

228. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING 31 (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012) (California, Connecticut, Colorado, Florida, Guam, Idaho, Indiana, Iowa, Maryland, Minnesota, Missouri, New Mexico, New York, Tennessee, Texas, and Washington).

229. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 23 (Nat'l Conference of Comm'rs on Unif. State Law, Tentative Draft Mar. 30, 2012).

230. See *id.*

231. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 19(5) (2013).

232. See *id.* § 19(3).

233. *Id.* §§ 19(3), 20(b).

234. See *id.* § 20(b).

235. See *Blue Campaign*, U.S. DEP'T OF HOMELAND SEC., <http://www.dhs.gov/blue-campaign> (last visit-

form Act authorizes the state labor department to fine any location that is required to post the signs and knowingly fails to comply.<sup>236</sup>

In its initial findings memorandum, the Uniform Law Commission emphasized the necessity of a “concerted effort” by the states to publicize materials in places likely to be frequented by trafficking victims in order to inform victims of the rights and resources available to them under state law.<sup>237</sup> The initial findings memorandum further noted that states would need to engage in “active and continual efforts” involving widespread public education and media outreach.<sup>238</sup> These findings by the Uniform Law Commission directly address the media’s propensity to cover only cases involving sex trafficking, as well as the resulting misperception by law enforcement and the general public that labor trafficking is not a problem in their communities.<sup>239</sup> By shifting the public perception toward a more complete understanding of human trafficking, the Uniform Act will help to increase the identification and reporting of labor trafficking cases and reshape law enforcement’s human trafficking priorities.<sup>240</sup>

#### IV. PROPOSED REVISIONS TO THE UNIFORM ACT AND RECOMMENDATIONS TO THE FEDERAL GOVERNMENT

##### *Explicitly Provide that All Human Trafficking Victims are Eligible for State Services*

The Uniform Law Commission should strike Section 21(b) of the Uniform Act and amend Section 21(a) to unambiguously state that all identified victims of human trafficking are eligible for benefits and services.

Section 21(b) currently singles out minors who are exploited in the commercial sex industry as being eligible for state benefits and services, thereby leaving open to question the eligibility of labor trafficking victims and adult sex trafficking victims

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ed Apr. 14, 2015).

236. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 20(c) (2013) (“The [state labor department] shall impose a [fine] of \$[300] per violation...”).

237. Unif. Law Comm’n Study Comm. Memorandum, *supra* note 15, at 5.

238. *Id.*

239. See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 30 (2014) (“When media report on only one type of human trafficking, the public is left with only part of the story.”); Martina Vandenberg, Human Trafficking: Ending the Myths, Confronting the Realities, Address at Walter H. Capps Center for the Study of Ethics, Religion, and Public Life (Jan. 29, 2014), available at <https://www.youtube.com/watch?v=X5EIPDP8b5c>.

240. This conclusion assumes that the states that adopt the Uniform Act will create public awareness materials that address both labor and sex trafficking. If a state creates awareness materials that address only sex trafficking, public misperceptions about labor trafficking will persist. The federal government’s human trafficking awareness efforts provide a useful model by depicting labor and sex trafficking victims, as well as both foreign national and domestic victims. See, e.g., *Blue Campaign Resource Catalog*, U.S. DEPT. OF HOMELAND SEC., <http://www.dhs.gov/blue-campaign/resource-catalog> (last visited Apr. 14, 2015); *Anti-Trafficking in Persons Program*, U.S. DEP’T OF HEALTH & HUMAN SERV., <http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking> (last visited Apr. 14, 2014).



for these same benefits.<sup>241</sup> Section 21(a) already provides that “[a] victim is eligible for a benefit or service available through the state. . . , including compensation under the [applicable victims compensation fund], regardless of immigration status.”<sup>242</sup> Removing Section 21(b) would therefore alleviate the current ambiguity over the comparative eligibility of labor and sex trafficking victims for state benefits and services, and would align the Uniform Act’s language more closely with its corresponding federal TVPA provision.<sup>243</sup> Furthermore, to resolve any remaining uncertainty regarding a victim’s eligibility for state benefits and services, the Uniform Law Commission should amend Section 21(a) to state that a trafficking victim is eligible for benefits and services “regardless of immigration status, age, or the type of exploitation suffered.”

*Mandate that All Human Trafficking Victims be Referred for Services*

The Uniform Law Commission should amend Section 21(c) of the Uniform Act to unambiguously mandate that state authorities refer all human trafficking victims they encounter to the appropriate services authorities. Section 21(c)’s current language can be interpreted at least three ways: first, that individuals reasonably believed to be victims of any form of trafficking must be referred; second, that only adults and minors believed to be victims of sex trafficking must be referred; and third, that adults who are believed to be victims of any form of trafficking must be referred, while only minors believed to be victims of sex trafficking must be referred. To alleviate this ambiguity, the Uniform Law Commission should amend Section 21(c) to clearly provide that all identified victims of human trafficking must be referred to the appropriate services authorities. In place of Section 21(c)’s current language, the Uniform Law Commission should employ the language it proposed in its February 5, 2013 draft of the Uniform Act: “As soon as practicable after a first encounter with an individual who reasonably appears to [the appropriate state or local agency] to be a victim, the [agency] shall notify [the appropriate authorities] that the individual may be eligible for a benefit or service under this [act].”<sup>244</sup>

As the Uniform Act already broadly defines a “victim” as “an individual who is subjected to human trafficking”<sup>245</sup> and “human trafficking” as including both sex and labor,<sup>246</sup> the language from the February 5, 2013 draft would require state and

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241. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 21(b) (2013).

242. *Id.* § 21(a).

243. See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 107(b)(1)(A), 114 Stat. 1464, 1475 (“[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 funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.”). In 2008 Congress expanded this provision to expressly include U.S. citizen victims of human trafficking. See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 213, 122 Stat. 5044, 5060.

244. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 22(b) (Nat’l Conference of Comm’rs on Unif. State Law, Tentative Draft Feb. 5, 2013).

245. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 2(15) (2013).

246. *Id.* § 2(6).

local officials to report to the appropriate authorities any victim of human trafficking covered under the Uniform Act rather than only a “victim or a minor engaged in commercial sexual activity.”<sup>247</sup> By making clear that all trafficking victims must be referred for services, the Uniform Act would better encourage states to take action on suspected labor trafficking cases.

*Require State Businesses to Inform Foreign National Workers of their Rights*

To encourage states to proactively combat labor trafficking, the Uniform Law Commission should incorporate into the Uniform Act a provision, based on Washington and New York’s state laws, requiring businesses and labor recruitment agencies operating within the state to provide each foreign national worker with a disclosure statement explaining the rights and services available to workers under state law.<sup>248</sup>

The Uniform Law Commission should amend the Uniform Act by adding a provision to Section 19 requiring that the state human trafficking counsel develop, and require employers to distribute, a disclosure statement to all foreign national workers employed within the state. Sections 19 and 20 of the Uniform Act currently require a state to create and distribute human trafficking public awareness signs with the expectation that victims will see the signs and contact the posted hotline number for assistance.<sup>249</sup> Although posting such signs in strip clubs, labor recruitment centers, hospitals, and public rest areas<sup>250</sup> increases the probability that human trafficking victims will encounter the signs and seek help, a mandatory disclosure initiative would serve to prevent human trafficking from occurring in the first place by arming foreign workers with critical information about their rights under state law and by putting businesses on notice regarding their statutory obligations.

Like Washington and New York’s state law provisions, the Uniform Law Commission should require that the disclosure statement be provided in a language understood by the foreign national worker; explain the worker’s rights under state labor and employment laws; describe the terms of employment including wages, work hours, and job conditions; list all fees or deductions the worker will be charged; state that the worker has the right to control all of his or her travel and labor documents and that the employer may not require the worker to surrender those documents; and provide a human trafficking hotline number.<sup>251</sup> The Uniform Act should also require that businesses keep a signed copy of each disclosure statement in their business records, as well as file a copy of the statement with the state de-

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247. *Id.* § 21(c).

248. *See* WASH. REV. CODE ANN. § 19.320.020 (West, Westlaw current with Chapters 1, 2, and 3 from the 2015 Regular Session); N.Y. GEN. BUS. LAW § 195 (McKinney, Westlaw through L.2015, chapters 1 to 4).

249. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING §§ 19(3), 20(a)-(b) (2013).

250. *Id.* §§ 20(a)-(b).

251. *See* WASH. REV. CODE ANN. § 19.320.020 (West, Westlaw current with Chapters 1, 2, and 3 from the 2015 Regular Session); N.Y. GEN. BUS. LAW § 195 (McKinney, Westlaw through L.2015, chapters 1 to 4).

partment of labor.<sup>252</sup>

Finally, the Uniform Law Commission should amend the Uniform Act to give teeth to this new disclosure statement provision. Specifically, the Uniform Law Commission should amend Section 19 to include a provision granting state departments of labor the authority to pursue punitive measures against businesses that knowingly fail to comply with the disclosure requirement<sup>253</sup> as well as a civil remedy under which workers may bring suit against an employer or labor recruiter that knowingly fails to comply with the disclosure requirement.<sup>254</sup>

As the majority of labor trafficking victims are foreign nationals,<sup>255</sup> providing foreign workers with a disclosure statement when they first interact with an employer or labor recruiter would strengthen the Uniform Act's labor trafficking focus. Furthermore, incorporating such provisions into the Uniform Act would ensure that appropriate state agencies are aware of the potentially-vulnerable foreign worker populations in their state, and allow those agencies to more effectively dedicate resources to labor trafficking prevention and enforcement efforts.

*Require Law Enforcement to Obtain Immigration Relief for All Identified Victims of Human Trafficking*

The Uniform Law Commission should amend Section 22 of the Uniform Act to explicitly require that state and local law enforcement officers request Continued Presence for all foreign national human trafficking victims identified during the course of the investigation—regardless of whether the victims requests such relief.<sup>256</sup>

Section 22(a) of the Uniform Act seeks to encourage states to pursue human trafficking cases involving foreign nationals.<sup>257</sup> However, the current language of Section 22(a) can be interpreted to require that a foreign national victim request Continued Presence in order for state and local law enforcement to submit an application to the appropriate federal authorities. Section 22(a) therefore risks creating

252. See N.Y. LAB. LAW § 692 (McKinney, Westlaw through L.2014, chapters 1 to 552); see also N.Y. GEN. BUS. LAW § 185-a(6) (McKinney, Westlaw through L.2014, chapters 1 to 552).

253. See N.Y. LAB. LAW § 693 (McKinney, Westlaw through L.2014, chapters 1 to 552).

254. See WASH. REV. CODE ANN. § 19.320.040 (West, Westlaw current with Chapters 1, 2, and 3 from the 2015 Regular Session) (establishing that a foreign worker may recover between \$200 and 500 dollars, or actual damages, whichever is greater, as well as other equitable relief at the court's discretion). The statute also provides that a foreign worker who prevails in his or her claim must be awarded court costs and attorneys' fees. See *id.*

255. SISKIN & WYLER, *supra* note 6, at 15.

256. Some foreign national victims wish to return home immediately, while others want to stay in the country for fear of the stigma attached to their trafficking situation or the perceived possibility of a better life than would otherwise be available to them if they returned home. However, even if a victim wishes to leave the United States, law enforcement should apply for Continued Presence to ensure the victim has legal status to remain in the country until investigators are able to obtain necessary information from the victim and arrange for his or her safe passage home. See U.S. AGENCY FOR INT'L DEV., THE REHABILITATION OF VICTIMS OF TRAFFICKING IN GROUP RESIDENTIAL FACILITIES IN FOREIGN COUNTRIES: A STUDY CONDUCTED PURSUANT TO THE TRAFFICKING VICTIM PROTECTION REAUTHORIZATION ACT 20 (2005), available at [http://pdf.usaid.gov/pdf\\_docs/PNADK471.pdf](http://pdf.usaid.gov/pdf_docs/PNADK471.pdf).

257. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 22(a) (2013).

an application policy at the state level that is inconsistent with Congress's intent in providing Continued Presence as a tool for law enforcement to ensure that key witnesses are able to remain in the United States for the investigation and prosecution of a trafficker.<sup>258</sup> Section 22(a) is also inconsistent with the Uniform Law Commission's own stated purpose in including Section 22(a): to help states pursue human trafficking cases involving foreign victims by ensuring that the key witnesses, without whom "it is virtually impossible to have effective criminal prosecutions," are able to remain in the country.<sup>259</sup>

To alleviate this ambiguity, the Uniform Law Commission should amend Section 22 by separating Section 22(a) into two separate provisions for requesting Continued Presence and complying with requests to complete a T visa or U visa certification form:

(a) As soon as practicable after identifying an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking, the [law-enforcement officer] shall ask a federal [law-enforcement officer] to request continued presence.

(b) On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa. . . , the [law-enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its internet website.

By amending Section 22 to provide that state and local authorities must submit a request for Continued Presence for all foreign victims of human trafficking without requiring a request from the victim, the Uniform Law Commission will bring the Uniform Act into line with Congressional intent and with its own intent in drafting the provision. Moreover, by encouraging state and local authorities to request Continued Presence for foreign victims as soon as practicable after identifying them, the Uniform Act would also help authorities immediately begin the process of stabilizing and building trust with the individuals who will likely become the key to the success of their trafficking investigation.<sup>260</sup>

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258. *See id.* "[L]aw 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..." Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 107(c)(3), 114 Stat. 1464, 1475 (emphasis added).

259. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING § 26 cmt. (Nat'l Conference of Comm'rs on Unif. State Law, Redline Draft Oct. 8, 2012).

260. *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 102(b)(20), 114 Stat. 1464, 1466) (traffickers frequently use the fear of arrest and deportation to control victims and prevent them from seeking help).

*Support State Labor Trafficking Cases by Improving Federal Processes and Resources*

Although the Uniform Law Commission and individual states can do more to encourage state and local authorities to pursue labor trafficking cases, there are also several actions the federal government should take to support and incentivize the investigation and prosecution of labor trafficking under state laws.

First, the federal government should review the current processing time for state and local law enforcement agencies' Continued Presence applications and dedicate appropriate resources to assure that the application process results in timely immigration relief for victims.<sup>261</sup> Without timely approval of their Continued Presence applications, state and local authorities will be at an impasse in their investigations because the key witnesses in their cases will have no legal status to remain in the United States.<sup>262</sup> By addressing the enduring problems in the Continued Presence application process, the federal government would remove one of the most significant impediments to state officers' investigation of labor trafficking cases under state law.<sup>263</sup> To support this effort, Congress should appropriate special funding in the next reauthorization of the TVPA to provide sustained support for the Continued Presence application process.

Second, Congress should provide funding to state and local law enforcement agencies that prioritize labor trafficking investigations by establishing a grant program in its next reauthorization of the TVPA, or a similar funding provision.<sup>264</sup> Under the grant program, state and local law enforcement would submit proposals detailing their efforts to proactively investigate and prosecute labor trafficking cases under their state laws, and a designated government agency would select qualified applicants to participate in the program.<sup>265</sup> As a result, states would for the first time be encouraged not to refer potential labor trafficking cases to federal law enforcement, but to take an active role in combatting labor trafficking in their own communities using their own laws.

CONCLUSION

The obstacles that face state and local authorities as they attempt to investigate labor trafficking cases under state law will not disappear any time in the near future. Deep-rooted misperceptions about labor trafficking and labor trafficking victims will likewise be slow to change. Nevertheless, by creating greater legal parity for sex and labor trafficking victims, the Uniform Act presents a distinct opportunity to better equip states to assist victims of labor trafficking and to begin to change the

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261. See *supra* note 135 and accompanying text.

262. See, e.g., 8 U.S.C. § 1101(a)(15)(H)(ii)(A), (B) (2012).

263. See OWENS ET AL., *supra* note 14, at 178.

264. See, e.g., Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 1242, 127 Stat. 54, 153 (authorizing grant funding to support state and local law enforcement and NGO efforts to combat sex trafficking).

265. See, e.g., *id.* § 1241-42.

way state and local law enforcement authorities view their responsibility toward these victims. States are essential players in the national fight against human trafficking, and they must be armed with strong legislation and adequate resources if they are to effectively combat this challenge at the local level. Human trafficking legislation is still a relatively new legal concept,<sup>266</sup> and it will take time for state and local law authorities to become comfortable with the new tools in their arsenal. Yet, with proper encouragement and support, these officials have the potential to be a significant force in the eradication of human trafficking within the United States.

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266. See U.N. OFFICE ON DRUGS & CRIME, *supra* note 4, at 6 (finding that as of 2007, forty percent of the world had yet to achieve a single human trafficking conviction).