
Comment

New Illinois Legislation Combats Modern-Day Slavery: A Comparative Analysis of Illinois Anti-Trafficking Law with Its Federal and State Counterparts

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“[T]he only thing traffickers fear . . . [is] hard jail time.”¹

I. INTRODUCTION

No matter how it is defined,² human trafficking is slavery.³ Even though the United Nations⁴ and all but two countries⁵ have outlawed

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1. Press Release, International Justice Mission, Prosecuting Perpetrators is ‘Silver Bullet’ in Stopping Human Trafficking: International Justice Mission Witnesses Growing Impact of TIP Report (June 6, 2006), available at http://216.128.18.195/IJMrelease/060606_IJMTIPReportRelease.pdf [hereinafter IJM].

2. 18 U.S.C.A. § 1590 (2006) (West Supp. 2006) (defining “trafficking with respect to peonage, slavery, involuntary servitude, or forced labor” as the “recruit[ment], harbor[ing], transport[ing], provid[ing], or obtain[ing] by any means, any person for forced labor or services . . .”). The United Nations’ definition further specifies different methods of trafficking. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, at 2, U.N. Doc. A/55/25 Nov. 15, 2000, available at <http://www.ohchr.org/english/law/protocoltraffic.htm> (first comprehensive anti-human trafficking protocol).

3. 22 U.S.C.A. § 7101 (2006) (West 2004 & Supp. 2006) (“[t]rafficking in persons is a modern form of slavery, and is the largest manifestation of slavery today.”). See also VICTOR MALAREK, *THE NATASHAS: INSIDE THE NEW GLOBAL SEX TRADE* 37 (2003) (reporting trafficked women sold at “sex slave auctions” in Bosnian night clubs).

4. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), available at <http://www.un.org/Overview/rights.html>.

5. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2006), available at <http://www.state.gov/documents/organization/66086.pdf> [hereinafter TIP REPORT 2006] (citing Burma and North Korea). Although the year 2007 marks the 200-year anniversary of the

slavery, more people are held as slaves today than at any other time in human history.⁶ Although the U.S. Supreme Court properly stated that slavery as a legal national phenomenon ended in the United States after the Civil War,⁷ today slavery flourishes as an illegal global epidemic.⁸

Human trafficking is second in size only to drug trafficking as a worldwide criminal enterprise.⁹ Every year traffickers move approximately 600,000 to 800,000 men, women, and children across international borders to be enslaved and exploited.¹⁰ Millions of victims are trafficked within national borders¹¹ including thousands within the United States.¹² Although willing private actors¹³ and

abolition of the transatlantic slave-trade, much remains to be done to abolish slavery in contemporary times. WilberforceCentral.org, <http://www.wilberforcecentral.org/wfc/>.

6. Stephanie Richard, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 U. MICH. J.L. REFORM 447, 449 (2005) [hereinafter Richard]. See generally Andrew Cockburn, *21st-Century Slaves*, NAT'L GEOGRAPHIC, Sept. 20, 2003, available at <http://magma.nationalgeographic.com/ngm/0309/feature1/> ("There are more slaves today than were seized from Africa in four centuries of the trans-Atlantic slave trade."); KEVIN BALES, *DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY* 9 (1999) (estimating 27 million slaves worldwide).

7. *Butchers' Benevolent Assn. of New Orleans v. Crescent City Livestock Landing and Slaughter-House Co.*, 83 U.S. 36 (1872). Human trafficking was once constitutionally protected. *Dred Scott v. Sandford*, 60 U.S. 393, 451 (1856) ("The right to traffic in" slaves is "distinctly and expressly affirmed in the Constitution."). The Thirteenth Amendment, however, abolished slavery. U.S. CONST. amend. XIII. Although *Slaughter-House* narrowly defined the amendment's purpose to abolishing African slavery, it expanded its reach by saying "it forbids any other kind of slavery, now or hereafter." *Slaughter-House Cases*, 83 U.S. at 72.

8. Human trafficking "has reached epidemic proportions" over the last decade. Cynthia Shepard Pery, *The Menace of Human Trafficking in Africa and the U.S. Congressional Response Through the Office of the United States Executive Director of the African Development Bank*, 2 LOY. U. CHI. INT'L L. REV. 179, 181 (2005); see also IJM, *supra* note 1 (calling "rape for profit" a global epidemic).

9. Salvador A. Cicero-Dominguez, *Assessing the US-Mexico Fight Against Human Trafficking and Smuggling: Unintended Results of the U.S. Immigration Policy*, 4 NW. U.J. INT'L HUM. RTS. 303, 306 (2005), available at <http://www.law.northwestern.edu/journals/jihr/v4/n2/2/Cicero-Dominguez.pdf> (noting that trafficking in humans is tied with trafficking in illegal arms as second in size).

10. TIP REPORT 2006, *supra* note 5, at 6. More than half of international trafficking victims are children, approximately 80% are female and the majority are trafficked for commercial sexual exploitation. *Id.*

11. Pery, *supra* note 8, at 187 ("7 million people are trafficked within a country's borders" worldwide).

12. Mia Spangenberg, *Prostituted Youth in New York City: An Overview*, ECPAT-USA, 2001, at 1, available at <http://www.ecpatusa.org/pdf/cseypnc.pdf> (reporting "as many as 400,000 prostituted children in the U.S."). See also Richard J. Estes & Neil Alan Weiner, Univ. of Pa., *The Commercial Sexual Exploitation of Children In the U.S., Canada and Mexico: Executive Summary*, 2000, at 11-13, http://www.sp2.upenn.edu/~restes/CSEC_Files/Exec_Sum_020220.pdf (estimating 293,000 American children are at high risk for commercial sexual exploitation each year).

13. KATHRYN FARR, *SEX TRAFFICKING: THE GLOBAL MARKET IN WOMEN AND CHILDREN* 56-65 (2005) (reporting that employment and travel agents and lawyers may allow their

corrupt authorities¹⁴ facilitate trafficking, the main culprits are organized crime syndicates, mafias, gangs, unaffiliated individuals, and pimps.¹⁵ Whether kidnapped, deceived, or sold,¹⁶ trafficking victims are forced to work long hours in the commercial sex industry, agriculture, sweatshops, domestic servitude, restaurants, and hotels, among other types of labor.¹⁷

Every year traffickers bring at least 14,500 to 17,500 people into the United States,¹⁸ predominantly from Eastern Europe, Asia, and Latin America.¹⁹ Yet these numbers fail to convey the reality and suffering

businesses to be used for trafficking objectives, and taxi drivers and bankers “knowingly facilitate trafficking by providing a variety of services for a fee”).

14. See, e.g., *id.* at 56–84 (giving detailed examples of official corruption and complicit authorities including police, border patrol, immigration agents, and embassy staff); MALAREK, *supra* note 3, at 119–55 (discussing government complicity and bribes by brothel owners to police).

15. FARR, *supra* note 13, 93–119; MALAREK, *supra* note 3, at 45–72.

16. Susan Tiefenbrun, *The Saga of Susannah, a U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 116–18 (2002) [hereinafter *Saga of Susannah*] (discussing how poor families “in cultures that devalue women” sell their daughters); Harvard Law Review Association, *Remedying the Injustices of Human Trafficking Through Tort Law*, 119 HARV. L. REV. 2574, 2576 (2006) [hereinafter *Remedying the Injustices*] (reporting traffickers kidnap women from their homes or falsely promise individuals jobs as nannies and restaurant or factory workers). U.S. dance and modeling agencies also serve as fronts for larger trafficking operations. James O. Finckenaue & Jennifer Schrock, Nat’l Inst. of Justice Int’l, *Human Trafficking: A Growing Criminal Market in the U.S.*, available at <http://www.ojp.usdoj.gov/nij/international/ht.html>.

17. Caliber Assoc., Inc., Needs Assessment for Service Providers and Trafficking Victims, 2003, 16, http://www.calib.com/home/practice_areas/cfcs/pdf/traffick.pdf. Victims are also trafficked for illegal adoptions, camel jockeying, forced begging and child soldiers. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 16, 21, 38, 51–52, 63, 122, 137, 186 and 216 (2005), available at <http://www.state.gov/documents/organization/47255.pdf> [hereinafter TIP REPORT 2005] (discussing numerous forms of human trafficking).

18. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), available at <http://www.state.gov/documents/organization/34158.pdf> [hereinafter TIP REPORT 2004]. Although the U.S. government has not studied how many of these are victims of sex trafficking, Kevin Bales says the number is at least 10,000. Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG., Jan. 25, 2004, at 32. See also Center for Women Policy Studies, *National Institute on State Policy on Trafficking of Women and Girls*, <http://www.centerwomenpolicy.org/programs/trafficking/default.asp> [hereinafter Center for Women] (calling the United States “a major destination country for traffickers”); HARVARD INSTITUTE OF POLITICS, THE HIDDEN INDUSTRY: FIGHTING SEX TRAFFICKING IN AMERICA 4, www.iop.harvard.edu/pdfs/sex_trafficking_report_032006.pdf [hereinafter HARVARD] (“The [U.S.] is one of the world’s largest markets for sex trafficking.”—Tony Blair, Prime Minister of the United Kingdom”).

19. 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 3 (2000), available at <https://www.cia.gov/csi/monograph/women/trafficking.pdf> [hereinafter O’NEILL]. See also Free the Slaves, et al., *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47, 48 (2005), [hereinafter *Hidden Slaves*] (reporting largest number of forced labor victims in the United States are Chinese, Mexican and Vietnamese).

human trafficking victims endure.²⁰ While modern-day slavery differs from the transatlantic slave trade,²¹ the plight of many contemporary trafficking victims is akin to the Supreme Court's description of life for many nineteenth century slaves.²²

In 2000, in recognition of the trafficking epidemic,²³ highlighted by some eye-opening cases²⁴ and under pressure from human rights advocates and non-profit organizations,²⁵ Congress enacted the Victims of Trafficking and Violence Protection Act (TVPA).²⁶ As an anti-slavery bill,²⁷ the TVPA criminalized human trafficking as a federal

20. U.S. DEP'T OF JUSTICE CIVIL RIGHTS DIV., REPORT ON ACTIVITIES TO COMBAT HUMAN TRAFFICKING: FISCAL YEARS 2001–2005, at 4, Feb. 24, 2006, available at http://www.usdoj.gov/crt/crim/trafficking_report_2006.pdf [hereinafter COMBAT HUMAN TRAFFICKING] (“I had to live like an animal. [The karaoke bar] was a prison . . . filled with nothing but curses, threats, and beatings”) (statement of “Ms. Kim,” a thirty-one year old sex trafficking victim in *Kwon v. United States*, No. 98-CR-00044, 2003 WL 22997233 (Sept. 11, 2003)); HARVARD, *supra* note 18, at 2 (Mary, a sex trafficking victim recounts: “I was bought and sold between men in the U.S. . . . It is often easier to kill yourself than to know you will be tortured all night when you get home and are not able to sleep before you must go back”).

21. BALES, *supra* note 6, at 15 (comparing key characteristics of “old slavery,” including assertion of legal ownership, high purchase cost, low profits, shortage of potential slaves, long-term relationship, slave maintenance and importance of ethnic differences, with “new slavery” characteristics of avoiding legal ownership, very low purchase cost, very high profits, surplus of potential slaves, short-term relationship, disposable slaves and unimportance of ethnic differences).

22.

These young children were literally stranded in large, hostile cities in a foreign country. They were given no education or other assistance toward self-sufficiency. . . . They had no choice but to work for their masters or risk physical harm. The [traffickers] took advantage of [their victim's] special vulnerabilities . . . placing them in situations where they were physically unable to leave.

United States v. Kozminski, 487 U.S. 931, 947–48 (1988).

23. See Perry *supra* note 8 (noting epidemic size). Kevin Bales, president of Free the Slaves, America's largest anti-slavery organization, estimates there are between 30,000 to 50,000 sex slaves in the United States at any given time. Landesman, *supra* note 18, at 32.

24. See Ivy C. Lee & Mie Lewis, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT'L L. & POL'Y 169, 170 (2003) (describing first major bust of a U.S. trafficking ring in El Monte, California, where a Chinese-Thai family enslaved seventy-two Thai workers and forced them to sew garments for almost seven years in a sweatshop-compound enclosed by barbed wire fences); *Hidden Slaves*, *supra* note 19, at 57 (the El Monte case energized attempts by advocates and government officials to combat such slavery).

25. ALLEN D. HERTZKE, *FREEING GOD'S CHILDREN: THE UNLIKELY ALLIANCE FOR GLOBAL HUMAN RIGHTS* 316–35 (2004) (discussing in detail how faith based and feminist groups collaborated to play key roles in the TVPA's passage).

26. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), (codified as amended at 22 U.S.C.A. § 7101 (West 2004 & Supp 2006) (signed into law by President Bill Clinton on October 28, 2000)).

27. Susan W. Tiefenbrun, *Sex Slavery in the United States and the Law Enacted to Stop it Here and Abroad*, 11 WM. & MARY J. WOMEN & L. 317, 323 (2005) (describing TVPA's purpose as the abolition of human trafficking worldwide).

felony.²⁸ The TVPA envisioned the main components to fighting modern-day slavery to be prosecuting traffickers, protecting and supporting victims, and preventing trafficking.²⁹ The TVPA marked the first time Congress enacted one particular law that comprehensively criminalized human trafficking.³⁰

While the TVPA has greatly improved federal law enforcement's response to human trafficking through increased investigations and prosecutions,³¹ the scope of the problem exceeds the federal response.³² Recognizing the need for state anti-trafficking laws to truly combat this crime, the U.S. Department of Justice (DOJ) drafted the Model State Anti-Trafficking Criminal Statute (Model Law) in 2004.³³ The Model Law is not enacted legislation but rather a practical tool for state legislatures to use when enacting actual anti-trafficking statutes.³⁴ In 2004, the U.S. Senate fully endorsed the Model Law and encouraged states to follow it.³⁵ Since 2003, twenty-two states,³⁶ including Illinois,³⁷ have passed state anti-trafficking laws.³⁸

28. 18 U.S.C.A. § 1589–1592 (2006) (West Supp. 2006).

29. TIP REPORT 2006, *supra* note 5, at 5. See also *Saga of Susannah*, *supra* note 16, at 114–15 (noting without this three-part emphasis trafficking would continue to grow globally).

30. Tiefenbrun, *supra* note 27, at 329–30 (discussing inadequacy of past slavery and peonage laws and the “cumbersome necessity of having to sue perpetrators of sex trafficking under several different statutes.”).

31. *Id.* at 324–25 (noting the TVPA has “resulted in increased arrests, prosecutions and convictions for trafficking within the United States as well as in some countries abroad.”).

32. Will Bunch and Charlotte Harvey, *Against Their Will*, BROWN ALUMNI MAGAZINE, Jan/Feb 2006, (quoting Derek Ellerman, co-founder of the D.C.-based anti-slavery group the Polaris Project, addressing the House Subcommittee on Human Rights and Wellness, stating that traffickers and the majority of victims have not noticed the U.S. response to trafficking half a decade after the TVPA).

33. U.S. DEP'T OF JUSTICE, MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE (2004), available at http://www.usdoj.gov/crt/crim/model_state_law.pdf [hereinafter MODEL LAW].

34. *Id.* at 6.

35. S. Res. 414, 108th Cong. 2d Sess. (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”).

36. H.B. 148, 24th Gen. Assemb. (Alaska. 2005); ARIZ. REV. STAT. ANN. §§ 13-1306- 13-1310 (West 2006); A.C.A. § 5-11-108 (Ark. 2006); CAL. PEN. CODE. §§ 236-37 (Cal. 2005); S.B. 207, 65th Gen. Assemb. 2d Sess. (Colo. 2006). S.B. 153, Pub. Act. No. 06-43 (Conn. 2006); S.B. 1962, 2004 Leg., Reg., Sess. (Fl. 2004); GA S.B. 529 (Ga. 2005); IDAHO CODE ANN. § 18-8602-05 (Id. 2006); H.B. 1155, Pub. L. No. 173, 114th Gen. Assemb. (Ind. 2006); H.B. 2205, 81st Gen. Assemb. 2d. Sess. (Io. 2005); S.B. 72, 81st Leg. Reg. Sess. (Kan. 2005); H.B. 56, Reg. Sess. (La. 2005); MICH. COMP. LAWS ANN. § 750.462(a)-(f) (West 2006); H.B. 1760, 84th Gen. Assemb. (Minn. 2005); MISS. CODE ANN. § 97-3-54 (Miss. 2006); S.B. 1210, 92nd Gen. Assemb., 2d Reg. Sess. (Mo. 2004); N.J. STAT. ANN. § 2C:13-8 (N.J. West 2005); H.B. 3060, 116th Gen. Assemb. (S.C. 2005); H.R. 2096, 78th Cong., Reg. Sess. (Tex. 2003); and H.R. 1175, 2003 Leg., Reg. Sess. (Wash. 2003).

37. H.B. 1469, 94th Gen. Assemb. (Ill. 2005) (codified as 720 ILL. COMP. STAT. ANN. 5/10A-

While the border states have the highest volume of human trafficking in the United States,³⁹ Illinois has a significant trafficking problem of its own.⁴⁰ In Illinois, human trafficking occurs in many of the same forms found in other parts of the country and other parts of the world: namely, trafficking adults and minors into forced labor and sexual exploitation.⁴¹ In 2005, the Illinois legislature responded to the state's trafficking problem by enacting the Trafficking of Persons and Involuntary Servitude Act (Illinois Trafficking Law).⁴² Like the TVPA and many state anti-trafficking laws, the Illinois Trafficking Law criminalizes several types of human trafficking, including involuntary servitude,⁴³ involuntary servitude of a minor,⁴⁴ and trafficking of persons for forced labor or services.⁴⁵ Unlike many states, however, Illinois has taken a stronger sentencing stance against traffickers.⁴⁶ Although Illinois has achieved general legislative and executive success in its response to

5-20 (West Supp. 2006)).

38. Washington and Texas were the first states to enact anti-trafficking laws (2003), while Missouri and Florida soon followed suit in 2004. Washington, H.R. 1175, 2003 Leg., Reg. Sess. (Wash. 2003); Texas, H.R. 2096, 78th Cong., Reg. Sess. (Tex. 2003); Missouri, S.B. 1210, 92nd Gen. Assem., 2d Reg. Sess. (Mo. 2004); Florida, S.B. 1962, 2004 Leg. Reg. Sess. (Fl. 2004).

39. California, Florida, New York, and Texas have the largest human trafficking problems. *Hidden Slaves*, *supra* note 19, at 48.

40. John W. Whitehead, The Rutherford Institute, *Sex Trafficking: The Real Immigration Problem*, Apr. 10, 2006, http://www.rutherford.org/articles_db/commentary.asp?record_id=397 (reporting "high rates of trafficking" found in Illinois, among other states).

41. Al Swanson, *Analysis: Trafficking Modern-Day Slavery*, WORLD PEACE HERALD, Mar. 21, 2005, at 2, available at www.ncdsv.org/images/AnalysisTraffickingModern-DaySlavery.pdf (quoting Jose Antolin, vice president of Chicago-based Heartland Alliance saying that "[t]rafficking for sexual exploitation and forced labor is a hidden reality in Illinois . . ."). Heartland Alliance is a "service-based human rights organization focused on investments in and solutions for the most poor and vulnerable men, women, and children in our society." <http://www.heartlandalliance.org/>.

42. H.B. 1469, 94th Gen. Assemb. (Ill. 2005).

43. Anyone who "knowingly subjects, attempts to subject, or engages in a conspiracy to subject another person to forced labor or services shall be punished . . ." 720 ILL. COMP. STAT. ANN. 5/10A-10(a) (West Supp. 2006). The provision lays out different levels of involuntary servitude based on how the crime is committed. *Id.*

44.

Whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any means, or attempts to recruit, entice, harbor, provide, or obtain by any means, another person under 18 years of age, knowing that the minor will engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, or causes or attempts to cause a minor to engage in commercial sexual activity, a sexually-explicit performance, or the production of pornography, shall be punished . . .

Id. at (b).

45. *Id.* at (c).

46. See *infra* Part II (discussing the Illinois Trafficking Law's sentencing provisions).

human trafficking,⁴⁷ truly combating this growing problem requires effective implementation through proactive investigations that lead to victim rescue, vigorous prosecutions,⁴⁸ tough sentencing, and the provision of essential victim services.⁴⁹ Additionally, to more comprehensively legislate against modern-day slavery, Illinois should regulate international matchmaking organizations operating within the state and criminalize sex tourism.⁵⁰

This Comment describes the reality of human trafficking in Illinois, discusses Illinois' anti-trafficking law, compares it to federal and state anti-trafficking laws, and makes law enforcement, prosecutorial, judicial, and legislative recommendations.⁵¹ Part II looks at the human trafficking problem in Illinois and highlights some real life examples.⁵² Part III discusses the Illinois Trafficking Law in depth.⁵³ Part IV analyzes the Illinois Trafficking Law by comparing it to federal law and anti-trafficking laws in other states and evaluates several investigatory and prosecutorial challenges to anti-trafficking statutes.⁵⁴ Part V makes law enforcement, prosecutorial, and judicial recommendations,⁵⁵ and then makes legislative proposals to the Illinois Trafficking Law.⁵⁶ Part VI concludes by acknowledging Illinois' overall success, recommending the addition of effective statutory provisions, and emphasizing the need for effective implementation through proactive

47. See *infra* Part III (discussing the Illinois Trafficking Law); *infra* Part IV.B.2 (discussing Gov. Blagojevich's state-wide plan and the Rescue and Restore Coalition). In addition to the legislative and executive response, the Chicago Police Department and Heartland Alliance have organized and implemented "a multi-jurisdictional, interdisciplinary Chicago Regional Human Trafficking Task Force." Press Release, Office of the Governor, Governor Blagojevich Announces New Anti-Human Trafficking Training Program for Law Enforcement: Law Enforcement and Social Services Partner to Recognize and Protect Victims of Human Trafficking (Dec. 14, 2006).

48. See *infra* Part V.A.1 (recommending proactive investigations that lead to victim rescue and perpetrator accountability).

49. See *infra* Part IV (discussing law enforcement and prosecutorial challenges); *infra* Part V.A (making appropriate law enforcement and prosecutorial recommendations).

50. See *infra* Part V.B (proposing legislative amendments).

51. See *infra* Part II (discussing trafficking in Illinois, comparing the Act to TVPA and other states' laws, and making recommendations).

52. See *infra* Part II (discussing depth of Illinois trafficking problem and Rockford and Chicago cases).

53. See *infra* Part III (discussing Illinois first state anti-trafficking statute).

54. See *infra* Part IV (discussing law enforcement and prosecutorial challenges).

55. See *infra* Part V.A (making law enforcement, prosecutorial and judicial recommendations).

56. See *infra* Part V.B (proposing Illinois regulate international matchmaking organizations operating in the state and criminalize sex tourism).

investigations that lead to victim rescue, vigorous prosecutions, tough sentencing, and providing essential victim services.⁵⁷

II. BACKGROUND

While human trafficking harms the international⁵⁸ and national community,⁵⁹ it has also created an ever-present and growing state and local threat.⁶⁰ In the “Land of Lincoln”⁶¹ slavery is alive and well.⁶² This Part discusses human-trafficking dynamics in Illinois⁶³ and explores cases in Chicago and Rockford to exemplify what trafficking in the state can look like.⁶⁴ This Part then addresses labor trafficking in Illinois and notes where trafficking victims can be found.⁶⁵ This part ends by discussing federal anti-trafficking legislative precedent in the form of the TVPA and the need for state anti-trafficking laws.⁶⁶

57. See *infra* Part VI (concluding that although Illinois generally succeeded in its anti-trafficking statute, there is room for additional statutory provisions, and a dire need for effective implementation through proactive investigations leading to victim rescue, vigorous prosecutions, tough sentencing, and providing essential victim services.).

58. Eleanor Clift, *Forward to GILBERT KING, WOMAN, CHILD FOR SALE: THE NEW SLAVE TRADE IN THE 21ST CENTURY I* (2004) (globally “every ten minutes a woman or girl” is enslaved); S. Res. 549, 109th Cong. 2d. Sess. (2006) (“In the 21st century, as many as 27,000,000 people are suffering as slaves throughout the world and in the [U.S.]”).

59. O’NEILL, *supra* note 19, at iii (“Trafficking of women and children for the sex industry and for labor is prevalent in all regions of the United States.”). In addition, the INS has discovered over 250 brothels in twenty-six different U.S. cities likely involving trafficking victims. *Id.* at 3.

60. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 9, 25, 29 (reporting “[h]uman trafficking cases have been opened in nearly every state . . .,” and that “[child] [s]ex trafficking may occur in any American community—urban, suburban, or rural . . .”).

61. Abraham Lincoln, the sixteenth U.S. president, issued the Emancipation Proclamation freeing slaves in the rebellion states. National Park Service, U.S. Dep’t of the Interior, Lincoln Home, Lincoln on Slavery, <http://www.nps.gov/archive/liho/slavery/al01.htm>. The slogan comes from the fact Lincoln lived in Illinois until becoming President; Lincoln was an Illinois Representative for one term (1847–1849) and an Illinois legislature member from 1834–1841. Illinois State Museum, Illinois State Symbols and Their History, <http://www.museum.state.il.us/exhibits/symbols/slogan.html>.

62. Carol L. Adams, *Illinois Leads Fight vs. Human Trafficking*, CHI. SUN-TIMES, Aug. 11, 2005, at 33. See also Swanson, *supra* note 41, at 2 (quoting Gov. Rod Blagojevich: “Human Trafficking . . . exists here in Illinois”); Frank Main & Annie Sweeney, *State Joins Drive to Root Out Sex, Labor Trafficking*, CHI. SUN-TIMES, Mar. 20, 2005, at 2A (reporting at least “hundreds” of trafficking victims in Illinois, and that minor girls and women are trafficked and held captive in underground brothels in Chicago apartments).

63. See *infra* Part II.A (discussing sex and labor trafficking in Chicago and sex trafficking in Rockford).

64. See *infra* Part II.A (discussing human trafficking examples in Rockford and Chicago).

65. See *infra* Part II.A (discussing labor trafficking and trafficking venues).

66. See *infra* Part II.B (discussing the TVPA); *supra* Part I (discussing the need for state laws).

A. Human Trafficking in Illinois

Chicago is considered a human trafficking “hotspot,”⁶⁷ including sex⁶⁸ and labor trafficking.⁶⁹ Many trafficking victims arrive in Chicago through O’Hare International Airport, a major port of entry for trafficking victims into the United States.⁷⁰ The presence of O’Hare and large immigrant communities makes Chicago a highly enticing place for traffickers.⁷¹ Traffickers seize opportunities for increased profits by trafficking greater numbers of women for sexual exploitation into Chicago during events where the city is filled with large numbers of spectators and tourists.⁷²

Traffickers systematically exploit the poorest and most vulnerable people in society.⁷³ Traffickers typically lure economically desperate individuals to Chicago with promises of good jobs and improved lives.⁷⁴ In fact, hundreds of girls and young women are trafficked and

67. KEVIN BALES & STEVEN LIZE, *TRAFFICKING IN PERSONS IN THE UNITED STATES* 4, available at <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf> [hereinafter BALES & LIZE]; See also 94th Gen. Assemb., Illinois H.R., Transcription Debate, (Apr. 4, 2005), at 16, available at <http://www.ilga.gov/house/transcripts/htrans94/09400036.pdf> [hereinafter House Debate] (According to Illinois Rep. Mendoza: “Chicagoland [is] a national hub for human trafficking”) and COMBAT HUMAN TRAFFICKING, *supra* note 20, at 35 (naming Chicago among “the most intense trafficking jurisdictions” in the country).

68. Landesman, *supra* note 18, at 36; Main, *supra* note 62, at 2.

69. See *infra* Part II.A (discussing labor trafficking in Chicago).

70. O’NEILL, *supra* note 19, at 11. See also Estes & Weiner, *supra* note 12, at 19 (reporting that traffickers use Chicago as the “last” gateway to bring children into the United States from five different countries); Finckenauer, *supra* note 16, at 2 (noting how “traffickers are increasingly moving migrants into the U.S. through . . . Chicago”).

71. CLAUDINE O’LEARY & OLIVIA HOWARD, CENTER FOR IMPACT RESEARCH, *THE PROSTITUTION OF WOMEN AND GIRLS IN METROPOLITAN CHICAGO: A PRELIMINARY PREVALENCE REPORT*, 28 (2001), available at <http://www.impactresearch.org/documents/prostitutionreport.pdf>. Human trafficking in Chicago may especially be concentrated in Asian neighborhoods. Patricia O’Connor, Northwestern Univ., *Three Chicago Groups Attempts to Thwart Human Trafficking*, MEDILL NEWS SERVICE, Aug. 20, 2003, available at http://mesh.medill.northwestern.edu/mnschicago/archives/2003/08/three_chicago_g.html.

72. Chuck Goudie, *Shameful Obsession*, ABC7 CHI., Feb. 9, 2004, at 4, <http://abclocal.go.com/wls/story?section=News&id=1176542> (reporting that “sex traffickers import extra women” during big Chicago events like the auto show); O’LEARY & HOWARD, *supra* note 71, at 28 (reporting that national law enforcement has found that national prostitution networks send “women and girls to areas when and where a high demand exists for prostitution—such as conventions and sporting events.”).

73. TIP REPORT 2006, *supra* note 5, at 14 (naming “internally displaced persons” during war or natural disasters, children and poor young women with “no educational opportunities” as traffickers’ prey); Christopher A. Wray, Assistant Att’y Gen., Criminal Div., Remarks to the National Conference on Domestic Trafficking and Prostitution (July 17, 2004), at 2 (naming “runaway or throwaway adolescents [and] undocumented migrants with little education and few language skills” as prime targets).

74. Kimbriell Kelly, *New Slavery*, CHI. REP., May/June 2005, at 15.

held captive as sex slaves in Chicago,⁷⁵ while teenage girls are routinely “pimped” and exploited on Chicago streets.⁷⁶ In 2005 the FBI designated Chicago as one of thirteen locations of “High Intensity Child Prostitution.”⁷⁷ The FBI based this designation on intelligence from its own investigations, information from state and local law enforcement,⁷⁸ and the fact that approximately 16,000 juveniles are prostituted in Chicago each year.⁷⁹ Although victims trafficked to Chicago generally come from Eastern Europe and the Far East,⁸⁰ one study uncovered child sex trafficking victims from countries in Africa,⁸¹ as well as Central and South America, living throughout Chicago.⁸²

In 2005, the *Chicago Sun-Times* ran a three part series on human trafficking in Chicago.⁸³ The *Sun-Times* documented how, in 1996,

75. CHICAGO CRIME COMMISSION, 2004 ANNUAL REPORT, at 18 [hereinafter CCC]; Landesman, *supra* note 18, at 32, 36; Goudie, *supra* note 72 (reporting that many of the women and children trafficked into the United States are forced into prostitution on Chicago streets, among other big cities); *see also* Sara Elizabeth Dill, *Old Crimes in New Times: Human Trafficking and the Modern Justice System*, 21 CRIM. JUST. 12, 13 (2006) (reporting that children are “easier to traffic and sell [and] generate” additional income through child pornography).

76. Annie Sweeney, *Sex and Sorrow: The Modern Slave Trade, Part III, Teens Sold on Chicago Streets*, CHI. SUN-TIMES [hereinafter Sweeney Part III], Aug. 9, 2005, at 17 (chronicling the case of Victor Powell, who trafficked teenage girls into commercial sexual exploitation, repeatedly beat and raped them, and according to Assistant U.S. Att’y Carrie Hamilton, “kept all the money” held the girls in “horrible hotels” and did not let them leave). *See also* Nesheba Kittling, *God Bless the Child: The United States Response to Domestic Juvenile Prostitution*, 6 NEV. L.J. 913, 921 (2006) (reporting that Victor Powell’s prosecution was the first “federal prosecution for juvenile sex trafficking in Chicago.”); Main, *supra* note 62, at 2A (reporting Chicago domestic trafficking cases are evident and “[s]ome are from the West Side, some are from the South Side,” quoting Mark Rodgers dean of the Graduate School of Social Work at Dominican University).

77. CCC, *supra* note 75, at 11; *Exploiting Americans on American Soil: Domestic Trafficking Exposed: Congressional Testimony Before the Commission on Security and Cooperation in Europe United States Helsinki Commission* (June 7, 2005) (statement of Chris Swecker, Assistant Director, Criminal Investigative Division, FBI) available at <http://www.fbi.gov/congress/congress05.htm> [hereinafter Swecker]; Kittling, *supra* note 76, at 921 (noting how “[i]n the summer of 2005, the FBI identified” Chicago as one of fourteen cities “with the largest problems of juvenile prostitution.”).

78. Swecker, *supra* note 77.

79. Kittling, *supra* note 76, at 921. Kittling noted that to address this disturbing trend, in 2004 the CCC formed the Coalition Against the Exploitation, Prostitution and Trafficking of Children (the “Coalition”). *Id.* at 924. The Cook County State’s Attorney’s Office, the U.S. Attorney’s Office and the FBI are all part of the Coalition. *Id.* *See, e.g.*, Jeff Coen, *Man Used Teenage Girls as Prostitutes, U.S. Says*, CHI. TRIB., July 25, 2006, at 3 (reporting on Jody Spears, 35, charged with child sex trafficking for pimping children). Spears told federal authorities that “some of my best girls were minors.” *Id.*

80. Main, *supra* note 62, at 2 (citing Mark Rodgers).

81. Estes & Weiner, *supra* note 12, at 17–18 (naming Somalia and Sudan).

82. *Id.* (naming Columbia, El Salvador, Guatemala, Honduras and Nicaragua).

83. Annie Sweeney, *Sex and Sorrow: The Modern Slave Trade*, CHI. SUN-TIMES, Aug. 7–9, 2005 (reporting on a victim’s first-hand experience, legislative and law enforcement efforts to

Russian-born Alex Mishulovich and two accomplices trafficked young women from Latvia through O'Hare airport⁸⁴ and forced them to dance nude and strip in Chicago nightclubs.⁸⁵ The case became Illinois' first known human trafficking case.⁸⁶

The victims were young Latvian students looking for decent work.⁸⁷ After promising one woman \$60,000 a year to dance completely clothed at "upscale" nightclubs, Mishulovich took her passport, crammed her in an apartment with other women, beat her, and repeatedly threatened to sell her as a prostitute.⁸⁸ Mishulovich forced a different woman to come to Chicago by threatening to "cut her face up if she refused" and by identifying her to mafia members for later reprisal.⁸⁹ Mishulovich held the women in slavery until August of 1997⁹⁰ when federal authorities apprehended him.⁹¹ After convicting Mishulovich of involuntary servitude under then existing federal law, the judge sentenced him to nine years in federal prison.⁹²

This case is not an anomaly, as Chicago has seen a major increase in Russian escort services, probably related to the sex trafficking of Eastern European women.⁹³ Trafficking is also not unique to Chicago, but exists in other areas of Illinois as well,⁹⁴ including Rockford.⁹⁵

battle the problem, and teen trafficking in Chicago). Annie Sweeney, *Sex and Sorrow: The Modern Slave Trade, Part I, From Ballroom Dancer to Stripper: Surviving Chicago's Sex Slave Trade*, CHI. SUN-TIMES, Aug. 7, 2005, at 16A-17A [hereinafter *Sweeney Part I*] (documenting how five Eastern Europeans created a Chicago-based trafficking ring).

84. *Id.*; MALAREK, *supra* note 3, at 59.

85. *See, e.g.*, *Sweeney Part I, supra* note 83, at 16A-17A (reporting at least five sex trafficking victims were forced to "work" at Chicago clubs, including the Admiral Theatre, Heavenly Bodies, Thee Dollhouse, Skybox and Crazy Horse Too).

86. Kelly, *supra* note 74, at 17.

87. *Sweeney Part I, supra* note 83, at 17A. FBI Special Agent Michael Brown described the victims: "These ladies, they were just young. Students. They were scared to death." *Id.* For a detailed look at the case see MALAREK, *supra* note 3, at 57-66.

88. *Sweeney Part I, supra* note 83, at 1, 17A (describing constant threats of physical violence, including holding a gun to the victims' temples). Mishulovich bragged about connections to the Chechen mafia, how he could have their families killed, and after showing one of the slaves a locket containing her mother's picture, threatened to send it to the Russian mafia if she did not cooperate. *Id.* at 17A. *See also* MALAREK, *supra* note 3, at 59 (describing how Mishulovich slammed a girl's head into a wall when she refused to dance nude).

89. O'NEILL, *supra* note 19, at 16 (citing to an interview with the U.S. Attorney's office in Chicago, July 1999).

90. *Id.* at 52 (detailing Mishulovich's scheme and the subsequent investigation).

91. *Sweeney Part I, supra* note 83, at 17A.

92. *Id.*; Mishulovich was released on November 30, 2006. Inmate Locator, Federal Bureau of Prisons, <http://www.bop.gov/iloc2/LocateInmate.jsp>. Some of the victims went back to Latvia and some were granted T-visas to stay in the United States. *Sweeney Part I, supra* note 83, at 17A.

93. MALAREK, *supra* note 3, at 23 (describing the enormous influx of Russian women into the

On February 7, 2005, federal authorities uncovered seven underground brothels operating in Rockford under the guise of “spas.”⁹⁶ In these hidden brothels, traffickers locked Chinese and Korean women inside tiny rooms, where the women both lived and toiled as sex slaves.⁹⁷ In the ensuing case, the U.S. Attorney’s Office charged thirteen defendants with conspiracy, money laundering, and aiding interstate racketeering.⁹⁸ Instead of treating the women as victims, however, law enforcement officials arrested four for prostitution and sent seven to immigration officials pending deportation.⁹⁹ Advocates and law enforcement officials appeared to disagree as to whether the women were trafficking victims or voluntary prostitutes.¹⁰⁰ The assistant U.S. attorney (AUSA) on the case said he would look into trafficking charges if the evidence supported them.¹⁰¹

While the AUSA doubted that most of the women were trafficking victims,¹⁰² the case was clear regarding one Korean woman.¹⁰³ The traffickers tricked the woman into coming to Rockford by promising her a job at the spa to support her struggling family back home.¹⁰⁴ Despite coming to Rockford voluntarily, the woman was not allowed to leave the spa.¹⁰⁵ The FBI requested that Heartland Alliance¹⁰⁶ interview the woman to see if she was trafficked.¹⁰⁷ After Heartland concluded she

illegal sex trade, how the United States is a significant destination for trafficked Eastern European women, and stating that “Russian dancers have become a popular staple in strip clubs and peep shows” in Chicago, among other U.S. cities). *See also* Landesman, *supra* note 18, at 36 (reporting that Roberto Caballero, an officer with Mexico’s federal preventive police states that at least fifteen major trafficking organizations “[take] orders from safe houses and brothels in . . . Chicago.”).

94. Erin Zaleski & Elise Simmons, *Slave Trafficking Exists in Illinois*, MEDILL NEWS SERVICE, Sept. 8, 2006, <http://nwitimes.com/articles/2006/09/08/news/illiana/0a64cd004ad3da67862571e2008170b7.txt>. Gregory Diephouse of the IDHS said: “We have rescued victims all over the state. This is not just an issue for Chicago, but for all of Illinois.” *Id.*

95. *See infra* Part II (discussing sex trafficking case in Rockford).

96. Kelly, *supra* note 74, at 16; Swanson, *supra* note 41, at 1.

97. Swanson, *supra* note 41, at 1.

98. *Id.*

99. Kelly, *supra* note 74, at 16.

100. *Id.* at 19. The Heartland Alliance strongly believed the women were trafficking victims, while the AUSA handling the case, Michael F. Iasparro, had doubts. *Id.*

101. *Id.*

102. The AUSA indicated he believed some of the women were voluntary prostitutes because hard evidence showing they were trafficked was lacking. *Id.*

103. *Id.* at 15–16.

104. *Id.* at 15.

105. *Id.* at 16.

106. *See supra* note 41 (describing the Heartland Alliance).

107. Kelly, *supra* note 74, at 17.

was trafficked, and after spending three weeks in jail, the woman was released to Heartland who arranged suitable housing for her.¹⁰⁸

Rather than an aberration, the Rockford case represents what is happening throughout the state.¹⁰⁹ Unlike the Rockford case, however, which involved sex trafficking, labor trafficking is less sensational and, thus, sometimes overlooked.¹¹⁰ In addition to sexual exploitation, victims in Chicago are also trafficked for forced begging, domestic servitude, and other forced labor.¹¹¹ Chinese and Indian children, as well as children from Africa, may also be trafficked as unaccompanied minors into forced labor.¹¹²

While tens of thousands of people work as forced laborers in the United States,¹¹³ it is unknown exactly how many of these victims are in Illinois.¹¹⁴ However, the problem is significant as forced labor and domestic servitude cases comprise half of Chicago-based attorney Katherine Kaufka's caseload.¹¹⁵ Forced labor networks thrive in highly populated states with large immigrant communities, like Illinois.¹¹⁶ These states also tend to serve as transit routes for foreign travelers.¹¹⁷ Significantly, Illinois is the fifth most populous state in the country¹¹⁸ and has a plethora of immigrant communities.¹¹⁹ Furthermore, due to

108. *Id.*

109. Michael F. Iasparro, the assistant U.S. attorney who handled the Rockford case, emphasized the case is just an example of what is happening in other places stating that "Rockford is certainly not an isolated community in terms of this type of crime . . . [i]t's going on all over the place." *Id.* at 19.

110. *Id.* at 19. Miriam Torrado, director of Heartland's Violence Recovery Services, believes a lot of trafficking in Chicago occurs outside of prostitution in factories or other labor markets. *Id.* "You're going to see what you're looking for and you could be missing a laborer in a factory that's right down the corner." *Id.*

111. Kelly, *supra* note 74, at 19 (worrying that these victims may be overlooked). Zaleski & Simmons, *supra* note 94. *See supra* notes 19–25 (naming different forms of labor trafficking).

112. *See infra* Part II (discussing trafficking of unaccompanied minors to Chicago).

113. *Hidden Slaves*, *supra* note 19, at 47–48, 59 (reporting "twenty [forced labor] cases involving approximately seventy-one victims who are U.S. citizens"). There were findings of one hundred and thirty one reports of forced labor operations in ninety U.S. cities in the last five years. *Id.* at 52.

114. Zaleski & Simmons, *supra* note 94.

115. *Id.* Attorney Kaufka works for the National Immigration Justice Center (NIJC). The NIJC is the only comprehensive program providing legal and case management services to victims of human trafficking in the Midwest. Interview with Katherine Kaufka, Supervising Attorney for the counter-trafficking program at the NIJC, in Chi., Ill. (Sept. 18, 2006). NIJC is a program of Heartland Alliance. *Id.*

116. *Hidden Slaves*, *supra* note 19, at 58 (noting California, Florida, New York, and Texas).

117. *Id.*

118. Illinois Fact Sheet, Illinois Secretary of State's Office, at 1, *available at* http://www.cyberdriveillinois.com/publications/pdf_publications/llinois_fact_sheet.pdf.

119. *See generally* Illinois Coalition for Immigrant and Refugee Rights, *Marching Towards*

the presence of two international airports, northern Illinois constitutes a transit route of notably high volume.¹²⁰ Thus, it is unsurprising to find forced labor networks in Illinois manifesting themselves in forced begging, domestic servitude, and forced labor of unaccompanied minors in restaurants.¹²¹

As to forced begging, it is unknown how many people are trafficked into this form of forced labor in the United States or Illinois.¹²² The *Paoletti* case, however, which involved forced begging in Illinois, illustrates the nature and potential of this form of modern-day slavery.¹²³

In the 1990s, the Paoletti family trafficked over 1,000 deaf and mute Mexican men and women from Mexico to Chicago and other U.S. cities.¹²⁴ The traffickers forced the victims to peddle trinkets and beg on subways and buses.¹²⁵ Held in slave-like conditions, the victims were never free to leave.¹²⁶ If they tried to escape, the traffickers hunted them down and punished them with stun guns.¹²⁷ Traffickers also beat those unlucky victims who failed to meet their daily quota.¹²⁸ While the ringleader was eventually arrested in a raid in New York City¹²⁹ and received a fourteen year sentence, the other defendants only received between one to eight years in the case.¹³⁰

In addition to forced begging, another type of labor trafficking occurring in Illinois is domestic servitude.¹³¹ Women often agree to

the American Dream: Illinois Immigrant Citizens Settle in Chicago Suburbs, 2005, *available at* <http://www.icirr.org/publications/marchingtowards.pdf> (reporting 1.7 million foreign born residents in Illinois as of 2005 and that immigrants and their children represent 26% of Illinois' population). *See also* Zaleski & Simmons, *supra* note 94 (“[w]e are a state with a higher percentage of . . . immigrant communities . . .”).

120. BALES & LIZE, *supra* note 67, at 15 (calling Chicago a “major immigration entry port” that traffickers use “to move women and children into the U.S.”).

121. *See supra* notes 116–20 and accompanied text (discussing high transit routes and immigrant communities as factors).

122. *See Hidden Slaves*, *supra* note 19, at 47 (reporting a possibility of ten thousand forced laborers in the United States but noting that number could be higher).

123. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 27 (citing *United States v. Paoletti*, No. 97–768 (E.D.N.Y. 1997)).

124. GILBERT KING, WOMAN, CHILD FOR SALE: THE NEW SLAVE TRADE IN THE 21ST CENTURY 188, 197 (2004).

125. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 27 (citing *Paoletti*, No. 97–768); O’NEILL, *supra* note 19, at 49, 52.

126. KING, *supra* note 124, at 188.

127. *Id.*

128. *Id.*

129. *Id.* at 188–89.

130. *Id.* at 189.

131. Interview with Katherine Kaufka, *supra* note 115.

come to the United States to be maids, but are then physically abused, exploited, and enslaved upon arrival.¹³² Those who resist are forced into submission through threats, intimidation, and beatings.¹³³ Domestic servitude victims are often forced to work long hours doing jobs such as cooking, cleaning, laundry, and child care.¹³⁴ While domestic servitude fails to garner the same media attention as sex trafficking, it is just as much a form of slavery,¹³⁵ as cases in Massachusetts¹³⁶ and Los Angeles exemplify.¹³⁷ Although there have been no prosecuted cases in Illinois, Katherine Kaufka of NIJC reports that women and children are trafficked and held in domestic servitude as nannies and maids in homes in wealthy Illinois suburbs.¹³⁸ In addition to the many women and children forced into domestic servitude, unaccompanied minors are also trafficked into forced labor in Chicago.¹³⁹

While approximately 5,000 to 7,000 unaccompanied minors enter the United States each year,¹⁴⁰ it is unknown how many are present in Illinois.¹⁴¹ Unaccompanied minors are trafficked¹⁴² to the United States

132. O'NEILL, *supra* note 19, at 27. Domestic servants are abused by traffickers and the families they work for. *Id.* at 27–28.

133. *Id.*

134. *Id.*; U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT, II. INTERNATIONAL BEST PRACTICES, June 5, 2005, available at <http://www.state.gov/g/tip/rls/tiprpt/2006/65984.htm>.

135. Interview with Katherine Kaufka, *supra* note 115. See also Barbara Kralis, *Slavery As Domestic Servitude*, RenewAmerica.us, July 24, 2006 (quoting Kevin Bales: “Visas normally require that domestic service workers remain with their original employer or face deportation. This requirement tends to discourage workers from reporting abuses.”).

136. In Massachusetts, the defendant held a woman as a domestic servant in involuntary servitude in his apartment for four months. *United States v. Alzanki*, 54 F.3d 994, 998–1000 (1st Cir. 1995). The defendant confiscated the victim’s passport, physically assaulted her twice, compelled her to work fifteen hours a day, withheld medical treatment for injured ribs and dental treatment for an abscessed tooth, denied her adequate food resulting in malnourishment, an enlarged abdomen, massive hair loss and the cessation of menstrual cycles, and threatened her on a daily basis with deportation, death and serious harm if she disobeyed his orders. *Id.*

137. Maria Suarez, a fifteen year old girl trafficked into domestic servitude in Los Angeles recalls her ordeal:

He beat me, raped me . . . abused me mentally, physically, emotionally, spiritual. I was not in touch with my family . . . [or] people because I was afraid of him. [T]he third day is when he told me that he had bought me [for \$200], that I was his slave . . . there to do whatever he want[ed] to do to me.

Kralis, *supra* note 135.

138. *Id.* Interview with Katherine Kaufka, *supra* note 115.

139. Uzo Nzelibe & Anita Ortiz, *Representing Children in Asylum Cases*, Civitas Child Law Center Coffee Talk, Oct. 4, 2006.

140. *Id.* See also Alex Kotlowitz, *The Smuggler’s Due*, N.Y. TIMES MAGAZINE, June 11, 2006, at 72 (“[I]n 2005, 7,787 unaccompanied minors trying to enter this country were detained by immigration authorities . . .”).

141. There are a total of fifteen U.S. detention centers for unaccompanied minors, including

to work primarily in restaurants.¹⁴³ While the majority of these victims are Chinese boys,¹⁴⁴ children from India and Africa may also be trafficked into forced labor.¹⁴⁵

In the case of unaccompanied Chinese minors, it is often the parents who send their child with a trafficker¹⁴⁶ to America in order to make money to send back home.¹⁴⁷ The parents often borrow the money from loan sharks in China, who regularly beat or torture people for falling behind in paying their debt.¹⁴⁸ The children arrive in the United States with their families already owing up to \$50,000 to the loan sharks or to the traffickers.¹⁴⁹ If law enforcement arrest the children for their illegal presence, they face deportation back to their countries where their families may shame them for getting caught¹⁵⁰ and where the Chinese government may torture them for leaving the country illegally.¹⁵¹ Because the children may be working in the restaurants to

one in Chicago which houses seventy children. Nzelibe & Ortiz, *supra* note 139.

142. Some debate whether these children are simply “smuggled” or trafficked. Interview with Maria Woltjen, Director of the Immigrant Children’s Advocacy Project at the University of Chicago Law School, Chi. Ill., (Sept. 15, 2006). Susan Krehbiel, director of children’s services for the Lutheran Immigration and Refugee Service says that “[i]t’s slavery because the children don’t have a choice . . . [and] are pressured by both fear and a sense of honor. They’re caught up in a transnational network that is so beyond their understanding [and] . . . control.” Kotlowitz, *supra* note 140, at 76.

143. Interview with Maria Woltjen, *supra* note 142.

144. *Id.*

145. Nzelibe & Ortiz, *supra* note 139

146. Some debate whether such people should be considered traffickers or whether they are more accurately termed “smugglers.” Interview with Maria Woltjen, *supra* note 142. The argument that they are smugglers relies on the fact that they do not use force, fraud, or coercion to bring the youth to the U.S. *Id.* Christopher Wray noted that the “trafficking of humans into the U.S. is facilitated by alien smugglers . . .” Wray, *supra* note 73, at 2. Additionally, under the Illinois Trafficking Law, the “smugglers” are “trafficking into forced labor or services” because they are obtaining a person “intending or knowing that the person will be subjected to forced labor or services,” because “forced labor or services” can be accomplished through a scheme “threatening to cause serious harm to” the minor’s family. 720 ILL. COMP. STAT. ANN. 5/10A-5(4)(a) (West Supp. 2006); 5/10A-10(c).

147. Interview with Maria Woltjen, *supra* note 142.

148. Kotlowitz, *supra* note 140, at 72, 74 (describing the torture and abuse).

149. Nzelibe & Ortiz, *supra* note 139. The children may be pressured by parents to work twelve hour days to make enough money so the family can pay off the debt. Kotlowitz, *supra* note 140, at 76. After paying back his debt, one minor crawled into a fetal position at a shelter for runaway youth and cried: “Why did they do this to me? I hate them for making me be alone. My family, why’d they turn their back to me?” *Id.* at 99.

150. *See* Interview with Maria Woltjen, *supra* note 142 (stating that victims’ parents often send them to the U.S. to work, and that the victims may feel ashamed if they cannot succeed in sending money back to their parents as planned).

151. Kotlowitz, *supra* note 140, at 76 (discussing how Seventh Circuit Appeals Judge Richard Posner “vacated a deportation order for a Chinese youth because the immigration judge did not consider . . . that the [youth]” may be sent to jail or a labor camp or even tortured).

pay off their families' debts to the trafficker, the trafficker's goal is to prevent the children from being deported.¹⁵² The traffickers generally hire attorneys from Los Angeles or New York City to represent the children in removal proceedings.¹⁵³ If released from federal custody and not deported, the children often return to their lives as hidden bonded laborers in the United States.¹⁵⁴

One of the biggest challenges in combating human trafficking is locating these and other types of victims.¹⁵⁵ In Illinois, the Heartland Alliance has uncovered sixty victims from rural, suburban, and urban areas over the last five years.¹⁵⁶ While the actual number of victims is higher than sixty,¹⁵⁷ the victim count still fails to match up with the trafficking victim estimates.¹⁵⁸ Experts agree, however, that the low numbers do not accurately indicate the magnitude of the problem.¹⁵⁹

Although trafficking victims can be found in many places, federal law enforcement experience and research by anti-trafficking experts show they are usually found in the following places: bars,¹⁶⁰ farm

152. Interview with Maria Woltjen, *supra* note 142.

153. *Id.* Legal practitioners in asylum law involving unaccompanied minors estimate that in Chicago one out of ten children are deported. Nzelibe & Ortiz, *supra* note 139.

154. Interview with Maria Woltjen, *supra* note 142.

155. *See generally* U.S. DEP'T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2004 (2005), available at <http://www.usdoj.gov/ag/annualreports/tr2005/assessmentofustipactivities.pdf> [hereinafter DEP'T OF JUSTICE ASSESSMENT] (discussing need to improve efforts to find victims).

156. Illinois Department of Human Services, Illinois Rescue and Restore Campaign, <http://www.dhs.state.il.us/projectsInitiatives/trafficking/>.

157. Zaleski & Simmons, *supra* note 94 (Kaufka reported that "[w]e have served over [sixty] victims in the last three years, but the numbers are higher.").

158. *See supra* Part II.A (discussing depth of the trafficking problem in Illinois).

159. Donna M. Hughes, *Hiding in Plain Sight: A Practical Guide to Identifying Victims of Trafficking in the U.S.*, Oct. 2003, at 1, http://www.uri.edu/artsci/wms/hughes/hiding_in_plain_sight.pdf [hereinafter Hughes]. Local police, often the first to come in contact with victims, either lack the ability to determine a woman's real identity or a girl's actual age, the ability to identify trafficking situations, or appropriate mandates to treat victims as victims rather than as criminals. *Id.* at 9; TIP REPORT 2006, *supra* note 5, at 8 (citing lack of awareness among law enforcement officials as reason countries do little to prosecute forced labor offenses despite laws against it). *See also* Landesman, *supra* note 18, at 66 (reporting that police assume all women who sell their bodies do so willingly and that undocumented foreign women are simply trespassers). Additionally, sex trafficking on urban America's streets is often indistinguishable from voluntary prostitution. *Id.* Although Chicago has a documented trafficking problem, Ronald Brannan, former commander of vice control at the Chicago Police Department, noted that the Department does not often encounter potential trafficking cases. Kelly, *supra* note 74, at 19. *See also* Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Florida Law on Human Trafficking*, 31 FLA. ST. U.L. REV. 289, 294 (2004) (reporting that trafficking is an underreported crime and that traffickers intentionally keep victims away from mainstream America).

160. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 25; Hughes, *supra* note 159, at 4;

worker camps,¹⁶¹ sweatshops,¹⁶² restaurants,¹⁶³ suburban homes,¹⁶⁴ sex entertainment and prostitution enterprises,¹⁶⁵ private clubs,¹⁶⁶ karaoke bars,¹⁶⁷ strip clubs,¹⁶⁸ health clubs, massage parlors, nightclubs, adult bookstores, modeling studios, saunas, spas, the streets,¹⁶⁹ escort services,¹⁷⁰ and makeshift brothels,¹⁷¹ including brothels in apartments, residential housing, commercial buildings, trailers,¹⁷² lounges,¹⁷³ or even open fields.¹⁷⁴ Unfortunately, as this list shows, victims can be found almost anywhere.¹⁷⁵

DONNA M. HUGHES, THE IMPACT OF THE USE OF NEW COMMUNICATIONS AND INFORMATION TECHNOLOGIES ON TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION: A STUDY OF THE USERS 4 (May 2001), available at http://www.uri.edu/artsci/wms/hughes/study_of_users [hereinafter STUDY OF THE USERS].

161. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 25; Wray, *supra* note 73, at 1.

162. Ellen L. Buckwalter et al., *Modern Day Slavery In Our Own Backyard*, 12 WM. & MARY J. WOMEN & L. 403, 407 (2006) (calling it “labor exploitation”); Wray, *supra* note 73, at 1.

163. See *supra* notes 143–54 and accompanying text (discussing trafficking of unaccompanied minors).

164. See *supra* notes 132–37 and accompanying text (discussing domestic servitude in Illinois).

165. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 25.

166. Dill, *supra* note 75, at 12 (noting the illicit sex trade’s expansion into luxury private clubs for wealthy customers).

167. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 4 (citing *United States v. Kwon Soon Oh*, (D. N. Mar. I.), No. CR-98-00044-01 (2002)).

168. Dill, *supra* note 75, at 12 (noting it as a venue where investigations routinely uncover sex trafficking victims).

169. Hughes, *supra* note 159, at 4, 8. See also Allan Lengel, *31 Arrested in Reputed Korean Sex-Slave Trafficking Along East Coast*, WASH. POST., Aug. 17, 2006, at B08 (reporting victims in upscale D.C. neighborhoods).

170. MALAREK, *supra* note 3, at 18. Escort services in Chicago exploit children as young as fifteen for commercial sex. O’LEARY & HOWARD, *supra* note 71, at 21. The Center further stated that Chicago law enforcement could not “cite a single escort service that they believed was operating legally.” *Id.* at 21.

171. HARVARD, *supra* note 18, at 25; See generally *Saga of Susannah*, *supra* note 16, at 2 (noting one study recommended stiff penalties for illicit brothel owners, even if they maintained legitimate activities).

172. Hughes, *supra* note 159, at 8.

173. Human Trafficking.Org, U.S. Domestic Sex Trafficking [1], Nov. 2005, <http://www.humantrafficking.org/updates/278>.

174. Hughes, *supra* note 159, at 8 & n.1 (reporting “[w]omen and girls trafficked from Mexico are known to be prostituted in reed caves constructed in the open fields around San Diego.”) (citing Thomas Larson, *Reina’s Story: A Mexican Girl Forced Into Prostitution*, S.D. READER, Aug. 7, 2003); Landesman, *supra* note 18, at 38 (noting Mexican girls are trafficked and forced to have sex in make-shift caves in the San Luis Rey riverbed near Vista, Cal.).

175. One twelve year-old Mexican girl was found by police “shackled to a chain link fence in a small, caged area behind” a suburban house in Laredo, Texas. KING, *supra* note 124, at 5–7. The owners of the house, also Mexican, had met the girl and her family in Mexico while on vacation and convinced the parents that they would give their daughter a better life in America, including food, clothing, a job as a maid in their home, and a good education. *Id.*

*B. Legislative Precedent: The Federal
Trafficking Victims Protection Act*

In 2000, Congress enacted the TVPA and made human trafficking a federal felony.¹⁷⁶ Former U.S. President Bill Clinton hailed the TVPA as a truly historic human rights measure.¹⁷⁷ The TVPA crafted new crimes to holistically address human trafficking.¹⁷⁸ The TVPA criminalized forced labor; trafficking with respect to peonage, slavery, and involuntary servitude; sex trafficking by force, fraud, or coercion; child sex trafficking; and unlawful conduct with respect to documents in furtherance of trafficking.¹⁷⁹ The TVPA also significantly enhanced penalties for traffickers.¹⁸⁰

Although criminals were prosecuted for trafficking-related offenses before the TVPA,¹⁸¹ the process was tedious and complicated, requiring prosecutors to use several different statutes.¹⁸² Moreover, these laws were notably insufficient since the potential penalties failed to reflect the gravity of the human rights abuses perpetrated on the victims.¹⁸³

176. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as 22 U.S.C. §§ 7101–7105 (2000)).

177. HERTZKE, *supra* note 25, at 316 (calling TVPA perhaps “among the most consequential initiatives of America’s human rights leadership”).

178. 18 U.S.C.A. §§ 1589–1592 (West Supp. 2006).

179. *Id.* §§ 1589–1592.

180. 22 U.S.C. § 7101(a) (2000).

181. Traffickers used to be prosecuted under thirteenth amendment statutes outlawing slavery. Richard, *supra* note 6, at 451. See also Michael R. Candes, *The Victims of Trafficking and Violence Protection Act of 2000: Will It Become the Thirteenth Amendment of the Twenty-First Century?*, 32 U. MIAMI-INTER-AM. L. REV. 571, 581 (2001) (discussing pre-TVPA trafficking laws).

182. O’NEILL, *supra* note 19, at 35; Tiefenbrun, *supra* note 27, at 329–30 (calling the process “cumbersome” and discussing the Mann Act).

183. Before the TVPA, the maximum sentence a trafficker could get was ten years. 18 U.S.C. §§ 1581(a), 1583–84 (2000). See also Richard, *supra* note 6, at 451 (noting that “prosecutors found these provisions highly inadequate”). Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2989–90 (2006) (discussing how the “available criminal punishments were not severe enough to fit the crime”). Examples include:

Los Angeles, where traffickers kidnapped a Chinese woman, raped her, forced her into prostitution, posted guards to control her movements, and burned her with cigarettes, the lead defendant received four years and the other defendants received two to three years; . . . Asian women were kept physically confined for years with metal bars on the windows, guards, and an electronic monitoring system and were forced to submit to sex with as many as 400 customers to repay their smuggling debt, the traffickers received between four and nine years; [t]rafficking case involving over [seventy] Thai laborers who had been held against their will, systematically abused, and made to work [twenty] hour shifts in a sweatshop, the seven defendants received sentences ranging from four to seven years, with one defendant receiving seven months.

O’NEILL, *supra* note 19, at 33.

Congress specifically stated that it enacted the TVPA, in large part, to remedy this problem.¹⁸⁴ Experts also praise the TVPA for the many social services and immigration benefits it affords victims.¹⁸⁵ While victims are in custody, the TVPA mandates that they be placed in housing appropriate to their status as crime victims, receive necessary medical care, be protected from retribution by their trafficker, and even have their families protected.¹⁸⁶

Additionally, to facilitate federal investigations and prosecutions, the TVPA empowered the Department of Homeland Security (DHS) to grant trafficking victims the unique temporary legal status of “continued presence” in the United States.¹⁸⁷ Congress also designed a special non-immigrant visa called a T-visa to encourage victims who were hesitant to testify because of deportation fears.¹⁸⁸ The T-visa grants the victim temporary residency for three years¹⁸⁹ and potential permanent residency.¹⁹⁰ To be eligible for a T-visa, a trafficking victim must be a victim of a “severe form of trafficking,”¹⁹¹ be present in the United

The Supreme Court further weakened pre-TVPA enforcement by finding that unless Congress defined involuntary servitude to expressly include psychological coercion, involuntary servitude required the use or threat of use of physical restraint or injury, or the use or threat of the law or legal process. *United States v. Kozminski*, 487 U.S. 931, 952–53 (1988).

184. 22 U.S.C. § 7101(a),(b)(13)-(21). In the TVPA Congress explicitly criminalized involuntary servitude accomplished through psychological coercion. 18 U.S.C. § 1589.

185. U.S. Dep’t of Justice Civ. Right Div. Crim. Section, TRAFFICKING WATCH (Int’l Rescue Comm.) Spring 2004, at 2, available at <http://www.theirc.org/resources/Issue-20No-204.pdf> [hereinafter TRAFFICKING WATCH SPRING]. Trafficking victims are eligible to receive federally funded services, including cash assistance, food stamps, medical care, and housing. DEP’T OF JUSTICE ASSESSMENT, *supra* note 155, at 4.

186. 22 U.S.C. § 7105(c)(1)(a)-(c).

187. *Id.* §§ 7105(c)(3). Continued presence allows the trafficking victim to remain in the United States as long as the Attorney General deems necessary for a federal investigation or prosecution. *Id.*

188. *Remedying the Injustices*, *supra* note 16, at 2580.

189. 8 U.S.C. § 1255(l) (2000).

190. The DHS may grant permanent residency to an eligible T-visa holder. *Id.* The T-visa holder is eligible if he or she has been present in the United States for three continuous years or during the now-completed trafficking investigation or prosecution, has shown “good moral character,” and complied with reasonable requests for assistance in the trafficking investigation or prosecution or would suffer extreme hardship involving unusual and severe harm upon removal” from the United States. *Id.*

191. “Severe form of trafficking” is defined as:

[S]ex 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 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 subjecting to involuntary servitude, peonage, debt bondage, or slavery.

22 U.S.C. § 7102(8).

States because of the trafficking,¹⁹² have complied with reasonable requests for assistance in the investigation or prosecution of trafficking (unless under eighteen), and be able to show extreme hardship involving unusual and severe harm if removed.¹⁹³ A trafficking victim with continued presence or a T-visa can be certified by the federal Department of Health and Human Services (HHS) and receive benefits and social services to the same extent as refugees.¹⁹⁴ Thus far, over 1,000 human trafficking victims have been certified by HHS and received federal benefits.¹⁹⁵

Before Congress enacted the TVPA very few trafficking cases were prosecuted in the United States.¹⁹⁶ Since the TVPA's enactment, human trafficking prosecutions have increased by 300%,¹⁹⁷ with the DOJ filing 405% more trafficking cases in 2001–2005 than in 1996–2000.¹⁹⁸ Moreover, in fiscal year 2006 alone, the DOJ's Civil Rights Division initiated 167 investigations, charged 111 defendants in thirty-two cases, and obtained seventy-nine convictions.¹⁹⁹ Additionally, in 2006 the DOJ secured fifty-year sentences for two sex

192. Thus, victims of domestic trafficking are ineligible to receive federal benefits since they are not physically present in the United States on "account of such trafficking." 8 U.S.C. § 1101(a)(15)(T)(i)(II); Telephone Interview with Gregory Diephouse, Project Manager for Assistant Secretary for Programs of the IDHS, Oct. 24, 2006.

193. 8 U.S.C. § 1101(a)(15)(T); U.S. Dep't of Health and Human Services, Fact Sheet: Certification for Victims of Trafficking, *available at* http://www2.acf.hhs.gov/trafficking/about/cert_victims.html (detailing the federal requirements for trafficking victims to receive federal services and immigration status). Senator Sam Brownback described "extreme hardship" as harm that does not have to be physical or caused by the trafficking itself. Jennifer M. Wetmore, *The New T Visa: Is the Higher Extreme Hardship Standard Too High for Bona Fide Trafficking Victims?* 9 NEW ENG. J. INT'L & COMP. L. 159, 169 (2002). This standard is also used in suspension of deportation and cancellation of removal proceedings. *Id.* at 170.

194. 22 U.S.C. § 7105(b)(1)(A).

195. Press Release, U.S. Dep't of Health and Human Services, HHS Announces 1000th Victim of Human Trafficking Certified (May 22, 2006), http://www.acf.hhs.gov/news/press/2006/1000_trafficking_victims_certified.htm. Certified human trafficking victims are eligible to receive housing, food, Medicaid, welfare cash assistance, employment, and educational benefits. *Id.*

196. Richard, *supra* note 6, at 451 (noting severe limitations on trafficking prosecutions); Tiefenbrun, *supra* note 27, at 330 (discussing how before the TVPA sex trafficking in the United States continually increased while arrests, prosecutions, and convictions did not). *But see* KING, *supra* note 124, at 183–90 (chronicling major U.S. trafficking cases from '95-'98).

197. COMBAT HUMAN TRAFFICKING, *supra* note 20, at i.

198. During the fiscal years 2001–2005 the DOJ and U.S. Attorneys' Offices filed ninety-one trafficking cases, charged two hundred and forty-eight trafficking defendants, and obtained one hundred and forty convictions on trafficking-related crimes. *Id.* at 1–2.

199. Press Release, Dep't of Justice, Attorney General Gonzales Announces Enhanced Programs to Combat Human Trafficking: National Conference Focuses On Victim Issues And Law Enforcement Solutions, (Oct. 3, 2006), <http://www.ojp.usdoj.gov/newsroom/2006/06-671.htm>.

traffickers, making them some of the longest sex trafficking sentences ever.²⁰⁰

While the TVPA created new crimes, enhanced trafficking penalties, and provided for victim services, it failed to create a civil cause of action for those victimized by human trafficking.²⁰¹ In 2003, however, Congress enacted the Trafficking Victims Protection Reauthorization Act (TVPRA) which gave victims the right to bring civil actions against their traffickers for actual and punitive damages and attorneys' fees.²⁰²

Despite its many successes,²⁰³ critics have noted that the TVPA and its enforcement have exhibited numerous shortcomings.²⁰⁴ Critics have lamented that the TVPA overemphasizes prosecution at the expense of victim protection.²⁰⁵ Furthermore, advocates point out that the TVPA's restriction of federal benefits only to victims of "severe forms of trafficking"²⁰⁶ necessarily,²⁰⁷ and sometimes intentionally,²⁰⁸ leaves countless trafficking victims, who have suffered in their own right,²⁰⁹ out in the cold and in danger of re-exploitation.²¹⁰ Congress

200. *Id.*

201. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464, (codified as amended at 22 U.S.C. §§ 7101–7105 (2004) (signed into law by President Bill Clinton on October 28, 2000)).

202. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193 § 4, 117 Stat. 2875 (2003) [hereinafter TVPRA] (signed into law by President Bush on Dec. 19, 2003) (codified as amended in 9, 18, and 22 U.S.C.A. and 18 U.S.C. § 1595 (civil action)).

203. Susan W. Tiefenbrun, *The Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 2 LOY. INT'L REV. 193, 217 (2005) [hereinafter *Impact of TVPA*] (concluding the TVPA helped reform awful U.S. policy of punishing victims instead of traffickers, established harsher sentences for traffickers and trained law enforcement and immigration staff to recognize victims).

204. Chacon, *supra* note 183, at 2979, 2991 (arguing the TVPA failed to address U.S. labor and immigration law enforcement which perpetuates trafficking); *Id.* at 2978 (arguing consensus exists that TVPA failed to sufficiently address human trafficking).

205. Chacon, *supra* note 183, at 3022 (finding that the law "limits the availability of protective services, but encourages broad use of the term 'trafficking' in the context of prosecution."). *Developments In the Law-Jobs and Borders*, 118 HARV. L. REV. 2171, 2196 (2005) [hereinafter *Developments*] ("The goal is no longer protection, but protection for the sake of prosecution."). See also Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 395 (2005) (lamenting law enforcement officials' equating trafficking victims with witnesses).

206. 8 U.S.C. § 1101 (a)(15)(T)(i).

207. Sadruddin, *supra* note 205, at 393–98 (detailing the arduous and demanding process victims must go through to receive immigration benefits, and noting that only select witnesses are given full victim benefits).

208. Chacon, *supra* note 183, at 2979–80 (arguing Congress intentionally excluded many labor exploitation victims from the TVPA).

209. Richard, *supra* note 6, at 469 (noting victims suffer from sexual, physical, and emotional trauma).

210. Christa Foster Crawford, *Cultural Economic and Legal Factors Underlying Trafficking*

deliberately excluded voluntary migrants out of fear that they would exploit the TVPA's immigration benefits.²¹¹ The result is, however, that officials withhold federal benefits from genuine trafficking victims on the erroneous belief that they are not wholly innocent because they initially consented to travel.²¹²

Furthermore, in comparison to the amount of actual victims,²¹³ the federal government has located and assisted a low number of victims,²¹⁴ while prosecutorial results remain relatively small as well.²¹⁵ The

in Thailand and Their Impact on Women and Girls from Burma, 12 CARDOZO J.L. & GENDER 821, 846 (2006) (discussing how strict application of immigration laws to trafficking victims subjects them to re-exploitation and further trafficking).

211. Chacon, *supra* note 183, at 3022–23 (calling the restriction of benefits a “deliberate effort to deny immigration benefits to individuals who” consented at any point to “their transportation or employment”). See *Saga of Susannah*, *supra* note 16, at 122 (describing consent as immaterial since someone can not legally consent to slavery).

212. See TIP REPORT 2006, *supra* note 5, at 10 (“The force, fraud or coercion exercised on that person to perform or remain in service to a ‘master’ is the defining element of trafficking in modern usage,” not the “voluntary nature of a person’s transnational movement . . .”). It is only fair that voluntary migrants searching for work still be considered trafficking victims because, in all reality, their consent is meaningless. Wray, *supra* note 73, at 4 (“trafficking victims don’t know their intended fate until it’s thrust upon them, because they go with the trafficker voluntarily, expecting something very different from what they get”); MODEL LAW, *supra* note 33, at 8 (calling a federal anti-slavery case law principle the rule “that a person’s initial agreement to perform a particular type of activity or type of service is not a waiver of any coercion aimed at keeping that person from leaving the service”); *Remedying the Injustices*, *supra* note 16, at 2576 (noting victims may consent to legitimate paying work only to be forced into slave-like work conditions “for little or no pay”).

213. See *supra* note 18 and accompanying text (discussing people trafficked to the United States annually).

214. See Sadrudin, *supra* note 205, at 391–92 (quoting Steve Wagner, Director, U.S. HHS Trafficking in Persons Program who stated that the federal government has failed to find victims at an “acceptable rate”); *Id.* at 391 (concluding that the TVPA has protected a “shockingly low number” of trafficking victims). Only 1,000 T-visas have been issued in five years while, based on conservative government estimates, 72,500 victims were trafficked into the United States during those same five years. See *supra* note 18 and accompanying text (14,500–17,500 yearly trafficked into the United States). This means the federal government helped approximately 0.013% of all victims trafficked into the United States. Of course, this number does not include the thousands of people who are domestically trafficked. *Impact of TVPA*, *supra* note 203, at 205, 217 (hypothesizing that the “surprisingly low number of visas applied for and actually issued” indicates that “trafficking victims do not trust the U.S. witness protection program” to protect them or their families back home from reprisals for assisting in prosecutions).

215. *Impact of TVPA*, *supra* note 203, at 217 (“The ratio of [trafficking] convictions to victims is woefully low”); HELGA KONRAD, ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, ASSESSMENT OF THE UNITED STATES HUMAN TRAFFICKING SITUATION AND ANTI-TRAFFICKING ACTIVITIES, 6 (June 2005), available at http://www.osce.org/documents/cthb/2005/06/17862_en.pdf [hereinafter KONRAD] (finding disappointing amount of trafficking prosecutions and reporting “the risk of being prosecuted is not high enough to alter traffickers’ sense of impunity.”).

federal government itself has recognized its need for assistance from states in combating this relentless human rights scourge.²¹⁶

C. The Need for State Anti-Trafficking Laws

Human trafficking in the United States increases every year.²¹⁷ Although federal laws currently criminalize human trafficking, comprehensive state legislation specifically addressing this crime is critical to abolishing modern-day slavery.²¹⁸ State laws will result in increased prosecutions²¹⁹ and a potential added deterrent to traffickers.²²⁰ Furthermore, state anti-trafficking legislation is needed because law enforcement is mainly a local issue,²²¹ and state and local authorities are usually first to discover trafficking victims.²²² Moreover, federal resources alone are inadequate in light of the scope of the crime,²²³ federal prosecutors are unlikely to take smaller cases,²²⁴

216. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 11 (citing positive trend of states enacting anti-trafficking legislation since “state and local law enforcement far outnumber the federal resources available to combat this problem”).

217. KONRAD, *supra* note 215, at 2, 9.

218. Cynthia Shepherd Torg, *Human Trafficking Enforcement in the United States*, 14 TUL. J. INT’L & COMP. L. 503, 504 (2005) (stating that “assertive and coordinated efforts must be funded on federal, state, and local levels” in order “[t]o make true headway toward eradicating the contemporary slave trade . . .”); *see also* Buckwalter et al., *supra* note 162, at 405 (citing importance of state anti-trafficking legislation).

219. Buckwalter et al., *supra* note 162, at 425 (noting that federal legislation alone will result in fewer prosecutions and arguing that state anti-trafficking laws must exist because local law enforcement can prosecute criminals quicker and more efficiently than federal authorities).

220. Torg, *supra* note 218, at 512 (stating that “comprehensive [state] antitrafficking statutes are needed to deter and punish the wide range of coercive tactics used by traffickers”); Buckwalter et al., *supra* note 162, at 426 (arguing state anti-trafficking laws are an added deterrent “[i]f traffickers know that local law enforcement officials have the ability to arrest, prosecute, and convict offenders . . .”).

221. Buckwalter et al., *supra* note 162, at 425 (calling “criminal prosecutions . . . generally a state responsibility”); Bunch, *supra* note 32 (“The state courts are the real workhorse of the criminal justice system and once the states get on board . . . the number of law enforcement officers available to pursue traffickers will increase exponentially.”).

222. Coonan, *supra* note 159, at 293 (discussing a common pattern throughout the United States of traffickers prosecuted under federal law, although state and local law enforcement initially encounter trafficking victims and operations through vice raids, “crime scene investigations in immigrant communities” and domestic violence calls).

223. O’NEILL, *supra* note 19, at 45 (“Currently, the US Attorney’s Offices appear to be understaffed and overburdened, making investigations of potential trafficking cases difficult.”); Buckwalter et al., *supra* note 162, at 425 (noting that federal resources are often limited and inadequate and that the “federal government spent only 0.0022% of its total budget on anti-trafficking efforts”).

224. Buckwalter et al., *supra* note 162, at 425 (noting federal authorities’ inability or unwillingness to prosecute cases of small groups of trafficking victims).

and state laws can address the local population's unique needs.²²⁵ Until 2003, however, no states had laws criminalizing human trafficking.²²⁶

Consequently in 2004, the DOJ wrote the Model Law as a guide to state legislatures on what to include in state anti-trafficking statutes.²²⁷ The Model Law's notes explain that states need specific anti-trafficking statutes so that prosecutors know to charge trafficking-like crimes as trafficking offenses.²²⁸ Charging trafficking-like crimes as trafficking offenses is critical to effectively combat human trafficking because the more basic offenses fail to reflect the nature and understanding of modern-day slavery.²²⁹ Additionally, state statutes that currently criminalize some aspect of trafficking are usually old, unknown, or simply not used.²³⁰

In 2004, the U.S. Senate unanimously passed a resolution strongly endorsing the Model Law and encouraging states to follow it.²³¹ By August 2005, eleven states had passed laws either criminalizing or requiring state investigations on human trafficking.²³² In 2006, ten additional states enacted anti-trafficking legislation,²³³ while similar legislation is currently pending in nine other states.²³⁴ Thus far, twenty-

225. *Id.* at 426.

226. *Id.* at 416 (discussing a trend starting in 2003).

227. MODEL LAW, *supra* note 33, at 6.

228. The notes to the law explain that although "many states already have laws on their books" addressing "trafficking-like crimes" such as kidnapping or prostitution, "by being codified in disparate parts of the criminal code, it may be unclear to prosecutors that the behaviors are trafficking in persons crimes and may be charged as such." *Id.*

229. *Id.*

230. *Id.*

231. S. Res. 414, 108th Cong. 2d Sess. (2004).

232. ARIZ. REV. STAT. ANN. §§ 13-1306–13-1310 (2006); COLO. REV. STAT. §§ 18-1.8-101, 18-6-402 (2006); FLA. STAT. § 787.06 (2007); 720 ILL. COMP. STAT. ANN. 5/10A-10 (West 2006); 2005 Kan. Sess. Laws 72; LA. REV. STAT. ANN. § 14:46.2 (2005); MO. ANN. STAT. § 6566.215 (West 2007); N.J. STAT. ANN. § 2C:13-8 (West 2005); OKLA. STAT. tit. 21, § 866 (2004); TEX. PENAL CODE ANN. § 20A.02 (Vernon 2006); WASH. REV. CODE. § 9A.40.100 (2005).

233. Alaska, H.B. 148, 24th Gen. Assemb. (2005); COLO. REV. STAT. § 18-6-402 (2005); 2006 Conn. Acts 153; Georgia, GA S.B. 529 (2005); H.B. 2205, 81st Gen. Assemb. (2005); IDAHO CODE ANN. § 18-8605 (2006); H.B. 1155, Pub. L. No. 173 114th Gen. Assemb. (2006); MICH. COMP. LAWS ANN. § 750.462a (West 2006); MISS. CODE ANN. § 97-3-54 (2006); South Carolina, H.B. 3060, 116th Gen. Assemb. (2005).

234. H.B. 241, 143rd Gen. Assemb. (De. 2005); S.B. 11, Reg. Sess. (Ky. 2006); H.R. 1473, 420th Gen. Assemb., 2005 Reg. Sess. (Md. 2005); S. 3914, 2005-06 Reg. Sess. (N.Y. 2005); Oklahoma, H.B. 2117, 1st Sess. of 50th Leg. Sess. (2005); Pennsylvania, H.R. Res. 353, 2005-06 Reg. Sess. (Pa. 2005); Rhode Island, H.B. 7670 (RI. 2005); Virginia, H.B. 418, 2006 Sess. (2006); and West Virginia, H.B. 4073, 2nd Sess. of 77th Leg. (2006); Fact Sheet on State Anti-Trafficking Laws from National Institute on State Policy on Trafficking of Women and Girls: A Program of the Center for Women Policy Studies, July, 2006, at 1, *available at* <http://www.centerwomenpolicy.org/programs/trafficking/facts/documents/TraffickingStateLawsF>

two states have enacted statutes criminalizing human trafficking, making it a felony offense.²³⁵

III. DISCUSSION

In 2005, the Illinois legislature enacted the state's first anti-human trafficking law, the Trafficking of Persons and Involuntary Servitude Act.²³⁶ This Part begins by discussing the legislative history of the Illinois Trafficking Law²³⁷ and then looks at its specific criminal provisions, including sentencing.²³⁸ It then discusses this law's restitution and forfeiture mandates,²³⁹ as well as the provisions for victim services and certification.²⁴⁰ Finally, this Part segues into the comparative analysis of the Illinois Trafficking Law and the TVPA.

A. Legislative History

On June 7, 2005, Illinois Governor Rod Blagojevich signed House Bill 1469, creating Illinois' first specific anti-trafficking law.²⁴¹ Unanimously passed by the House²⁴² and Senate,²⁴³ the law shows that Illinois is committed to fighting modern-day slavery within its borders.²⁴⁴ Representative Michelle Chavez,²⁴⁵ the initial sponsor, emphasized during the House debates that the law is necessary to allow state and local law enforcement to investigate and prosecute trafficking cases.²⁴⁶

actSheetAugust2006.pdf [hereinafter Fact Sheet on State Laws] (last visited Mar. 18, 2007).

235. *Id.* at 1; *See supra* note 36 (listing the state statutes).

236. H.B. 1469, Pub. L. No. 094-0009 (Ill. 2005); (codified as 720 ILL. COMP. STAT. ANN. 5/10A-5-20 (West Supp. 2006)).

237. *See infra* Part III (noting how the trafficking problem in Illinois moved legislatures to act).

238. *See infra* Part III (discussing the specific offenses and sentencing provisions).

239. *See infra* Part III (discussing mandatory victim restitution and asset forfeiture).

240. *See infra* Part III (discussing victim services and certification provisions).

241. H.B. 1469, Pub. L. No. 094-0009. The Act came into effect January 1, 2006. *Id.*

242. Illinois House Vote, 4/8/2005, available at http://www.ilga.gov/legislation/votehistory/94/house/09400HB1469_04082005_006000T.pdf (108-000-001) (last visited Mar. 18 2007).

243. Illinois Senate Vote, 4/7/2005, at 21 (57-00-00).

244. Illinois Coalition Against Sexual Assault, Illinois Gov. Highlights Anti-Trafficking Campaign, Dec. 29, 2005, available at <http://www.icasa.org/newsDetail.asp?id=939> (last visited Mar. 18, 2007) [hereinafter ICASA] ("Here in Illinois we are taking a serious and aggressive approach to ending human trafficking and forced labor.").

245. Chavez is a Democrat from the 24th district. Illinois General Assembly, <http://www.ilga.gov/house/Rep.asp?MemberID=1120> (last visited May 18, 2007).

246. House Debate, *supra* note 67, at 12 (stating the law provides the tools to bring traffickers to justice).

Advocates and groups such as the Chicago-based Heartland Alliance and its subdivision, the National Immigrant Justice Center spearheaded the movement to enact the Illinois Trafficking Law.²⁴⁷ The scope of the trafficking problem in the United States and in Illinois moved legislators to propose the bill and argue for its passage.²⁴⁸ The lead sponsor, Chavez, emphasized during the House debate the plight of poor immigrants who come to Illinois pursuing the American dream and are instead enslaved and exploited.²⁴⁹ Chavez especially noted the need to protect children from trafficking by providing an appropriately strong response to child trafficking.²⁵⁰

B. *The Illinois Trafficking Law*

The Illinois Trafficking Law offers such a response by criminalizing involuntary servitude, involuntary servitude of a minor, and trafficking of persons for forced labor or services.²⁵¹ The crime of involuntary servitude of a minor is essentially child sex trafficking,²⁵² while trafficking of persons into forced labor or services covers all forms of adult sex and labor trafficking.²⁵³ The statute expressly defines most of its material terms, such as “commercial sexual activity,”²⁵⁴ “forced labor or services,”²⁵⁵ “sexually-explicit performance,” and “trafficking victim,”²⁵⁶ among other key terms.²⁵⁷

247. Interview with Katherine Kaufka, *supra* note 115.

248. Richard, *supra* note 6, at 448 (noting that the U.S. “is one of the top three destination countries to which people are trafficked into modern day slavery and no state or territory . . . is exempt from this problem”); House Debate, *supra* note 67, at 12.

249. House Debate, *supra* note 67, at 12.

250. *Id.* at 14. Goudie, *supra* note 72, at 3 (reporting that Chicago has a huge problem as traffickers and pimps prey on street children and adolescents). Some estimate that 40,000 U.S. children are involved in sex trafficking. Swecker, *supra* note 77, at 1.

251. 720 ILL. COMP. STAT. ANN. 5/10A-10(a)-(c) (West 2006).

252. *Id.* at (b).

253. *Id.* at (c).

254. *Id.* at 5/10A-5(2).

255. Defined as:

[L]abor or services that are performed or provided by another person and are obtained or maintained through: (A) any scheme, plan, or pattern intending to cause or threatening to cause serious harm to any person; (B) an actor's physically restraining or threatening to physically restrain another person; (C) an actor's abusing or threatening to abuse the law or legal process; (D) an actor's knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (E) an actor's blackmail; or (F) an actor's causing or threatening to cause financial harm to or exerting financial control over any person.

Id. at (4). Case law supports the proposition that commercial sexual activity can be considered “service” in involuntary servitude statutes. See MODEL LAW, *supra* note 33, at 9 (citing *Pierce v. United States*, 146 F.2d 84, 85–86 (5th Cir. 1944) (upholding conviction for forcing women to

In terms of sentencing, the Illinois Trafficking Law provides for five different felony levels depending on the nature of the trafficking crime²⁵⁸ and the age of the trafficking victim.²⁵⁹ For example, someone convicted of involuntary servitude “by causing or threatening to cause physical harm to another person” is guilty of a Class X felony,²⁶⁰ punishable by a maximum of thirty years imprisonment.²⁶¹ In contrast, someone who subjects another person to involuntary servitude “by using intimidation, or using or threatening to cause financial harm to or by exerting financial control over any person” is guilty of a Class 4 felony,²⁶² punishable by a maximum of three years imprisonment.²⁶³ Similarly, someone convicted of involuntary servitude of a minor “between the ages of [seventeen] and [eighteen], not involving overt force or threat” is guilty of a Class One felony,²⁶⁴ punishable by a maximum of fifteen years imprisonment.²⁶⁵ If the victim is under seventeen, however, the person is guilty of a Class X felony.²⁶⁶

The Illinois Trafficking Law also provides for sentencing enhancements through the statutory maximum and three sentencing considerations.²⁶⁷ For example, any person who commits a violation involving the attempt or commission of either kidnapping or aggravated criminal sexual assault, or attempted first degree murder, is guilty of a Class X felony.²⁶⁸ Additionally, a defendant is subject to an extended term if the victim suffers bodily injury.²⁶⁹ The law also encourages a

commit “immoral acts” at a roadhouse to pay off debts and other cases).

256. Defined as “a person subjected to the practices set forth in subsection (a) of Section 10A-10 (involuntary servitude) or subsection (b) of Section 10A-10 (sexual servitude of a minor), or transported in violation of subsection (c) of Section 10A-10 (trafficking of persons for forced labor or services.” *Id.* at (10).

257. 720 ILL. COMP. STAT. ANN. 5/10A-5 (2006).

258. *Id.* at 5/10A-10.

259. *Id.* at (b)(1)(2).

260. *Id.* at (a)(1).

261. 730 ILL. COMP. STAT. 5/5-8-1(3) (1993) (with a minimum of six years).

262. 720 ILL. COMP. STAT. ANN. 5/10A-10(a)(5) (West 2006) (with a minimum of one year).

263. 730 ILL. COMP. STAT. 5/5-8-1(7) (2006).

264. 720 ILL. COMP. STAT. ANN. 5/10A-10(b)(1) (West 2006).

265. 730 ILL. COMP. STAT. 5/5-8-1(4) (2006) (with a minimum of four years).

266. 720 ILL. COMP. STAT. ANN. 5/10A-10(b)(2) (West 2006). If the crime of involuntary servitude of a minor is committed with overt force or threat, then the defendant is guilty of a Class X felony even if the victim was eighteen years of age. *Id.* at (b)(3).

267. *Id.* at (d).

268. *Id.* at (d)(1).

269. *Id.* at (d)(2)(A). Section 730 ILL. COMP. STAT. 5/5-8-2 (2006) deals with extended terms, and provides for a maximum of sixty years for someone given an extended term on a Class X felony, 5/5-8-2(a)(1), and similarly doubles the statutory maximum for felonies Classes 1 through 4. *Id.* at (a)(2)-(6).

court to consider the number of victims when sentencing a defendant and to substantially increase a sentence if more than ten victims are involved.²⁷⁰ Furthermore, the court is mandated to consider the amount of time the victim was enslaved and must increase the penalty if the victim was held for more than 180 days.²⁷¹

The statute also mandates victim restitution²⁷² and requires that the judge order a trafficker to forfeit any assets obtained as a result of the trafficking offense.²⁷³ Illinois' forfeiture provision requires that half of all assets forfeited by a trafficker go to the state or local agency responsible for the investigation or prosecution.²⁷⁴ Additionally, to prevent traffickers from transferring assets gained through their crimes, the statute allows a court to order a pre-judgment restraining order or injunction upon a finding of probable cause that any property may be subject to forfeiture.²⁷⁵ The Illinois Attorney General must subsequently seize the trafficker's assets.²⁷⁶

While the Illinois Trafficking Law did not create a civil action for trafficking victims, separate Illinois legislation has.²⁷⁷ On July 3, 2006, the Illinois legislature enacted the Predator Accountability Act (PAA).²⁷⁸ The PAA created a cause of action against any person who coerced an individual into, or to remain in, prostitution, used coercion to collect someone's prostitution-derived earnings, or advertised to recruit people into prostitution.²⁷⁹ The PAA allows for recovery against pimps, sex traffickers, and sex "customers."²⁸⁰ Victims may recover

270. 720 ILL. COMP. STAT. ANN. 5/10A-10(d)(2)(B) (West 2006).

271. *Id.* at (d)(2)(A).

272. *Id.* at (e).

273. *Id.* at 10A-15(a).

274. 720 ILL. COMP. STAT. ANN. 5/10A-10(c) (West 2006).

275. *Id.* at (c).

276. *Id.* at (d).

277. H.B. 1299, Pub. L. No. 094-998, 2005 ILL. ALS 998, 94th Gen. Assem. (Ill. 2006), available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=094-0998> [hereinafter PAA]; codified as 735 ILL. COMP. STAT. 5/13-225 (2006).

278. *Id.*

279. According to the House Sponsor, Rep. Constance A. Howard, the PAA "allows persons who have been or are subjected to the sex trade to seek civil damages and remedies from individuals and entities that recruited, profited from, or maintained them in the sex trade." Illinois House of Representative Transcript Debate, April 5, 2005, at 31-32, available at <http://www.ilga.gov/house/transcripts/htrans94/09400033.pdf> [hereinafter House PAA Debate].

280. PAA § 15(a)-(c). The bill expressly provides that the defendant is prohibited from raising as a defense victim consent, victim compensation, that the act occurred only once, that the victim did not escape, or that the behavior was non-violent. *Id.* § 25(a); Lyn M. Schollett, Illinois Coalition Against Sexual Assault, The Predator Accountability Act: Groundbreaking Rights for Prostitutes (2006), available at http://www.icasa.org/uploads/Spring_2006_-_Predator_Accountability.doc (noting the PAA may help heal "the financial injuries" of trafficking victims).

compensatory damages, including economic loss, loss of past or future earning capacity, mental and emotional harm, pain and suffering, and punitive damages in the amount the defendant profited from the plaintiff's sex trade activities.²⁸¹

As to victim services, the Illinois Trafficking Law theoretically provides for victim services through the Illinois Department of Human Services (IDHS).²⁸² The State, however, has yet to appropriate any funds to the IDHS for this purpose.²⁸³ Victim services are also funded through the forfeiture provision because it requires that half of the forfeiture proceeds go towards a Victims Assistance Fund.²⁸⁴

The Illinois Trafficking Law also requires the Attorney General, State's Attorney's Office and any state law enforcement official to certify to the Department of Homeland Security (DHS) or another relevant federal agency that the victim is likely a victim of human trafficking and is cooperating with a trafficking investigation or prosecution, or is a minor.²⁸⁵ Certification may help an immigrant victim receive legal immigration status and federal services.²⁸⁶ DHS may consider the law enforcement certification (or endorsement) in deciding to certify the victim as a trafficking victim, if the victim is eligible under federal law.²⁸⁷

The impact of the Illinois Trafficking Law on trafficking in Illinois is still unknown because it has only been in effect for approximately fourteen months.²⁸⁸ Because trafficking investigations and cases can take a long time, it will likely be a few years before this law can truly be effective.²⁸⁹ For anti-trafficking advocates and practitioners, however,

281. *Id.* § 20(a)-(b).

282. 720 ILL. COMP. STAT. ANN. 5/10A-10(f) (West 2006).

283. Telephone Interview with Gregory Diephouse, *supra* note 192. In 2006 Governor Blagojevich gave a one million dollar state grant to the Chicago Foundation for Women to help fund its Anti-Violence Initiative to fight human trafficking, among other violent crimes. Press Release, Illinois Government News Network, Gov. Blagojevich Announces Nearly \$20 million in Federal Funds Secured for Grants to Help Provide Services to Victims of Domestic Violence and Sexual Assault, (Sept. 21, 2006), <http://www.illinois.gov/PressReleases/ShowPressRelease.cfm?SubjectID=2&RecNum=5311> [hereinafter IGNN].

284. 720 ILL. COMP. STAT. ANN. 5/10A-15(e)(2) (West 2006).

285. *Id.* at 5/10A-20.

286. *Id.*

287. See *supra* Part II.A (discussing federal T-visa and certification); see *infra* Part IV.A.2 (discussing state trafficking victims' eligibility for rights and benefits under TVPA).

288. See *Implementation of the Trafficking Victims Protection Act: Hearing Before the H. Comm. on International Relations*, 107th Cong. 7-8 (2001) (statement of Rep. Smith) (noting slow TVPA implementation). Although the TVPA was enacted in 2000, only one case was tried under it in 2001 and T-visa regulations were yet to be issued. *Id.* at 7-8, 27.

289. See BALES & LIZE, *supra* note 67, at 82 ("Forced labor cases are extremely time- and

the law itself brings hope and makes a strong statement against human trafficking.²⁹⁰ Comparing Illinois' law with the TVPA and other state anti-trafficking laws may help to predict the Illinois Trafficking Law's future success.²⁹¹

IV. ANALYSIS

The state anti-trafficking legislative movement is clearly a positive legal development,²⁹² showing a marked improvement in anti-trafficking legislation. Before the existence of state anti-trafficking laws, trafficking offenses were left uncharged²⁹³ or prosecuted as prostitution or labor violations that failed to reflect the gravity of the crime and allowed traffickers to avoid deserved punishment.²⁹⁴ For state laws to be fully effective, however, they need to adopt the TVPA's strong criminal provisions,²⁹⁵ complement its broad scope, and ensure that victims receive the services they need.²⁹⁶ For trafficking victims to receive federal benefits, states must maintain definitional uniformity to reduce confusion when state trafficking victims apply for federal victim protections.²⁹⁷

labor-intensive criminal investigations . . ."). The Justice Department estimates that slavery and trafficking cases last around a year and a half to investigate and prosecute. O'NEILL, *supra* note 19, at 3. For example, the Mishulovich investigation took twenty five months. BALES & LIZE, *supra* note 67, at 81.

290. Kelly, *supra* note 74, at 16. Before the Illinois Trafficking Law some trafficking crimes could not be pursued. *Id.* Miriam Torrado, director of Heartland's Violence Recovery Services said: "[The state's anti-trafficking legislation] really sends a message out to those perpetrators that it's not to be tolerated." *Id.*

291. See GLOBAL RIGHTS AND THE COALITION TO ABOLISH SLAVERY AND TRAFFICKING, STATE LEGISLATURE'S GUIDE TO THE FEDERAL VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000 AND THE TRAFFICKING REAUTHORIZATION ACT OF 2003 1 (2005) [hereinafter GLOBAL RIGHTS] (handed out at the 4th Annual Freedom Network USA Conference, held in Chi., Ill.) (discussing the strength of the TVPA and stating that states "should complement the broad scope of federal provisions").

292. See *supra* notes 217–26 and accompanying text (discussing the need for state anti-trafficking laws).

293. Torg, *supra* note 218, at 513 (citing the reason for uncharged offenses as "lack of criminality under state law").

294. 22 U.S.C. § 7101(14)-(15) (2000 & West Supp. 2006) (finding that "even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment").

295. GLOBAL RIGHTS, *supra* note 291, at 1; MODEL LAW, *supra* note 33, at 7.

296. Richard, *supra* note 6, at 467–72, 77 (discussing that states need to provide adequate services because victims' safety "should be of paramount concern").

297. GLOBAL RIGHTS, *supra* note 291, at 2–3 (providing the definitions of trafficking used in the TVPA); MODEL LAW, *supra* note 33, at 7.

This Part contains a three section analysis.²⁹⁸ The first section compares the Illinois Trafficking Law to the TVPA by comparing their criminal provisions, sentencing approaches, and civil remedies and discussing the effect of state prosecutions on a victim's eligibility to receive federal benefits.²⁹⁹ The second section then analyzes the Illinois Trafficking Law and other states' anti-trafficking statutes by comparing their criminal provisions, sentencing approaches, victim services, and training and implementation measures.³⁰⁰ Lastly, the third section discusses commonplace challenges to trafficking investigations and prosecutions.³⁰¹

A. Comparing the Illinois Trafficking Law with the TVPA

One way to assess how effective the Illinois Trafficking Law will be is to compare it with the TVPA.³⁰² This includes comparing its criminal and sentencing provisions, private cause of action, and victim services provisions.³⁰³

1. Comparing Criminal and Civil Provisions

As states enact anti-trafficking laws, it is important that consistency exist in trafficking definitions³⁰⁴ and criminal provisions.³⁰⁵ Generally, the criminal provisions for the Illinois Trafficking Law parallel those of the TVPA.³⁰⁶ Both laws criminalize trafficking into forced labor,³⁰⁷

298. See *infra* Part IV (comparing Illinois Trafficking Law with both the TVPA and other states' anti-trafficking laws, and analyzing commonplace challenges to trafficking investigations and prosecutions).

299. See *infra* Part IV.A (analyzing similarities, differences and their implications).

300. See *infra* Part IV.B (analyzing and comparing similar and different state approaches and their likely effects).

301. See *infra* Part IV.C (discussing specific challenges to trafficking investigations and prosecutions).

302. GLOBAL RIGHTS, *supra* note 291, at 1, 7–8 (stating that state anti-trafficking legislation should mimic the TVPA).

303. *Id.*

304. MODEL LAW, *supra* note 33, at 7 (discussing the “strong need for uniformity in definitions and concepts across state lines to minimize confusion”).

305. GLOBAL RIGHTS, *supra* note 291, at 1.

306. Compare 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006), with 18 U.S.C.A. §§ 1589–94, (West Supp. 2006). In at least one case, Illinois' criminal provisions cast a broader net than the TVPA's provisions. 5/10A-5(4) (E)-(F). Unlike the TVPA, in Illinois forced labor includes the use of blackmail or “causing or threatening to cause financial harm to or exerting financial control over any person.” Compare 5/10A-5(4), with U.S.C. § 1589.

307. § 1590; 5/10A-10(c). Illinois law also criminalizes trafficking into forced services, 5/10A-10(c), defining services as “a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor.” 5/10A-5(8). Services include commercial sexual activity and sexually-explicit performances. *Id.* The TVPA's criminalization of trafficking into peonage, slavery and involuntary servitude likely encompasses

trafficking of a minor,³⁰⁸ involuntary servitude or forced labor,³⁰⁹ and unlawful conduct respecting immigration or government documents.³¹⁰ Moreover, the TVPA and the Illinois Trafficking Law also criminalize and punish attempts as actual commissions,³¹¹ thus obviating the need for law enforcement to wait until someone is trafficked and exploited before holding traffickers accountable.³¹²

Illinois' involuntary servitude provisions also parallel those of the TVPA.³¹³ For example, Illinois' law allows state prosecutors to charge traffickers with involuntary servitude if they threaten to deport their victims, confiscate their passports, or intimidate them.³¹⁴ Because all of these are common methods traffickers use to coerce and maintain their subjects in slavery,³¹⁵ Illinois' expansive criminal approach gives state prosecutors the tools to hold traffickers accountable regardless of the method they use to subject their victims to slavery.³¹⁶ Because federal involuntary servitude statutes do not require physical or violent coercion either, but rather are meant to protect people held in servitude by non-violent coercion,³¹⁷ Illinois' involuntary servitude provisions are in line with the federal understanding of the crime.³¹⁸

Additionally, because someone can be a trafficking victim without being transported across a border,³¹⁹ Illinois' exclusion of a transportation requirement in its criminal provisions allows the state to

Illinois' "services" provision. § 1590.

308. § 1591; 5/10A-10(b).

309. § 1589; 5/10A-10(a).

310. § 1592; 5/10A-10(a)(4).

311. 18 U.S.C.A. § 1594 (West Supp. 2006); 720 ILL. COMP. STAT. ANN. 5/10A-10(a) (West Supp. 2006).

312. Wray, *supra* note 73, at 5 (discussing the urgency of preventing "traffickers from bringing potential slaves into the U.S. in the first place. . .").

313. *See infra* notes 251–52 and accompanying text (discussing the Act's involuntary servitude provisions).

314. 5/10A-10(a)(3)–(5).

315. *See, e.g.*, TIP REPORT 2006, *supra* note 5, at 9–10 (discussing the various tactics that "unscrupulous labor agencies or employers" use to coerce victims into forced labor).

316. *See supra* notes 314–15 and accompanying text (noting criminalizing threats of deportation, passport confiscation and intimidation).

317. 22 U.S.C. § 7101(b)(13) (2000 & West Supp. 2006).

318. *See* 720 ILL. COMP. STAT. ANN. 5/10A-10(a)-(b) (Illinois' involuntary servitude provisions).

319. Virginia Suvein & Brenda Uekert, *Human Trafficking: A Growing Crime to Hit the State Courts*, in *FUTURE TRENDS IN STATE COURTS* 105, 105 (2005), available at http://www.ncsconline.org/WC/Publications/KIS_CtFutu_Trends2005.pdf. Law enforcement agencies should not "mistakenly focus" on voluntary migration but rather should focus on "compelled service or forced labor." TIP REPORT 2006, *supra* note 5, at 10 (explaining "the myth of movement").

protect all trafficking victims regardless of their lack of movement.³²⁰ In this way, the Illinois Trafficking Law's criminal provisions, like the TVPA, focus on the essence of the crime of human trafficking: namely, the slave-like nature of the service.³²¹

Even more importantly than simply criminalizing the same general conduct, the language of the Illinois Trafficking Law at times substantively mirrors that of the TVPA, and thus criminalizes the same specific conduct.³²² For example, Illinois' elements of sex trafficking require the mental state of "knowingly" for anyone who "recruits, entices, harbors, transports, provides, or obtains by any means . . . another person, intending or knowing that the person will be subjected to forced labor or services . . ."³²³ The TVPA's sex trafficking elements are essentially the same.³²⁴

Additionally, both the TVPA and the Illinois Trafficking Law seek to target those who facilitate trafficking offenses by taking monetary or in-kind bribes.³²⁵ Both laws do this by making it a crime for someone to "benefit, financially or by receiving anything of value, from participation in a venture which has engaged in" human trafficking.³²⁶ Because corruption by government agencies, law enforcement, immigration officials, and private individuals enhances the ease with which criminal networks traffick human beings, these provisions are essential to making it more difficult for traffickers to succeed in

320. 720 ILL. COMP. STAT. ANN. 5/10A-10.

321. MODEL LAW, *supra* note 33, at 8 (noting that the Model Law's Criminal provisions "focus on the coercive nature of the service" rather than the transportation of the victim). The Model Law further emphasizes that the denial of someone's freedom is the essence of "trafficking in persons." *Id.*

322. *Compare, e.g.,* 5/10A-10(c) (describing the trafficking of persons for forced labor or services), *with* 18 U.S.C. § 1591(a) (describing the elements of sex trafficking).

323. 5/10A-10(c).

324. 18 U.S.C. § 1591(a). Initially it appears that the TVPA's requirement for adult sex trafficking that the person charged know that "force, fraud, or coercion . . . will be used to the cause the person to engage in a commercial sex act" is stricter than Illinois' requirement. *Id.* § 1591(a)(2)(1). However, a closer look reveals that they are substantively equal because Illinois' definition of forced labor or services encompasses the concepts of force, fraud, or coercion. 5/10A-5(4) (allowing forced labor or services to be accomplished by causing or threatening to cause harm, physically restraining someone or threatening to, or abusing or threatening to abuse the legal process, among other actions). Additionally, the TVPA's coercion definition is almost identical to Illinois' forced labor or services definition, so that if a defendant uses coercion under the TVPA's definition, that defendant has also subjected someone to forced labor or services under Illinois definition. *Compare* 5/10A-5(4) (Illinois' definition of "forced labor or services") *with* 18 U.S.C. § 1591(c)(2) (the TVPA's definition of "coercion").

325. § 1591(a)(2); 5/10A-10(c)(2).

326. § 1591(a)(2); 5/10A-10(c)(2) (using the exact same language as the TVPA).

exploiting and enslaving people.³²⁷ Illinois criminal provisions are thus broad enough to combat the wide scope of trafficking-related conduct.³²⁸

The fact that the Illinois Trafficking Law parallels the TVPA is crucial because consistency in criminal provisions is essential with regard to human trafficking offenses.³²⁹ Investigators, prosecutors, and judges may become confused regarding what constitutes a human trafficking offense if definitions lack consistency,³³⁰ given that it is a relatively misunderstood crime and only recently comprehensively defined through anti-trafficking legislation.³³¹ Since Illinois' criminal provisions are substantively like the TVPA's, state prosecutors will potentially be able to target the same criminal population as federal prosecutors.³³² Because the Illinois Trafficking Law parallels the TVPA and maintains consistency in trafficking criminalization, it will potentially serve as an added force, along with federal law, in combating human trafficking in Illinois.³³³

One of the hallmarks of the TVPA is that it established long sentences and enhanced penalties for trafficking offenses.³³⁴ The TVPA's sentencing approach has been praised because one of the main reasons trafficking is so rampant is the historically and shamefully low risk of arrest,³³⁵ prosecution,³³⁶ conviction,³³⁷ and harsh sentencing.³³⁸

327. FARR, *supra* note 13, at 13, 64, 77–84. In the United States there is “evidence of a ‘relatively high degree of collusion’ between traffickers and public officials, including bribes paid to law enforcement, border officers, and immigration officials at airports.” *Id.* at 78–79. Even the INS “has admitted that traffickers have most likely ‘corrupted’ some senior-level officials, along with officials in key positions, such as ‘immigration officials at airports’ and ‘consular workers in U.S. embassies abroad.’” *Id.* at 81. In the 1880s, dens of forced teenage prostitution were rampant in the mining and logging communities of northern Wisconsin and Michigan. GARY A. HAUGEN, GOOD NEWS ABOUT INJUSTICE: A WITNESS OF COURAGE IN A HURTING WORLD 51–55 (1999). Corruption was rampant as police returned girls who escaped back to the brothels, while local politicians prevented legal action against the forced prostitution operations because they owed their power to the wealthy business interests behind the brothels. *Id.* at 52–54. See MALAREK, *supra* note 3, at 135–56 (detailing how corruption fuels trafficking).

328. See GLOBAL RIGHTS, *supra* note 291, at 1 (noting that the TVPA created the federal crimes of trafficking, forced labor, and sex trafficking to supplement existing laws).

329. GLOBAL RIGHTS, *supra* note 291, at 1 (recommending that state legislation be consistent with the TVPA); MODEL LAW, *supra* note 33, at 7.

330. MODEL LAW, *supra* note 33, at 7.

331. See, e.g., Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2985–86 (2006) (discussing the confusion between trafficking and smuggling).

332. See Buckwalter et al, *supra* note 162, at 425–26 (noting that state legislation will allow for more prosecutions of traffickers).

333. See *id.* (describing state anti-trafficking legislation as an “additional deterrent”).

334. Tiefenbrun, *supra* note 27, at 324.

335. *Saga of Susannah*, *supra* note 16, at 116 (noting the “relatively small” risk of getting

Illinois has likewise attached appropriately strong sentences to state trafficking offenses.³³⁹ The Illinois Trafficking Law, like the TVPA, allows for a life sentence if the offense includes kidnapping, attempted kidnapping, aggravated sexual abuse, attempted aggravated sexual abuse, or an attempt to kill.³⁴⁰ In at least one instance, a trafficker sentenced under Illinois' law could conceivably receive a tougher sentence than if tried for the same offense under the TVPA.³⁴¹ The Illinois Trafficking Law provides for a sentence of up to thirty years for involuntary servitude of an adult involving threats of physical harm,³⁴² while the TVPA only provides for twenty years.³⁴³

Although Illinois' sentences generally parallel those of the TVPA, sometimes the TVPA provides for longer ones.³⁴⁴ For example, someone convicted of child sex trafficking under the TVPA can receive a life sentence if the victim is under eighteen years old.³⁴⁵ However,

caught for trafficking); KING, *supra* note 124, at 21 (quoting Kansas Senator Sam Brownback as saying "[t]he chances of being caught are slight").

336. Dill, *supra* note 75, at 14 (stating that "prosecution of traffickers is rare"); KING, *supra* note 124, at 2-3 (saying human traffickers operate with impunity). Between 2003 and 2005 just over twenty-one thousand traffickers were prosecuted worldwide. TIP REPORT 2006, *supra* note 5, at 36. Yet, the U.S. State Department estimates that between 600,000 to 800,000 people are trafficked each year. Kelly, *supra* note 74, at 16.

337. Dill, *supra* note 75, at 14 (noting that convictions occur in few cases); *Hidden Slaves*, *supra* note 19, at 52 (noting that perpetrators of forced labor believe their chances of "never be[ing] held accountable in a court of law" are good in spite of forced labor laws). Between 2003 and 2005 just over ten thousand traffickers were convicted worldwide, while between 1.2 and 1.6 million people were trafficked. TIP REPORT 2006, *supra* note 5, at 36; Kelly *supra* note 74, at 16.

338. Dill, *supra* note 75, at 14 (describing convictions as "light"); KING, *supra* note 124, at 21 (quoting Senator Brownback as saying "small penalties exist"); *Impact of TVPA*, *supra* note 203, at 197 (calling past enforcement of trafficking and slavery laws abysmal); *Saga of Susannah*, *supra* note 16, at 116 (noting relatively weak punishments for sex trafficking compared to drug or arms trafficking, and identifying international organized crime's lack of fear of lenient penalties a major reason for the increase in sex trafficking).

339. 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006) (referencing trafficking offenses and corresponding sentences); *see supra* notes 259-71 and accompanying text (discussing sentencing provisions). *See also* Press Release, Office of the Governor, Gov. Blagojevich Signs Landmark Legislation to Combat Human Trafficking: Illinois Joins the Federal Government in Launching the Nation's Largest Assault on the Growing Problem (June 7, 2005) (emphasizing that Illinois is "putting strong penalties in the law that will deal severely with people who force others into servitude").

340. 18 U.S.C.A. §§ 1589-1590 (West Supp. 2006); 5/10A-10(d)(1) (making these offenses Class X felonies).

341. 5/10A-10(a)(1) (Illinois' involuntary servitude provision).

342. *Id.*; 730 ILL. COMP. STAT. 5/5-8-1(3) (2004 & West Supp. 2005).

343. 18 U.S.C.A. § 1589.

344. *Compare, e.g.,* § 1591 (b)(1) (TVPA's sex trafficking provision), *with* 720 ILL. COMP. STAT. ANN. 5/10A-10(c) (Ill. provision for sex trafficking of an adult).

345. 18 U.S.C.A. § 1591(b)(1)-(2).

someone convicted of child sex trafficking in Illinois can only receive up to thirty years.³⁴⁶ Additionally, someone convicted under the TVPA of sex trafficking of an adult by force, fraud, or coercion can receive a life sentence³⁴⁷ while someone similarly convicted under the Illinois Trafficking Law can only get up to fifteen years.³⁴⁸ These sentencing discrepancies mean sex traffickers could receive weaker sentences under the Illinois Trafficking Law.³⁴⁹

The Illinois Trafficking Law does, however, include several sentencing enhancements which, if fully utilized, could potentially ensure that traffickers receive equally strong sentences in Illinois as they would in federal court.³⁵⁰ For example, a court can sentence a defendant to a longer term if the victim was physically injured, held for more than 180 days, or if there is more than one victim.³⁵¹ Illinois courts should almost always have the opportunity to apply these enhancements as most traffickers routinely employ beatings, rape, and other physical assaults to force their victims to perform sex acts or other slave labor.³⁵² Traffickers also often hold their victims for extended periods of time³⁵³ and enslave numerous victims at once.³⁵⁴

346. 5/10A-10(b) (identifying child sex trafficking as a Class X felony); 730 ILL. COMP. STAT. 5/5-8-1(3) (assigning a maximum thirty year sentence for Class X felonies).

347. § 1591(b)(1).

348. 5/10A-10(c) (identifying sex trafficking of an adult as a Class 1 felony); 730 ILL. COMP. STAT. 5/5-8-1 (4) (assigning a maximum fifteen year sentence for Class 1 felonies).

349. Tiefenbrun, *supra* note 27, at 330 (discussing how the TVPA's increased penalties provide harsher sentences and deterrents to traffickers).

350. 5/10A-10(d)(2).

351. *Id.*

352. 22 U.S.C. § 7101(b)(6) (2000 & West Supp. 2006); *see* Jorene Soto, *Show Me the Money: The Application of the Asset Forfeiture Provisions of the Trafficking Victims Protection Act and Suggestions for the Future*, 23 PENN ST. INT'L L. REV. 365, 368–69 (2004) (noting that traffickers rape, beat, drug or starve their victims to compel them to work); O'NEILL, *supra* note 19, at 5 (“[T]rafficking victims suffer extreme physical and mental abuse, including rape, imprisonment, forced abortions, and physical brutality”). For example, in *United States v. Robinzine*, the defendant-pimp slapped the juvenile sex trafficking victim four times across her face and forced her to sit naked next to an operating air conditioner in a Chicago hotel for hours. 80 F.3d 246, 249 (7th Cir. 1996).

353. *See* Tiefenbrun, *supra* note 27, at 353 (discussing the Lakireddy Bali Reddy case, where victims were held for over a decade). The largest trafficking operation in U.S. history involved the case of Kil Soo Lee, where over 250 victims, mostly women were forced to operate sewing machines in a sweatshop. *United States v. Lee*, 472 F.3d 638, 640–41 (9th Cir. 2006). The victims were held for over two years. Buckwalter, *supra* note 162, at 411. *See also* BALES & LIZE, *supra* note 67, at 40 (noting that Mishulovich held the five trafficking victims for almost ten months, while the Paoletti family held some of their victims for two and a half years).

354. *See supra* note 353 (discussing the Kil Soo Lee case involving 250 victims and the Reddy case involving dozens of women); *see supra* note 24 (discussing the El Monte case, which involved seventy-two victims).

In addition to prison sentencing, both victim restitution and the forfeiture of trafficking assets are mandatory under the TVPA³⁵⁵ and the Illinois Trafficking Law.³⁵⁶ These two provisions could prove especially crucial in weakening trafficking operations by depleting the vast financial resources at the traffickers' disposal.³⁵⁷ One of the main reasons human trafficking is so prevalent is that trafficking, especially trafficking women and children into sexual exploitation, is one of the most financially profitable organized crime ventures worldwide.³⁵⁸ While the FBI estimates that human trafficking easily brings in over \$9 billion annually for organized crime,³⁵⁹ the actual amount may be even more.³⁶⁰ Because traffickers exploit human lives and subsequently reap millions of dollars in profit, effective enforcement of the restitution and forfeiture provisions will not only help deter traffickers, but will also help compensate victims for their tremendous loss.³⁶¹

Due to the lucrative nature of human trafficking, tough sentences across state and federal lines are necessary to deter this lurid trade.³⁶²

355. 18 U.S.C.A. §§ 1593–1594(b)-(c) (West Supp 2006).

356. 720 ILL. COMP. STAT. ANN. 5/10A-15 (West Supp. 2006) (addressing forfeitures); 5/10A-10(e) (addressing restitution).

357. Wray, *supra* note 73, at 7 (calling asset forfeiture a powerful tool). Forfeiture seizes money that was acquired through slavery and will likely be used to fuel more criminal endeavors. TIP REPORT 2006, *supra* note 5, at 13.

358. Annie Sweeney, *Sex and Sorrow: The Modern Slave Trade, Part II: Battling the Problem*, CHI. SUN-TIMES Aug. 8, 2005, at 10 [hereinafter Sweeney *Part II*] (Consul at Riga U.S. Embassy, Landon R. Taylor reports “trafficking in persons either is—or is well on its way to—becoming the largest source of revenue for organized criminal activity in the world, supplanting in illegal arms and trade in illegal drugs.”); 22 U.S.C.A. § 7101(b)(8) (West 2004) (“Trafficking in persons . . . is the fastest growing source of profits for organized criminal enterprises worldwide.”). In fact, trafficking is potentially more financially profitable than drugs or weapons trafficking because unlike drugs, human beings, when made a commodity, can be sold over and over again, HERTZKE, *supra* note 25, at 317, and are easier to transport than drugs, BALES, *supra* note 6, at 252; Europol, Trafficking in Human Beings for Sexual Exploitation in the EU: A Europol Perspective 1, <http://www.europol.europa.eu/publications/SeriousCrimeOverviews/2004/THB.pdf>; International Rescue Committee, The IRC Launches Anti-Trafficking Action Coalition, Nov. 24, 2003, http://www.theirc.org/news/the_irc_launches_antitrafficking_action_coalition.html.

359. HUMAN TRAFFICKING: AN INTELLIGENCE REPORT 1 (2006), http://www.fbi.gov/page2/june06/human_trafficking061206.htm. *But see* International Labor Organization (ILO) Department of Communication, *ILO Releases Major New Study on Forced Labour: Says More Than 12 Million are Trapped in Forced Labour Worldwide*, May 11, 2005, at 1, available at <http://www.ilo.org/public/english/bureau/inf/pr/2005/22.htm> (\$32 billion in profits worldwide).

360. Siobhan Morrissey, *Sinister Industry: ABA Joins Worldwide Effort to Fight Criminal Trade in Human Beings*, 92 A.B.A.J. 59, 59 (2006) (stating that human traffickers could be making much more in the U.S. than suggested).

361. Soto, *supra* note 352, at 365, 367, 370 (noting one trafficker who made \$2.5 million in two years by “forcing women and girls into prostitution”). *See also* Sweeney *Part II*, *supra* note 358, at 10 (reporting profits from just one woman averaging \$250,000).

362. *See supra* notes 357–61 and accompanying text (discussing lucrateness of trafficking);

Those who traffic in human misery have historically enjoyed an unconscionably low risk of any kind of severe penalty.³⁶³ Governments, including Illinois', have begun to counter traffickers' exploitation of these weak penalties.³⁶⁴ Non-profit and government experts agree that without stiff penalties, there is little hope in combating the scourge of modern-day slavery.³⁶⁵ Illinois has thus achieved legislative success in ascribing strong sentences to human trafficking offenses, and has joined the federal government in emphasizing the need for tough sentences.³⁶⁶

Additionally, like the federal government³⁶⁷ and a handful of states,³⁶⁸ Illinois has enacted legislation allowing victims of trafficking to file civil actions against their perpetrators.³⁶⁹ In 2006, the Illinois legislature passed the PAA, allowing victims of sex trafficking or the sex trade to sue their perpetrators in court.³⁷⁰

There is, however, a major difference between Illinois' civil action and the TVPA's, for while the federal cause of action is available to all trafficking victims, Illinois' civil action is only available to victims of sex trafficking or the sex trade.³⁷¹ The PAA was directed at those victimized by the sex trade rather than human trafficking in general.³⁷² Labor trafficking victims in Illinois can still recover damages, but only through traditional state tort claims or federal court.³⁷³ The failure to provide all trafficking victims a civil action is a clear weakness of the

Perry, *supra* note 8, at 182 (calling deterrence and criminal penalties significant aspects in combating trafficking); Wray, *supra* note 73, at 6 ("we need to put . . . traffickers behind bars – for a long, long time.").

363. See *supra* notes 335–38 and accompanying text (discussing low arrest, prosecution, conviction and sentencing rates).

364. See *supra* Part III (discussing sentencing provisions).

365. See IJM, *supra* note 1 (emphasizing "hard jail time"); *supra* notes 220, 362 (discussing need for deterrence).

366. See *supra* Part III (discussing Illinois Trafficking Law).

367. See *supra* notes 201–02 and accompanying text (discussing TVPRA).

368. California, CAL. CIV. CODE § 52.5 (West Supp. 2007); Connecticut, S.B. 153, Pub. Act. No. 06-43 (Ct. 2006); Florida, FLA. STAT. ANN. § 772.104(A)(2) (West Supp. 2007); Iowa, H.B. 2205, 81st Gen. Assem., 2d Sess. (Iowa 2005); Washington, H.B. 1175, 59th Leg., Reg. Sess. (Wash. 2005).

369. See *supra* notes 278–81 and accompanying text (discussing PAA); House PAA Debate, *supra* note 279, at 31–32.

370. Predator Accountability Act, H.B. 1299, 94th Gen. Assem. Pub. L. No. 094-998, 2005 ILL. ALS 998 (2006) (codified as 735 ILL. COMP. STAT. 5/13-225 (2006)).

371. *Id.*

372. See *supra* notes 279–80 and accompanying text (discussing goal of PAA).

373. *Remedying the Injustices*, *supra* note 16, at 2589 (noting how trafficking victims can potentially receive "greater recovery through common law tort claims than through statutory claims").

Illinois Trafficking Law; one which, unlike the TVPA, will make it harder for victims to be compensated for their tremendous loss.³⁷⁴ Whether state trafficking victims will be able to access federal benefits is also a lingering question.³⁷⁵

2. *Victim Services, Certification, and Immigration Status*

Although the addition of state laws strengthens the fight against trafficking in the United States, it is critical that such laws are consistent with federal law so that trafficking victims receive much needed federal benefits, such as immigration status and refugee rights.³⁷⁶ The reality is that trafficking victims have numerous complex needs,³⁷⁷ many of which the TVPA provides for.³⁷⁸ Nevertheless, while the TVPA's criminal definition of trafficking is relatively broad, not all trafficking victims qualify for federal benefits.³⁷⁹ Moreover, although it seems counterintuitive, trafficking victims who participate in state prosecutions may not necessarily be eligible to receive the same federal benefits and services as those victims identified and helped by federal agents.³⁸⁰ This section analyzes what victim services are available under the Illinois Trafficking Law as compared to the TVPA by looking at the interwoven issues of victim protection, T-visa grants, and federal certification.

In the realm of victim-witness protection, the TVPA provides that a trafficking victim is covered under the federal witness protection program.³⁸¹ Under the TVPA's federal regulations, foreign victims and their families are granted protection from intimidation, harm and threats of harm.³⁸² Federal prosecutors have successfully prosecuted traffickers when the victims are protected in a safe place.³⁸³ State

374. See *supra* notes 222 and 280 and accompanying text (discussing damages under PAA and TVPRA).

375. See *infra* notes 377–422 and accompanying text (discussing T-visa and federal benefits eligibility for state victims).

376. GLOBAL RIGHTS, *supra* note 291, at 1.

377. Caliber, *supra* note 17, at 2, 7 (including immigration, legal, health and mental health counseling).

378. 28 C.F.R. § 1100.33(a)(2006); TVPRA, *supra* note 202.

379. Although one wonders why Congress did not consider all trafficking to be inherently “severe,” its determination implemented through federal regulations is law. Coonan, *supra* note 159, at 300.

380. Richard, *supra* note 6, at 463 (arguing that in theory this should not be the case).

381. 18 U.S.C.A. § 1594(d) (West Supp. 2006); 18 U.S.C. § 3521 (2000). This victim protection mandate has not been completely successful, as witnesses still fear retribution against their families back in their home countries. Tiefenbrun, *supra* note 27, at 329.

382. 28 C.F.R. § 1100.31(d)(1) (2004).

383. GLOBAL RIGHTS, *supra* note 291, at 3.

prosecutors will likewise need to ensure victim protection to achieve similar success.³⁸⁴ The TVPRA, however, does not permit states to request continued presence for a victim.³⁸⁵ Additionally, most states, including Illinois,³⁸⁶ lack witness-protection programs.³⁸⁷ While the Illinois Trafficking law does provide for emergency services and assistance to trafficking victims, this provision is subject to state budgetary constraints,³⁸⁸ and does not include a provision for victim-witness protection.³⁸⁹ This is a major weakness of the law because without protection for themselves and their families, trafficking victims are unlikely to testify against their perpetrators in court, thus making prosecutions much more difficult.³⁹⁰

As the justice system seeks to support and protect undocumented trafficking victims while they recover, providing them legal immigration status is also essential.³⁹¹ As discussed earlier, a T-visa allows a foreign victim to receive federal benefits and stay in the United States as a temporary resident.³⁹² For a victim to receive immigration status and other benefits through a T-visa,³⁹³ he or she must be a victim of a severe form of trafficking as defined by the TVPA.³⁹⁴ A positive aspect of Illinois' provision for victim services is that victims are assisted regardless of their immigration status.³⁹⁵ As a state, however,

384. *Id.* See also MODEL LAW, *supra* note 33, at 12 (emphasizing that “[f]ederal experience has shown that prosecution without victim protection is unworkable”).

385. Richard, *supra* note 6, at 466–67 (contrasting this prohibition with the allowance for state law enforcement endorsements for certification).

386. Illinois has a witness protection act for gang crime witnesses. 725 ILL. COMP. STAT. 172/5-5, 5-10.

387. NATIONAL INSTITUTE OF JUSTICE, U.S. DEP’T OF JUSTICE, FIGHTING URBAN CRIME: THE EVOLUTION OF FEDERAL-LOCAL COLLABORATION 3 (2003), <http://www.ncjrs.gov/pdffiles1/nij/197040.pdf>.

388. 720 ILL. COMP. STAT. ANN. 5/10A-10(f) (West Supp. 2006). Unless Illinois appropriates specific funds for trafficking services, Illinois trafficking victims will need to depend on federal services or local non-profit service providers. As Gregory Diephouse of the IDHS notes, the state is yet to appropriate any money to human trafficking victim services. Telephone Interview with Gregory Diephouse, *supra* note 192.

389. 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006).

390. Richard, *supra* note 6, at 467 (discussing how victim safety should be a priority of trafficking investigations and prosecutions); See also *United States v. Robinzine*, 80 F.3d 246, 253 (7th Cir. 1996) (noting that juvenile sex trafficking victim was threatened to keep silent or else “there would be a price on [her] head”).

391. GLOBAL RIGHTS, *supra* note 291, at 3.

392. See *supra* notes 188–94 and accompanying text (discussing T-visa).

393. A T-visa provides and also ensures the victim and maybe her family protection from “intimidation and threats of reprisals from traffickers and their associates.” 22 U.S.C. § 7105(c)(1)(C)(i) (2000 & West. Supp. 2006).

394. See *supra* note 191 (discussing definition of eligibility).

395. ICASA, *supra* note 244, at 1. This provision is consistent with the TVPRA’s recognition

Illinois has no power to grant legal immigration status to foreign trafficking victims.³⁹⁶ Thus, for a foreign trafficking victim in a state prosecution to receive immigration relief he or she must be certified as a victim by the federal Department of Health and Human Services (HHS).³⁹⁷

Victim certification is essential to victim recovery because once someone is certified he or she is eligible for medical and psychological assistance, food stamps, housing, job training, work authorization, educational programs, and translation and legal services.³⁹⁸ It remains unclear, however, whether victims taking part in Illinois state prosecutions will be certified to receive the benefits and services that foreign victims are eligible for under federal law.³⁹⁹ This question largely hinges on whether the Office of Refugee Resettlement (ORR) of the HHS will certify victims based on state law enforcement endorsements that a victim is a victim of a severe form of trafficking and is reasonably cooperating in a trafficking investigation or prosecution.⁴⁰⁰

Illinois' law includes a certification provision that may assist these victims in receiving federal benefits.⁴⁰¹ The Attorney General, State's Attorney, or any law enforcement official is required to certify to the DOJ or Department of Homeland Security (DHS) that an investigation or prosecution is underway and that a likely trafficking victim is cooperating with the investigation or prosecution.⁴⁰² The provision recognizes, however, that a victim will only receive a T-visa and other federal benefits "if eligible under federal law."⁴⁰³

The Illinois' certification provision is only relevant because of the TVPRA.⁴⁰⁴ Until 2003, a victim needed to collaborate with federal law enforcement to receive immigration relief.⁴⁰⁵ The TVPRA removed the

that trafficking victims should be treated as crime victims and not illegal aliens. Landesman, *supra* note 18, at 32.

396. Buckwalter et al., *supra* note 162, at 434–35; *See also* Richard, *supra* note 6, at 464 ("States . . . [lack] the power to offer the benefits of legal status . . .").

397. *See supra* notes 194–95 and accompanying text (discussing certification).

398. 28 C.F.R. § 1100.33(a) (2006); TVPRA, *supra* note 202, at § 4(a)(3).

399. Interview with Katherine Kaufka, *supra* note 115; GLOBAL RIGHTS, *supra* note 291, at 3.

400. Interview with Katherine Kaufka, *supra* note 115.

401. 720 ILL. COMP. STAT. ANN. 5/10A-20 (West Supp. 2006).

402. *Id.*

403. *Id.* This means the victim must be a victim of a severe form of trafficking and present in the United States on account of trafficking. 8 C.F.R. § 214.11(f) (2006).

404. TVPRA, *supra* note 202.

405. 22 U.S.C. § 7105(b)(1)(E)(i) (2000).

requirement that federal law enforcement endorse a trafficking victim⁴⁰⁶ and allowed the ORR to accept endorsements for the purpose of certification from state and local law enforcement investigating or prosecuting trafficking cases.⁴⁰⁷ This amendment is important because it opens the door for victims rescued at the state and local level to receive federal services and secure lawful immigration status to assist in trafficking prosecutions and potentially remain in the United States permanently.⁴⁰⁸

However, although the TVPRA amended the law so that the ORR could rely on state or local law enforcement endorsements, the federal regulations implementing that law are yet to be issued.⁴⁰⁹ The regulations currently in effect require an endorsement from a federal law enforcement agency (LEA) or certain credible secondary evidence.⁴¹⁰ While an LEA endorsement is considered primary evidence that a person is the victim of a severe form of trafficking, state or local law enforcement statements are only considered secondary evidence.⁴¹¹ Although LEA endorsements are not mandatory,⁴¹² without them certification eligibility is almost impossible.⁴¹³ Federal LEA endorsements are thus favored over state endorsements.⁴¹⁴ Even

406. TVPRA, *supra* note 202, at § 4(a)(3)(iv); 22 U.S.C.A. § 7105 (West 2004); Richard, *supra* note 6, at 454–55 (reporting that “trafficked persons can qualify for social service benefits and T-visas by cooperating with . . . state and local law enforcement agents . . .”).

407. 22 U.S.C.A. § 7105(b)(1)(E)(iv) (West 2004); Richard, *supra* note 6, at 454–55. The TVPRA also amended the Immigration and Nationality Act to allow victims under eighteen to receive a T-visa without certification and thus without the need to participate in the investigation or prosecution. TVPRA, *supra* note 202 at § 4(A)(b)(1)(a).

408. *Id.*

409. Interview with Katherine Kaufka, *supra* note 115; *Hidden Slaves*, *supra* note 19, at 79 (noting how the TVPRA is yet to be implemented).

410. 8 C.F.R. § 214.11(a) (2006) (defining a law enforcement agency as “any Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons.”).

411. *Id.* at § 214.11 (f)(2)-(3); GLOBAL RIGHTS, *supra* note 291, at 4.

412. Immigration and Naturalization Serv., U.S. Dep’t of Justice, OMB No. 1115-0246, *Application for T Nonimmigrant Status*, (Filing Instructions for Application for T Nonimmigrant Status (Form I-914)) 3 (Jan. 22, 2002):

[T]he endorsement of a Federal Law Enforcement Officer on the Form I-914, Supplement B, constitutes presumptive proof that the applicant is a victim and has complied with any reasonable request for assistance in the investigation and prosecution. These elements of the applicant’s claim may be difficult to establish otherwise, and submission of the Form I-914, Supplement B, is strongly advised.

413. 8 C.F.R. § 214.11(h)(2) (2006) (“An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status”).

414. *Hidden Slaves*, *supra* note 19, at 79 (reporting that “[v]ictims who cooperate with local authorities are technically eligible for a T visa but run into problems because the [TVPRA] favors documentation of cooperation from federal law enforcement over an endorsement from state

when the new regulations are issued, it is possible that federal agencies will continue to distrust state and local endorsements.⁴¹⁵ Despite calls for collaboration,⁴¹⁶ federal agencies have shown resistance to relying on state prosecutors or law enforcement officials when certifying a trafficking victim.⁴¹⁷

Even if federal agencies accept state LEA endorsements, the endorser will still need to show that the person is a victim of a severe form of trafficking.⁴¹⁸ The DOJ itself has shown concern that trafficking victims in state-level cases may not meet the severe form of trafficking definition.⁴¹⁹ Whether they do or not will depend on the extent that Illinois trafficking victims fall into the TVPA's "severe forms of trafficking" definition.⁴²⁰ As Illinois' state prosecutors attempt to show that force, fraud, or coercion was used against a victim, they should utilize the wealth of knowledge gathered by anti-trafficking advocates and service providers about the many ways traffickers use force, fraud, and coercion on trafficking victims.⁴²¹

While some argue that providing victim services is something beyond the realm of state criminal statutes,⁴²² it seems clear that any state, including Illinois, failing to provide adequate victim services will simultaneously fail at successfully prosecuting traffickers and helping victims in any meaningful way.⁴²³ Without necessary victim services,

officials"). However, the TVPRA attempts to make "state endorsements equivalent to federal ones . . ." *Id.* Nevertheless, the DOJ opposed this new TVPRA provision. Richard, *supra* note 6, at 464.

415. Richard, *supra* note 6, at 465–66 (calling "continu[ed] distrust" likely).

416. Buckwalter et al., *supra* note 162, at 434 (calling "[c]ollaboration among law enforcement organizations at all levels and NGOs" critical to meeting the needs of trafficking victims).

417. Richard, *supra* note 6, at 464 (discussing the Justice Department's opposition to the TVPRA provision accepting state level endorsements and its "historical hesitancy" to allowing state level endorsements)

418. *See supra* notes 190–93 and accompanying text (discussing T-visa requirements).

419. H.R. REP. NO. 108-164, pt. 2, at 15 (2003), *reprinted in* 2003 U.S.C.C.A.N. 2408, 2423.

420. *See supra* note 191 (discussing definition of "severe forms of trafficking").

421. Hughes, *supra* note 159, at 4–7 (naming numerous examples and indications of force, fraud and coercion against trafficking victims). Donna M. Hughes is Professor and Carlson Endowed Chair of the Women's Studies Program at the University of Rhode Island. Hughes has testified before Congress and comprehensively researched human trafficking. Donna M. Hughes, Carlson Endowed Chair, Univ. of R.I., <http://www.uri.edu/artsci/wms/hughes/hughes.htm>.

422. Coonan, *supra* note 159, at 301 (arguing that trafficking victims' service needs "lie outside the framework of state criminal codes.").

423. Buckwalter et al., *supra* note 162, at 434 (noting that states can provide victims with services, benefits, and needed protection); *See also Hidden Slaves*, *supra* note 19, at 79 (noting how without "federal immigration and welfare benefits, victims in state prosecutions are unable to regularize their status and must fall back on state benefits—if available—or private support."); Wray, *supra* note 73, at 5 ("stress[ing] the importance of careful attention to, and care for . . .

state prosecutions are likely to be hampered, exposing trafficking victims to deportation and re-exploitation in their home countries.⁴²⁴

*B. Comparing the Illinois Trafficking Law to
Other State Anti-Trafficking Laws*

As states enact anti-trafficking criminal legislation, it is important that these laws consistently punish the same crimes with equally strong penalties.⁴²⁵ Otherwise, traffickers will simply exploit weak laws in certain states just as they currently exploit weak laws in certain countries.⁴²⁶ Inconsistent anti-trafficking statutes in a region result in human trafficking routes shifting as opposed to human trafficking activity lessening.⁴²⁷

1. Comparing Criminal Provisions and Victim Services

Like the twenty-one other states with anti-trafficking laws,⁴²⁸ Illinois criminalizes human trafficking as a felony.⁴²⁹ The criminal provisions of the majority of state anti-trafficking statutes are quite similar⁴³⁰ and often parallel the Model Law.⁴³¹ All state anti-trafficking statutes criminalize sex trafficking and labor trafficking, while at least nine states explicitly criminalize trafficking of minors.⁴³²

Although Illinois' criminal provisions are fairly similar to other states, unlike several states it lacks provisions dealing with the mail-

trafficking victims" and noting the importance of "victim service providers . . .").

424. Richard, *supra* note 6, at 467 (noting that victim safety is critical and without it effective prosecutions are almost impossible).

425. See Fact Sheet on State Laws, *supra* note 234, at 1 (stating that one of the goals of the Center for Women Policy Studies is that state statutes criminalizing trafficking would include "harsh punishments for traffickers.").

426. Hanh Diep, *We Pay – The Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking*, 2 LOY. U. CHI. INT'L L. REV. 309, 326 (2005) ("The disparity in legal conditions creates disparate markets, which traffickers exploit for their gain.").

427. *Id.* at 327 ("Attempts by individual governments to put criminal organizations out of business have made such organizations more innovative in manipulating their business circumstances.").

428. See *supra* note 36 (listing the state statutes).

429. 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006).

430. See generally Fact Sheet on State Laws, *supra* note 234 (discussing state anti-trafficking laws).

431. See generally MODEL LAW, *supra* note 33 (proposing how state legislatures should create anti-trafficking laws).

432. ARIZ. REV. ANN. STAT. § 13-1307 (Supp. 2006); COLO. REV. STAT. § 18-6-402 (2006); CONN. GEN. STAT. ANN. § 53-21 (West Supp. 2006); FLA. STAT. ANN. § 796.035 (West Supp. 2007); 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006); S. 72, 81st Leg., Reg. Sess. (Kan. 2005); MO. ANN. STAT. §§ 566.212-566.213 (West Supp. 2007); OKLA. STAT. tit. 21, § 867 (West 2004); TEX. PENAL CODE ANN. § 20A.02 (Vernon Supp. 2006).

order bride industry or sex tourism.⁴³³ Thus far, Texas,⁴³⁴ Hawaii,⁴³⁵ Washington,⁴³⁶ and Missouri⁴³⁷ have enacted legislation regulating international matchmaking organizations (IMOs) operating within their respective states.⁴³⁸ These statutory provisions mandate that IMOs enable the person considering coming to the United States as a bride to access her prospective spouse's marital and criminal record.⁴³⁹ Illinois' failure to regulate IMOs is a clear weakness of its anti-trafficking law because the mail-order bride industry is directly connected to human trafficking.⁴⁴⁰ U.S. embassies have noted how IMOs actively camouflage sex trafficking rings that victimize "brides."⁴⁴¹ IMOs also facilitate human trafficking by publicly offering girls and women as brides and then selling them into prostitution or slavery as domestic servants.⁴⁴² Moreover, the CIA has found that IMOs advertise children for marriage and do not screen their male clients for criminal records.⁴⁴³

As for sex tourism, Alaska,⁴⁴⁴ Missouri,⁴⁴⁵ Washington,⁴⁴⁶ and Hawaii⁴⁴⁷ have passed laws making it a state felony to offer to sell or actually sell travel services that facilitate travel for the purpose of

433. 720 ILL. COMP. STAT. ANN. 5/10A-10 (West Supp. 2006).

434. TEX. BUS. & COM. CODE ANN. §§ 35.121-35.125 (Supp. 2006).

435. HAW. REV. STAT. § 489N-2 (Supp. 2005).

436. WASH. REV. CODE ANN. § 19.220.010 (West Supp. 2007).

437. MO. ANN. STAT. § 566.221 (West Supp. 2007).

438. Washington Senator Maria Cantwell introduced similar federal legislation culminating in the International Marriage Broker Regulation Act of 2005. Pub. L. No. 109-162, §§ 831-34, 119 Stat. 2960, 3066-78 (2005).

439. TEX. BUS. & COM. CODE ANN. §§ 35.122-35.124 (Vernon Supp. 2006); HAW. REV. STAT. § 489N-2 (Supp. 2005); WASH. REV. CODE ANN. § 19.220.010 (West Supp. 2007); MO. REV. STAT. § 566.221(1) (Supp. 2006).

440. Buckwalter et al., *supra* note 162, at 432 (saying mail-order brides are brought to the United States so that their labor and bodies can be exploited); TIP REPORT 2006, *supra* note 5, at 20, 91, 139, 194, 238-39. *See generally* Donna R. Lee, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L. J. 139, 140 (1998) (discussing how the mail-order bride industry "possesses attributes of involuntary servitude" and its "dynamics . . . closely parallel those of prostitution"). *Id.* at 161 (noting the "trafficking of Asian Pacific mail-order brides").

441. Suzanne Jackson, *To Honor and Obey: Trafficking in "Mail-Order Brides,"* 70 GEO. WASH. L. REV. 475, 480-81 (2002).

442. *Id.* at 480 (describing how marriage brokers pay "U.S. servicemen to marry Korean women" to bring them to the U.S. to be used in brothels and massage parlors).

443. *Id.* at 481 (noting that the INS concluded IMO brokers should be liable as traffickers).

444. S.B. 12, 24th Leg. 2d Sess. (Alaska 2006).

445. H.R. 1698, 93d Gen. Assemb. (Mo. 2006) (codified as MO. REV. STAT. § 567.087).

446. S. 6731, 59th Leg. Reg. Sess. (Wash. 2006) (codified as WASH. REV. CODE § 9A.88.085).

447. H.R. 2020, 22d Leg. (2004) (codified as HAW. REV. STAT. § 468L-7.5 (Supp. 2006)).

engaging in prostitution.⁴⁴⁸ These provisions criminalizing sex tourism are crucial because experts concur that sex tourism, especially child sex tourism,⁴⁴⁹ is directly tied to the demand for sex trafficking and debilitates its victims.⁴⁵⁰ Moreover, U.S. citizens make up one fifth of all child sex tourists worldwide.⁴⁵¹ Because state anti-trafficking laws are so recent, no case law exists interpreting or applying their criminal provisions.⁴⁵²

In regards to sentencing, while some states allow for strong sentences,⁴⁵³ the Illinois Trafficking Law establishes tougher penalties for traffickers than many other states.⁴⁵⁴ In Illinois, someone convicted of involuntary servitude by causing or threatening to cause physical harm, a Class X felony, can receive up to thirty years in jail.⁴⁵⁵ In Washington, however, a state leader in anti-trafficking legislation, the maximum sentence that someone convicted of human trafficking can receive is ten years.⁴⁵⁶ Similarly, in Michigan⁴⁵⁷ and Louisiana⁴⁵⁸ a

448. Lee, *supra* note 440, at 160 (noting that G & F Tours promote “fantasy love tours” to Thailand and the Philippines, promising some of “the world’s biggest and steamiest nightlife” in G & F Tours Promotional Materials from 1997).

449. Child sex tourism (CST) occurs when people travel from their country to another to “engage in commercial sex acts with children.” The Facts About Child Sex Tourism, at 1, available at <http://www.state.gov/documents/organization/45115.pdf> [hereinafter CST].

450. See H.R. 2020, 22d Leg. (2004) (codified as HAW. REV. STAT. § 468L-7.5 (Supp. 2006)) (emphasizing that sex tourism contributes to human trafficking and that prohibiting it can reduce the sex trafficking demand); TIP REPORT 2006, *supra* note 5, at 6, 15, 17; CST, *supra* note 449, at 1 (discussing the effects of CST, including “long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death.”).

451. Matthew Robb, *International Child Sex Trafficking—Ravished Innocence*, SOCIAL WORK TODAY, Sept/Oct 2006, at 24, available at <http://www.socialworktoday.com/archive/swsept2006p22.shtml> (“Twenty Percent of the world’s child ‘sex tourists’ are U.S. citizens”).

452. See <http://www.lexisnexis.com> and <http://www.westlaw.com> (all searches turned up no published case results).

453. In Missouri, someone convicted of child sex trafficking can receive up to thirty years or life. MO. ANN. STAT. §§ 566.212(3), 558.011(1)(a) (West Supp. 2007). In Mississippi, someone convicted of child sex trafficking can receive up to thirty years imprisonment. MISS. CODE ANN. § 97-3-54.1(c) (Supp. 2006). Georgia creates a mandatory minimum sentence for human trafficking, mandating that someone convicted of trafficking a minor “shall be punished by imprisonment for not less than ten [years].” GA. CODE ANN. § 16-5-46(d) (West Supp. 2006).

454. See *infra* Part IV (comparing Illinois sentences with the TVPA and analyzing Illinois sentences compared to other states).

455. 720 ILL. COMP. STAT. ANN. 5/10A-10(a)(1) (West Supp. 2006); 730 ILL. COMP. STAT. ANN. 5/5-8-2 (West 1993).

456. WASH. REV. CODE ANN. § 9A.40.100(1)(b) (West Supp. 2006).

457. MICH. COMP. LAWS ANN. § 750.462f (West Supp. 2006). The trafficker may get a fifteen year sentence if he or she causes injury to the victim. *Id.*

458. H.R. 56, Reg. Sess. (La. 2006). The trafficker may get twenty years for sex trafficking. *Id.*

convicted trafficker faces a maximum of ten years in jail, while South Carolina's anti-trafficking statute allows for a maximum of only fifteen years for human trafficking into forced labor or services.⁴⁵⁹ Because trafficking cases are relatively difficult and time-intensive, the potential for strong sentences in Illinois may lead to greater utilization of the statute by state prosecutors.⁴⁶⁰ Additionally, the stiffer penalties may result in greater overall deterrence for traffickers.⁴⁶¹

Illinois has also taken a tougher stance on the trafficking of minors than most states.⁴⁶² In Illinois, someone convicted of involuntary servitude of a minor, a Class X felony, faces a sentence of up to thirty years,⁴⁶³ while someone convicted of the same offense in California, a state with one of the largest trafficking problems in the nation,⁴⁶⁴ can receive a maximum of only eight years in prison.⁴⁶⁵ Assessing strong penalties for child trafficking offenses is crucial to punish and deter this growing crime.⁴⁶⁶ The brutal reality is that very young children are forced into prostitution⁴⁶⁷ and sexually assaulted as many as fifteen,⁴⁶⁸

459. H.R. 3060(a), 116th Gen. Assemb. (S.C. 2006).

460. Duncan Campbell, *Young Girls Sold as Sex Slaves in US, CIA Says*, GUARDIAN, Apr. 3, 2000, available at <http://www.guardian.co.uk/international/story/0,3604,178485,00.html> (noting low penalties as one reason U.S. Attorneys find trafficking cases unattractive).

461. See *supra* notes 220, 362 (discussing need for deterrence).

462. When asked why trafficking became a Class X felony when it involved minors, Rep. Chavez responded that "human trafficking of minors deserve[s] this type of . . . [s]trong response." House Debate, *supra* note 67, at 14. End Demand for Sex Trafficking Act of 2005, H.R. 2012, 109th Cong. § 2(9) (2005), available at <http://thomas.loc.gov/cgi-bin/thomas> [hereinafter End Demand] (Congress finding in the U.S. "between 100,000 to 300,000 children are victimized by sex trafficking at any given time").

463. 730 ILL. COMP. STAT. ANN. 5/5-8-2 (West 1993). Compare Illinois statute to Georgia, where someone convicted of trafficking a minor can receive a maximum of twenty years. GA. CODE ANN. § 16-5-46(d) (West Supp. 2006). However, in Texas, someone convicted of first degree felony trafficking of a minor under fourteen can receive up to ninety-nine years in prison. Center for Women, *supra* note 18, at 6.

464. See *supra* note 24 (discussing El Monte case).

465. CAL. PENAL CODE § 236.1(c) (West Supp. 2007). When it comes to the trafficking of adults, California's law is more shameful, allowing for a maximum of only five years. CAL. PENAL CODE § 236.1(b) ("[A] violation of this section is punishable by imprisonment . . . for three, four, or five years). *Id.*

466. See *supra* notes 220, 362 (discussing deterrence).

467. Donna M. Hughes, *Aiding and Abetting the Slave Trade*, ASIAN WALL ST. J., Feb. 27, 2003, available at http://www.uri.edu/artsci/wms/hughes/abetting_slave_trade (reporting five year-old Cambodian girls forced to give oral sex, with penetration starting at ten); Swecker, *supra* note 77, at 1 (discussing nine to fourteen year-old children prostituted in the United States); Wray, *supra* note 73, at 1 (stating traffickers prey on young children and explaining how an eleven year-old girls from Latin America are trafficked and forced into prostitution in Texas); Landesman, *supra* note 18, at 38 (describing how a victim indicated that the sex trafficking ring she was in imported toddlers, children, and teenagers into the United States); KING, *supra* note 124, at 13 (quoting former Secretary of State Colin Powell recounting six year olds trafficked into commercial sexual exploitation).

twenty,⁴⁶⁹ or thirty times a day,⁴⁷⁰ while other children, even infants, are trafficked and forced into pornography.⁴⁷¹ Illinois' tough sentences for child trafficking place it among the leaders in combating this highly lucrative illicit industry.⁴⁷²

In addition, while many states place unprincipled limits on fines for traffickers,⁴⁷³ Illinois mandates full restitution and asset forfeiture.⁴⁷⁴ Only seven states mandate restitution,⁴⁷⁵ while only two other states mandate forfeiture.⁴⁷⁶ Illinois' forfeiture provision is also the only one that gives half of the forfeited assets to the agency responsible for the investigation or prosecution.⁴⁷⁷ Because trafficking cases require a lot of investigative and prosecutorial time, this provision will likely help local law enforcement and prosecutor's offices continue to effectively

468. Lengel, *supra* note 169, at B08 (reporting victims in upscale D.C. neighborhoods).

469. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 50 (citing *United States v. Carreto*, No. 04-140 (E.D.N.Y. 2004)).

470. Dill, *supra* note 75, at 12 (describing scene at Texas brothel raid, where eleven year-old girl was held in a six by six foot room, slept on a threadbare sheet covered bed, and forced to have sex with twenty-five to thirty men a day); KING, *supra* note 124, at 28–29 (quoting fourteen year-old, Maria, saying, “We worked six days a week and twelve hour days . . . [and] mostly had to serve thirty-two to thirty-five clients a day. Our bodies were utterly sore and swollen.”). Maria was a victim of the Cadena crime family in the “nation's highest profile sex trafficking case.” Coonan, *supra* note 159, at 291 n.13 (citing *United States v. Cadena*, 207 F.3d 663 (11th Cir. 2000)); *see also* Donna Hughes, *Human Exploitation*, WEEKLY STANDARD, Feb. 24, 2003, at 1–2, available at http://www.uri.edu/artsci/wms/hughes/condoms_sex_slaves (reporting thirty-five men “using” a girl in one hour near San Diego).

471. Robb, *supra* note 451, at 23–25 (claiming that “children and women are trafficked inside the United States to satisfy this nation's insatiable appetite for pornography,” among other types of sexual exploitation); Wayne Parry, *Feds Net 125 Nationwide in Kid-Porn Case*, FOX NEWS, Oct. 19, 2006, (U.S. Attorney Christopher Christie said, “When I say ‘hard-core’ pornography, I am talking about child pornography that includes images of children as young as six months involved in bondage and sodomy.”).

472. Estes & Weiner, *supra* note 12, at 8 (noting lucrativeness of child trafficking and that a trafficker can make more than \$30,000 off of one child).

473. Louisiana limits a traffickers fine to \$10,000, or \$15,000 for sex trafficking. H.R. 56, Reg. Sess. (La. 2005); KING, *supra* note 124, at 188, 197; *see also Id.* at 70 (noting Thai traffickers in New York made \$1.5 million in about one year by forcing Thai women into prostitution and Thai traffickers made \$8 million in six years by enslaving Thai men and women in a sweatshop); FARR, *supra* note 13, at 23 (explaining that the Cadena family made \$2.5 million in two years).

474. *See infra* Part III (discussing forfeiture and restitution provisions).

475. Arizona, ARIZ. REV. STAT. ANN. § 13-1309 (Supp. 2005); California, CAL. CIV. CODE § 52.5(b) (West Supp. 2007); Idaho, IDAHO CODE ANN. § 18-8604 (Supp. 2006); Indiana, H.R. 1414, 114th Gen. Assemb. (Ind. 2006); Iowa, S. 2219, 81st Gen. Assemb. 2d Sess. (Iowa. 2005); Missouri, MO. ANN. STAT. § 566.218 (West Supp. 2007); New Jersey, N.J. STAT. ANN. § 2C:13-8(a)(2)(e) (West 2005).

476. Iowa, S. 2219, 81st Gen. Assemb., 2d Sess. (Iowa 2005); New Jersey, A.B. 2730, 211th Leg., 2d Reg. Sess. (West 2005).

477. *See supra* notes 274–77 (discussing Illinois' special allowance in its forfeiture provision).

investigate and prosecute these important cases.⁴⁷⁸ Due to the enormous profits they reap⁴⁷⁹ at the expense of their victims,⁴⁸⁰ justice demands that when caught traffickers not be allowed to keep one cent of ill-gotten gain.⁴⁸¹ As a remedy, forfeiture is essential to eliminating traffickers' large financial returns and putting them out of business.⁴⁸²

Some states have taken it upon themselves to provide for victim services.⁴⁸³ States especially need to afford victims of domestic trafficking protections and services because only foreign victims are eligible for T-visa grants.⁴⁸⁴ Missouri included in its anti-trafficking statute a provision stating that trafficking victims "shall be afforded the rights and protections provided" in the TVPA.⁴⁸⁵ Providing the same rights and protections to state trafficking victims as the TVPA will increase the chances of prosecutorial success at the state level and ensure that victims receive the care they need.⁴⁸⁶ Additionally, Iowa provides victims with medical care, mental health treatment, food, shelter, translation and legal assistance, as well as victim protection.⁴⁸⁷ Moreover, ten states have established task forces charged with, among

478. *Hidden Slaves*, *supra* note 19, at 71 (reporting that trafficking and forced labor investigations and prosecutions generally last anywhere between eight months to three years); *see also* Tiefenbrun, *supra* note 27, at 348 (noting trafficking cases "require the full time dedication of many attorneys and investigators.").

479. MALAREK, *supra* note 3, at 5 (stating that a trafficker can make between \$75,000 to \$250,000 a year on just one trafficked woman) (citing Interpol, the international police organization).

480. Gary Haugen, International Justice Mission president, recounts the story of a bonded laborer in India.

From 8:00 in the morning until 6:00 at night, six days a week, [ten-yr-old Kanmani] sits in the same little place on the floor and . . . close[s] . . . [cigarette] ends with a little knife. She is required to complete 2,000 cigarettes a day. If she doesn't work fast enough, her overseer strikes her on the head. . . [S]he has been working like this for more than five years [to pay off a family debt]. . . [S]he gets . . . seventy-five cents [a week] . . . [and] . . . is no closer to paying off the debt than when she started. . . Without intervention she will spend her entire childhood this way.

HAUGEN, *supra* note 327, at 43.

481. Wray, *supra* note 73, at 7.

482. Soto, *supra* note 352, at 365–66 (noting that the TVPA's forfeiture provision is a significant step in eliminating the "financial profitability of trafficking in persons").

483. MO. ANN. STAT. § 566.223 (West Supp. 2007); S. 2219, 81st Gen. Assemb., 2d Sess. (Iowa 2006).

484. *See* Telephone Interview with Gregory Diephouse, *supra* note 192 (calling this the gap in services, and noting that the IDHS and service providers are attempting to address the gap).

485. MO. ANN. STAT. § 566.223 (West Supp. 2007).

486. *See generally* Richard, *supra* note 6, 473–75 (discussing the weakness of certain state anti-trafficking laws merely criminalizing trafficking but not affording victims rights and protections like the TVPA).

487. S. 2219, 81st Gen. Assemb. 2d Sess. (Iowa. 2006)

other things, evaluating the level of victim services available statewide.⁴⁸⁸

In Illinois, the Department of Human Services (IDHS) is authorized to fund victim services provided for trafficking victims.⁴⁸⁹ At this time, however, the state has not appropriated any funds to that end.⁴⁹⁰ While Gregory Diephouse of the IDHS notes that his organization has yet to see the need for victim services, that may change as law enforcement officials and prosecutors receive the necessary training.⁴⁹¹ The Illinois provision, however, may be less effective than those of Missouri and Iowa because while Missouri provides all the rights and protections under the TVPA and Iowa enumerates several specific services, the Illinois provision simply allows for the generic “emergency services and assistance.”⁴⁹² Additionally, Missouri mandates that victims be afforded services,⁴⁹³ while Illinois leaves it to the discretion of the IDHS whether to provide services.⁴⁹⁴

2. Implementation and Training

In the realm of implementation and training, once states like Illinois enact anti-trafficking laws, it is essential that they educate and train law enforcement officials,⁴⁹⁵ prosecutors,⁴⁹⁶ and judges.⁴⁹⁷ As one Illinois

488. CAL. PENAL CODE § 13990 (West Supp. 2005); COLO. REV. STAT. § 18-1.8-101 (2006); 2006 CONN. ACTS 43 (Spec. Sess.); H.R. 2051, 23rd Leg. Reg. Sess. (Haw. 2005); H.R. 18, 58th Leg., 1st Reg. Sess. (Idaho 2005); S.F. 2219, 81st Gen. Assem. 2d Sess. (Iowa 2006); H.R. 1296, 122d Leg., 2d Reg. Sess. (Me. 2005); H.R. 1760, 84th Leg. Reg. Sess. (Minn. 2005). WASH. REV. CODE ANN. § 7.68.350 (West Supp. 2007).

489. 720 ILL. COMP. STAT. ANN. 5/10A-10(f) (West Supp. 2007).

490. Telephone Interview with Gregory Diephouse, *supra* note 192.

491. *Id.* Office of the Governor, *supra* note 47 (quoting IDHS Secretary Carol L. Adams saying that “long-term plans include more trainings for prosecutors [and] judges . . .”).

492. 720 ILL. COMP. STAT. ANN. 5/10A-10(f).

493. MO. ANN. STAT. § 566.223 (West Supp. 2007).

494. 720 ILL. COMP. STAT. ANN. 5/10A-10(f).

495. CENTER FOR WOMEN POLICY STUDIES, RESOURCE GUIDE FOR STATE LEGISLATURES: MODEL PROVISIONS FOR STATE ANTI-TRAFFICKING LAWS (2005) [hereinafter POLICY STUDIES], available at <http://www.centerwomenpolicy.org/pdfs/TraffickingResourceGuide.pdf> (discussing the critical need for mandating law enforcement training); Office of the Governor, *supra* note 47 (quoting Dr. Patricia Rushing, Interim Director, Regional Institute for Community Policing, University of Illinois, Institute of Government Affairs: “When police officers understand that traffickers use violence, threats and psychological manipulation to maintain control of their victims, they will apply their well-honed investigative techniques with sensitivity”).

496. See H.R. 469, 108th Leg. Reg. Sess. (Fla. 2006) (codified as FLA. STAT. § 787.06(5)) (Supp. 2006) (requiring “state attorney [to] develop standards of instruction for prosecutors to receive training on the human trafficking crimes.”).

497. See Helga Konrad, *Latest Developments and Challenges in the Fight Against Trafficking in Human Beings in the OSCE Area*, in Yearbook on the Organization for Security and Co-operation in Europe (OSCE) (2006) [hereinafter Konrad 2] (emphasizing that “[i]ntensive training

anti-trafficking leader emphasized, for a trafficking law to be most effective, law enforcement officials and prosecutors must be fully trained to understand trafficking dynamics and victim needs.⁴⁹⁸ Law enforcement officials and government personnel who lack appropriate education and training may actually come into contact with trafficking victims without even knowing it.⁴⁹⁹ State's Attorneys who are fully trained on human trafficking are more likely to prosecute those cases.⁵⁰⁰

In 2005, Governor Blagojevich further exemplified Illinois' seriousness in the fight against human trafficking when he laid out a state-wide five-tiered plan to combat human trafficking through training, victim services, outreach, prosecution, and research.⁵⁰¹ In Illinois, such crucial training has been spearheaded by the NIJC, which has already trained law enforcement, community organizations and the legal community to identify and respond to human trafficking victims.⁵⁰² Similarly, other states have mandated that law enforcement officials receive trafficking awareness training.⁵⁰³ For example, Connecticut authorizes and funds⁵⁰⁴ a trafficking training program for

should be provided to . . . front-line police and special investigators . . . state prosecutors and judges.”).

498. Email from Salvador A. Cicero Dominguez, Director of Proyecto Contra la Trata de Personas – Ecuador of the ABF-ABA/LALIC (Project to Combat Trafficking in Persons – Ecuador) (July 31 & Oct. 3, 2006) (on file with author). Assuring that all law enforcement, state prosecutors and judges are equipped with in-depth understanding of trafficking is, thus, essential to effective implementation of anti-trafficking laws. *Id.* States should follow the TVPA's example, as it mandated training for federal officials to identify trafficking victims and provide them protections. 22 U.S.C.A. § 7105(c)(4) (West 2004 & Supp. 2006).

499. Int'l Rescue Comm., ORR Trafficking in Persons Program, TRAFFICKING WATCH, 2 (2004) available at <http://www.theirc.org/resources/Trafficking-203.pdf>. See also HARVARD, *supra* note 18, at 14 (discussing sex trafficking and noting that “Illinois with airports surrounding a large metropolitan area witness[es] thousands of people entering each day via air travel and might consider training airport immigration officials.”).

500. Telephone Interview with Gregory Diephouse, *supra* note 192 (noting how “without state prosecutions, pimps will keep pimping, and girls won't come forward and testify”).

501. State of Illinois Summary of Anti-Human Trafficking activities, http://www.dhs.state.il.us/projectsInitiatives/trafficking/dhs_trafficking-illinoisactivities.pdf (last visited Feb. 17, 2007). Those to be trained include the State Police, labor compliance officers, child welfare investigators, public health workers and social workers. *Id.*

502. Carolyn D. Amadon, *Pro Bono Profile: The Audacity of Hope: The Midwest Immigrant and Human Rights Center*, 19 CBA REC. 46, 47 (2005). In addition, the Chicago Regional Human Trafficking Task Force recently produced a “computer based training video for law enforcement professionals [which will] help [them] handle human trafficking cases and victims more effectively.” Office of the Governor, *supra* note 47. Copies of the video were mailed out to all Illinois law enforcement agencies, and “[o]fficers will have access to this program . . . in their squad cars . . .” *Id.*

503. S.B. 153, Pub. L. No. 06-43, Gen. Assemb. (Ct. 2006); IND. CODE ANN. § 5-2-1-9 (West 2006).

504. S.B. 153, § 8 (appropriating \$25,000).

the State Police, State's Attorney's Office and local police departments,⁵⁰⁵ while Indiana mandates that all law enforcement officers receive minimum standards training on human trafficking within one year of their date of appointment.⁵⁰⁶

In addition to the state-wide plan, in the spring of 2005 Illinois launched a Rescue and Restore Coalition to combat human trafficking in the state.⁵⁰⁷ Although ten states have created task forces to study trafficking and recommend legislation,⁵⁰⁸ the Illinois Coalition remains unique because of its collaboration with HHS.⁵⁰⁹ These state task forces and the Illinois coalition will likely help raise awareness about human trafficking and increase the state's ability to identify victims, provide them with needed services, and successfully prosecute traffickers.⁵¹⁰

C. Law Enforcement and Prosecutorial Challenges

Many unique challenges exist to investigating and prosecuting trafficking and slavery offenses.⁵¹¹ Initially, as opposed to other more visible crimes, trafficking offenses can be relatively difficult to discover.⁵¹² For example, investigations of domestic servitude cases are difficult because the exploitation is hidden in private homes.⁵¹³ Domestic servitude cases are also hard to prove because the victim is almost always the sole witness.⁵¹⁴ In cases of unaccompanied minors,

505. *Id.* at § 6.

506. IND. CODE ANN. § 5-2-1-9(a)(10)-(b).

507. DHS Illinois Rescue and Restore Campaign Against Human Trafficking, <http://www.dhs.state.il.us/projectsInitiatives/trafficking/> [hereinafter Rescue and Restore] (last visited Feb. 17, 2007); IGNN, *supra* note 283 (describing how Governor Blagojevich "instructed several state agencies to join with the federal government, the Chicago Police Department, and over 80 other statewide and local organizations in Illinois to form a coalition to combat the growing problem of human trafficking.").

508. *See supra* note 488 (listing state statutes authorizing task forces).

509. Press Release, Midwest Immigrant and Human Rights Center, Heartland Alliance Lauds New Legislation and Launch of Illinois Campaign to Combat Human Trafficking, (June 7, 2005), available at <http://www.immigrantjustice.org/documents/PReI-RescueandRestoreCampaignFINAL2005.06.pdf> (quoting Reverend Dr. Sid L. Mohn, President of Heartland Alliance: "The Illinois Rescue and Restore campaign is the first of its kind to combine federal and state resources in an effort to eradicate human trafficking through public education, training for law enforcement and community workers, and victim assistance").

510. Richard, *supra* note 6, at 476.

511. Tiefenbrun, *supra* note 27, at 347-48 (noting the difficulty of obtaining proof and the "expense and time of trial . . .," among others).

512. O'NEILL, *supra* note 19, at 3 ("Trafficking cases are hard to uncover as the crime usually occurs 'behind closed doors,' and language and cultural barriers usually isolate the victims.").

513. BALES & LIZE, *supra* note 67, at 82.

514. *Id.* ("The concealed nature of the crime necessitates collecting information, often

initiating any type of criminal investigation is challenging because the children are routinely transferred from one restaurant to the next and from one state to another.⁵¹⁵

In addition to trafficking's underground nature, the perpetrators' cultural and language dynamics add a further barrier to the job of law enforcement.⁵¹⁶ Furthermore, investigating and prosecuting trafficking cases can be a long,⁵¹⁷ complex, and difficult process.⁵¹⁸ Trafficking victims often find it challenging to cooperate with investigations and prosecutions due to trauma, as well as language and cultural barriers.⁵¹⁹ Trafficking victims frequently hesitate to testify because they fear that the traffickers will further harm them or their families,⁵²⁰ or that they will be deported to their home countries to face reprisals and alienation.⁵²¹ Victims also fear criminal prosecution if their captors forced them to commit illegal acts.⁵²²

Traffickers often tell their victims to lie about their age and the involuntary nature of their involvement so that the traffickers are not suspected of wrongdoing.⁵²³ Often trafficking victims fail to report the abuse to law enforcement officials because they fear the traffickers will

fragmentary, that corroborates the victim's testimony.").

515. Interview with Maria Woltjen, *supra* note 142.

516. According to the INS, Asian street gangs in Chicago are involved with local brothels where trafficking victims may be enslaved. O'NEILL, *supra* note 19, at 13. One federal prosecutor emphasized the difficulty infiltrating ethnic crime groups involved in trafficking due to language barriers and the need for Chinese and Spanish-speaking agents. *Id.* at 32.

517. See *supra* note 289 (discussing length of trafficking investigations and prosecutions).

518. Tiefenbrun, *supra* note 27, at 348.

519. Richard, *supra* note 6, at 469-70.

520. Kelly, *supra* note 74, at 16 (quoting Terry M. Kinney, the assistant U.S. attorney who secured Illinois' first and only known conviction of a trafficker: "[I]t's often difficult to get victims to cooperate, and investigators face a hard time making a case strong enough for prosecutors to pursue"). The U.S. Senate found: "survivors of human trafficking crimes risk their lives and the lives of their families to assist in the investigation and prosecution of their former captors." S. Res. 413, 108th Cong. 2d Sess. (2004). See also Meredith May, *Sex Trafficking: San Francisco is a Major Center for International Crime Networks That Smuggle and Enslave*, S.F. CHRON., Oct. 6, 2006 (according to Dong Shim Kim, head counselor at Du Re Bang, a shelter for sex trafficking victims in South Korea: "Those [women] who have become witnesses have been burned with acid, have disappeared, or have had their homes ransacked and their families harmed or threatened in their home countries").

521. INT'L RESCUE COMM., TRAFFICKING IN THE UNITED STATES, http://www.theirc.org/media/www/trafficking_in_the_united_states.html (last visited Feb. 17, 2007) [hereinafter TRAFFICKING IN THE U.S.]; Tiefenbrun, *supra* note 27, at 321 ("Upon return to their home countries, they suffer further humiliation of being treated as outcasts . . .").

522. Trafficking in the U.S., *supra* note 521.

523. Trafficking victims in India and many other countries are trained by brothel owners to tell anyone who asks that they are twenty-five yrs old and acting voluntarily. TIP REPORT 2005, *supra* note 17, at 5.

harm them.⁵²⁴ Additionally, traffickers often train their victims to fear or mistrust police and government officials.⁵²⁵ Victims may also hesitate to confide in law enforcement officials because they naturally fear police due to bad experiences with corrupt officials either in their immigrant communities or home countries.⁵²⁶

In light of the aforementioned law enforcement and prosecutorial challenges, it is incumbent upon law enforcement and state prosecutors to receive basic training on human trafficking issues.⁵²⁷ These challenges also underscore Illinois' need to provide victim-witness protection.⁵²⁸ Like the federal government and other states, Illinois has the laws in place to combat human trafficking. What Illinois needs now is effective implementation and vigorous enforcement.

V. PROPOSAL

This Part presents two sets of proposals to two different audiences.⁵²⁹ First, this Part proposes recommendations to law enforcement officials, prosecutors, and judges on how to overcome challenges to trafficking cases and achieve optimal effectiveness.⁵³⁰ Second, this Part proposes amendments to the Illinois Trafficking Law by examining how other states, through creative leadership, have crafted effective anti-trafficking provisions regarding the mail-order bride industry and sex tourism.⁵³¹

524. *Hidden Slaves*, *supra* note 19, at 49.

525. Lt. John Kupczyk, commanding officer of vice enforcement for the Chicago Police Department stated that:

They are brainwashed not to trust any government officials . . . It takes sometimes . . . two weeks before you can start breaking down the walls and start explaining to them there is a program that can help you. That can keep you in this country, and that we're trying to get at the people who are doing this to you.

Main, *supra* note 62, at 3.

526. *See Hidden Slaves*, *supra* note 19, at 49 (noting that law enforcement training can help overcome this obstacle).

527. Telephone Interview with Gregory Diephouse, *supra* note 192; Email from Salvador A. Cicero Dominguez, *supra* note 498.

528. *See supra* notes 381–88 (discussing the need for and importance of victim-witness protection).

529. The first audience is comprised of law enforcement officials, prosecutors and judges, while the second audience is the Illinois legislature. *See infra* Part V.A–B (describing recommendations for law enforcement, prosecutors, judges and the legislature).

530. *See infra* Part V.A (recommending proactive investigations, prosecuting perpetrators not victims vigorously, handing down tough sentences and providing essential victim services).

531. *See infra* Part V.B (proposing regulating IMOs and criminalizing sex tourism).

A. Law Enforcement, Prosecutorial, and Judicial Recommendations

Law enforcement officials, prosecutors, and judges all have vital and interwoven roles to play in ensuring successful human trafficking investigations and prosecutions.⁵³² Police investigators should engage in proactive trafficking investigations leading to victim rescue.⁵³³ Prosecutors should consistently and passionately prosecute human trafficking offenses⁵³⁴ and focus on prosecuting perpetrators and not victims. Judges have the crucial role to ensure that the law results in appropriately tough sentences for traffickers.⁵³⁵

1. Proactive Investigation Leading to Victim Rescue

One of the biggest challenges to fighting human trafficking is locating victims.⁵³⁶ Although some experts suggest that uncovering trafficking victims is difficult,⁵³⁷ others suggest that it is quite simple.⁵³⁸ Regardless of the difficulty, experts continually emphasize that law enforcement officials fail to find and rescue trafficking victims not because they do not exist, but rather because they fail to look for them.⁵³⁹ Because trafficking victims are often physically prevented from leaving their work site, they are generally unable to seek out help⁵⁴⁰ and, thus, help must come to them. This is precisely why combating human trafficking must begin with proactive investigations

532. See *infra* Part V.A (discussing crucial and interrelated roles of law enforcement, prosecutors and judges).

533. See *supra* notes 220, 362 and accompanying text (discussing need for deterrence).

534. Kelly, *supra* note 74, at 17 (“To keep the issue near the forefront . . . it takes . . . prosecutors with a passion . . .”).

535. See *infra* Part V.A.2 (discussing judges’ roles in sentencing and restitution and forfeiture enforcement).

536. See DEP’T OF JUSTICE ASSESSMENT, *supra* note 155 (discussing challenge of locating victims in United States).

537. Experts include Amy O’Neill Richard and the Justice Department. O’NEILL, *supra* note 19, at 3, 31; DEP’T OF JUSTICE ASSESSMENT, *supra* note 155.

538. See Landesman, *supra* note 18, at 67 (quoting Sharon Cohn who stated: “[t]his is not narco-traffic secrecy. . . [t]hese are not people kidnapped and held for ransom, but women and children sold every single day. . . [and] [i]f they’re hidden, their keepers don’t make any money”). IJM President Gary Haugen noted that “[i]t’s the easiest kind of crime in the world to spot [because] [m]en look for it all day, every day.” *Id.*

539. See *id.* at 32, 37 (quoting Laura Lederer, sex trafficking expert and senior State Department advisor as saying: “We’re not finding [trafficking] victims in the United States because we’re not looking for them.”). See also Hughes, *supra* note 159, at 1 (quoting Lederer: “[i]f you look, you’ll find them”). Discussing sex trafficking victims as defined by the TVPA, the article notes the need to actively search for trafficking victims. *Id.*

540. Hughes, *supra* note 159, at 7 (“Many victims are physically unable to leave the brothels without an escort and are not free to contact outside people”). See Landesman, *supra* note 18, at 32 (reporting how slaves are beaten or killed for trying to escape).

that lead to rescuing victims.⁵⁴¹ The global consensus is that proactive, as opposed to reactive, investigations find and rescue victims, lead to arrests, and are vital to overall law enforcement success.⁵⁴²

Law enforcement officials can find trafficking victims by reading public advertisements, which pimps and traffickers regularly post to attract business.⁵⁴³ In one of the first cases prosecuted under the TVPA, Alaskan law enforcement officials investigated ads offering Russian women at a local strip club and found seven Russian women and underage girls who were forced to perform in the club against their will.⁵⁴⁴ Police can also search online male forums where men give self-reports of women they purchased in brothels and strip clubs because many of their descriptions may involve trafficked women.⁵⁴⁵ In

541. IJM, *supra* note 1 (calling “immediate rescue” a key step to “combat[ing] modern forms of human trafficking and slavery . . .”). The first of IJM’s “Four-Fold purpose[s]” is “victim rescue,” *id.*, because it “[r]elieve[s] the victim of the abuse currently being committed.” <http://www.ijm.org> (click “About Us” and then “Four-Fold Purpose”). Christopher Wray stated that the “mission [of law enforcement] is to recognize and rescue [trafficking] victims and bring the users or consumers to justice.” Wray, *supra* note 73, at 2. Wray later emphasized that “identifying and dismantling the larger criminal organization . . . must [begin] with the rescue of trafficking victims and the prosecution of trafficking consumers” in the United States. *Id.* at 4.

542. KONRAD, *supra* note 215, at 4 (“[P]roactive investigation is the tool with which to initiate identification of human trafficking victims, with a view to rescuing them, rather than waiting for them to appear on the doorstep”). Thus, instead of waiting for victims to self-report, governments and law enforcement must proactively search for trafficking victims. TIP REPORT 2006, *supra* note 5, at 22; *see also* Hughes, *supra* note 159, at 7 (“Given the violence, coercion, and schemes used by traffickers and pimps and the relative powerlessness of victims, activists and service providers will have to actively search out victims of trafficking.”) and DEP’T OF JUSTICE ASSESSMENT, *supra* note 155, at 27 (calling “[p]roactive law enforcement” a “promising way to deal with” human trafficking).

543. Hughes, *supra* note 159, at 8 (reporting that “pimps and traffickers depend on advertising to the public to attract men and make money. . .” and that “[m]ost of the illegal sex industries in the U.S. publicly advertise their criminal activity. . . [i]n newspapers, tabloids, local community newspapers, and free advertising guides in adult bookstores . . . boast[ing] of having women of different ethnicities, nationalities, and races,” including yellow pages listings for massage parlors and escort services.”); *see also* Kelly, *supra* note 74, at 16–17 (describing how Kenneth Lee, who co-operated one of the Rockford spas raided as brothels, told agents he spent about \$9,000 a month on advertising in the *Chicago Sun-Times*); MALAREK, *supra* note 3, at 23 (reporting countless ads in “the back pages of cheesy tabloids in numerous North American cities” offer “[f]ull service nude massages by Russian beauties for \$60 an hour.”).

544. Sheila Toomey, *INS Accuses Four Strippers for Cultural Excesses*, ANCHORAGE DAILY NEWS, Jan. 6, 2001, at A1. *See also* STUDY OF THE USERS, *supra* note 160, at 15 (reporting the “case was discovered when the [strip club] advertised on the radio that exotic dancers from Russia would be performing.”); Press Release, U.S. Dep’t of Justice, Alaska Man Sentenced to 30 Months for Immigration Fraud and Transporting Minors from Russia to Dance in an Anchorage Strip Club (Aug. 28, 2001), *available at* <http://www.usdoj.gov/opa/pr/2001/August/438cr.htm>.

545. *See* Hughes, *supra* note 159, at 8 (noting that the “web is fueling a prostitution business that is both difficult to detect and enforce”); *see also* Brendan McCarthy, *Prostitutes Use Web As New Street Corner*, CHI. TRIB., Sept. 13, 2006. However, many of these so-called prostitutes are likely trafficking victims according to Brenda Myers-Powell, organizer of the Prostitution

addition, members of ethnic communities may know brothel locations where women from their country are held.⁵⁴⁶ Some encouraging news is that the Chicago Police Department has two investigators focused on investigating trafficking cases in the city.⁵⁴⁷

2. Vigorous Prosecution and Tough Sentencing

Unless the Illinois Trafficking Law is fully enforced and implemented with relentless prosecutions,⁵⁴⁸ commensurately strong sentences,⁵⁴⁹ and adequate victim services,⁵⁵⁰ it will prove wholly ineffective.⁵⁵¹ Prosecution is the federal government's main focus in its anti-trafficking strategy,⁵⁵² because effective prosecution is essential to

Alternative Roundtable, launched by the Chicago Coalition for the Homeless: "[t]he [prostitution] industry thrives on young girls, many of whom are forced or coerced into prostitution and become victims of violence, abuse, exploitation and homelessness . . . [t]his comes from kids, young girls . . ." *Id.*

546. Hughes, *supra* note 159, at 10 (reporting that "the use of 'lower class' women in prostitution is accepted or ignored by the wider community that does not recognize the harm suffered by victims of trafficking . . . [and that] communit[y] [members] are often reluctant to expose illegal activity because they think it reflects badly on their own ethnic group . . .").

547. Email from Lt. Paul Kusinski, Vice Enforcement Unit, Vice Control Section, Organized Crime Division (Mar. 3, 2007). While there is no specific human trafficking unit, the Department has actively investigated human trafficking cases since October 2005. *Id.* Despite several investigations into trafficking allegations, none have been charged as human trafficking offenses. *Id.* Importantly, Superintendent Philip Cline of the Chicago Police Department has recognized "human trafficking as a crime against humanity [which] requir[es] local solutions." Office of the Governor, *supra* note 47.

548. Torg, *supra* note 218, at 519 ("Concerted efforts must be made to apprehend and incarcerate traffickers, seize their assets . . ." [and] "prosecutors and law enforcement [must] be aggressive and innovative with all existing legal tools."); TIP REPORT 2006, *supra* note 5, at 8 ("Forced labor must be punished as a crime through vigorous prosecution."); 22 U.S.C. § 7101(21) ("trafficking in persons is an evil requiring concerted and vigorous action" by all countries affected).

549. TIP REPORT 2006, *supra* note 5, at 8 ("Prosecution, combined with the imposition of significant penalties . . . provides protection by eliminating the perpetrator's immediate ability to exploit the victim, [and] serves" as a deterrent). Prior to the TVPA, people who held victims in involuntary servitude often got extremely light sentences. *See United States v. Alzanki*, 54 F.3d 994, 999 (1st Cir. 1995) (defendant was sentenced to one year and one day in prison).

550. *See generally* Richard, *supra* note 6 (arguing that state anti-trafficking laws must provide for victim services like the TVPA).

551. Former Illinois Representative Henry Hyde, Chairman of the House Committee on International Relations, noted at the TVPA Implementation Hearing that "[a] law without vigorous and effective implementation is worse than no law at all, because it lulls us into the false sense that we have done something to solve the problem." Implementation Hearing, *supra* note 288, at 1; Dill, *supra* note 75, at 17 (saying state actors help facilitate trafficking by not enforcing laws and failing to investigate cases). Immanuel Kant described those who fail to carry out punishments as accomplices in the "public violation of legal justice." JEFFRIE G. MURPHY & JULES L. COLEMAN, PHILOSOPHY OF LAW: AN INTRODUCTION TO JURISPRUDENCE 120 (1990).

552. *Remedying the Injustices*, *supra* note 16, at 2579; TIP REPORT 2006, *supra* note 5, at 7 (recommending criminal prosecution of involuntary servitude cases as a solution to the

abolishing human trafficking.⁵⁵³ Additionally, it is likely that the more trafficking victims participate in successful prosecutions of their perpetrators, the more they will trust and cooperate with law enforcement.⁵⁵⁴ Such a positive experience may actually help transform victims into advocates for justice and for other trafficking victims.⁵⁵⁵

Additionally, Congress has emphasized that traffickers must be punished severely in order to deter others and reflect the crime's heinous nature.⁵⁵⁶ It is essential that prosecutors use Illinois' trafficking statute as opposed to statutes for committing prostitution, kidnapping, assault, battery, or any other statute criminalizing a lesser offense.⁵⁵⁷ These other laws result in ineffective and weak penalties for convicted traffickers and are thus inadequate to deter trafficking or sufficiently punish traffickers.⁵⁵⁸ Anti-trafficking experts and practitioners agree that vigorous prosecutions with stiff sentences have the greatest chance of deterring the crime of trafficking.⁵⁵⁹

In addition to long sentences, judges should also take into account the massive profits that traffickers reap when ordering mandatory restitution and forfeiture.⁵⁶⁰ One sex trafficker openly bragged that "[y]ou can buy a woman for \$10,000 and you can make your money back in a week if she is pretty and she is young. . . . [t]hen everything else is profit."⁵⁶¹ Such brazen declarations result in part from lenient enforcement of anti-trafficking laws, including restitution and forfeiture provisions.⁵⁶² If the net assets traffickers lose through forfeiture are

enslavement of migrant workers); *id.* at 8 (citing the need for criminal investigations and prosecutions as a response to exploitative labor recruitment practices).

553. Torg, *supra* note 218, at 503.

554. Khai, a Thai trafficking victim of domestic servitude who successfully cooperated with law enforcement and testified against her trafficker, later remarked that because of her experience she believes "justice does exist. I have a different view now on law enforcement, the courts, immigration, and prosecutors." *Hidden Slaves*, *supra* note 19, at 80–81.

555. Khai believed coming forward would help others and stated that "I had to fight. I had to tell the truth, to tell what happened." *Id.*

556. 22 U.S.C.A § 7105(a)(3) (West 2004 & Supp. 2006).

557. 22 U.S.C.A § 7101(14)-(15).

558. *Id.*

559. See IJM, *supra* note 1 (calling "rigorous prosecution" a key step to "combat[ing] modern forms of human trafficking and slavery"); *Saga of Susannah*, *supra* note 16, at 116 (noting that increased sentences would deter traffickers); see also *United States v. Bergman*, 416 F. Supp. 496, 500 (S.D.N.Y. 1976) ("crimes . . . [that are] deliberate, purposeful, continuing, non-impulsive, and committed for profit are . . . most likely to be generally deterrable by sanctions.").

560. O'NEILL, *supra* note 19, at 19 n.63 (reporting that "[r]estitution, when ordered for the trafficking victims, generally fell far short of the traffickers' profits.>").

561. MALAREK, *supra* note 3, at 57 (convicted racketeer Ludwig Fainberg in an interview with Malarek).

562. O'NEILL, *supra* note 19, at 19.

less than the amount they gain, then such key theoretical provisions are rendered meaningless.⁵⁶³ Traffickers reap huge profits by turning human beings into usable and disposable commodities.⁵⁶⁴ As criminal forfeiture provisions exemplify, no civilized society should allow the retention of such illegitimate gain.⁵⁶⁵

3. Prosecute Perpetrators, Not Victims

Although human traffickers are slave traders,⁵⁶⁶ trafficking victims are often punished more harshly than those who enslave them, as traffickers historically have received minor immigration violations, if charged at all.⁵⁶⁷ Sometimes when police uncover trafficking victims they simply bring them to immigration authorities for deportation.⁵⁶⁸ Traffickers, however, are not the only culprits in this complex crime.⁵⁶⁹

Pimps and purchasers of commercial sex engage in, perpetuate, and promote modern-day slavery just as much as traffickers.⁵⁷⁰ While pimps are often glorified in pop culture⁵⁷¹ their actions are tantamount to trafficking and slavery.⁵⁷² In fact, in one case fifteen pimps were

563. The Paoletti family made \$8 million but the judge only ordered \$1 million in restitution. *See also* KONRAD, *supra* note 215, at 5 (finding that the forfeiture of criminal assets can disable whole trafficking networks).

564. Diep, *supra* note 426, at 311–12 (noting how “when the trafficked person is considered no longer profitable because of disease or otherwise . . . they become disposable ‘products.’”).

565. Wray, *supra* note 73, at 7.

566. COMBAT HUMAN TRAFFICKING, *supra* note 20, at i.

567. Tiefenbrun, *supra* note 27, at 320–24 (this occurs despite laws enacted to prevent it from happening).

568. *Id.* at 321 (“The women receive this treatment simply because they are viewed as illegal aliens, rather than as victims of slavery.”).

569. *See supra* notes 13–15 and accompanying text (discussing trafficking culprits); Coonan, *supra* note 159, at 289–90 (stating that legitimate businesses knowingly or unknowingly obtain the rewards of slave labor).

570. *See* Wray, *supra* note 73, at 5–6.

But what about the sixteen-year-old girl on the street involved in prostitution – perhaps dependent on a drug habit and seemingly loyal to her pimp? The [TVPA] correctly tells us that she can’t consent to the prostitution either. *Her pimp is a trafficker.* He uses the very same techniques to lure, control, and direct the child that other traffickers use to lure and keep foreign trafficking victims in a condition of servitude. . . . Her apparent volition may be the result of more beatings, threats, and sexual assaults than she can even remember.

Id. (emphasis added).

571. *See, e.g.,* Kyra Kyles, *Protestors Have Problems With Pimp-Themed Parties*, RED EYE, Oct. 23, 2006, at 6–7 (citing several activists who argue that pimps are considered “pop culture idols”).

572. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 9 (stating that prostitution alone does not constitute trafficking, but where a pimp uses “force or coercion to prevent people from leaving the enterprise, it becomes a severe form of trafficking”); Melissa Farley, *Prostitution Is Sexual Violence*, PSYCHIATRIC TIMES, Vol. XXI, Iss. 12, Oct. 2004, available at

prosecuted and convicted for trafficking women and girls as young as twelve.⁵⁷³ When pimping involves minors, or adults who are coerced, it is a severe form of trafficking in persons under the TVPA and constitutes trafficking under most state statutes, including Illinois.⁵⁷⁴

Correspondingly, because trafficking is a business, the people who purchase commercial sex acts are considered the “demand” side⁵⁷⁵ and must be vigorously prosecuted in order to fully combat human trafficking.⁵⁷⁶ Sex trafficking could hardly exist were it not for the global demand for purchased sex by men.⁵⁷⁷ To seriously combat sex trafficking, customers who buy the “violence commodities” of trafficked women and children⁵⁷⁸ must be arrested, prosecuted, and convicted.⁵⁷⁹ It is especially critical for the federal government and states to hold those who purchase commercial sex services accountable because the vast majority of victims are trafficked from impoverished developing countries to affluent Western countries, like the United

<http://www.psychiatrictimes.com/p0410s07.html> (“Pimps and customers use methods of coercion and control [such as] . . . minimization and denial of physical violence, economic exploitation, social isolation, verbal abuse, threats and intimidation, physical violence, sexual assault, and captivity.”).

573. *United States v. Pipkins*, 378 F.3d 1281, 1284, 1297 (2004), *vacated*, 544 U.S. 902 (2005), *reinstated by* 412 F.3d 1251 (11th Cir. 2005) (finding defendant pimp guilty of involuntary servitude in violation of 18 U.S.C. § 1584 because he forced the victim to prostitute herself and give him all her “earnings” at the threat of beatings). *See also* David Heinzmann, *17 Years in Prison for Girls’ Pimp*, CHI. TRIB., June 1, 2006, *available at* 2006 WLNR 9380994 (reporting on David L. Phillips, 38, who transported fourteen and sixteen-year-old girls across state lines into prostitution in Lynwood and Sauk Village, Ill.).

574. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 9; *see also* Estes & Weiner, *supra* note 12, at 24, 27 (calling pimps “adult perpetrators of sex crimes” and reporting that pimps “systematically promote the commercial sexual exploitation of juveniles”).

575. *Combating Trafficking in Persons: Hearing Before the Subcomms. on Domestic & Int’l Monetary Policy, Trade and Tech. and the Comm. on Financial Servs.*, 109th Cong. 22 (2005) (statement of Norma Hotaling, Executive Director, SAGE) (“[Sex trafficking] networks are financed \$1 at a time by men, who we call ‘the demand,’ who we have allowed to buy human beings and use them [as] though they were nothing more than receptacles, like toilets and sewers.”).

576. Wray, *supra* note 73, at 4 (emphasizing that prosecutors must prosecute trafficking consumers).

577. MALAREK, *supra* note 3, at 73, 75–97.

578. Diep, *supra* note 426, at 326 (noting that “[t]raffickers, organized criminals, and nation-states” depend on customers eager to buy the “violence commodities” of trafficked human beings).

579. Office of the Press Secretary, *President Bush Signs H.R. 972, Trafficking Victims Protection Reauthorization Act*, Jan. 10, 2006, <http://www.whitehouse.gov/news/releases/2006/01/20060110-3.html> (emphasizing the inability to put traffickers out of business unless the demand problem is confronted through investigation and prosecutions of “customers,” stressing that “[t]hose who pay for the chance to sexually abuse children and teenage girls must be held to account.”).

States.⁵⁸⁰ If federal and state law enforcement officials in the United States can decrease and deter the large U.S. demand for sex trafficking, then the amount of sex trafficking victims in the United States will also decrease.⁵⁸¹

However, more often than not trafficking victims are the ones who are arrested and punished,⁵⁸² while their many perpetrators operate with impunity or receive minor penalties.⁵⁸³ In fact, although federal and state laws have been enacted to punish those who sexually exploit women and children, Congress found that law enforcement has disproportionately enforced these laws against innocent victims instead of the predators who exploit them.⁵⁸⁴ One local example is the Chicago Police Department.⁵⁸⁵ While the Department spends almost \$10 million a year on prostitution enforcement, most of it is spent arresting prostitutes instead of their pimps or traffickers.⁵⁸⁶ This reality was confirmed as Congress recently found that for every nine females arrested for being commercially sexually exploited in Chicago only one male was arrested for purchasing the sex act.⁵⁸⁷ Intuitively, such results are not only morally appalling but represent wholly ineffective crime

580. FARR, *supra* note 13, at 145–54 (concluding that the flow of human trafficking is driven, in large part, by the human and economic development of countries).

581. Diep, *supra* note 426, at 326–27 (discussing how decrease in demand in one country lessens the number of victims trafficked to that country).

582. 22 U.S.C. § 7101 (2000 & West Supp. 2006) (“[B]ecause victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves”).

583. House PAA Debate, *supra* note 279, at 32 (statement of Ill. Rep. Howard) (“Many persons, organizations and entities that subject individuals to/or maintain them in the sex trade are not held accountable by the criminal justice system. In some parts of the state, less than 1 percent of all prostitution-related arrests are for pimps or panderers.”).

584. End Demand, *supra* note 462, at § 2(5).

585. Goudie, *supra* note 72, at 3 (reporting on trafficking in Chicago and the police department’s alleged failure to punish the perpetrators).

586. *Id.* For example:

In February 1999, the Cook County Sheriff’s Police Department’s Vice Unit raided The Skybox Gentleman’s Club in Harvey after a two-month investigation. Thirty-nine women were taken into custody, 15 of whom were charged with prostitution or public indecency and two more with keeper of a place of prostitution. None of the 75 male patrons were arrested.

O’LEARY & HOWARD, *supra* note 71, at 24.

587. End Demand, *supra* note 462, at § 2(6) (noting that the ratio is eleven to one in Boston and six to one in New York City). In 1999, thirty-five children between the ages of twelve and seventeen were arrested for prostitution in Chicago. O’LEARY & HOWARD, *supra* note 71, at 8. The police never should have arrested these children because any child under eighteen who is used for a commercial sex act is a trafficking victim under the TVPA. Hughes, *supra* note 159, at 3.

control strategies.⁵⁸⁸ In addition to prosecuting perpetrators for trafficking, scholars have noted that in cases of sex trafficking, every forced sex act can be charged as a separate sexual assault or forcible rape.⁵⁸⁹ Experts agree that law enforcement must focus on arresting and holding perpetrators of slavery accountable instead of their victims.⁵⁹⁰

4. Provide Victims Essential Services

In addition to focusing on prosecuting perpetrators vigorously, law enforcement officials, State's Attorneys, and the State itself should adopt a victim-centered approach to trafficking cases.⁵⁹¹ Providing essential services to trafficking victims will not only help them recover and move on with their lives,⁵⁹² but will also enable them to potentially participate in state prosecutions.⁵⁹³ As noted earlier, trafficking victims need numerous services, including victim protection.⁵⁹⁴ Victim

588. 22 U.S.C. § 7101(24) (2000 & West Supp. 2006) (emphasizing that to deter trafficking and hold its perpetrators accountable countries must protect rather than punish victims, among other things).

589. 22 U.S.C. § 7101 (“Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.”); Hughes, *supra* note 159, at 4 (noting that unless a woman fully consents “to the commercial sex acts, each act of prostitution should be considered to be a sexual assault.”).

590. Estes & Weiner, *supra* note 12, at 24 (recommending that law enforcement de-emphasize arresting street youth involved in prostitution and emphasize arresting, prosecuting and convicting pimps, traffickers and customers who perpetrate sex crimes against children). Additionally, Paul Kusinski, commanding officer of the vice enforcement unit in Chicago said that “pimps should be punished, not admired.” Kyra Kyles, *Pimps Make It Difficult for Prostitutes to Walk Away*, RED EYE, Oct. 23, 2006, at 7.

591. The DOJ has emphasized the need for a “victim-centered” approach, meaning that because the victim’s well-being is the first priority, it should not be sacrificed for the sake of winning a case. TRAFFICKING WATCH SPRING, *supra* note 185, at 2. “[A] victim-centered approach requires us equally to address the “three R’s”—rescue, rehabilitation, and reintegration.” TIP REPORT 2006, *supra* note 5, at 5. Federal experience with trafficking victims also shows that treating victims with compassion goes a long way towards successfully prosecuting traffickers and rehabilitating victims. *Hidden Slaves*, *supra* note 19, at 80–81. Khai, a trafficking victim, stated that the federal prosecutor’s behavior in her case made a real difference: “The U.S. Attorney gave me a new life. He delivered me, like a doctor delivering a baby, to a new life.” *Id.* Trafficking victims are likely a prosecutor’s only witness and how they are treated makes or breaks the case. Wray, *supra* note 73, at 5.

592. Richard, *supra* note 6, at 477 (noting that victim services help victims recover).

593. COMBAT HUMAN TRAFFICKING, *supra* note 20, at 13 (noting how providing necessary care and services to victims removes the obstacles of fear and trauma, enabling victims to provide law-enforcement with evidence to investigate and prosecute traffickers); *id.* at 18 (“A safe and healthy victim is better able to articulate to investigators and in a court what has happened to him or her.”).

594. TRAFFICKING IN THE U.S., *supra* note 521 (reporting that victim needs are “distinct, severe, and extensive,” and citing the need for the following services: counseling, employment and job placement, immigration assistance, income assistance, independent living skills, interpretation, literacy and ESL, criminal and civil legal assistance, medical and nutritional

protection increases law enforcement's ability to detect, investigate, and prosecute trafficking.⁵⁹⁵ In trafficking cases, victims are often the only witnesses available.⁵⁹⁶ If the victim fears further harm or retaliation, she or he is unlikely to be an effective witness.⁵⁹⁷ Furthermore, because the victim is traumatized, she or he may find it difficult to participate in the investigation.⁵⁹⁸ On the other hand, trafficking victims who receive proper services and safe shelter are usually the first to cooperate with law enforcement.⁵⁹⁹ Not only can victims hold their own traffickers accountable, but they can also help law enforcement uncover whole trafficking syndicates and prevent future trafficking.⁶⁰⁰ Therefore, it is incumbent on law enforcement, State's Attorneys, and the State to ensure that trafficking victims are provided essential social services, either through the State,⁶⁰¹ non-profit organizations,⁶⁰² or the federal government.⁶⁰³

assistance, reintegration, safety planning, and basic shelter, food, and clothing).

595. S. Res. 414, 108th Cong. (2004) (“[E]ffective prosecution of human trafficking crimes will not be possible unless adequate protections are offered to the survivors”); DEP’T OF JUSTICE CIVIL RIGHTS DIV. ACTIVITIES AND PROGRAMS (2006 Edition), *available at* <http://www.usdoj.gov/crt/activity.html>; COMBAT HUMAN TRAFFICKING, *supra* note 20, at i (“Victims are essential to the investigation, prosecution, and prevention of this appalling crime.”); *see also Hidden Slaves*, *supra* note 19, at 51 (reporting that safe and secure trafficking survivors are more likely to assist in prosecutions).

596. Kelly, *supra* note 74, at 18–19 (“[Y]ou do need the victim/witnesses to make a successful prosecution. They know the inner workings . . . can identify members . . . [and] can testify if need be against members in the organization.” Peter Fahey, group supervisor of the human trafficking unit of the U.S. Department of Homeland Security’s Immigration and Customs Enforcement).

597. Buckwalter et al., *supra* note 162, at 429 (noting that “[w]ithout the assurance of protection, victims . . . may . . . refuse to cooperate with law enforcement to aid in prosecutions”).

598. POLICY STUDIES, *supra* note 495, at 6.

599. Buckwalter et al., *supra* note 162, at 429 (noting that “[v]ictim protection . . . foster[s] a willingness to cooperate”).

600. Wray, *supra* note 73, at 4 (stating that victims are the keys to identifying larger trafficking networks).

601. The Model Law recommends that “state programs and licensing bodies . . . recognize federal T non-immigrant status for the purposes of benefits, programs, and licenses.” MODEL LAW, *supra* note 33, at 5. *See also* POLICY STUDIES, *supra* note 495, at 6–8 (discussing how states must provide trafficking victims with services, including witness protection and access to the state crime victims compensation fund).

602. Sometimes victim needs can be met by non-profit organizations, such as Asian Anti-Trafficking Collaborative (<http://www.apilegaloutreach.org/trafficking.html>), Project REACH (<http://www.traumacenter.org/projectreach/index.asp?friendly=true>), Freedom Network (<http://www.freedomnetworkusa.org/index.html>) and Salvation Army (<http://www.salvationarmyusa.org/trafficking>).

603. Richard, *supra* note 6, at 455 (acknowledging that combating human trafficking requires both state and federal action).

B. Proposed Amendments to Illinois' Anti-Trafficking Law

This section proposes that Illinois add provisions to its anti-trafficking law to regulate the mail-order bride industry and to criminalize sex tourism.⁶⁰⁴

1. Regulate the Mail-Order Bride Industry

Although the federal government enacted anti-trafficking legislation first, it by no means has a monopoly on anti-trafficking initiatives.⁶⁰⁵ Illinois can glean legislative wisdom in combating human trafficking from other states.⁶⁰⁶ For example, Washington has exhibited legislative leadership by introducing statutory provisions regulating the mail-order bride industry and its relation to trafficking.⁶⁰⁷

Illinois should follow the lead of Washington and other states and enact a provision regulating international matchmaking organizations (IMOs) operating within the state.⁶⁰⁸ Thus far, Texas,⁶⁰⁹ Hawaii,⁶¹⁰ Washington,⁶¹¹ and Missouri⁶¹² have enacted legislation regulating IMOs operating within their respective states. These provisions mandate that IMOs provide the person considering coming to their state as a prospective bride the marital and criminal record of the prospective spouse.⁶¹³ Additionally, like Texas, Illinois should provide strong civil penalties for violators and allow the money recovered to go towards a trafficking victims compensation fund.⁶¹⁴

604. See *infra* Part V.B (proposing Illinois regulate IMOs operating in the state and criminalize sex tourism).

605. See Buckwalter et al., *supra* note 162, at 408–20 (comparing and analyzing federal and state anti-trafficking legislation).

606. See *id.* at 418–20 (discussing the State of Washington's legislative leadership and how other states have followed its provisions).

607. *Id.*

608. POLICY STUDIES, *supra* note 495, at 13–16 (discussing the importance of regulating IMOs and suggesting provisions for states to adopt); Buckwalter et al., *supra* note 162, at 431–32 (proposing states regulate IMOs). Notably, IMOs are “almost completely unregulated.” O'NEILL, *supra* note 19, at 27.

609. TEX. BUS. & COM. CODE ANN. §§ 35.121–35.125 (Vernon 2006).

610. HAW. REV. STAT. § 489N (Supp. 2006).

611. WASH. REV. CODE ANN. § 19.220 (West 2007).

612. MO. ANN. STAT. § 566.221 (West 2007).

613. TEX. BUS. & COM. CODE ANN. §§ 35.122–35.124 (Vernon 2006); HAW. REV. STAT. § 489N-2 (Supp. 2005); WASH. REV. CODE ANN. § 19.220.010 (West 2007); MO. ANN. STAT. § 566.221(1) (West Supp. 2007).

614. TEX. BUS. & COM. CODE ANN. § 35.125 (Vernon Supp. 2006) (setting a maximum penalty of \$20,000).

Because Illinois' goal is to abolish slavery within its territory,⁶¹⁵ it should make every reasonable effort to combat this crime. IMOs operating under Illinois law may be actively facilitating and concealing modern-day slavery;⁶¹⁶ therefore, Illinois should regulate their activities to send a message that this kind of activity is not tolerated.⁶¹⁷ The Illinois Trafficking Law would be more comprehensive and thus more effective at eradicating modern-day slavery if it contained a provision regulating IMOs doing business in Illinois.⁶¹⁸

2. Criminalize Sex Tourism

While the federal government has made progress in fighting sex tourism through the Protect Act,⁶¹⁹ states should also enact laws prohibiting travel agencies within their state from facilitating sex tours.⁶²⁰ Thus far, Alaska,⁶²¹ Missouri,⁶²² Washington,⁶²³ and Hawaii⁶²⁴ have passed laws criminalizing sex tourism. Illinois should follow their lead and make it a state felony for a travel agency operating in Illinois to offer to sell or actually sell travel services that facilitate travel for the purpose of engaging in prostitution.⁶²⁵

Illinois has a strong incentive to criminalize sex tourism because Illinois citizens, including an ex-governor's aide, and some law enforcement officials and emergency personnel, have engaged in sex

615. Ill. Rescue and Restore Campaign, <http://www.dhs.state.il.us/projectsInitiatives/trafficking/> (last visited Feb. 17, 2007) ("[T]he state of Illinois believes that even one case of Human Trafficking in Illinois is one too many"). Office of the Governor, *supra* note 47 (quoting Illinois State Police Director Larry Trent saying that "[o]ne victim of human trafficking is one too many").

616. *See supra* notes 440–43 and accompanying text (discussing the connection between IMOs and trafficking).

617. *See* Coonan, *supra* note 159, at 294–95 (noting that because trafficking is such an egregious human rights violation, it should be "countered at every turn").

618. *See* Buckwalter et al., *supra* note 162, at 418–20 (discussing the effectiveness of the state of Washington's comprehensive law regulating IMOs).

619. 18 U.S.C. § 2423 (West 2004 & West Supp. 2006). The Act provides for a thirty year maximum sentence for someone convicted of CST, and has resulted in over twenty indictments and twelve convictions thus far. § 2423(b)-(c); CST, *supra* note 449, at 2. "Previous cases of child sex tourism involving U.S. citizens have included a former pediatrician, a retired Army sergeant, a dentist, and a university professor." *Id.* at 1.

620. POLICY STUDIES, *supra* note 495, at 1, 17 (recommending that states regulate travel agencies that facilitate sex tourism).

621. S. 12, 24th Gen. Assemb., 2d Sess. (Alaska 2006) (as passed into law, July 10, 2006).

622. MO. ANN. STAT. § 567.087 (West 2007).

623. WASH. REV. CODE ANN. § 9A.88.085 (West 2007).

624. HAW. REV. STAT. § 468L-7.5 (Supp. 2005).

625. POLICY STUDIES, *supra* note 495, at 17.

tourism abroad.⁶²⁶ In 2004, ABC7 News reported that an aide to ex-governor George Ryan and many other former Illinois officials were given Costa Rican prostitutes by then state lobbyist Roger Stanley in exchange for government kickbacks.⁶²⁷ The news team also reported that a Chicago policeman and a Chicago fireman traveled to Costa Rica to have sex with young teenage girls.⁶²⁸

In response to child sex tourism (CST), in 1999, international anti-trafficking organizations created the global *Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism*.⁶²⁹ By March 2005, sixty-eight travel companies had signed on to the code.⁶³⁰ As a specific measure, Illinois should require every travel and tourism company operating within the state to sign the code as a requirement of doing business in Illinois.⁶³¹ First, the U.S. State Department names signing the Code as something businesses can do to prevent CST.⁶³² Secondly, the Code requirements are basic and not onerous.⁶³³ The Code simply requires that each company establish a corporate ethical policy against commercial sexual exploitation of children; train tourism personnel; and provide information to travelers and to local “key persons” at travel destinations.⁶³⁴ Additionally, to criminalize sex tourism effectively, Illinois should amend the state code regulating travel agencies to provide for suspension or revocation of a travel agency’s license if it facilitates sex tourism.⁶³⁵

Because human trafficking is such an affront to human freedom and civilization, all governments have a moral responsibility to combat this crime in every way possible.⁶³⁶ For any state, including Illinois, to fully

626. Goudie, *supra* note 72. The article highlights how groups of Chicagoans travel to Costa Rica to have sex with young teenage girls, and then post explicit reports on websites for Costa Rican sex tours. *Id.*

627. Costa Rican investigators estimate that “there are 3,000 underage girls working as prostitutes in Costa Rica.” *Id.* at 1. The aide was the now-imprisoned Scott Fawell. *Id.*

628. *Id.* at 1 (noting how some of the firemen “have been doing this for 18 years.”).

629. CST, *supra* note 449, at 1; The Code, <http://www.thecode.org> (last visited Feb. 17, 2007).

630. *Id.*

631. CST, *supra* note 449, at 2.

632. *Id.* The State Dep’t also recommends that states launch public awareness campaigns; better train law enforcement; increase punishment for CST perpetrators; and provide counseling and legal assistance to CST victims. *Id.*

633. The Code, <http://www.thecode.org/> (last visited Feb. 17, 2007).

634. *Id.*

635. POLICY STUDIES, *supra* note 495, at 17 (also suggesting that Illinois amend its code to authorize the state to freeze the assets of the offending agency).

636. *See* Coonan, *supra* note 159, at 294–95 (discussing that human trafficking is a serious human rights violation that should be “countered at every turn”).

combat the trade in human flesh, prohibiting travel agencies from conducting sex tours is essential.⁶³⁷

VI. CONCLUSION

The global crime of human trafficking thrives in America, including in Illinois and Chicago. While the federal government has responded with tough anti-trafficking legislation, the addition of state anti-trafficking laws is critical to adequately combat this heinous crime. Illinois succeeded legislatively by responding to human trafficking through the Illinois Trafficking Law and succeeded executively by launching the Rescue and Restore Coalition and the state-wide plan. The formation of the Chicago Regional Human Trafficking Task Force is important in training and coordinating the anti-human trafficking efforts of appropriate local authorities. Illinois should more comprehensively combat trafficking by regulating the mail-order bride industry operating within the state and by criminalizing sex tourism. Many challenges face Illinois as it attempts to implement and enforce its anti-trafficking law. The need for victim services cannot be overstated, both as a humanitarian measure and for effective prosecution. Furthermore, law enforcement should actively seek out and rescue victims through undercover operations. Prosecutors should reverse the disturbing tide of allowing traffickers, pimps, and sex customers to operate with impunity while victims are arrested for prostitution and immigration violations. The enacting of state anti-trafficking laws brings hope that the full arm of the law at every level will work to combat this brutal crime. It is time to transform the Illinois Trafficking Law from a well-crafted and good-intentioned law to a safe-haven for modern-day slaves and a hammer against their masters.

637. Buckwalter et al., *supra* note 162, at 430 (stating that “[a] comprehensive approach . . . [includes] criminaliz[ing] sex tourism”).