

Sex Trafficking Needs Assessment for the State of Minnesota

**The Advocates for Human Rights
Minneapolis**

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I. PREFACE

The Advocates for Human Rights (“The Advocates”) prepared this needs assessment report at the request of the State of Minnesota Human Trafficking Task Force¹ (“Task Force”) pursuant to its mandate from the Commissioner of Public Safety to conduct a human trafficking needs assessment and to develop a plan to prevent human trafficking.² This report focuses solely on trafficking of persons for commercial sexual exploitation or prostitution as defined in federal law and Minnesota law.³

The Advocates is releasing this report in conjunction with the anti-trafficking conference of the Sergeant Gerald Vick Task Force. This occasion affords the opportunity to reflect on recent successes in combating sex trafficking and formulate ways to improve responses to this complex problem.

The findings of this report are based on interviews with 175 participants throughout the State of Minnesota. Interviewees included judges, prosecutors, public defenders, immigration attorneys, family law attorneys, probation officers, law enforcement officers, immigration officials, healthcare providers, service providers, social services and other stakeholders regarding their knowledge of and experiences with trafficked persons.

Sex trafficking violates numerous human rights. Federal, state, and international laws compel an effective response from the government to address these violations. This report describes the legal

framework and the various institutional and collaborative responses necessary to address these violations, including services to protect the fundamental human rights of trafficked persons and law enforcement actions to hold traffickers accountable for the crimes they have committed. Despite the increased attention to this problem in recent years, The Advocates has found that often the response of law enforcement is ineffective and the needs of trafficked persons remain unmet. This report includes recommendations to address the barriers to an effective, coordinated response to sex trafficking and to better meet the needs of trafficked women and children.

¹ The Task Force reports to the Commissioner of Public Safety and was created to advise the commissioner on his duties regarding human trafficking and to serve as a liaison between the commissioner and agencies and non-profit organizations that provide services to trafficking victims. MINN. STAT. § 299A.7955 (2007).

² *Id.* § 299A.78.

³ While this report is limited to trafficking for commercial sexual exploitation or prostitution, trafficking for forced labor, domestic servitude, forced conscription, organ extraction and other forms of exploitation also involves serious human rights violations meriting immediate attention from law enforcement, policy makers and service providers in Minnesota.

II. EXECUTIVE SUMMARY

Sex trafficking is a form of slavery and involuntary servitude resulting in grave human rights violations. Sex trafficking involves individuals profiting from the sexual exploitation of others and often results in brutal sexual assaults and devastating physical and psychological injuries.⁴ It is not new to Minnesota nor is it confined to the Twin Cities metropolitan area; it affects communities throughout the state. Misunderstanding of the dynamics of sex trafficking and of the law and its implementation results in underfunding for education, prevention, assistance and prosecution.

Minnesota was a place of origin, transit, and destination for sex trafficking operations even before federal or state law defined the crime of “sex trafficking.” In an infamous example from the 1980s and 1990s, the Minneapolis-based Evans family prostituted women and girls around the country.⁵ They employed tactics including gang rapes, physical beatings, threats of violence, and access to drugs to persuade, induce, entice, and coerce their victims into performing prostitution, as well as forced sex acts on members of their own family.⁶ In today’s terms, these crimes constitute sex trafficking.

Although legal definitions vary, international, federal and state law all reflect the idea that human trafficking involves the recruiting, harboring, receipt

⁴ In passing the Trafficking Victims’ Protection Act of 2000, the U.S. Congress found that “trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports [...]” Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1468 (2000) (codified at 22 U.S.C. § 7101(23) (2007)).

⁵ The federal district court convicted the five defendants for transporting individuals in interstate commerce for the purpose of prostitution in violation of the Mann Act, 18 U.S.C. §§ 2421-2423, money laundering, *id.* § 1956, and conspiracy to commit those offenses. See *United States v. Evans*, 272 F.3d 1069, 1077 (8th Cir. 2001) (upholding convictions of all five defendants, but remanding two for resentencing on several counts under earlier version of statute).

⁶ See *Evans*, 272 F.3d at 1087, 1089, 1091, 1092, 1095, 1097.

or transportation of persons for some exploitative purpose.⁷ These laws do not, as is commonly believed, require that people be moved from one point to another for an act to be considered human trafficking. Some provisions of international and federal law also specify that traffickers use means such as force, fraud, coercion,⁸ or the abuse of power⁹ to place or maintain someone in an exploitative situation.¹⁰ Minnesota law does not require proof of force, fraud, coercion, or any other means for an act to constitute sex trafficking.

Exploitation includes practices ranging from prostitution and other forms of sexual exploitation, forced labor or services, domestic servitude, slavery or practices similar to slavery, or the removal of organs.¹¹ Generally, laws and intervention strategies view these forms of exploitation in two broad categories: labor trafficking and sex trafficking.¹² This report focuses on sex trafficking.

⁷ See 18 U.S.C. § 1591(a); MINN. STAT. § 609.321, subd. 7a; United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, at art. 3(a), U.N. Doc. A/RES/55/25 (Jan. 8, 2001) [hereinafter U.N. Trafficking Protocol]; see also 18 U.S.C. §§ 1589-1590 (forced labor).

⁸ See 18 U.S.C. § 1591(a). In this report, references to the federal law on “sex trafficking” refer specifically to 18 U.S. Code section 1591, not other sections of the U.S. Code.

⁹ The U.N. Trafficking Protocol lists the following means in its definition of trafficking in persons: “by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” U.N. Trafficking Protocol, *supra* note 7, art. 3(a).

¹⁰ See discussion in the section “Defining Sex Trafficking” *infra* p. 9. See MINN. STAT. § 609.321, subd. 7a (defining sex trafficking as the “receiving, recruiting, enticing, harboring, providing, or obtaining *by any means* an individual to aid in the prostitution of the individual” (emphasis added)); *id.* § 609.281, subd. 5 (labor trafficking).

¹¹ U.N. Trafficking Protocol, *supra* note 7, art. 3(a).

¹² However, some advocates and organizations reject this division and consider trafficking for sexual exploitation as a form of forced labor. See, e.g., INT’L LABOUR OFFICE, A GLOBAL ALLIANCE AGAINST FORCED LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 6, 7 (2005), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1015&context=forcedlabor>; Jo Dozema, *Loose Women or Lost Women? The Re-emergence of the Myth of ‘White Slavery’ in Contemporary Discourses of Trafficking in Women*, 18 GENDER ISSUES 23 (2000).

People from various backgrounds are trafficked for sexual exploitation in Minnesota, although it primarily affects women and girls.¹³ Traffickers seek out persons perceived to be vulnerable for various reasons, including age, poverty, chemical dependency, history of abuse, lack of resources or support systems, or lack of immigration status. Traffickers then use various tactics to control these persons that may include inflicting sexual, emotional or mental abuse; confiscating documents; inducing or enabling chemical addiction; withholding money or identification documents; and violent physical assaults or threats of assaults.

No reliable data exist on the extent of human trafficking in Minnesota or elsewhere. The clandestine nature of the crime, varied definitions of human trafficking, and flawed methodologies complicate efforts to obtain reliable data.¹⁴ Various sources estimate from 600,000 to four million people are trafficked globally each year.¹⁵ In its 2004 Trafficking in Persons (“TIP”) Report, the U.S. State Department estimated that between 14,500 and

17,500 people were trafficked into the United States annually.¹⁶ The 2006 Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons for Fiscal Year 2005, however, characterized this estimate as unreliable.¹⁷

The 2007 report *Human Trafficking in Minnesota* found that service providers in Minnesota had served 154 labor trafficking victims and 637 sex trafficking victims over a three-year period.¹⁸ These data represent a limited picture of trafficking because it only captures information about persons who contact service providers.¹⁹ Research has shown that not all trafficked persons interact with government or non-government agencies²⁰ and that trafficked persons are reluctant to report their situations, particularly to law enforcement or immigration officials.²¹

Both interviews and research demonstrate that persons trafficked for sexual exploitation often suffer immediate and long-term harm as a result.²² For

¹³ See discussion *infra* p. 21. The 2007 Report on Human Trafficking in Minnesota reported only thirteen sex trafficking cases involving adult male victims from 106 service providers. The data do not specify the sex of trafficked children served. MINN. OFFICE OF JUSTICE PROGRAMS & MINN. STATISTICAL ANALYSIS CTR., HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE STATE LEGISLATURE 1, 2 (2007), http://www.ojp.state.mn.us/cj/publications/Reports/2007_Human_Trafficking.pdf [hereinafter 2007 REPORT]. Accordingly, this report will primarily refer to trafficked persons as women and girls, while acknowledging that the sex trafficking of boys, men and transgendered persons also involves human rights violations and merits additional study, public and private response and appropriate assistance.

¹⁴ See HEATHER J. CLAWSON, MARY LAYNE & KEVONNE SMALL, ESTIMATING HUMAN TRAFFICKING: THE DEVELOPMENT OF A METHODOLOGY (2006), <http://www.ncjrs.gov/pdffiles1/nij/grants/215475.pdf>; U.S. GOV’T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD (2006), <http://www.gao.gov/new.items/d06825.pdf>.

¹⁵ The U.S. government estimates 600,000 to 800,000 people per year are trafficked across international borders for exploitative labor or commercial sexual exploitation. This estimate does not include trafficking within a nation’s borders. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 14, at 2. The International Labor Organization of the United Nations estimates that at any time 2.45 million people are in various forms of forced labor, including sexual exploitation, as a result of trafficking. INT’L LABOUR OFFICE, *supra* note 12, at 14.

¹⁶ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), <http://www.state.gov/documents/organization/33614.pdf>.

¹⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 14, at 17. The annual TIP report has since ceased estimating the number of trafficked persons.

¹⁸ 2007 REPORT, *supra* note 13, at 1-2.

¹⁹ Available trafficking data are often limited by this institutional bias. See Guri Tyldum & Annette Brunkovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 INT’L MIGRATION 17, 25-26 (2005), <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.0020-7985.2005.00310.x>.

²⁰ A 2007 study of thirty-nine trafficking victims and thirteen individuals in street prostitution in Serbia, Albania and Moldova found that “[i]n many cases, women came across the information [about assistance] by chance. This may indicate that there are many more trafficked persons who *do not* come across such information and never know about options for assistance.” The study reported that most trafficking victims with alternatives to assistance would “generally decline trafficking specific assistance and seek help in other places.” For example, trafficking victims with supportive families are more likely to return home than to seek assistance. ANETTE BRUNOVSKIS & REBECCA SURTEES, LEAVING THE PAST BEHIND? WHEN VICTIMS OF TRAFFICKING DECLINE ASSISTANCE 7, 10, 34-35 (2007), http://www.childtrafficking.com/Docs/fafo_past_victims_tra_ass_0408.pdf.

²¹ See KEVIN BALES & STEPHEN LIZE, TRAFFICKING IN PERSONS IN THE UNITED STATES 45 (2005), <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>; BRUNOVSKIS & SURTEES, *supra* note 20, at 34.

²² The Advocates recognizes that the experiences of trafficked persons can vary. Moreover, reports on the experiences of

example, a 2001 U.S. study based in part on interviews with fifteen foreign nationals and twenty-five U.S. citizens who had been trafficked found high rates of injuries and emotional and psychological distress among women due to their experiences in the sex industry, with almost half of U.S. women reporting head injuries.²³ These findings are consistent with a 2007 European study of 207 trafficked women from fourteen countries that found that nearly all the women (95%) reported physical or sexual violence while in the trafficking situation.²⁴ The psychological aspects of the trafficking experience can last long after the physical scars have healed. A European study found that 56% of trafficked women reported symptoms such as recurrent nightmares, reliving traumatic events, difficulty sleeping, and the inability to feel emotion that suggest post-traumatic stress disorder (“PTSD”).²⁵ Although women reported fewer symptoms ninety days after leaving the trafficking situation, they remained at risk for recurring PTSD when re-integrating into society or facing stressful events in the future.²⁶

trafficked persons can vary widely due to varying methodologies and aims. For example, a study of fifty-five mostly Eastern European women in prostitution in Israel, some of whom could meet the U.N. Protocol's definition of “trafficked,” found that “stereotypes of sex workers as either always having histories of childhood abuse or as being always ‘happy hookers’ were incorrect.” Fifteen of the women in this study did not report histories of sexual abuse or rape as a child or while in prostitution in Israel. Bella Chudakov et al., *The Motivation and Mental Health of Sex Workers*, 28 J. OF SEX AND MARITAL THERAPY 305, 308-309 (2002). In contrast, a European study of twenty-eight trafficked women found that all of the women reported sexual abuse during the trafficking situation with lasting health effects. CATHY ZIMMERMAN, THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY 16 (2003),

<http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>.

²³ JANICE C. RAYMOND, DONNA M. HUGHES & CAROL GOMEZ, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS, 8, 12 (2001),

http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf.

²⁴ CATHY ZIMMERMAN ET AL., STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE 10 (2007),

<http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>.

²⁵ *Id.* at 20.

²⁶ *Id.*

Sex trafficking violates basic human rights, including the right to be free from slavery and slavery-like practices; the right to equal protection under the law; the right to be free from discrimination based on race, nationality, and gender; and the rights to life, security of person and freedom from torture. Governments violate trafficked persons' rights when they fail to prevent sex trafficking, prosecute perpetrators or provide trafficked persons with effective remedies for these violations, such as access to courts and legal immigration status.

This report examines the human rights implications of governmental and non-governmental responses to sex trafficking in Minnesota. Although this report focuses on the problem as it affects Minnesota, it is important to note that sex trafficking cases may not remain exclusively within the state's borders.

As discussed throughout this report, sex trafficking affects women and girls from a variety of backgrounds. Based on a mandate from the Minnesota Office of Justice Programs, this report highlights, to the extent possible, the needs of trafficked American Indian and Alaska Natives in Minnesota (“American Indians”).²⁷ The mandate reflects service providers' concerns about the systematic lack of information and general invisibility of American Indian women and youth in discussions about sex trafficking in Minnesota.²⁸ Information

²⁷ The Advocates recognizes the importance of language and has sought to use language that acknowledges the diversity of opinions and experiences of American Indians and Alaska Natives in Minnesota. As noted by Amnesty International in its 2007 report MAZE OF INJUSTICE, “no single term is universally accepted by all Indigenous peoples in the USA.” Accordingly, this report will employ a variety of terms when discussing American Indians and Alaska Natives in Minnesota. Based on recommendations from service providers active in the local American Indian community, this report will refer to identified members of this group primarily as “American Indians,” whether they are officially recognized as tribal members or not. This report, however, will also employ other commonly used terms, such as tribe and tribal authorities, as well as legal terms, such as Indian and Indian Country. For an in-depth discussion about issues surrounding terminology, see AMNESTY INT'L, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA, at iii-iv (2007), <http://www.amnestyusa.org/women/maze/report.pdf>.

²⁸ In the Minnesota Office of Justice Programs' 2007 report HUMAN TRAFFICKING IN MINNESOTA, seven respondents reported

about this population is extremely limited and difficult to obtain. The majority of the findings come from interviews conducted with government and non-government actors working with American Indians in metropolitan, rural and tribal areas, only a few of whom had direct experience working with trafficked American Indians. Despite the unique factors impacting trafficked American Indian women and youth, interviews revealed they face barriers similar to other populations of trafficked persons, although often to a greater extent. As a result, these issues are integrated and discussed throughout the entire report.

Minnesota has a unique history of confronting various forms of commercial sexual exploitation, including sex trafficking, through grassroots activism and innovative legal reform.²⁹ The passage of state

working with 342 Native American trafficked women. This finding represents one of the first efforts in the United States to assess the extent of human trafficking among American Indian women and youth. 2007 REPORT, *supra* note 13, at 2, 19-20.

²⁹ Much of this history pre-dates the advent of the term “sex trafficking” in state and federal law. Thus, the word “prostitution” is used in this footnote for historical accuracy with the understanding that these actions today might be thought of as combating sex trafficking, at least in part. The following list is representative of major events in this history, but certainly not exhaustive. In 1978, the PRIDE (From Prostitution to Independence, Dignity and Equality) program was founded by a survivor of prostitution and her therapist to provide specialized services for individuals in prostitution. It continues to serve women and girls today. Lola Greene Baldwin Foundation, Timeline of Sex Industry in the United States, http://www.prostitutionrecovery.org/prostitution_timeline.html (last visited Aug. 17, 2008). Although Mayor Don Fraser subsequently vetoed the amendment, in 1983 the Minneapolis City Council amended the municipal civil rights code to “prevent and prohibit all discriminatory practices of sexual subordination or inequality through pornography.” Minneapolis, Minn., Proposed Ordinance to Amend Title 7, Chapter 139 and 141 of Minneapolis Code of Ordinances (1983), <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppA.htm> (last visited Aug. 17, 2008); see CATHERINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 262, n.1 (Harvard University Press 1994) (1987). In 1984, the first national conference for advocates of individuals in prostitution was held in Minneapolis. Lola Greene Baldwin Foundation, *supra*. In the 1980s, the prostitution advocacy organization WHISPER (“Women Hurt in Systems of Prostitution Engaged in Revolt”) opened an office in Minneapolis to provide drop-in services and advocacy for individuals in prostitution. E-mail from advocate (Aug. 17, 2008) (on file with author). In 1991, the statewide Minnesota Coalition for Battered Women (“MCBW”) passed a resolution declaring prostitution a form of violence against women and extending the services of its members to women in prostitution. Freedom and Justice Ctr. for Prostitution

anti-trafficking legislation coupled with growing partnerships across disciplines to address sex trafficking in Minnesota continues this tradition. The needs documented in this assessment, however, demonstrate the importance of implementing responses that prioritize the safety and autonomy of trafficked persons while continuing to hold traffickers and patrons accountable.

Resources, State Coalition Defines Prostitution as a Form of Violence Against Women, <http://www.angelfire.com/mn/fjc/mcbw.html> (last visited Aug. 17, 2008). In 1994, the state legislature passed a bill establishing a civil cause of action against anyone who coerces an individual into prostitution or hires an individual for use in prostitution if they knew or had reason to know that the individual was being coerced. MINN. STAT. §§ 611A.80-88 (2007). In 1996, the organization Breaking Free was established in St. Paul to assist “women and girls involved in systems of prostitution/sex trafficking and other battered women who have been involved in the criminal justice system.” Breaking Free, <http://www.breakingfree.net/> (last visited Aug. 17, 2008). In 1999, pursuant to a legislative mandate, the Hofstede Committee released a report discussing the nature and extent of commercial sexual exploitation of juveniles in Minnesota and recommended more severe penalties for perpetrators. THE HOFSTEDE COMMITTEE REPORT: JUVENILE PROSTITUTION IN MINNESOTA (1999), <http://www.heart-intl.net/HEART/080105/JuvenileProstitutionMinn.pdf>; see S.F. 3345, 80th Leg. Sess., Reg. Sess. (Minn. 1998). Also in 1999, the Minnesota legislature appropriated funds for a chemical dependency treatment center primarily targeting women exiting prostitution, which became the Women’s Recovery Center in North Oaks. S.F. 2221, 81st Leg. Sess. Reg. Sess. (Minn. 1999); see also William F. Nelson, *Prostitution: A Community Solution Alternative*, CORRECTIONS TODAY, Oct. 2004, http://www.angelfire.com/mn/fjc/Corrections_Today.pdf.

A. PROJECT GOALS AND METHODOLOGY

This needs assessment evaluates the government response to sex trafficking in Minnesota at the local, state, tribal and federal levels; identifies facilities and services currently available to trafficking victims in Minnesota; assesses their effectiveness; and makes recommendations for coordinating services to better meet the needs of sex trafficking victims statewide.

The Advocates conducted qualitative rather than quantitative research for this report,³⁰ employing the documentation and fact-finding techniques the organization has used in eighteen reports about violence against women in the Twin Cities and in countries around the world.³¹ These qualitative methods can capture details of the trafficked person's experience and barriers to an effective government response that statistics may not reveal. The methodology used the following research techniques:

- Review of local, national and international research on sex trafficking;
- Review of relevant laws, policies, regulations, and legal precedent;
- Review of media accounts of sex trafficking;
- Review of training and outreach materials;
- Discussions with thirty-two focus group participants consisting of legal, healthcare and service providers who work with trafficked persons;³²

³⁰ The annual report Human Trafficking in Minnesota published by the Minnesota Office of Justice Programs seeks to capture quantitative information about human trafficking in Minnesota. See 2007 REPORT, *supra* note 13; MINN. OFFICE OF JUSTICE PROGRAMS & MINN. STATISTICAL ANALYSIS CTR., HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE STATE LEGISLATURE (2006), http://www.ojp.state.mn.us/cj/publications/Reports/2006_Human_Trafficking.pdf [hereinafter 2006 REPORT].

³¹ See the methodology used for this report in Appendix B *infra* p. 157.

³² Statements from focus groups are cited throughout the report. The body of the text refers to both focus group participants and interview subjects as interviewees, but the citation will clarify the nature of the source.

- Interviews with judges, prosecutors, attorneys, service providers, immigration officials, social service providers, healthcare providers, mental healthcare providers, chemical dependency providers, and other stakeholders; and
- Interviews with survivors of sex trafficking interested in telling their story, as referred by service providers.

The Advocates conducted interviews with 175 individuals throughout Minnesota.³³ These interviews form the primary body of evidence upon which this report is based. Interviewees included thirty-nine current and former law enforcement officers, ten prosecutors, six judges, four immigration officials and ten other government officials, including probation officers, victim-witness advocates and Child Protection Services employees. In addition, The Advocates interviewed sixty-eight current and former advocates from various fields, ten healthcare providers, and twenty-five attorneys, including attorneys specializing in immigration law and criminal defense. Three trafficking survivors were also interviewed, including two who currently work as advocates. Another forty individuals were contacted for an interview, but they declined to participate.

Interviewees in the Minneapolis/St. Paul metropolitan area (“Minneapolis/St. Paul” or “metro area”) reported a higher volume of known sex trafficking and public and private responses to this problem. Some service providers and law enforcement officers in Greater Minnesota, however, also reported experience with sex trafficking cases.

In an attempt to gain the most complete picture possible of the needs relating to sex trafficking in Minnesota, The Advocates asked about trafficked persons without regard to their nationality, immigration status, age, gender or level of education. Interviewees were also told that sex

³³ Four interviewees spoke off the record and are not cited in this report.

trafficking can occur without the transportation of people from point A to B or even when trafficked persons initially “consent” to the arrangement. Additionally, The Advocates told interviewees that when answering questions about sex trafficking, they should “cast the net broadly” to include a wide range of cases, including cases that may not clearly correspond with legal definitions of sex trafficking. The purpose of this approach was to obtain as much information as possible without being limited by misperceptions or confusion about the legal definitions of sex trafficking.

In this report, interview subjects are identified only by general job titles such as “law enforcement officer” or “advocate.” In cases where interviewees could be classified in different categories, The Advocates conferred with individual interviewees on the appropriate title. Anonymity allows interviewees to speak candidly about their experiences and knowledge without fear of retaliation in their professional life or from perpetrators. This protection is especially critical for interviewees who are themselves survivors of trafficking and may fear retribution from their traffickers.

Many of the needs identified in this report apply to trafficked women and girls throughout the state. Given the variety of sex trafficking situations and jurisdictional issues unique to some areas of Minnesota, however, some of the findings of this report may only apply to specific areas. Effective responses to sex trafficking must be tailored to meet the needs of specific communities, particularly given contrasts between the metropolitan area and Greater Minnesota. Moreover, responses must address the specific needs of individual victims.

This report identifies issues that require additional research and attention, including the sex trafficking of American Indian women and children; the sex trafficking of boys; the extent of trafficking among

gay, lesbian, bisexual, transgendered and queer youth; any connections between the juvenile justice system and trafficking; any connections between the child protection system and trafficking; and the connections between labor trafficking and sex trafficking.

B. DEFINING SEX TRAFFICKING

Despite the increased international focus on human trafficking since the 1990s,³⁴ no consensus exists regarding the definition of “sex trafficking.” This lack of consensus reflects a much deeper controversy about prostitution, women and consent, including questions about whether women ever “voluntarily” engage in prostitution and the level of exploitation involved in prostitution. The laws that address sex trafficking all reflect some underlying policy position regarding this controversy.

Minnesota law defines sex trafficking as a type of promotion of prostitution.³⁵ This reflects an understanding of sex trafficking as a crime closely linked to prostitution. It is important to note, however, that prostitution and sex trafficking are not synonymous under state law. Individuals can be in prostitution without a pimp or trafficker figure.

Federal law defines sex trafficking differently. Both federal and state definitions criminalize the recruiting, enticing, harboring, providing, or obtaining of a person for the purpose of a “commercial sex act” (federal law) or for “prostitution” (state law).³⁶ They differ significantly, however, in that federal law requires that traffickers use the means of “force, fraud or

coercion”³⁷ to recruit or maintain an adult in sex trafficking while Minnesota law does not.³⁸

Minnesota law recognizes that a person can never consent to being sexually exploited and considers individuals who have been prostituted by others as trafficking victims.³⁹ Federal law requires an assessment of the level of “consent” of the prostituted person in determining whether the crime of trafficking has occurred.

Commentators have noted that when the law requires an assessment of consent, the focus essentially shifts to an analysis of the “guilt” or “innocence” of a trafficked person. Prosecution for sex trafficking may then depend on a moral judgment about the victim rather than the conduct of the trafficker in furthering a criminal enterprise, regardless of the deplorable conditions or exploitative practices employed by the trafficker.⁴⁰ These judgments about the perceived culpability of the victim may impact the level of law enforcement intervention and the potential prosecution of traffickers. They may also determine the level of services a trafficked person may access.

Variances in the definition of sex trafficking can impact the protections available to trafficked persons. Because Minnesota law does not require showing that “force, fraud or coercion” was used in the sex trafficking incident, it does not consider the consent or perceived consent of the prostituted person. Therefore, courts can make a determination of culpability based on the

³⁴ The toppling of Communist regimes in Central and Eastern Europe caused a “wave of trafficking in women” to Western Europe that sparked the contemporary anti-trafficking movement. See BIRGIT LOCHER, *TRAFFICKING IN WOMEN IN THE EUROPEAN UNION* 158-161 (2007); GURI TYLDUM, MARIANNE TVEIT & ANETTE BRUNOVSKIS, *TAKING STOCK: A REVIEW OF THE EXISTING RESEARCH ON TRAFFICKING FOR SEXUAL EXPLOITATION* 9 (2005), <http://www.fafo.no/pub/rapp/493/493.pdf>. However, “[i]nternational awareness of and debates on human trafficking can be traced back to the end of the 19th century, when involuntary prostitution was put forth on the international agenda under the term ‘white slavery.’” *Id.*

³⁵ MINN. STAT. § 609.321, subd. 7a (2007). The penalties for sex trafficking are listed in Minnesota Statute section 609.322.

³⁶ Federal law also penalizes the transportation of an individual for the purpose of a commercial sex act. Minnesota law does not include this specific language. Additionally, Minnesota law prohibits the receipt of a person for the purpose of prostitution. Federal law does not contain any language about receiving for the purpose of commercial sexual exploitation. See 18 U.S.C. § 1591(a) (2007); MINN. STAT. § 609.321, subd. 7a.

³⁷ 18 U.S.C. § 1591(a). Prosecutors must prove these elements for judges to impose the longer sentences associated with the crime of sex trafficking. In cases of trafficked children, prosecutors need not prove the use of force, fraud or coercion to secure a conviction. *Id.* Similarly, trafficked children who are foreign nationals need not prove that force, fraud or coercion was used to be eligible for public benefits or immigration relief through a T visa, as discussed in the section entitled “Immigration Relief” in this report. Immigration and Nationality Act [hereinafter INA] § 101(a)(15)(T)(i)(1), 8 U.S.C. § 1101 (a)(15)(T)(i)(1) (2007) (cross-referencing 22 U.S.C. § 7102(8)(A)); see *infra* p. 79.

³⁸ Minnesota law punishes the use of “any means” in an act of sex trafficking. MINN. STAT. § 609.321, subd. 7a.

³⁹ See MINN. STAT. §§ 609.321, subds. 7a, 7b & 609.325, subd. 2.

⁴⁰ See TYLDUM, TVEIT & BRUNOVSKIS, *supra* note 34, at 14-15.

conduct of the trafficker and not on the state of mind of the woman being prostituted.⁴¹

In Minnesota, however, services and protection are often linked to the federal definition. For example, in the case of a foreign national lacking proper documentation to be in the United States, federal law provides for a specially designated category of visa for trafficking victims, called a T visa, that allows them to stay in the United States.⁴² The T visa requires applicants to demonstrate that they are a victim of a “severe form of trafficking,” which requires showing that “force, fraud or coercion” was used in the trafficking incident.

In addition, federal law provides funding to organizations providing services to victims of “severe forms of trafficking.” Service providers working pursuant to a federal grant must determine if the prostituted person fits the federal definition of trafficking to be eligible for those services. In other words, the service provider must determine whether force, fraud or coercion was used to prostitute the woman in order to provide her services.

Even if services are not restricted to persons who qualify under the federal definition, trafficked persons in Minnesota may never get referrals or information about the services available to them because of the lack of proper training for law enforcement personnel, who may be the trafficked person’s only connection to these services. Healthcare providers and organizations that do not specialize in serving victims of commercial sexual exploitation may also fail to identify trafficked women and girls, resulting in the failure to provide the specialized services these groups need.

⁴¹ There have been no cases prosecuted under the sex trafficking provision of Minnesota law since its passage in 2005. See discussion in the section “Prosecutors and Judges” *infra* p. 117.

⁴² INA § 101(a)(15)(T), 8 U.S.C § 1101 (a)(15)(T). See discussion in the section “Immigration Relief” *infra* p. 79.

In Minnesota, interviews revealed that a lack of awareness and understanding of the law is impeding the development of an effective statewide response to this problem, potentially resulting in traffickers not being prosecuted and trafficked persons not being provided remedies or offered assistance.⁴³ For example, a local law enforcement officer described recent cases involving two women he arrested for prostitution after answering their advertisements on the website Craigslist.com.⁴⁴ In both cases, women had traffickers who took some of their money, drove them to the hotel, and waited for them in the car while the women met the officer.⁴⁵ When asked whether these were sex trafficking cases, the officer said the women did not mention “any coercion or force.”⁴⁶ This is an improper standard because Minnesota law does not require those elements for the crime of sex trafficking.⁴⁷ These women were prosecuted as criminals due to a law enforcement officer’s determination that they were not victims.⁴⁸

⁴³ The inconsistent and ineffective application of the current legal definitions of sex trafficking to specific cases within the state is discussed in the section entitled “Sex Trafficking in Minnesota.” See discussions in sections “Summary of Federal and State Law and Policy” and “Misconceptions about Sex Trafficking May Exclude Trafficked Persons from Receiving Assistance and Impede Prosecution of Traffickers” *infra* pp. 28, 33.

⁴⁴ Interview with law enforcement officer (Nov. 8, 2007).

⁴⁵ One trafficker also ran a sex-related website. *Id.*

⁴⁶ *Id.*

⁴⁷ See MINN. STAT. § 609.321, subd. 7a (2007).

⁴⁸ Both women were also investigated for welfare fraud. Interview with law enforcement officer (Nov. 8, 2007). Author Maria Cianciarulo cites a case from Texas that evoked a similar response from federal law enforcement officials. After securing a ten-year sentence and \$460,000 fine against brothel owner Mi Na Malcom, Immigration and Customs Enforcement (“ICE”) officials found that only five of the forty-two women found in the brothels were eligible for immigration benefits based on their status as sex trafficking victims. The ICE Special Agent in Charge stated that, “[t]he women arrested for prostitution at the spas were not teenagers – most were mature women in their 30s. A clear majority were professional prostitutes who knew exactly what they were doing....” However, as Cianciarulo explains, the women’s situation may not have been what it seemed:

The circumstances in which the women were found and their subsequent treatment indicate that perhaps their situation was not quite as clear cut as the Immigration and Customs Enforcement agents propound. The women reported that they serviced dozens of customers a day; that they would work even “when sick, sore and bleeding”; and that the brothel owners routinely refused permission to seek medical treatment. They spoke little English, and had been trained, under threat of harm to family members back home, to

If law enforcement officials find a group of adult women in a brothel, disagreements may ensue about whether they are “trafficked persons” or women who consented to being prostituted.⁴⁹ Different actors might view the same set of facts

provide vague answers to law enforcement officials and victims’ advocates. When legal counsel from Catholic Charities arrived to interview the women, they found that the “women were treated as criminals in an environment hostile to building trust or learning their histories.” After permitting limited interviews with the Catholic Charities representatives, Immigration and Customs Enforcement transferred the women to a detention center.

Marisa Silenzi Cianciarulo, *The Trafficking and Exploitation Victims’ Assistance Program: A Proposed Early Response Plan for Victims of International Human Trafficking in the United States*, N.M. L. REV. (forthcoming 2008) (manuscript at 2-5) (citations omitted), http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=marisa_cianciarulo.

⁴⁹ The law often punishes the sex trafficking or prostitution of juveniles more severely than the sex trafficking or prostitution of adults. The law reflects the generally accepted notion that children under eighteen can never consent to prostitution or other forms of commercial sexual exploitation. For example, federal law does not require proof of force, fraud or coercion in criminal cases involving trafficking of juveniles. See 18 U.S.C. § 1591(a) (2007). Both federal and state law provide for higher penalties for the sex trafficking of juveniles. Compare *id.* § 1591(b)(1) (providing for a fine and imprisonment for not less than 15 years or for life for trafficking juveniles under fourteen), and *id.* § 1591(b)(2) (providing for a fine and imprisonment for not less than 10 years or for life for trafficking juveniles between fourteen and eighteen), and *id.* § 2422(b) (providing for a fine and between five to thirty years imprisonment for using means of interstate commerce to entice or persuade a minor to engage in prostitution), and 18 U.S.C. § 2423 (2007) (providing for a fine and imprisonment for not less than 10 years or for life for transporting a minor to engage in prostitution), with *id.* § 2421 (providing for a fine and/or up to ten years imprisonment for transporting any individual to engage in prostitution). But see *id.* § 1591(b)(1) (providing for a fine and imprisonment for not less than 15 years or for life for trafficking adults by using force, fraud or coercion). Compare MINN. STAT. § 609.322, subd. 1 (providing for up to twenty years imprisonment and/or payment of up to \$40,000 fine for sex trafficking of a minor), with *id.* § 609.322, subd. 1a (providing for up to fifteen years imprisonment and/or payment of up to \$30,000 fine for sex trafficking of an adult). Compare *id.* § 609.324, subd. 1 (providing maximum sentences of five, ten or twenty years imprisonment and/or payment between \$10,000 to \$40,000 for soliciting a minor for prostitution depending on the child’s age), with *id.* § 609.324, subd. 3 (providing up to ninety days imprisonment and/or payment of fine not more than \$1,000 for soliciting an adult for prostitution). Similarly, federal law makes it easier for trafficked foreign nationals who are juveniles to access federal benefits and receive immigration status. Juveniles trafficked to the United States are not required to cooperate with law enforcement or prove they experienced force, fraud or coercion while trafficked to receive a T visa. See INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb) (2007).

differently depending on their level of training, profession, or political agenda.⁵⁰ A recent report on law enforcement responses to human trafficking found that “in virtually all trafficking cases there is some disagreement or confusion about whether or not the individuals are victims, offenders, or occupy multiple statuses at different times.”⁵¹

In recognition of these definitional problems, it is important to clarify the meaning of terminology used in this report. As noted in the previous section on methodology, The Advocates posed open-ended questions to interviewees to obtain information about their understanding of federal and state definitions of sex trafficking. This approach also facilitated discussion of the ambiguities in the law referred to earlier in this section.

In addition, this report does not use the terms “prostitution” or “individuals in prostitution” synonymously with sex trafficking.⁵² Their use reflects the understanding that trafficked persons constitute a subpopulation of the group of individuals in prostitution, since some individuals in prostitution operate independently without a pimp or trafficker

⁵⁰ TYLDUM, TVEIT & BRUNKOVSKIS, *supra* note 34, at 9, 18. See discussion of the impact of definitional issues on coordinated responses in the section “Multi-Agency and Multi-Disciplinary Collaboration” *infra* p. 44.

⁵¹ AMY FARRELL, JACK MCDEVITT & STEPHANIE FAHY, NORTHEASTERN UNIV. INST. ON RACE AND JUSTICE, UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING, INSTITUTE ON RACE AND JUSTICE 104 (2008), http://www.humantrafficking.neu.edu/news_reports/reports/documents/Understanding%20and%20Responding_Full%20Report.pdf.

⁵² The extent to which pimps or traffickers control prostitution is difficult to assess and varies. Studies have found that up to 80% of prostitution is controlled by pimps, although those studies may define prostitution differently or focus on specific prostitution venues. MICHAEL SHIVELY ET AL., FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER PROSTITUTION PROGRAM 6 (2008) (citations omitted), <http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>; see also JODY RAPHAEL & DEBORAH L. SHAPIRO, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 20-21 (2002), http://www.issuelab.org/click/download2/sisters_speak_out_the_lives_and_needs_of_prostituted_women_in_chicago_a_research_study/5194sisterspeakout.pdf (finding between 23.8% and 50% of women in prostitution in various venues responding gave money to someone else and between 42.9% and 83.3% of those women risked harm if they refused to pay the money).

figure.⁵³ Accordingly, interviewees' comments and reports on prostitution may provide some insight into the situation of trafficked persons.

Key Terms in Report

Off-Street Prostitution: Forms of prostitution that occur in different venues besides the street, including saunas, massage parlors, brothels, hotels, bars, and residences. This category can also include prostitution occurring in adult-oriented businesses, such as strip clubs, peep shows, and pornography and live sex shows. Whether advertised in weekly newspapers or online ads, escort services also satisfy this definition. Because off-street prostitution often requires a degree of organization, traffickers are typically involved. It is important to note, however, that persons can be exploited simultaneously in multiple venues, both in the street and off-street. Moreover, individuals in off-street prostitution venues may or may not have a pimp or trafficker.

Patron: Minnesota law defines a patron as “an individual who hires or offers or agrees to hire another individual to engage in sexual penetration or sexual contact.”⁵⁴

Pimp or Trafficker: An individual who recruits, entices, harbors, transports, provides, receives, or obtains a person for a commercial sex act or prostitution, as defined respectively in federal and Minnesota law.⁵⁵ These terms are used synonymously in this report.

Prostitution: State law defines this term as “engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.”⁵⁶

Sex Trafficking: This term references the federal and state legal definitions.

Federal law defines sex trafficking as using force, fraud or coercion to recruit, entice, harbor, transport, provide, or obtain a person for the purpose of a commercial sex act.⁵⁷ Force, fraud and coercion are not required in cases of trafficked juveniles. In this report, references to the federal law on “sex trafficking” refer specifically to 18 U.S. Code section 1591, not other sections of the U.S. Code.

⁵³ It is difficult to collect data on human trafficking victims, so studying data from groups which may contain a subpopulation of human trafficking victims may provide some insight into experiences of human trafficking victims. See Tyldum & Brunkovskis, *supra* note 19, at 26.

⁵⁴ MINN. STAT. § 609.321, subd. 4 (2007). This report uses this term in its legal sense. Its use is in no way intended to condone or minimize patrons' actions.

⁵⁵ See 18 U.S.C. § 1591(c)(1) (2007); MINN. STAT. § 609.321, subd. 7 (subdivision 7a defines sex trafficking). The Advocates uses these terms in their legal sense. In other words, once an individual performs these acts, they have committed the crime of sex trafficking. Trafficked persons, however, may not consider the pimp or trafficker as fulfilling that role. For example, a woman may consider her pimp as her boyfriend or she may even be married to him. These emotional ties may influence a trafficked person's perception of her situation and can pose a challenge to the prosecution of her traffickers or to service providers assisting trafficked persons. See Interview with advocate (Oct. 3, 2007); Interview with prosecutor (Dec. 10, 2007); Interview with advocate (Feb. 14, 2008); Interview with law enforcement officer (Jan. 3, 2008).

⁵⁶ MINN. STAT. § 609.321, subd. 9.

⁵⁷ 18 U.S.C. § 1591(a).

Minnesota law defines sex trafficking as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”⁵⁸ This crime is punished under Minnesota Statute section 609.322.

Sex Trafficking Victim: State law defines this term as anyone who has been received, recruited, enticed, harbored, provided, or obtained by any means for the purpose of prostitution.⁵⁹

Sexual Contact: State law defines this term to include any of the following acts, “if the acts can reasonably be construed as being for the purpose of satisfying the actor’s sexual impulses:”

- (i) the intentional touching by an individual of a prostitute’s intimate parts; or
- (ii) the intentional touching by a prostitute of another individual’s intimate parts.⁶⁰

Sexual Exploitation: Includes the trading of sex for money, clothing, food, drugs, shelter or favors. Prostitution “is an industry of exploitation that can include strip clubs, massage parlors, saunas, pornography, street walking, live sex shows, phone sex, prostitution rings, international and domestic trafficking, internet pornography, escort services, peep shows, ritual abuse, and mail-order bride services.”⁶¹ This report uses this term more broadly than the terms “prostitution” or “commercial sex act” as they are defined in state and federal law, respectively.

Sexual Penetration: State law defines this term to include any of the following acts, if for the purpose of satisfying sexual impulses: “sexual

intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual’s body by any part of another individual’s body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.”⁶²

Street Prostitution: Solicitation and engagement in prostitution that is based in the street, as opposed to indoors. This category may include individuals involved in prostitution for drugs from drug dealers, as well. Persons in street prostitution may or may not have a pimp or trafficker.

Survival Sex: Sex acts exchanged for clothes, food, drugs, a place to stay or other items. Typically, there is no trafficker involved in these situations. While these acts constitute sexual exploitation, they may not necessarily constitute sex trafficking.⁶³

Trafficked Persons or Trafficked Women and Girls:

Persons who have been transported, received, recruited, enticed, harbored, provided, or obtained by another to perform commercial sex acts or acts of prostitution. This definition is not a legal one and is more general than the definition of “sex trafficking victim” under state law or “victim of a severe form of trafficking” under federal law.

Victim of a Severe Form of Trafficking: Federal law defines this as a victim of “[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.”⁶⁴ Trafficking victims must meet this standard to receive immigration benefits, public assistance and services from federally-funded non-profit organizations.

⁵⁸ MINN. STAT. § 609.321, subd. 7a.

⁵⁹ *Id.* § 609.321, subd. 7b.

⁶⁰ *Id.* § 609.321, subd. 10.

⁶¹ Christine Stark & Carol Hodges, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 17, 19 (Melissa Farley ed., 2003).

⁶² MINN. STAT. § 609.321, subd. 11.

⁶³ See TRUDEE ABLE-PETERSON & RICHARD A. HOOKS WYMAN, BEST PRACTICES AND STANDARDS IN OUTREACH METHODOLOGY TO HOMELESS YOUTH, STREETWORKS 107-08 (2006) (discussion of working with young people engaging in survival sex).

⁶⁴ 22 U.S.C. § 7102(8)(a), (13) (2007).

C. KEY FINDINGS AND RECOMMENDATIONS

This report's key findings and recommendations fall into seven broad categories: (1) priority findings and recommendations; (2) protecting trafficked persons; (3) holding traffickers and patrons accountable; (4) improving the coordinated community response; (5) changing laws, regulations and rules; (6) increasing training; and (7) increasing funding for anti-trafficking efforts. Findings and recommendations are presented in numbered pairs below. Recommendations that offer further detail are also embedded in the text of the report.

The section immediately below entitled "Priority Findings and Recommendations" is a summary of the most urgent needs identified by the authors.

1. PRIORITY FINDINGS AND RECOMMENDATIONS

Finding 1.1: Federal laws on sex trafficking are ineffective due to the difficulty in proving "force, fraud or coercion." Traffickers are often not prosecuted for the trafficking offense and trafficked persons are denied access to victim assistance, including immigration relief, public benefits, and services from non-profit organizations.

Recommendation 1.1: Congress should amend the federal definition of sex trafficking to eliminate the requirement to show "force, fraud or coercion" in order to prosecute traffickers and qualify for victim assistance, including immigration relief, public benefits and federally-funded services from non-profit organizations.

Finding 1.2: Unlike the federal sex trafficking law, Minnesota law recognizes that a person can never consent to being sexually exploited and considers individuals who have been prostituted "by any means" as trafficking victims. Minnesota law, however, excludes some victims of commercial

sexual exploitation, such as those exploited in stripping, by limiting the definition of sex trafficking to include only sexual contact or sexual penetration.

Recommendation 1.2: The Minnesota State Legislature ("Legislature") should expand the definition of sex trafficking⁶⁵ to include all victims of commercial sexual exploitation and punish all traffickers.⁶⁶

Finding 1.3: With some notable exceptions, law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and the general public lack awareness about sex trafficking and fail to properly identify trafficked persons. As a result, trafficking victims are sometimes prosecuted for crimes related to the trafficking scheme and do not receive assistance.

Recommendation 1.3: Law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and others responding to trafficking cases should receive training relevant to their profession on properly identifying and assisting trafficked persons as defined by federal and state law. The Legislature should consider amending relevant statutes on continuing professional education to require education about sex trafficking and the unique needs of trafficked persons. The Legislature should appropriate funds for a public

⁶⁵ MINN. STAT. § 609.321, subd. 7a (2007).

⁶⁶ Although a bill was introduced in the Minnesota legislature in 2008 to expand the definitions of both labor and sex trafficking to include "forced sexual performance" and "forced performance involving nudity" as forms of trafficking, it did not pass. H.F. 3059, 85th Leg. Sess., Reg. Sess. §§ 4-6, 9 (Minn. 2008), <https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H3059.0.html&session=ls85> (companion bill S.F. 2618); Minn. State Legislature, SF 2618 Status in Senate for Legislative Session 85, https://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF2618&ssn=0&y=2007 (last visited Aug. 17, 2008); Minn. State Legislature, HF 3059 Status in House for Legislative Session 85, https://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=House&f=HF3059&ssn=0&y=2007 (last visited Aug. 17, 2008).

awareness campaign about sex trafficking in Minnesota.

Finding 1.4: Services and public benefits for trafficked persons in Minnesota are inadequate because of insufficient or narrowly-restricted funding.

Recommendation 1.4: The Legislature should appropriate funding for services and public assistance for trafficked persons based on the definitions of “sex trafficking” and “sex trafficking victim” outlined in Minnesota law, not federal law. It should also ensure that receipt of those services and public assistance is not conditioned on victims’ nationality, immigration status or participation in the investigation or prosecution of sex traffickers. Congress should amend relevant federal laws to reflect these principles.

Finding 1.5: With notable exceptions,⁶⁷ law enforcement, prosecutors, and judges frequently do not hold sex traffickers and patrons accountable for sex trafficking and prostitution crimes in Minnesota.

Recommendation 1.5: Federal, state, tribal, and local law enforcement officials and prosecutors should prioritize enforcement of sex trafficking and prostitution laws against sex traffickers and patrons. Prosecutors should seek and judges should impose the appropriate sentences for sex traffickers and patrons. The Legislature should consider amending Minnesota Statutes sections 609.322 and 609.324 to reflect mandatory minimum sentences and increased penalties for these crimes.

Finding 1.6: Arresting and prosecuting trafficked persons for crimes that occur as a result of being trafficked further harms trafficked persons.

Recommendation 1.6: Federal, state, tribal, and local law enforcement agencies and prosecutors should prioritize the protection of trafficked persons over their arrest and prosecution for prostitution and other offenses related to the trafficking situation. These authorities should recognize that other offenses may be a consequence of having been trafficked.

2. PROTECTING TRAFFICKED PERSONS

Finding 2.1: Trafficked persons need greater access to services tailored to meet their specific needs, including case management, counseling, housing, healthcare, language interpretation and legal representation.

Recommendation 2.1: The Legislature should appropriate funding for these services. Community leaders should work together to ensure there are adequate services for trafficked persons that are tailored to meet their specific needs. These services should include case management, housing, healthcare, language interpretation, and legal services. Housing resources should include emergency, transitional, and permanent housing facilities. Healthcare services should address the trafficked persons’ pre-existing health issues and the immediate and long-term consequences of the trafficking experience, including substance abuse and chemical dependency treatment. Trafficked persons should be provided legal services, including both immigration and criminal defense attorneys, to protect their rights and ensure their access to immigration remedies. Law enforcement and prosecutors should ensure that legal and other types of assistance are provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers.⁶⁸ These services

⁶⁷ See discussion of measures to hold patrons accountable in St. Paul in the section “Law Enforcement Agencies” *infra* p. 94.

⁶⁸ U.N. Econ. & Soc. Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations Commissioner for Human Rights to the Economic and Social Council*, princ. 9, U.N. Doc. E/2002/68/Add. 1 (May 20, 2002).

should be provided equally and confidentially to U.S. citizens and foreign nationals and be sensitive to age, culture, language, sexual orientation and gender identity.

Finding 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack screening protocols to identify trafficked persons and to screen individuals, especially juveniles, for the risk factors that may create vulnerability to sex trafficking.

Recommendation 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop screening protocols based on model practices to identify trafficked persons and to screen for risk factors for sex trafficking. Training should be provided on how to effectively administer the screening protocols.

Finding 2.3: Many law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack protocols for effectively responding to trafficked persons and sex trafficking cases.

Recommendation 2.3: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop response protocols based on model practices, so they can effectively serve and assist trafficked persons and hold traffickers accountable without further harming trafficked persons.⁶⁹ Training should be provided on how to effectively administer the response protocols.

Finding 2.4: Trafficked persons fear the criminal and immigration consequences of being trafficked for commercial sexual exploitation, particularly arrest, detention, and deportation.

Recommendation 2.4: Federal law enforcement agencies, prosecutors, and immigration officials should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, prosecuted, or removed from the country for the illegality of their entry into or residence in the United States. Federal, state, tribal, and local law enforcement agencies and prosecutors should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, or prosecuted for their involvement in unlawful activities to the extent that such involvement is a consequence of having been trafficked.

Finding 2.5: Trafficked persons may be involved in criminal proceedings against sex traffickers. These criminal proceedings may cause further harm to trafficked persons.

Recommendation 2.5: Prosecutors and judges should institute policies and procedures that ensure that any legal proceedings involving trafficked persons as victims or witnesses are not prejudicial to their rights and their physical or psychological well-being. Judges should ensure fair and impartial proceedings, including fair determinations about the admissibility and prejudicial nature of evidence in sex trafficking cases.

Finding 2.6: Interviews revealed that there are cases in which police officers harass and abuse women in prostitution, some of whom may be trafficking victims under federal or state law.

Recommendation 2.6: Federal, state, tribal and local authorities should investigate and punish such violations to the fullest extent of the law. The Minneapolis and St. Paul Police Departments should conduct an internal investigation into allegations of police misconduct and ensure that policies for filing complaints for police misconduct are accessible and effective.

⁶⁹ The Sergeant Gerald D. Vick Human Trafficking Task Force has created response protocols for use by its members. See *infra* p. 44.

3. HOLDING TRAFFICKERS AND PATRONS ACCOUNTABLE

Finding 3.1: With some exceptions, the government response to sex trafficking in Minnesota currently focuses on the arrest, prosecution, and punishment of prostituted women rather than sex traffickers. This misplaced focus leads to harmful criminal and/or immigration consequences for trafficked persons.

Recommendation 3.1: Federal, state, tribal, and local law enforcement agencies and prosecutors should focus their efforts on holding sex traffickers or pimps accountable. Federal and state prosecutors should aggressively prosecute sex traffickers for trafficking, its component acts and related conduct. They should seek sentences that reflect the severity of the offense. They should also dedicate resources to keep crime victims and witnesses, especially children, safe during investigations and criminal proceedings.

Finding 3.2: The government response to sex trafficking in Minnesota, with limited exceptions, effectively tolerates patrons buying sex from both trafficked persons and prostituted persons. This approach indirectly fuels the demand for women, girls, and other vulnerable populations as commodities in violation of their fundamental human rights.

Recommendation 3.2: Federal, state, tribal, and local law enforcement agencies and prosecutors should increase their enforcement efforts against individuals who buy sex. Prosecutors should prosecute patrons for soliciting or engaging in prostitution and other crimes committed against trafficked persons.

4. IMPROVING THE COORDINATED COMMUNITY RESPONSE

Finding 4.1: Most communities throughout the State of Minnesota have not developed an interagency, interdisciplinary task force or collaborative group to work together to respond to sex trafficking cases, assist trafficked persons, and hold sex traffickers accountable.⁷⁰ As a result, the professionals most often involved in sex trafficking cases do not engage in regular communication, data sharing, common prosecution methodologies, and joint investigations. In addition, professionals in different jurisdictions do not always cooperate to respond to sex trafficking cases across jurisdictions.

Recommendation 4.1: The Legislature should appropriate funding for coordinated community response teams aimed at addressing human sex trafficking in Minnesota. Government and community leaders should expand the use of task forces such as the Sergeant Gerald D. Vick Human Trafficking Task Force to include other communities in Minnesota, or similarly organized, regionally-based task forces should be created. The goal should be to create a network of professionals able to respond immediately to sex trafficking cases; communicate regularly about cases, good practices, and obstacles to communication; develop systems for data collection and sharing; and develop common prosecution methodologies, policies, and procedures for joint or multi-jurisdictional investigations among federal, state, tribal, and local agencies.

5. AMENDING LAWS, REGULATIONS AND RULES

Finding 5.1: Immigration relief in the form of a T visa does not meet the needs of trafficked persons

⁷⁰ The exceptions here are the Sergeant Gerald D. Vick Human Trafficking Task Force and Ramsey County Safe Harbors Youth Intervention Project. See discussion in the section "Multi-Agency and Multi-Disciplinary Collaboration" *infra* p. 44.

because its restrictive eligibility requirements limit the number of trafficked persons who qualify. Specifically, the T visa is overly burdensome in its requirements to: 1) show traffickers' use of "force, fraud, or coercion" in the trafficking scheme; 2) demonstrate that the applicant was trafficked to the United States; 3) show "extreme hardship involving unusual and severe harm" if the applicant were removed from the United States; and 4) assist law enforcement in the investigation or prosecution of the trafficker.

Recommendation 5.1: Congress should amend federal law to eliminate the requirement to demonstrate "force, fraud, or coercion" to receive a T visa. The law should be amended to allow foreign nationals to apply for a T visa regardless of whether they were trafficked to or within the United States. Congress should amend the law to allow applicants to demonstrate "extreme hardship" upon their removal from the United States, instead of the higher standard of "extreme hardship involving unusual and severe harm." Congress should also amend the law to allow applicants to qualify for a T visa if they either cooperate with law enforcement or demonstrate "extreme hardship." Both of these elements should not be required.⁷¹

Finding 5.2: Many trafficked persons applying for the U visa or T visa also need to apply for a waiver to remedy the negative immigration consequences of past immigration violations or criminal histories due to having been trafficked. Without this waiver, applicants cannot receive a U visa or T visa. However, the waiver has a mandatory \$545 fee that applicants must pay, making it cost-prohibitive for many trafficked persons.

Recommendation 5.2: Citizenship and Immigration Services should amend the regulations to allow for

qualified T and U visa applicants to waive the fee for this application.

Finding 5.3: Evidence of law enforcement certifications for U visas and T visas is sometimes used to diminish an applicant's credibility in criminal proceedings against their traffickers. This evidence also compromises the confidentiality of the U visa or T visa application. Evidence of previous sexual conduct may also be used against trafficked persons to diminish their credibility as witnesses. The rules of evidence do not contain procedural safeguards limiting the introduction of such evidence, as they do for criminal sexual conduct cases. Both types of evidence may deter trafficked persons from seeking immigration relief and deny them the protection they are entitled to as crime victims.

Recommendation 5.3: Congress, the Legislature and the federal and state judiciary should amend the federal and state rules of evidence to exclude evidence of the details contained in a law enforcement certification for a T visa or U visa application. They should also amend the rules to enact procedural safeguards limiting the introduction of evidence of trafficking victims' previous sexual conduct.

Finding 5.4: At the state level, sex traffickers and pimps receive sentences that are disproportionately low compared to other felony crimes and which cannot be enhanced based on prior convictions.

Recommendation 5.4: The Legislature should amend state law to ensure that sentences for sex trafficking are proportionate to other felony offenses for crimes against persons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for sex trafficking offenses. The Department of Public Safety should publish these data in its annual report on human trafficking.

⁷¹ WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, THE U.S. RESPONSE TO HUMAN TRAFFICKING: AN UNBALANCED APPROACH 4 (2007), http://www.womenscommission.org/pdf/us_trfkg.pdf.

Finding 5.5: At the federal level, prosecutors must prove that traffickers used “force, fraud, or coercion” against adult victims to secure the high sentences provided by federal law. Prosecutors often have difficulties proving these elements due to insufficient evidence, which leads to traffickers receiving lower sentences for non-trafficking charges.

Recommendation 5.5: Congress should review and amend federal law to establish an appropriately high minimum sentence for all sex traffickers, regardless of whether there is a showing of “force, fraud, or coercion.”

Finding 5.6: At the state level, patrons are often not held accountable for soliciting or engaging in prostitution with trafficked or prostituted persons.

Recommendation 5.6: The Legislature should amend Minnesota law to increase penalties against patrons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for soliciting or engaging in prostitution. The Department of Public Safety should publish these data in its annual report on human trafficking.

6. INCREASING TRAINING

Finding 6.1: Widespread misunderstanding of the definition of sex trafficking results in harm to trafficked persons and allows traffickers and patrons to escape accountability.

Recommendation 6.1: The Legislature should appropriate funding for training on sex trafficking for both governmental and non-governmental agencies throughout the State of Minnesota. This training should address common misconceptions about the definition of sex trafficking, including the fact that sex trafficking may or may not involve 1) foreign nationals; 2) transportation or movement across

borders; or 3) “force, fraud, or coercion.” Training should also explain that in some cases sex trafficking overlaps with prostitution and that many prostituted women and girls qualify as victims of sex trafficking under federal or state law. Training should educate participants on the state and federal anti-trafficking laws. Advanced training should be available to governmental and non-governmental actors specializing in sex trafficking cases.

Finding 6.2: A lack of awareness about the unique physical and psychological health needs of trafficked persons, which stem from pre-existing issues, the trafficking experience and the post-trafficking experience, results in the failure to meet the trafficked persons’ needs.

Recommendation 6.2: The Legislature should appropriate funding for training on the unique health issues of trafficked persons for both governmental and non-governmental agencies throughout the State of Minnesota. Healthcare providers should provide opportunities for such training to their employees.

Finding 6.3: Prejudicial attitudes about prostitution compromise the effectiveness of efforts to protect and assist trafficked persons.

Recommendation 6.3: The Legislature should appropriate funding for awareness-raising campaigns on sex trafficking that target the general public. These programs should be offered by non-profit organizations and others with experience assisting trafficked persons. These programs should promote tolerance and respect for the fundamental human rights and dignity of trafficked persons and all individuals in prostitution. The campaigns should include information about the harm women experience in prostitution and raise awareness about the role of patrons in fueling the demand for trafficked women.

7. INCREASING FUNDING FOR ANTI-TRAFFICKING EFFORTS

Finding 7.1: Funding for anti-trafficking efforts in Minnesota does not currently meet the needs of trafficked persons or those assisting them.

Recommendation 7.1: The Legislature should designate long-term funding for anti-trafficking measures. This funding should not adversely impact funding for other crime victims, including victims of domestic violence or sexual assault. The Legislature should also allocate funding for sex trafficking to governmental and non-profit agencies working on related issues to ensure they have adequate funding to address sex trafficking cases. Congress should support such funding at the federal level. Federal and state government should allocate funding to assist trafficking victims regardless of their nationality or immigration status, including funding for educational, employment, healthcare, housing, legal services, interpretation, and social services. Wherever possible, funding should be available and directed to non-profit organizations that specialize in providing direct services to trafficked and prostituted persons.

Finding 7.2: At the state level, funding for anti-trafficking efforts in Minnesota does not currently meet the needs of local law enforcement agencies or state prosecutors.

Recommendation 7.2: The Legislature should appropriate significant funds for investigation and prosecution of sex traffickers and patrons, including funds dedicated to keeping victims and witnesses safe during investigations and criminal proceedings, and for programs aimed at stopping the demand. Allocation of these funds, however, should not compromise the amount of funding allocated to assisting trafficked persons or other crime victims.

III. SEX TRAFFICKING IN MINNESOTA

A. INTRODUCTION

Sex trafficking is a modern-day form of slavery and results in serious human rights violations, including severe physical and psychological injury to its victims. Interviews revealed sex trafficking to be a multi-faceted phenomenon occurring throughout Minnesota. The Federal Bureau of Investigation (“FBI”) identified Minneapolis as one of thirteen cities with a high concentration of criminal enterprises promoting juvenile commercial sexual exploitation.⁷² The problem of sex trafficking varies in nature from urban to rural areas, with interviewees in small towns and rural areas reporting few cases.⁷³ The nature of sex trafficking can even vary significantly within a city.⁷⁴

The extent of sex trafficking in Minnesota is difficult to assess due to its clandestine nature and lack of awareness about the issue.⁷⁵ A metro area law enforcement officer attempted to quantify the number of investigations of sex trafficking, stating that “we get one [tip] a week.”⁷⁶ A survivor of sex trafficking, when asked how to quantify the level of sex trafficking, responded, “I would say it’s incalculable because of the internet. Incalculable.”⁷⁷ However, in the 2007 Minnesota Office of Justice

⁷² The basis for this ranking is unclear. Minneapolis Division FBI, FBI Priorities, http://minneapolis.fbi.gov/priorities.htm#violent_crime (last visited Aug. 20, 2008).

⁷³ Non-profit organizations in Greater Minnesota reported more cases involving abusive marriages between U.S. citizens and foreign national women, although some interviewees had only served one or two women in this situation. See, e.g., Interview with advocate (Dec. 3, 2007); Interview with advocate (Dec. 3, 2007); Interview with advocate (Oct. 31, 2007).

⁷⁴ For example, a study of women in North Minneapolis on probation for prostitution violations found that the characteristics of prostitution in North Minneapolis differ substantially from South Minneapolis. LAUREN MARTIN & JULIE RUD, PROSTITUTION RESEARCH REPORT: DATA SHARING TO ESTABLISH BEST PRACTICES FOR WOMEN IN PROSTITUTION, HENNEPIN COUNTY AND FOLWELL CENTER PROSTITUTION PROJECT 11-12 (2007) (on file with author).

⁷⁵ See Tyldum & Brunkovskis, *supra* note 19, at 27.

⁷⁶ Interview with law enforcement officer (Oct. 4, 2007).

⁷⁷ Interview with survivor (Nov. 29, 2007).

Programs report HUMAN TRAFFICKING IN MINNESOTA, 52% of service providers, 86% of law enforcement and 93% of healthcare providers reported never working with a trafficked person or arresting someone for human trafficking.⁷⁸

Sex trafficking in Minnesota overwhelmingly impacts women and girls. Three interviewees each speculated about cases they thought might have involved the trafficking of boys, but they had few details about the incidents.⁷⁹ Similarly, some advocates shared stories about trans-gendered youth in prostitution, but were unclear as to whether they would be considered trafficked, since they lacked a pimp.⁸⁰ For these reasons, this report will use the term “trafficked persons” synonymously with “trafficked women and girls.”

1. RISK FACTORS

It is difficult to pinpoint “the type of person” who will be trafficked.⁸¹ Interviewees reported cases involving women and girls who were U.S. citizens, including Native Americans and African-Americans. There were also cases of foreign national women being trafficked. Interviewees reported cases where women had entered the country without visas, as well as cases involving women with lawful permanent residency, commonly referred to as

⁷⁸ 2007 REPORT, *supra* note 13, at 1.

⁷⁹ Interview with advocate (Nov. 26, 2007); Interview with advocate (Dec. 10, 2007); Interview with advocate (Dec. 10, 2007) (limited work with boys who discussed involvement in prostitution by their peers, but not themselves). One advocate shared a story of a young man who disclosed his previous involvement in prostitution, but did not indicate whether he ever had a pimp. Interview with advocate (Feb. 14, 2007). Although the data is sparse, individuals working with sexually exploited youth believe boys under eighteen are less likely to be under the control of a pimp than girls. SARA ANN FRIEDMAN, ECPAT-USA, INC., WHO IS THERE TO HELP US? HOW THE SYSTEM FAILS SEXUALLY EXPLOITED YOUTH IN THE UNITED STATES 14, n.2 (2005), <http://www.ecpatusa.org/pdfs/wholstheretohelpus3.pdf>.

⁸⁰ Interview with advocate (Feb. 14, 2008); Interview with advocate (Feb. 13, 2008).

⁸¹ Dina Francesca Haynes, (*Not*) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act, 21 GEO. IMMIGR. L.J. 337, 356 (2007), available at <http://ssrn.com/abstract=984927>.

“green card” holders. Women came from a variety of countries, including Mexico, Venezuela and Russia, as well as the metro area, Duluth, St. Cloud, small towns and rural areas. Although interviewees described cases of sex trafficking of American Indian women and girls, only three interviewees had personal knowledge of cases involving the movement of Native girls from a reservation to the metro area for prostitution.⁸² One girl was from a reservation in another state.⁸³

Interviews revealed a number of risk factors that make a person more susceptible to trafficking. But nearly all of those interviewed mentioned poverty as a risk factor, alone or in conjunction with other factors.⁸⁴ A prosecutor observed that “human trafficking does not happen in a vacuum. It’s an association of circumstances that cause it to happen.”⁸⁵ Many of these factors stem from systemic problems that decrease viable alternatives, including not only poverty, but gender discrimination, violence against women, racism, and restrictive U.S. immigration policies. Other risk factors or causes commonly cited included chemical abuse, intimidation by or involvement with gangs, physical and emotional isolation, lack of preventive education about sexual exploitation, mental health issues, sexual orientation, language barriers, and age.

Prior sexual or physical abuse was also a commonly mentioned risk factor. A probation officer who works with women with prostitution offenses commented that

[I]t is about control. The women who come through the system on prostitution cases have had pimps all of their lives. These women are usually beaten down into submission. They are usually introduced to

these pimps by family members or by people they know...Unfortunately, young women are told by fathers, brothers, and aunts that this is an option for them to make money. They tell them that this is a way for them to help provide food for kids...The choice is made because they have no money and feel there are no other options for them.⁸⁶

Interviewees cited the impact of gender roles and expectations. A service provider commented that “[w]e are still in a pop culture with ‘pimps and ho’ websites. We need to get the word out to people who don’t realize they are supporting an atmosphere of exploitation.”⁸⁷

Additionally, some factors uniquely impact specific groups. For instance, increasingly restrictive immigration laws have curtailed the possibilities to enter the United States legally. At the same time, increased enforcement of immigration laws has created a climate of fear among foreign nationals in this country, even among those with immigration status. Thus, traffickers can more easily prey on women’s fear of deportation to coerce them to remain in the trafficking situation.

The historical manifestations of racism and sexism also shape the experiences of trafficked women of color in Minnesota, who are overrepresented in prostitution in Minnesota.⁸⁸ A recent study of women on probation for prostitution offenses in North Minneapolis found that American Indian women accounted for 24% of the probationers, while African-American women accounted for over 39%.⁸⁹

⁸² Interview with advocate (Jan. 29, 2008); Interview with advocate (May 16, 2008); Interview with advocate (Nov. 9, 2007).

⁸³ Interview with advocate (Nov. 9, 2007).

⁸⁴ Interview with attorney (Oct. 16, 2007); Interview with attorney (Oct. 8, 2007); Interview with prosecutor (Oct. 15, 2007); Focus Group (Aug. 6, 2007).

⁸⁵ Interview with prosecutor (Jan. 15, 2008).

⁸⁶ Interview with probation officer (Oct. 12, 2007).

⁸⁷ Focus Group (Aug. 6, 2007).

⁸⁸ As noted earlier, trafficking data are incomplete and unreliable. More reliable data exist regarding the backgrounds of women in prostitution. However, these studies also offer limited pictures of women in prostitution to the extent that they focus on particular populations, such as women in street prostitution or women incarcerated for prostitution offenses.

⁸⁹ MARTIN & RUD, *supra* note 74, at 4.

These groups respectively represent only 2.2% and 18% of Minneapolis' entire population.⁹⁰

Numerous interviewees cited “historical trauma” as a factor that makes today’s Native American women vulnerable to traffickers.⁹¹ They specifically identified the forced marriages of Native women to other tribes and the U.S. policy of forcing Native American children to attend Christian schools in the nineteenth and twentieth centuries as origins of this “historical trauma.”⁹² Boarding schools not only sought to strip American Indians of their language and culture, but also exacted brutal physical and sexual abuse on children.⁹³ The director of the South Dakota Coalition Against Sexual and Domestic Violence, Willetta Dolphus, characterized boarding school policies as the conduit for sexual violence into Native American communities because many victims of violence became perpetrators themselves.⁹⁴ Recently Amnesty International reported that today one in three American Indian women will be raped during her lifetime, whereas the ratio declines to one in five women for the entire United States.⁹⁵ One advocate described these factors as contributing to the normalization of violence against Native women.⁹⁶

⁹⁰ U.S. Census Bureau, Minneapolis (City) QuickFacts, <http://quickfacts.census.gov/qfd/states/27/2743000.html> (last visited Aug. 20, 2008).

⁹¹ Focus Group (July 23, 2007); Interview with advocate (Jan. 29, 2008); Interview with advocate (Jan. 29, 2008); Interview with attorney (Jan. 3, 2008). See generally Suzanne H. Jackson, *Marriages of Convenience: International Marriage Brokers, “Mail-Order Brides,” and Domestic Servitude*, 38 U. TOL. L. REV. 895, 912-15 (2007), <http://ssrn.com/abstract=1007008> (discussing experiences of Native American, African, African-American and white women in forced marriage, slavery and indentured servitude in the United States).

⁹² Focus Group (July 23, 2007); Interview with advocate (Jan. 29, 2008); Interview with advocate (Jan. 29, 2008); Interview with attorney (Jan. 3, 2008).

⁹³ Interview with attorney (Jan. 3, 2008). See generally Andrea Smith, *Soul Wound: The Legacy of Native American Schools*, AMNESTY INT’L MAG., Summer 2003, <http://www.amnestyusa.org/amnestynow/soulwound.html>.

⁹⁴ Smith, *supra* note 93.

⁹⁵ AMNESTY INT’L, *supra* note 27, at 2.

⁹⁶ Focus Group (July 23, 2007).

The legacy of the enslavement of Africans and African-Americans in the United States was also cited as a factor in the vulnerability of African-American women and girls to sex trafficking.⁹⁷ Vednita Carter, executive director of the St. Paul service provider Breaking Free, observes that the physical and sexual abuse women endured in slavery and after emancipation, coupled with the limited opportunities afforded to all African-Americans, and women in particular, “kept [them] in a state of poverty and dependency – undereducated, with limited horizons,” that continues to affect African-American women today.⁹⁸

Juveniles also have specific vulnerabilities that make them a target for traffickers. A study of individuals in prostitution in North Minneapolis found that 53% of participants reported first trading or selling sex before the age of eighteen.⁹⁹ Nationwide, anecdotal evidence indicates the average age of entry into prostitution is thirteen or fourteen years old, although some advocates in the United States have worked with children as young as ten and eleven.¹⁰⁰ Interviews conducted with thirty-five young people in Minneapolis found that common paths into prostitution were: 1) a relationship with someone involved in prostitution; 2) homelessness, often due to estrangement or rejection by family; 3) drug abuse; and 4) solicitation by an adult.¹⁰¹ Adolescent development also contributes to youths’ vulnerabilities. For example, children ages eleven to fourteen increasingly object to parental limitations,

⁹⁷ Interview with attorney (Jan. 3, 2008); see generally Interview with advocate (Feb. 13, 2008) (discussing sex trafficking in the context of the enslavement of Africans and African-Americans in United States).

⁹⁸ VEDNITA CARTER, BREAKING FREE, INC., PROVIDING SERVICES TO AFRICAN-AMERICAN PROSTITUTED WOMEN 2, <http://s100980402.onlinehome.us/article1.pdf> (last visited Aug. 20, 2008).

⁹⁹ Lauren Martin, North Minneapolis Prostitution Research (2007) (unpublished data collected at Folwell Center for Urban Initiatives) (summary on file with author).

¹⁰⁰ FRIEDMAN, *supra* note 79, at 3.

¹⁰¹ The term “young people” refers to individuals up to age twenty-one. ABLE-PETERSON & WYMAN, *supra* note 63, at 113-14 (citing C. ZIERMAN, PATHWAYS INTO PROSTITUTION: REPORT TO PROJECT OFFSTREETS, PROJECT OFFSTREETS (1998)).

leading to conflict.¹⁰² Traffickers exploit these conflicts by playing the role of the person who understands the child, simultaneously alienating the child from her parents and solidifying the bond with the trafficker.

2. DYNAMICS OF SEX TRAFFICKING IN MINNESOTA

While traffickers knowingly prey on their victims' vulnerabilities, women and girls often display resourcefulness and ingenuity in these situations. For example, a recent report on law enforcement responses noted that many of the trafficked women encountered by U.S. law enforcement agencies entered the United States voluntarily, suggesting women's attempts to create and seize opportunities to better their lives.¹⁰³ Moreover, while in trafficking situations, women and youth employ strategies to survive and even resist the confines of their situation, such as limiting the time they have to spend with patrons.¹⁰⁴ These responses demonstrate that "[a]lthough women have been severely victimized, they are not simply victims."¹⁰⁵

Traffickers employ various means to recruit or entice women and girls. Sometimes traffickers establish a romantic, platonic, or maternal relationship to forge an emotional bond that makes it difficult for a trafficked person to say no to the demand to perform prostitution or to leave the situation,¹⁰⁶ as with one survivor who married her pimp.¹⁰⁷ In some instances, members of the family are involved in prostitution, so participation in prostitution is not only demanded, but is normalized at a young age.¹⁰⁸

Women and girls are recruited from various locations, including strip clubs, shopping malls, correctional facilities, drop-in centers, homeless or domestic violence shelters, and schools. They are also recruited by electronic means such as the internet. In one case, two girls were approached by two much older pimps at their high school prom in Greater Minnesota.¹⁰⁹ The organizers of the trafficking operation may not necessarily recruit women and girls themselves. Interviews revealed the key role women and girls can play in befriending individuals to lure them into the operation.¹¹⁰ A service provider stated that "[r]ecruiting can happen anywhere, at the neighborhood store or bus stop or in high school by another woman. It's anywhere. It's that prevalent... Recruitment can happen anywhere, any time."¹¹¹

Depending on location, women and girls are trafficked into various types of exploitative situations with varying degrees of visibility. A judge described the sex industry in Minnesota as consisting primarily of "street level prostitution where women are supporting one man and trying to support a couple kids or trying to supplement welfare income and drug or alcohol habits," but also as involving saunas, escort services, and brothels in houses and apartments.¹¹² Interviewees identified four broad categories of cases involving:

- U.S. citizen women and girls in street prostitution, drug house prostitution or prostitution connected with gang activity;
- U.S. citizen women and girls used in off-street prostitution in escort services, strip clubs, private parties, hotels, casinos and homes;

¹⁰² *Id.* at 25 (citation omitted).

¹⁰³ FARRELL, McDEVITT & FAHY, *supra* note 51, at 96-97.

¹⁰⁴ RAYMOND, HUGHES & GOMEZ, *supra* note 23, at 85, 86-88.

¹⁰⁵ *Id.* at 85.

¹⁰⁶ Interview with law enforcement officer (Jan. 3, 2008); Interview with advocate (Oct. 3, 2007); Interview with advocate (May 16, 2008).

¹⁰⁷ Interview with survivor (Nov. 29, 2007).

¹⁰⁸ Interview with advocate (May 29, 2008); Interview with advocate (Nov. 26, 2007).

¹⁰⁹ Focus Group (Aug. 6, 2007).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Interview with judge (Jan. 3, 2008).

- Foreign national women with varying immigration statuses used in off-street prostitution venues who are frequently moved to similar venues throughout the United States every few weeks;
- Foreign national women and girls brought to the United States by U.S. citizens and lawful permanent residents who subsequently abuse them. The relationships may or may not result in marriage. The abuse can include prostitution or use in pornography.¹¹³

Interviews also revealed a connection between temporary spikes in sex trafficking and large events, such as conventions or large sporting events like the Super Bowl.¹¹⁴ Similarly, women and girls are trafficked to Greater Minnesota, sometimes through a circuit of strip clubs or other venues.¹¹⁵ Traffickers may also bring women to rural bars to strip and perform prostitution during hunting seasons.¹¹⁶

Once an exploitative situation is established, traffickers employ various means to maintain control over women and girls, including physical violence, threats,¹¹⁷ and access to illegal drugs.¹¹⁸ Two law

enforcement officers stated that simply being involved with a pimp is coercive.¹¹⁹ Women can be held in a form of debt bondage, where they are forced to work off an amount of money they “owe” to a trafficker for their travel, clothes, food, immigration papers or other needs. Emotional ties to a trafficker, whether a boyfriend or family member, can become a tool of control.¹²⁰ An advocate described a young woman whose grandmother, mother, aunt, sister, and cousins were all involved in prostitution. The advocate concluded that the young woman’s involvement in prostitution demonstrated her loyalty to the family.¹²¹

3. CHARACTERISTICS OF SEX TRAFFICKERS AND PATRONS

The picture of traffickers in Minnesota is less complete than that of trafficked persons. For reasons discussed in the “Law Enforcement” and “Prosecution” sections of this report, law enforcement arrests traffickers infrequently, so less is known about them. This anonymity and lack of accountability allows sex trafficking to flourish. State and federal prosecutions for sex trafficking or related crimes, such as promotion of prostitution, have involved traffickers with different profiles. They include an American man in his late thirties,¹²² a fifty-eight-year old man in Morrison County who owned a strip club,¹²³ a young man from Ramsey County who had prostituted young Hmong girls,¹²⁴ and a ring involving twenty-five defendants that was led by a thirty-seven-year-old woman from the Dominican

¹¹³ See, e.g., Interview with healthcare provider (Feb. 11, 2008); Interview with advocate (Oct. 31, 2007). Interviewees shared many cases involving these types of relationships that involved domestic violence, but not prostitution or commercial sex acts as required by state and federal trafficking laws, respectively.

¹¹⁴ Interview with law enforcement officer (Jan. 29, 2008).

¹¹⁵ Interview with law enforcement officer (Nov. 26, 2007). See generally Strip Club Central, <http://www.stripclubcentral.com> (follow “Minnesota (MN)” hyperlink) (last visited Aug. 20, 2008) (showing 33 strip clubs in Minnesota, although some have since closed); Chris Schafer, *Dancers, Bar Owner, Testify as Prostitution Trial Gets Underway*, MORRISON COUNTY REGISTER, Apr. 21, 2006 (strip club owner charged with promoting prostitution), <http://www.mcrecord.com> (search “Advanced Search” for “dancers” with date “Apr. 21, 2006”; then follow “Dancers, Bar Owner, Testify as Prostitution Trial Gets Underway” hyperlink)

¹¹⁶ Interview with law enforcement officer (Dec. 5, 2007) (commenting that “it’s hard to tell what goes on” when women are brought up north during hunting season to strip); see also Sherry Lee Short, *Making Hay While the Sun Shines: The Dynamics of Rural Strip Clubs in the American Upper Midwest and the Community Response*, in NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 306, 320 (Christine Stark and Rebecca Whisnant eds., 2004) (discussing how small town bars host strippers during hunting season).

¹¹⁷ Interview with advocate (Oct. 3, 2007).

¹¹⁸ Interview with advocate (Nov. 9, 2007).

¹¹⁹ Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Jan. 29, 2008).

¹²⁰ Interview with advocate (Nov. 26, 2007).

¹²¹ *Id.*

¹²² Judgment, United States v. McNeal, No. 06-406 (D. Minn. Nov. 5, 2007); Dan Browning, *First of Human Traffickers Sentenced to 24 Years*, STAR TRIBUNE, Nov. 6, 2007 (referring to McNeal as “Minneapolis man”), <http://www.startribune.com/local/minneapolis/11593326.html> (last visited Aug. 26, 2008)

¹²³ State v. Wheeler, No. 49-K9-05-001194 (Morrison County Ct. Sept. 30, 2005), <http://pa.courts.state.mn.us/default.aspx> (follow “Criminal Case Records” hyperlink; then enter case number).

¹²⁴ Chang v. Minnesota, 528 F.3d 828 (8th Cir. 2008).

Republic.¹²⁵ Tellingly, the woman in the last example had a history of prostitution.¹²⁶

As one prosecutor observed, even less is known about patrons, whose demand for buying sex from women and girls fuels the sex industry.¹²⁷ As with traffickers, law enforcement infrequently arrests patrons,¹²⁸ enabling them to remain anonymous. Patrons are almost exclusively men.¹²⁹ Based on his experience, a judge identified three types of patrons.¹³⁰ The first group is the “frat boy type,” men

who get intoxicated and then seek out prostitution for “fun.”¹³¹ The second and largest group consists of men addicted to this type of sexual experience.¹³² Often these men come from the suburbs or the city and have significant relationships with women, whether dating or married.¹³³ The third, and smallest, group is the criminal sexual predator. These men have been convicted of rape or sexual assault, and prey on individuals in prostitution.¹³⁴

4. SEX TRAFFICKING NEEDS ASSESSMENT

The needs of trafficked persons in Minnesota are complex and require coordinated, adequately funded responses from governmental and non-governmental actors. Interviews throughout Minnesota revealed numerous barriers to protecting trafficked persons, prosecuting traffickers and patrons, and preventing trafficking.

In 2002, the U.N. High Commissioner for Human Rights issued the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (“U.N. Recommended Principles and Guidelines”) to underscore the human rights principles enshrined in the U.N. Trafficking Protocol.¹³⁵ They state that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.”¹³⁶ These principles provide important guidelines and are featured throughout this report.

Research Report Based on Interviews with 110 Men Who Bought Women in Prostitution (2008), <http://www.prostitutionresearch.com/ChallengingDemandScotland.pdf>.

¹³¹ Interview with judge (Mar. 13, 2007).

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*; see also Interview with law enforcement officer (Jan. 29, 2008) (“They’re some who are sex offenders. They can’t help it. It’s their nature; it’s not a thought-process. It’s in their mental makeup.”).

¹³⁵ U.N. Econ. & Soc., *supra* note 68; UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, COMBATING HUMAN TRAFFICKING IN ASIA: A RESOURCE GUIDE TO INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS, POLITICAL COMMITMENTS AND RECOMMENDED PRACTICES 102 (United Nations 2003).

¹³⁶ *Id.* princ. 1.

¹²⁵ Superseding Indictment, *United States v. Ramirez*, No. 07-166 (D. Minn. May 21, 2007). Ramirez ultimately pleaded guilty to conspiracy, illegal entry after deportation and money laundering. Plea Hearing Minutes, *Ramirez* (Apr. 3, 2008).

¹²⁶ Interview with law enforcement officer (Feb. 19, 2008); Information at Count 1, *Ramirez* (Apr. 3, 2008) (showing 1997 conviction for pimping and keeping a place of prostitution in Georgia). In another case, a nineteen-year-old woman who pleaded guilty to using the internet to promote prostitution also had a history of prostitution. Judgment, *United States v. Reisdorf*, No. 07-276 (D. Minn. Jan. 14, 2008); Affidavit to Criminal Complaint at 1, *Reisdorf* (Jan. 14, 2008).

¹²⁷ Interview with prosecutor (Nov. 27, 2007).

¹²⁸ Interview with advocate/survivor (Jan. 14, 2008); Interview with advocate (Feb. 13, 2008). But see Anthony Lonetree & Patricia Lopez, *GOP Stalwart Arrested in 2-day St. Paul Prostitution Sting*, STAR TRIBUNE, July 25, 2008, <http://www.startribune.com/local/25880574.html> (last visited Aug. 26, 2008). Those patrons who are arrested in the Minneapolis/St. Paul metropolitan area often pay fines and attend diversion programs specifically designed for patrons of prostitution. Powderhorn Park Neighborhood Association, Restorative Justice Adult Program, <http://www.pdna.org/node/21> (last visited Aug. 20, 2008) (Minneapolis’ over six-month counseling and restorative justice program for patrons); Breaking Free, *supra* note 29 (follow “Program” hyperlink; then follow “John School” hyperlink) (St. Paul’s one-day diversion program for patrons). The relative lack of criminal consequences for soliciting or engaging in acts of prostitution conveys the message that this conduct is at least tolerated by authorities. See discussion in the section “Holding Sex Traffickers and Patrons Accountable” *infra* p. 118.

¹²⁹ See, e.g., City of Minneapolis, Prostitution Solicitation Conviction Photos, <http://www.ci.minneapolis.mn.us/police/prostitution-convictions/convictions.asp> (last visited Aug. 20, 2008) (showing photos of two men convicted of solicitation for prostitution); Fourth Precinct CARE Task Force, Viewing Johns, http://4thprecinctcare.org/view_offenders/categories/5 (last visited Aug. 20, 2008) (showing photos of twelve men arrested for solicitation for prostitution); City of St. Paul, Prostitution Photographs, <http://mn-stpaul.civicplus.com/index.asp?NID=2351> (last visited Aug. 20, 2008) (showing photos of four men arrested on prostitution offenses, but does not specify whether as patron or individual in prostitution).

¹³⁰ Interview with judge (Mar. 13, 2007). See generally CHICAGO COAL. FOR THE HOMELESS, BUYING SEX: A SURVEY OF MEN IN CHICAGO (2004), http://www.chicagohomeless.org/files/Archive/factsfigures/buyings_ex.pdf (demographics of men who purchase sex); JAN MACLEOD ET AL., *Challenging Men’s Demand for Prostitution in Scotland: A*

Good practices are also featured throughout this report.¹³⁷ These practices highlight successful anti-trafficking responses in Minnesota and elsewhere. They provide potential models for statewide responses.

¹³⁷ A “best” or “good” practice is “a creative and sustainable practice that provides an effective response and that can have the potential for replication as an ‘inspirational guideline’ and contribute to policy development. Initiatives are successful that:

- Have a demonstrable effect on improving people's quality of life or addressing a problem;
- Are the result of effective partnership between the public, private and civic sectors of society;
- Are socially, culturally, economically and environmentally sustainable. Any practice must be adapted to the political, historical, cultural, social and economic context of the society in question.

DANISH RED CROSS, GOOD PRACTICES IN RESPONSE TO TRAFFICKING IN HUMAN BEINGS: COOPERATION BETWEEN CIVIL SOCIETY AND LAW ENFORCEMENT IN EUROPE at 29 (2005), [http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20\(2\).pdf](http://www.ungift.org/docs/ungift/pdf/knowledge/1088_drk_human_manual_web%20(2).pdf) (citing UNESCO, Panel discussion on ‘Best Practices and Strategies to Combat Trafficking in Women and Children in Africa’ (Unesco's Anti-Poverty Projects, 2005, accessed 1 August 2005)).

B. SUMMARY OF FEDERAL AND STATE LAW AND POLICY

The United States, and by extension, the state of Minnesota,¹³⁸ has committed to combating sex trafficking through a number of international treaties, including protocols specifically addressing trafficking. The United States has ratified both the *United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*,¹³⁹ and the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*.¹⁴⁰ These obligations entail protecting trafficked persons, holding perpetrators accountable for their crimes and taking actions to prevent trafficking.

¹³⁸ While the federalist structure of the United States may have an effect on the way in which the federal government works to comply with its obligations under international law, domestic legal systems cannot be used as an excuse for non-compliance with international obligations. Restatement (Third) of the Foreign Relations Law of the United States § 321 cmt. b (1987) (“A state is responsible for carrying out the obligations of an international agreement. A federal state may leave implementation to its constituent units but the state remains responsible for failures of compliance.”) [hereinafter Restatement]; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 50, 999 U.N.T.S. 171, TIAS (the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions”) [hereinafter ICCPR]; *Nature of the General Legal Obligation on States Parties to the Covenant*, Human Rights Committee, General Comment 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (government “may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility”); Vienna Convention on the Law of Treaties, May 23, 1969, art. 27, 1155 U.N.T.S. 331, reprinted in 25 I.L.M. 543 (a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”) [hereinafter Vienna Convention]; Restatement, *supra* (“Every international agreement in force is binding upon the parties to it and must be performed by them in good faith.”).

¹³⁹ U.N. Trafficking Protocol, *supra* note 7.

¹⁴⁰ United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Art. 10, A/RES/54/263 (May 25, 2000), Vol. 2171, A-27531 [hereinafter U.N. Children’s Protocol] (“States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations”).

1. U.S. GOVERNMENT LAW AND POLICY

In response to international concern about human trafficking, Congress passed the Trafficking Victims Protection Act (“TVPA”) with significant bipartisan support on October 28, 2000.¹⁴¹ The TVPA sought “to ensure just and effective punishment of traffickers, [...] to protect their victims” and to prevent trafficking in persons.¹⁴² Although this section of the report focuses on the measures for combating human trafficking in the United States, the TVPA also contains measures for monitoring and combating human trafficking around the world.¹⁴³ Congress reauthorized and amended the TVPA in 2003¹⁴⁴ and 2005.¹⁴⁵ Since the passage of the TVPA, Congress has passed other laws addressing sex trafficking of minors – the Adam Walsh Act and the PROTECT Act.¹⁴⁶ In 2005,

¹⁴¹ Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended in sections of 8 and 22 U.S.C.).

¹⁴² 22 U.S.C. § 7101(a) (2007).

¹⁴³ For example, the State Department issues an annual Trafficking in Persons report assessing the efforts of other countries to meet the TVPA’s minimum standards for the elimination of trafficking in persons. TVPA § 110(b)(1), 114 Stat. at 1482 (codified at 22 U.S.C. § 7107(b)(1) (2007)). If governments do not comply with the minimum standards for the elimination of trafficking and are not making “significant efforts” to comply with those standards, the United States may deny them nonhumanitarian, nontrade-related foreign assistance. *Id.* § 110(a), 114 Stat. at 1482 (codified at 22 U.S.C. § 7107(a) (2007)). Since the TVPA’s passage, Congress has appropriated funds for programs in other countries designed to prevent trafficking, raise public awareness, assist trafficked persons and meet the U.S. State Department’s minimum standards for the elimination of trafficking. *Id.* § 113(c), (e), 114 Stat. at 1490-91 (codified at 22 U.S.C. § 7110(c), (e) (2007)).

¹⁴⁴ Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) [hereinafter TVPRA 2003].

¹⁴⁵ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006) [hereinafter TVPRA 2005]. As of the writing of this report, Congress has not yet passed the 2007 TVPA reauthorization and amendments. The U.S. House of Representatives passed the TVPA reauthorization almost unanimously on December 4, 2007. H.R. 3887, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03887:@@@R>. After significant delay, the Senate version was introduced on May 22, 2008. S. 3061, 110th Cong. (2007), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:SN03061:@@X>.

¹⁴⁶ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003) [hereinafter PROTECT Act]; Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006) [hereinafter Walsh Act].

Congress also passed the International Marriage Broker Regulation Act, in part to ensure these businesses were not sex trafficking operations disguised as legitimate businesses.¹⁴⁷

The U.S. Government has focused its anti-trafficking activity largely on holding traffickers accountable for their crimes. Much of the language of the TVPA addresses prosecution of traffickers.¹⁴⁸ The TVPA provides for higher penalties than other federal statutes for traffickers who used force, fraud or coercion in the trafficking enterprise.¹⁴⁹ When force, fraud or coercion is not established, the crime of transporting adults across state lines for the purpose of prostitution is punishable under other laws, often with lesser penalties for traffickers and fewer remedies for trafficked persons.¹⁵⁰ The TVPA and other laws have also enhanced sentences for trafficking-related crimes already in force.¹⁵¹

¹⁴⁷ International Marriage Broker Regulation Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, 3066 (2005) [hereinafter IMBRA].

¹⁴⁸ Congress found that “[e]xisting legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, 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.” TVPA § 102(b)(14), 114 Stat. at 1467 (codified as 22 U.S.C. § 7101(b)(14) (2007)).

¹⁴⁹ 18 U.S.C. § 1591(b) (2007), amended by Walsh Act § 208, 120 Stat. at 615.

¹⁵⁰ The sex trafficking of an adult by means of force, fraud or coercion is punishable by a fine and imprisonment of not less than fifteen years to life. 18 U.S.C. § 1591(b)(1); see *supra* note 37. The crime of transporting someone across a state line for the purpose of prostitution carries a maximum sentence of a fine or up to ten years imprisonment. 18 U.S.C. § 2421. For example, none of the twenty-five defendants indicted as a result of a lengthy ICE investigation in Minnesota were charged with crimes under the TVPA. They were charged with criminal conspiracy (*id.* § 2, 371), transportation of persons to engage in prostitution (*id.* § 2421), and coercion and enticement of another to travel in interstate commerce to engage in prostitution (*id.* § 2422). Superseding Indictment at 3, 17, 19, *United States v. Ramirez*, No. 07-166 (D. Minn. May 21, 2007); see also Interview with prosecutor (Dec. 17, 2007).

¹⁵¹ This is particularly true with forced labor crimes. Jennifer Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 2992 (2006), <http://ssrn.com/abstract=931448>; see also PROTECT Act § 103(a)(2), 117 Stat. at 652 (codified at 18 U.S.C. § 2422 (2007)) (increasing maximum penalties from ten to twenty years for using means of interstate commerce to entice anyone to engage in prostitution “knowingly persuad[ing], induc[ing],

Additionally, the TVPA provided other tools to facilitate the prosecution of traffickers. For example, because traffickers frequently confiscate identity documents to keep an individual in a trafficking situation, seizure of another person’s government-issued identification is now punishable by up to five years in prison.¹⁵²

The federal government has also established new agencies to coordinate government efforts on trafficking, such as the Human Smuggling and Trafficking Center, which serves as a clearinghouse for information for federal agency representatives to improve law enforcement response.¹⁵³ New divisions have also been created in existing departments. For instance, in 2007, the Attorney General created the Human Trafficking Prosecution Unit to focus “human trafficking expertise and expand its anti-trafficking enforcement program to further increase human trafficking investigations and prosecutions throughout the nation.”¹⁵⁴ Immigration and Customs Enforcement (“ICE”) also has investigators specializing in human trafficking and smuggling operations.¹⁵⁵

entic[ing], or coer[cing] any individual to travel in interstate or foreign commerce . . . to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense,” and from fifteen to thirty years when such a crime involves a juvenile); Walsh Act § 208, 120 Stat. at 615 (codified at 18 U.S.C. § 1591(b) (2007)) (establishing minimum sentences for severe forms of trafficking).

¹⁵² 18 U.S.C. § 1592.

¹⁵³ U.S. Dep’t of State, Human Smuggling and Trafficking Center, <http://www.state.gov/p/inl/c14079.htm> (last visited Aug. 20, 2008). Other executive agencies include the President’s Inter-Agency Task Force to Monitor and Combat Trafficking in Persons and the Senior Policy Operating Group (“SPOG”). TVPA § 105, 114 Stat. at 1473 (codified at 22 U.S.C. § 7103 (2007)) (establishing Inter-Agency Task Force to Monitor and Combat Trafficking in Persons); TVPRA 2003 § 6(c), 117 Stat. at 2881 (2003) (codified at 22 U.S.C. § 7103(f) (2007)) (establishing SPOG).

¹⁵⁴ U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF THE U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 27 (2008), <http://www.usdoj.gov/ag/annualreports/tr2007/agreporhumantrafficking2007.pdf>.

¹⁵⁵ U.S. Immigration and Customs Enforcement, Human Trafficking and Human Smuggling, <http://www.ice.gov/pi/investigations/publicsafety/humantrafficking.htm> (last visited Aug. 20, 2008).

Lastly, to facilitate prosecution of traffickers, the federal government has allocated money and resources to enhance federal and local law enforcement capacity to investigate and prosecute traffickers.¹⁵⁶ This funding includes training for law enforcement officers, immigration officials and prosecutors, although such training is not mandated.¹⁵⁷ Additionally, the federal government has established and funded multi-agency and multi-disciplinary task forces to combat trafficking. For example, the Department of Justice has awarded up to \$450,000 to establish forty-two human trafficking task forces headed by local law enforcement agencies to enhance cooperation between local and federal law enforcement agencies, as well as non-profit organizations. The Sergeant Gerald D. Vick Task Force in St. Paul is one such task force.¹⁵⁸

When Congress passed the TVPA, it found that “[e]xisting laws often fail to protect victims of trafficking, and because victims are often illegal immigrants in the destination country, they are repeatedly punished more harshly than the traffickers themselves.”¹⁵⁹ For example, before the TVPA, the Immigration and Naturalization Service¹⁶⁰

often deported trafficked foreign nationals because they lacked immigration status.¹⁶¹ In response, the TVPA established new immigration remedies and protective measures for “victims of severe forms of trafficking.” To be eligible for these protections, trafficked adults must have experienced force, fraud or coercion.¹⁶²

The TVPA provides eligible foreign national trafficking victims with access to government benefits like food stamps and medical assistance.¹⁶³ The federal government has allocated funds for non-governmental and faith-based organizations to provide direct services to eligible trafficked persons before they are “certified”¹⁶⁴ by the government to receive public benefits.¹⁶⁵ Locally, the organization Civil Society has received federal funds to provide these services.¹⁶⁶ There is also a national trafficking hotline for victim assistance or information-sharing about potential trafficking cases.¹⁶⁷

As noted previously, the TVPA also creates a new form of immigration relief, the T visa, for victims of severe forms of trafficking who have cooperated in the investigation or prosecution of their trafficker.¹⁶⁸

¹⁵⁶ Although the TVPA and its reauthorizations have allocated funds to federal agencies designated for anti-trafficking efforts, that money has not always been appropriated. The Government Accountability Office reported that the Federal Bureau of Investigations and Immigration and Customs Enforcement did not receive the \$15 million and \$18 million, respectively, authorized by the TVPRA 2005 because the amendments became law after fiscal year 2006 had already begun. Accordingly, the money could not be appropriated. In such cases, agencies must rely on existing resources to fund anti-trafficking initiatives. GOV'T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: A STRATEGIC FRAMEWORK COULD HELP ENHANCE THE INTERAGENCY COLLABORATION NEEDED TO EFFECTIVELY COMBAT TRAFFICKING CRIMES 53 (2007), <http://www.gao.gov/new.items/d07915.pdf>.

¹⁵⁷ See, e.g., U.S. DEP'T OF JUSTICE, *supra* note 154, at 33-43 (discussing training of domestic law enforcement officers).

¹⁵⁸ U.S. DEP'T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, U.S. GOVERNMENT FUNDS OBLIGATED IN FY 2005 FOR ANTI-TRAFFICKING IN PERSONS PROJECTS, COMPILED BY OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS 17, <http://www.state.gov/documents/organization/78573.pdf> (last visited Aug. 20, 2008) [hereinafter FY 2005 FUNDS REPORT].

¹⁵⁹ TVPA § 102(b)(17), 114 Stat. at 1467 (codified at 22 U.S.C. § 7101(b)(17)(2007)).

¹⁶⁰ Pursuant to the Homeland Security Act of 2002, the duties of the former Immigration and Naturalization Service were transferred to various agencies in the Department of Homeland Security. Homeland Security Act, Pub. L. No. 107-296, §§ 471,

1502, 116 Stat. 2135, 2205, 2308 (2002) (codified at 6 U.S.C. §§ 291, 542).

¹⁶¹ RAYMOND, HUGHES & GOMEZ, *supra* note 23, at 21, 101, 104, 105.

¹⁶² TVPA § 107, 114 Stat. at 1474 (codified at 22 U.S.C. § 7105 (2007)).

¹⁶³ *Id.* § 107(b)(1)(A)-(B), (E)(i), 114 Stat. at 1475 (as codified at 22 U.S.C. § 7105(b)(1)(A)-(B), (E)(i)(2007)).

¹⁶⁴ This certification process is addressed in more detail in the section “Public Assistance” *infra* p. 72.

¹⁶⁵ TVPA § 113(d), 114 Stat. at 1491 (codified at 22 U.S.C. § 7110(d) (2007)).

¹⁶⁶ The grant was in the amount of \$500,000 for three years. U.S. DEP'T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, UNITED STATES GOVERNMENT FUNDING OBLIGATED IN FISCAL YEAR 2006 FOR ANTI-TRAFFICKING IN PERSONS PROJECTS 16, <http://www.state.gov/documents/organization/83485.pdf> (last visited Aug. 21, 2008) [hereinafter FY 2006 FUNDS REPORT].

¹⁶⁷ Polaris Project, National Human Trafficking Hotline, http://www.polarisproject.org/index.php?option=com_content&task=view&id=90&Itemid=95 (last visited Aug. 21, 2008).

¹⁶⁸ TVPA § 107(e), 114 Stat. at 1477 (codified at 8 U.S.C. § 1101(a)(15)(T) (2007)). Trafficked persons who are foreign nationals may also be eligible for other forms of immigration relief besides the T Visa, such as the U Visa, 8 U.S.C. § 1101(a)(15)(U) (2007); VAWA self-petition, *id.* § 1101(a)(51); or asylum, *id.* § 1158. See discussion in the section “Immigration Relief” *infra* p. 79.

It allows recipients to stay in the United States for up to four years and apply for lawful permanent residency after three years.¹⁶⁹ A temporary status called “continued presence” is available to trafficked persons during the pendency of the criminal investigation or prosecution.¹⁷⁰

The Trafficking Victims Protection Reauthorization Act of 2003 provides victims with the right to a civil cause of action against their traffickers for punitive damages and attorney’s fees.¹⁷¹ The TVPA also provides for mandatory restitution in cases where the court rules in favor of the trafficked person.¹⁷² The law also requires traffickers to forfeit their assets upon conviction.¹⁷³

The federal government has devoted fewer resources to preventing trafficking in persons in the United States. The most prominent initiative is the national public awareness raising campaign overseen by the Department of Health and Human Services’ Rescue and Restore Campaign, which has coalitions in nineteen cities and two states.¹⁷⁴

2. STATE OF MINNESOTA LAW AND POLICY

Since the passage of the TVPA in 2000, forty states have passed human trafficking laws.¹⁷⁵ Minnesota

passed trafficking legislation in 2005 and 2006.¹⁷⁶ Supporters hoped to deter human traffickers from operating in the state of Minnesota by criminalizing their conduct.¹⁷⁷

Minnesota law contains various provisions to facilitate the prosecution of traffickers. The 2005 law defines the crime of sex trafficking as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”¹⁷⁸ Minnesota law does not require the use of “force, fraud or coercion” by traffickers to establish the crime of sex trafficking.¹⁷⁹ Existing provisions of Minnesota law provide that consent of the individual used in prostitution does not constitute a defense to promotion of prostitution.¹⁸⁰ Also, a defendant cannot cite a person’s prior involvement in prostitution as a defense to a charge of promotion of prostitution.¹⁸¹

Minnesota law also provides some legal protections for trafficked persons. The 2005 law defines a sex trafficking victim as anyone subjected to sex trafficking, although the term “sex trafficking victim”

¹⁶⁹ INA § 245(l)(1), 8 U.S.C. § 1255(l)(1); see 8 C.F.R. § 214.11(p)(2) (2007).

¹⁷⁰ TVPA § 107(c)(3), 114 Stat. at 1477 (setting a deadline for promulgating regulations on continued presence); 28 C.F.R. § 1100.35 (2007) (conferring authority to Department of Homeland Security to grant continued presence).

¹⁷¹ TVPRA 2003 § 4(a)(4), 117 Stat. at 2878 (codified at 18 U.S.C. § 1595 (2007)); see also Jennifer S. Nam, *The Case of the Missing Case: Examining the Civil Right of Action for Trafficking Victims*, 107 COLUM. L. REV. 1655 (2007) (few trafficking victims have filed civil lawsuits against their traffickers under this cause of action).

¹⁷² 18 U.S.C. § 1593.

¹⁷³ *Id.* § 1594(b), (c).

¹⁷⁴ U.S. Dep’t of Health and Human Servs., The Campaign to Rescue & Restore Victims of Human Trafficking, <http://www.acf.hhs.gov/trafficking/about/index.html> (last visited Aug. 16, 2008).

¹⁷⁵ The scope of these laws vary from state to state. See list of state trafficking laws in Appendix C *infra* p. 175.

¹⁷⁶ S.F. 1689, 84th Leg. Sess., Reg. Sess. (Minn. 2005), available at <http://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S1689.3&session=ls84> (last visited Aug. 16, 2008); H.F. 4162, 84th Leg. Sess., Reg. Sess. (Minn. 2006), available at <https://www.revisor.leg.state.mn.us/laws/?doctype=Chapter&year=2006&type=0&id=282> (last visited Aug. 16, 2008).

¹⁷⁷ Susan Gaertner, Human Trafficking: Today’s Hidden Slavery – Our Role in Recognizing and Protecting Victims, Remarks at the Criminal Justice Institute (Aug. 22, 2006), in <http://www.co.ramsey.mn.us/NR/rdonlyres/E4B3303E-AF48-4DCC-98D1-A31347E96721/4942/HumanTraffickingTodaysHiddenSlavery.pdf>, at 6.

¹⁷⁸ MINN. STAT. § 609.321, subd. 7a (2007). The language of the Minnesota statute does not correspond to the language promoted by the U.S. Department of Justice in its Model State Anti-Trafficking Criminal Statute. See MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE § XXX.02(2) (U.S. Dep’t of Justice), http://www.usdoj.gov/crt/crim/model_state_law.pdf (last visited Aug. 21, 2008).

¹⁷⁹ See *supra* note 38.

¹⁸⁰ MINN. STAT. § 609.325, subd. 2. This defense under state law is even broader than the defense provided in the U.N. Protocol because it does not require the trafficker to use any specific means, such as force, fraud or coercion, in order for the defense to apply. See U.N. Trafficking Protocol, *supra* note 7, art. 3b.

¹⁸¹ MINN. STAT. § 609.325, subd. 3.

does not appear anywhere else in Minnesota law.¹⁸² The 2005 law establishes an affirmative defense to sex trafficking for victims accused of prostitution crimes.¹⁸³ By successfully raising this defense, a sex trafficking victim might avoid criminal charges for prostitution resulting from trafficking.

Parents and guardians may also seek a protective order against any individual who is inducing, coercing, soliciting, or promoting the prostitution of their minor child.¹⁸⁴ Persons coerced into prostitution may also seek civil damages against pimps or patrons for the harm they experienced.¹⁸⁵

An additional law passed in 2006 established an independent state Human Trafficking Task Force staffed by persons from various disciplines to formulate the state response on human trafficking.¹⁸⁶ It also established a statewide hotline for trafficked persons and tips about trafficking.¹⁸⁷ While the law contains a provision for the Commissioner of Public Safety to assess services available to trafficked persons,¹⁸⁸ funding was appropriated only for gang-strike task forces, establishment of Ramsey County's Safe Harbors

Youth Intervention Project ("SHYIP"), state task force, trafficking hotline and direct legal services to trafficked persons by the non-profit organization Civil Society.¹⁸⁹

The 2006 law also provided for the publication of an annual report assessing the extent of human trafficking in the state of Minnesota.¹⁹⁰ The Minnesota Office of Justice Programs ("OJP") has produced an annual report on human trafficking in Minnesota, including sex and labor trafficking, for the last two years.¹⁹¹ These reports represent the first attempts to regularly compile trafficking-related data from the entire state. In 2007, OJP collected the data in online surveys to service providers, police chiefs and county sheriffs, and nurses.¹⁹² The surveys also collected figures on trafficking-related arrests, charges and convictions.¹⁹³

¹⁸² *Id.* § 609.321, subd. 7b.

¹⁸³ "It is an affirmative defense to a charge under section 609.324 [Other prostitution crimes; patrons, prostitutes, and individuals housing individuals engaged in prostitution; penalties] if the defendant is a labor trafficking victim...or a sex trafficking victim... and that the defendant committed the act only under compulsion by another who by explicit or implicit threats created a reasonable apprehension in the mind of the defendant that if the defendant did not commit the act, the person would inflict bodily harm upon the defendant." *Id.* § 609.325, subd. 4. The narrow scope of the law limits the availability of this defense. The defendant must have committed the prostitution act due to explicit or implicit threats of bodily harm to the defendant.

¹⁸⁴ MINN. STAT. § 609.3232.

¹⁸⁵ *Id.* § 611A.81. Interviews and primary research revealed no cases based on this cause of action except for a case mentioned in a newspaper article. On January 25, 1997, the Star Tribune reported that the case settled for \$17,000. Kevin Duchshere, *Prostitution-Coercion Law to be Tested: A Woman Who Alleges that She Was Virtually Enslaved Has Sued Under an Untested Law Allowing Prostitutes to Collect Damages from Johns if They Can Prove Coercion*, MINNEAPOLIS STAR TRIBUNE, Nov. 20, 1995, at 1B; Kevin Duchshere, *Woman Wins Settlement under Unique State Prostitution Law*, MINNEAPOLIS STAR TRIBUNE, Jan. 25, 1997, at 2B.

¹⁸⁶ MINN. STAT. § 299A.7955.

¹⁸⁷ *Id.* § 299A.7957.

¹⁸⁸ *Id.* § 299A.795.

¹⁸⁹ H.F. 4162, 84th Leg. Sess., Reg. Sess., art. 13, subds. 4(a)-(e) (Minn. 2006), available at <https://www.revisor.leg.state.mn.us/laws/?doctype=Chapter&year=2006&type=0&id=282> (last visited Aug. 16, 2008).

¹⁹⁰ MINN. STAT. § 299A.785. See discussion of the Human Trafficking Task Force's role in commissioning this report in the "Preface" *supra* p. 1.

¹⁹¹ As of the publication of this report, the 2008 report had not yet been released. 2007 REPORT, *supra* note 13; 2006 REPORT, *supra* note 30.

¹⁹² 2007 REPORT, *supra* note 13, at 1. Only service providers were contacted to complete the 2006 survey. 2006 REPORT, *supra* note 30, at 1.

¹⁹³ 2007 REPORT, *supra* note 13, at 7; 2006 REPORT, *supra* note 30, at 6-7.

C. UNIVERSAL ISSUES: MISCONCEPTIONS ABOUT SEX TRAFFICKING, LACK OF SCREENING AND RESPONSE PROTOCOLS AND DATA COLLECTION

Minnesota government agencies, non-profit organizations and service providers encounter several common obstacles to effectively assisting trafficked persons and prosecuting traffickers. These obstacles include misconceptions about sex trafficking, lack of funding and resources, lack of screening protocols, lack of response protocols, difficulties with cross-sector collaboration and insufficient data collection.

1. MISCONCEPTIONS ABOUT SEX TRAFFICKING

Interviews revealed the lack of a common understanding of what sex trafficking is and who the victims of sex trafficking are.¹⁹⁴ In the 2007 report *Human Trafficking in Minnesota*, only 1% of service providers and 2% of nurses reported being extremely or very knowledgeable about human trafficking.¹⁹⁵ Common misconceptions include the belief that sex trafficking involves only foreign nationals; misunderstanding cases as smuggling and not sex trafficking; limiting sex trafficking to only those cases involving force, fraud, or coercion; excluding prostituted women who also may be victims of trafficking; and limiting sex trafficking to only those cases involving transportation across state or national borders. Such misconceptions are an obstacle to trafficked persons receiving the services and assistance they need. They also contribute to an ineffective criminal justice system response to the crime of sex trafficking.

Criminal justice professionals, service providers, and healthcare providers need training to address these

¹⁹⁴ This lack of consensus contributes to these misperceptions. See discussion in the section “Multi-Agency and Multi-Disciplinary Collaboration” *infra* p. 44.

¹⁹⁵ 2007 REPORT, *supra* note 13, at 3.

misconceptions and expand their knowledge about the nature of sex trafficking. Although a select group of interviewees reported receiving training on sex trafficking,¹⁹⁶ interviewees from many sectors of the community consistently identified the lack of training and knowledge as obstacles to providing an effective response to sex trafficking cases.¹⁹⁷ A local law enforcement officer with limited experience in sex trafficking cases noted that “[t]o improve we need more knowledge and education and awareness by the public and the criminal justice system. People need to understand what trafficking is.”¹⁹⁸ One healthcare provider described her need for basic information about sex trafficking because she sees cases and does not know how to respond.¹⁹⁹

a) SEX TRAFFICKING IS NOT LIMITED TO FOREIGN NATIONALS

United States citizens may be wrongfully excluded from services and protection under the anti-trafficking laws due to misconceptions about trafficked persons.²⁰⁰ While the federal and state

¹⁹⁶ Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Oct. 4, 2007); Interview with former law enforcement officer (Nov. 26, 2007); Interview with former law enforcement officer (Jan. 31, 2008); Interview with law enforcement officer (Nov. 25, 2007); Interview with advocate (Oct. 26, 2007); Interview with advocate (May 16, 2008); Interview with advocate/survivor (Jan. 14, 2008); Interview with advocate/survivor (Feb. 20, 2008); Interview with prosecutor (Oct. 15, 2007); Interview with prosecutor (Apr. 10, 2008).

¹⁹⁷ Interview with law enforcement officer (Oct. 16, 2007); Interview with law enforcement officer (Jan. 16, 2008); Interview with law enforcement officer (Jan. 3, 2008); Interview with law enforcement officer (Oct. 4, 2007); Interview with healthcare provider (Feb. 11, 2008); Interview with healthcare provider (Jan. 17, 2008); Interview with immigration official (Nov. 27, 2007); Interview with advocate (Nov. 26, 2007); Interview with advocate (Oct. 8, 2007); Interview with advocate (Nov. 26, 2007); Interview with advocate (Feb. 14, 2008); Interview with attorney (Oct. 24, 2007).

¹⁹⁸ Interview with law enforcement officer (Oct. 16, 2007).

¹⁹⁹ Interview with healthcare provider (Feb. 11, 2008); see discussion in the section “Healthcare for Trafficked Persons” *infra* p. 59.

²⁰⁰ However, trafficked U.S. citizens and foreign nationals with lawful permanent residency status are ineligible to receive federally-funded services and public benefits available to trafficking victims. See discussion in the section “Public Assistance” *infra* p. 72.

laws contain no language limiting their application to the trafficking of foreign nationals, numerous interviewees understood sex trafficking primarily in terms of individuals being brought to the United States from another country, as opposed to a crime that can happen to U.S. citizens. For example, when asked about the causes of sex trafficking, one law enforcement officer believed it was attributable in large part to “people wanting to get into our country.”²⁰¹ When asked about training on trafficking, officers responded that “[w]e are so far from the border” and you “don’t expect people coming in through Canada.”²⁰² As discussed above, however, state and federal law criminalizes the sex trafficking of U.S. citizens in addition to foreign nationals.²⁰³

b) HUMAN SMUGGLING CASES MAY INVOLVE SEX TRAFFICKING

Interviews revealed that cases identified as “smuggling” cases may also involve trafficked persons who do not receive the services and protection anticipated under state and federal law. Smuggling involves facilitating the illegal crossing of the U.S. border from another country, regardless of whether the smuggler receives payment.²⁰⁴ In

theory, smuggling is a consensual act and does not result in the subsequent exploitation of the foreign nationals once they arrive in the United States. However, one commentator noted that “migrants are increasingly caught in coercive trafficking arrangements as the border becomes more treacherous and crossing the border becomes more costly.”²⁰⁵

An interviewee with extensive experience in trafficking cases explained that trafficking may appear to be smuggling in cases where law enforcement or immigration officials discover a trafficking case before the exploitative conduct occurs, such as at a border crossing or an airport.²⁰⁶ A NEW YORK TIMES MAGAZINE article from 2004 contains examples of sex trafficking operations that regularly brought women and girls into and out of the United States.²⁰⁷ In one case, a young woman reported that her traffickers marched her and a group of Mexican girls through the desert to enter the United States, where she was ultimately prostituted.²⁰⁸ Immigration officials did not intercept her group, but if they had, they may have misidentified her as being smuggled as opposed to trafficked. Law enforcement officers or immigration officials may be focused on the illegal smuggling act. They may fail to identify a potential trafficking situation. In such cases, women and girls risk being

²⁰¹ Interview with law enforcement officer (Dec. 7, 2007).

²⁰² Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Nov. 8, 2007).

²⁰³ Recent federal prosecutions for sex trafficking and related crimes have primarily involved minor U.S. citizens and few adults. *See, e.g.*, Sentencing, United States v. Reisdorf, No. CR 07-276 (D. Minn. Jan. 14, 2008) (pleaded guilty to using internet to promote the prostitution of minors who were U.S. citizens); Judgment, United States v. McNeal, No. 06-406 (D. Minn. Nov. 5, 2007) (pleaded guilty to sex trafficking minors who were U.S. citizens); Judgment, United States v. Taylor, No. 07-54-1 (D. Minn. Apr. 17, 2008) (pleaded guilty to two counts of sex trafficking of minors who were U.S. citizens and possession of documents in furtherance of trafficking); *see* Plea Hearing, United States v. Ramirez, No. 07-166 (D. Minn. Apr. 3, 2008) (pleaded guilty to illegal entry after deportation, money laundering and conspiracy in case involving movement of foreign national women to residential brothels in metro area and Austin, Minnesota). *See* the section “Summary of Federal and State Law and Policy” *supra* p. 28.

²⁰⁴ INA § 274, 8 U.S.C. § 1324 (2007); *see also* INA § 277, 8 U.S.C. § 1327 (prohibiting “aiding or assisting any inadmissible alien to enter the United States”); INA § 278, 8 U.S.C. § 1328

(prohibiting bringing an alien to the United States for prostitution or “any other immoral purpose”).

²⁰⁵ Chacón, *supra* note 151, at 3010.

²⁰⁶ Interview with former law enforcement officer (Nov. 26, 2007); *see also* Interview with attorney (Oct. 2, 2007) (discussing smuggling case); Chacón, *supra* note 151, at 2985-86, 3010 (“Over six years after the completion of the drafting of the U.N. Protocol and over five years after the passage of the Trafficking Act in the United States, the distinction between trafficking and smuggling is still frequently misunderstood or ignored. Even those who know that there is a legal distinction between the terms disagree about how to define the differences. Furthermore, because of the changing nature of international migration, the line between smuggling and trafficking is becoming increasingly blurry.”).

²⁰⁷ Peter Landesman, *The Girls Next Door*, NEW YORK TIMES MAGAZINE, Jan. 25, 2004,

<http://www.nytimes.com/2004/01/25/magazine/25SEXTRAFFIC.html?ei=5007en=43dbe6ef76e45af8ex=1390366800&pagewanted=all&position>.

²⁰⁸ *Id.*

removed back to their home country and possibly back to their traffickers.

c) SEX TRAFFICKING IS NOT LIMITED TO CASES INVOLVING FORCE, FRAUD OR COERCION

Some interviewees expressed an understanding of sex trafficking as requiring an element of force, fraud or coercion. As discussed previously, these elements are not required as proof for the crime of sex trafficking in Minnesota.²⁰⁹ Under Minnesota law, the means used by traffickers are irrelevant.²¹⁰ As a result of this misconception, trafficked persons often do not receive the assistance and services they need and traffickers are not prosecuted.

For example, in discussing when his unit would be involved in a case, one local law enforcement officer stated, “[i]f we were dealing with a truer sense of trafficking, we would probably get involved.... [where] [t]here’s some kind of coercion, some kind of unwillingness to participate.”²¹¹ Another officer relied on a victim’s consent as a defining element of sex trafficking.²¹² He explained that “the prominent opinion is that everyone being trafficked is a victim, but I don’t agree with that. Some people do that for the money. They know what they are doing. For whatever reason, some of those people need to be prosecuted.”²¹³ In one case, an attorney inquired about individuals thought to be trafficked after a brothel raid.²¹⁴ Law enforcement officers told him that there were no trafficking victims, “just pimps and prostitutes,” suggesting that everyone had consented to the situation and, therefore, it did not involve sex trafficking.²¹⁵ This is inconsistent with the state definition of sex trafficking.

²⁰⁹ See *supra* note 38.

²¹⁰ MINN. STAT. § 609.321, subd. 7a (2007).

²¹¹ Interview with law enforcement officer (Nov. 8, 2007).

²¹² Interview with law enforcement officer (Jan. 7, 2008).

²¹³ *Id.*

²¹⁴ Interview with attorney (Oct. 24, 2007).

²¹⁵ *Id.*

d) SEX TRAFFICKING DOES NOT REQUIRE TRANSPORTATION OR MOVEMENT ACROSS A BORDER

Minnesota law does not list transportation or movement of an individual across a state or national border as an element of the offense.²¹⁶ Federal law lists transportation as a possible act of sex trafficking, but does not require transportation or specify the crossing of any borders.²¹⁷

Interviews revealed a common misunderstanding of the law. For example, a service provider defined trafficked women as those moved to other cities, states or countries for the purpose of prostitution.²¹⁸ When asked for his definition of trafficking, another officer likened it to drug trafficking which involves “export[ation] from one location to another location.... My picture of it, girls used to be here and brought to Duluth for the tramp ships.”²¹⁹

Not all interviewees shared this misconception. One officer explained that the term “trafficking” “clouds the issue” because “there are some people who are trafficked in Minneapolis and did not come from anywhere but Minneapolis.”²²⁰ Notably, a recent federal prosecution involved minors from the metropolitan area being used only in prostitution locally with no transportation across a border.²²¹

²¹⁶ MINN. STAT. § 609.321 subd. 7a.

²¹⁷ 18 U.S.C. § 1591(a)(1) (2007).

²¹⁸ E-mail from advocate (July 30, 2008) (on file with author).

²¹⁹ Interview with law enforcement officer (Feb. 1, 2008).

²²⁰ Interview with law enforcement officer (Jan. 29, 2008).

²²¹ Nineteen year old Justine Reisdorf was initially charged with sex trafficking of a minor (18 U.S.C. § 1591) and using the internet to promote prostitution (18 U.S.C. § 1952). *Indictment, United States v. Reisdorf*, No. CR 07-276 (D. Minn. Aug. 14, 2007). She ultimately pleaded guilty to the second charge and received five years imprisonment. See *Sentencing, Reisdorf* (Jan. 7, 2008).

RECOMMENDATIONS

The Legislature should allocate funds for training on sex trafficking. This training should occur throughout Minnesota for both governmental and non-governmental actors. It should address common misconceptions about sex trafficking and trafficking victims; the relationship between sex trafficking and prostitution; and state and federal anti-trafficking laws.

2. LACK OF FUNDING AND RESOURCES

Developing an effective response to sex trafficking in Minnesota requires sufficient money and resources. Many interviewees reported a lack of resources that affects both governmental and non-governmental actors' ability to respond to sex trafficking cases and provide services and protection to trafficked women and girls.

The selective nature of federal funding designated for anti-trafficking measures exacerbates the problem of the lack of state funding in Minnesota. In Minnesota, only one service provider, Civil Society, has received federal anti-trafficking grant money to provide direct services to trafficked persons.²²² In recent legislative hearings, the executive director of Civil Society testified that this funding has recently become more restrictive, limiting the types of trafficking victims the organization can serve.²²³

²²² FY 2006 FUNDS REPORT, *supra* note 166, at 16; see Focus Group (July 23, 2007).

²²³ *Survivors of Human Trafficking: Informational Hearings Before the State Senate Judiciary Committee*, 84th Leg. Sess. (2008) (statement of Linda Miller), http://www.senate.leg.state.mn.us/media/media_list.php?ls=85&archive_year=2008&archive_month=07&category=committee&type=audio#monthnav. This restriction has since been modified to allow Civil Society to provide services to trafficked persons seeking a U visa or Special Immigrant Juvenile Status, as well as T visas. See discussion of types of immigration relief in the section "Immigration Relief" *infra* p. 79.

Other service providers seeing trafficked women and girls must find other means to provide the necessary services to these clients.²²⁴ An attorney stated that her organization lacks staff, facilities and other resources necessary to assist trafficked women.²²⁵ A healthcare provider concluded that his ability to take time with patients who may be trafficked and serve them well depended directly on the availability of long-term resources dedicated to the problem.²²⁶ State law enforcement agencies face similar obstacles due to the lack of money and resources to support trafficking investigations, as discussed in the section of this report entitled "Lengthy, Resource-Intensive Investigations."²²⁷

Service providers repeatedly cited the lack of federal funds to assist U.S. citizens ("USCs") or lawful permanent residents ("LPRs") who have been trafficked as an obstacle.²²⁸ A youth advocate summarized the need in her interview:

The biggest, biggest thing I have to emphasize is that this has been going on forever in Minnesota, with Minnesota kids, and women and men. And we need to focus resources on them...we have all these kids here. We need resources here.²²⁹

Although Congress specifically found that trafficking occurs within the United States when it passed the TVPA reauthorization of 2005, the \$30 million it appropriated for services for trafficked U.S. citizens and lawful permanent residents was never included in the budgets for fiscal years 2006 and 2007.²³⁰

²²⁴ Interview with advocate (May 29, 2008).

²²⁵ Interview with attorney (Oct. 15, 2007); see Interview with advocate (Oct. 15, 2007).

²²⁶ Interview with healthcare provider (Jan. 29, 2008).

²²⁷ See *infra* p. 105.

²²⁸ Focus Group (July 26, 2007); see also Interview with advocate (Nov. 9, 2007); Focus Group (Aug. 6, 2007).

²²⁹ Interview with advocate (Nov. 9, 2007).

²³⁰ TVPRA 2005 §§ 2(3)-(6), 202-203, 119 Stat. at 3358-59, 3569-70 (codified at 22 U.S.C. § 7101 note, 42 U.S.C. §§ 14,044a, 14,044b); see also POLARIS PROJECT, EQUAL BENEFITS FOR ALL SURVIVORS OF HUMAN TRAFFICKING IN THE UNITED STATES 3 (2007) (on file with author).

Some interviewees reported that recent funding cuts or shifts in funding negatively affected their work in general and their ability to combat trafficking specifically. These cuts disproportionately impact the ability to respond to sex trafficking cases due to their time and resource-intensive nature.²³¹ For example, a law enforcement officer in Greater Minnesota noted that the loss of funding for the statewide Gang Task Force resulted in its disbandment.²³² When funded, this task force had uncovered at least one statewide sex trafficking ring in the course of an investigation.²³³ Although partial funding continues, the funding loss has reduced his department's capacity to coordinate large investigations with other agencies.²³⁴ Similarly, a former federal law enforcement agent explained that the events of September 11, 2001, and the creation of the Department of Homeland Security in 2003 negatively affected their ability to investigate trafficking cases due to the loss of funding for the nationwide smuggling program.²³⁵ These events marked a shift of federal funding to national security issues and increased funding and resources for immigration enforcement at the border, versus the interior of the United States. He pointed out that for a trafficking case to emerge in Minnesota, it likely has connections to another state, highlighting the importance of a nationwide program.²³⁶

These cuts have more indirect effects, as well. A local law enforcement officer reported that recent budget cuts caused his department to drastically reduce funding for optional training for police officers, which includes training on human trafficking.²³⁷ Service providers who work with youth reported that loss of funding for street outreach

programs led to an overall reduction in the number of clients they served.²³⁸

RECOMMENDATIONS

Federal and state governments should designate long-term funding for anti-trafficking measures. The Legislature should also allocate funding for sex trafficking to governmental and non-profit agencies working on related issues to ensure they have adequate funding to address sex trafficking cases. Federal and state governments should allocate funding to assist trafficking victims regardless of their nationality or immigration status.

3. INADEQUATE SCREENING PROTOCOLS

The lack of screening protocols²³⁹ across government agencies, healthcare providers and service providers contributes to the failure of trafficked persons to receive the assistance and services they need and the failure to prosecute traffickers. Without screening protocols, as one author notes, "the whole issue of assistance and protection" accorded to trafficked persons under state, federal and international law "becomes superfluous."²⁴⁰

As part of the "Rescue and Restore" campaign, the U.S. Department of Health and Human Services has developed tool kits for law enforcement officers, healthcare providers and service providers.²⁴¹ Each of these tool kits contains tips for identifying trafficking victims and screening questions tailored

²³¹ See discussions in the sections "Non-Profit Organizations" and "Lengthy, Resource Intensive Investigations" *infra* pp. 50, 105.

²³² Interview with law enforcement officer (Nov. 26, 2007).

²³³ *Id.*

²³⁴ *Id.*

²³⁵ This program oversaw investigations into human smuggling and crimes that might constitute human trafficking under current law. Interview with former law enforcement officer (Nov. 26, 2007).

²³⁶ *Id.*

²³⁷ Interview with law enforcement officer (Jan. 29, 2008).

²³⁸ Interview with advocate (Jan. 22, 2008); see also Focus Group (July 26, 2007).

²³⁹ The term "screening protocol" encompasses a range of procedures designed to identify trafficked persons, including intake questions and watching for "red flags" that may indicate someone has been trafficked.

²⁴⁰ DANISH RED CROSS, *supra* note 137, at 42.

²⁴¹ U.S. DEP'T OF HEALTH & HUMAN SERVS., RESCUE AND RESTORE CAMPAIGN TOOL KITS, http://www.acf.hhs.gov/trafficking/campaign_kits/index.html (last visited Sept. 15, 2008).

to each actor.²⁴² However, interviews revealed that these resources are not widely used in Minnesota.

Many interviewees cited the lack of protocols as an obstacle to performing their jobs. One stated, “one of my areas of concern is that there is a gap in identification. People don’t even know who could be a vulnerable person, or how to identify those who are being trafficked.”²⁴³ These concerns were expressed throughout Minnesota. The failure to identify trafficked women may result in incomplete diagnoses and treatment in the healthcare setting or inadequate services from service providers. In the criminal justice system, it could result in women being treated as criminals instead of crime victims. For foreign nationals, failure to identify them as trafficked could result in their removal from the United States, potentially placing them at risk of being re-trafficked.

The wording of screening questions plays an important role in identifying trafficked persons.²⁴⁴ Direct questions, such as “are you a trafficking victim?” may not yield useful answers. Indirect questions that avoid words like “trafficking” or “force, fraud or coercion” may yield more useful responses, as well as contribute to the development of a trusting, non-judgmental relationship.²⁴⁵ One service provider’s in-take form contained questions that are factual and focus on specific actions, such as “have you ever exchanged sex for drugs, money, a place to stay, food, clothing or anything else?”²⁴⁶ A healthcare provider who sees homeless, runaway and street youth, some of whom are trafficked, uses an in-take form that asks about the youth’s sexual history.²⁴⁷ If a patient reveals a high number of

sexual partners in a short period of time that alerts the provider to a potential trafficking situation.²⁴⁸ These types of questions are crucial because trafficked persons tend to minimize the harm they have experienced and not view themselves as exploited, particularly when they think they are involved in an intimate relationship with a pimp.²⁴⁹ Women may also view themselves as prostitutes guilty of criminal conduct instead of trafficked persons deserving protection.²⁵⁰ The fear of criminal sanctions or the shame of being in prostitution may discourage them from sharing information.²⁵¹ An attorney in Greater Minnesota stated that in the three trafficking cases she had seen, none of the women identified themselves as crime victims in need of assistance until the attorney pointed it out.²⁵²

²⁴² *Id.*

²⁴³ Interview with advocate (Oct. 15, 2007); *see also* Interview with attorney (Oct. 15, 2007); Interview with healthcare provider (Feb. 11, 2008); Interview with attorney (Dec. 5, 2007); Interview with healthcare provider (Jan. 17, 2008).

²⁴⁴ Interview with healthcare provider (Jan. 17, 2008).

²⁴⁵ *See* Interview with advocate (Jan. 2, 2008) (discussing how another advocate’s questions used the words “human trafficking,” “force,” and “coercion” with victims and did not yield responses or help build a trusting relationship).

²⁴⁶ Interview with advocate (Jan. 22, 2008).

²⁴⁷ Interview with healthcare provider (Jan. 23, 2007).

²⁴⁸ *Id.*

²⁴⁹ Interview with attorney (Dec. 5, 2007); *see also* Interview with advocate (Nov. 16, 2007).

²⁵⁰ Interview with advocate (Nov. 16, 2007).

²⁵¹ Focus Group (Aug. 6, 2007).

²⁵² Interview with attorney (Dec. 5, 2007).

Good Practice for Screening Protocols: Safe Harbors Youth Intervention Project Screening Questions

To address the problem of sexually exploited runaway, homeless and truant youth, Ramsey County instituted the Safe Harbors Youth Intervention Project (SHYIP). The goal of SHYIP is to coordinate the efforts of the criminal justice system, social service, school, healthcare providers and human services agencies to identify and prevent sexual exploitation among the target population.²⁵³ To this end, experts in working with this population have developed ten questions for the St. Paul Police Missing Persons to ask runaway youth:

1. Why did you leave home?
 - a. Problems with parent(s)/guardian
 - b. Abuse in the home
 - c. Other family problem
2. How long have you been away from home?
 - a. 1-4 days
 - b. 4-7 days
 - c. 7+ days
3. Who have you been staying with while away from home, and where?
 - a. Relative:
 - b. Non-relative:
4. Has anyone hurt you, or tried to hurt you while you were away from home?
 - a. Yes assault
 - b. Yes [criminal sexual conduct (“csc”)]
 - c. No

5. Has anyone touched you in a way you did not like? If so, who? Describe the incident.
 - a. Yes assault
 - b. Yes csc
 - c. No
6. Did you get injured or have any health issues that you need to see a doctor or nurse for?
 - a. Yes-pregnant
 - b. Yes-injury
 - c. Yes-drug/alcohol
 - d. No
7. Are you afraid to be at home? Rate 1-10, 10 is safest
 - a. Yes rate 0-5
 - b. Yes rate 5-10
 - c. No
8. Do you have someone you can talk to at home or school?
 - a. Parent/other family
 - b. School teacher/counselor
 - c. Other adult
9. Do you drink or do drugs?
 - a. Yes-alcohol
 - b. Yes-drugs
 - c. No
10. Are you a gang member, or do you associate with gang members? (10 point criteria)?
 - a. Yes-gang member
 - b. Yes-gang associate
 - c. No

These questions are designed to flag at-risk or in-crisis youth and refer them to the appropriate services.

²⁵³ SAFE HARBORS YOUTH INTERVENTION PROJECT, COMMUNITY NEEDS ASSESSMENT 4 (2007), http://partnersforviolenceprevention.org/documents/CNA11_1_final.pdf.

The ability to develop a trusting relationship over time with trafficked persons also influences the effectiveness of screening measures. Often, trafficked women only disclosed information about this sensitive matter after developing trusting relationships with service providers.²⁵⁴ Most women do not self-identify as “trafficked” during an initial meeting.²⁵⁵ One attorney said it took repeated meetings over four weeks with one client and six weeks with another to learn about the trafficking aspects of their cases.²⁵⁶ A service provider reported that two clients from her agency disclosed having been trafficked only after two years of “trust building” with case managers.²⁵⁷

Good Practice for Service Providers: Multi-Stage Intake Process

Anna Marie’s Alliance, a battered women’s shelter in St. Cloud, employs a three-to four-part in-take process designed to lower the stress battered women may feel when seeking assistance. This process creates an atmosphere for women to discuss their experiences and needs, recognizing that asking numerous personal questions on an initial in-take form can seem like another form of control to women. This process also allows them to disclose information as they feel comfortable.

Interviews revealed that trafficked women and girls access healthcare services, but are not properly identified. In many situations, potentially trafficked persons are only given a small window of time to disclose these issues to people they just met, creating an obstacle to the identification of trafficking victims in a healthcare setting.²⁵⁸ Medical facilities

prioritize seeing as many patients as possible.²⁵⁹ A healthcare provider noted that he has a long list of items he needs to address, and patients have their own concerns to share with the doctor.²⁶⁰ He noted that the trafficking situation often presents itself secondarily and is not the primary reason the patient is seeking care. As such, trafficking may not come up during the ten minute visit one interviewee typically has with her patients.²⁶¹ These time constraints may discourage medical professionals from asking questions that may complicate, and therefore extend, the visit.²⁶²

Punitive administrative measures may also compel healthcare providers to speed up patient visits. A healthcare provider reported receiving an e-mail the day of our interview notifying her that her “production” was down and that she would be docked pay for not seeing enough patients per day.²⁶³ This healthcare provider reported accepting the pay cut and refused to compromise the level of care she administers.²⁶⁴

Screening protocols for healthcare providers are crucial because they may be the first responders to a trafficking case.²⁶⁵ For example, an advocate knew of a Somali labor trafficking case that was discovered because a patient disclosed the information to a doctor.²⁶⁶ A trafficking survivor explained that she did not regularly visit the doctor,

²⁵⁹ Interview with healthcare provider (Feb. 11, 2008).

²⁶⁰ Interview with healthcare provider (Jan. 29, 2008).

²⁶¹ Interview with healthcare provider (Feb. 11, 2008).

²⁶² Interview with healthcare provider (Feb. 11, 2008); Interview with healthcare provider (Sept. 15, 2008).

²⁶³ *Id.*

²⁶⁴ Interview with healthcare provider (Feb. 11, 2008).

²⁶⁵ Interview with advocate (Oct. 26, 2007); Dep’t of Health & Human Servs., Rescue & Restore Campaign Tool Kits, http://www.acf.hhs.gov/trafficking/campaign_kits/index.html (last visited Aug. 23, 2008) (“Frontline health providers play important role in identifying and helping trafficking victims”); 2007 REPORT, *supra* note 13, at 18. However, an organization serving trafficked women in the United Kingdom only received 2.8% of their referrals from health care providers, compared to 22% from other non-profit organizations. Julie Barton & Alice Sachrajda, Health Needs of Trafficked Women, at 7, <http://www.networks.nhs.uk/uploads/07/12/barton.ppt> (last visited Aug. 24, 2008).

²⁶⁶ Interview with advocate (Jan. 17, 2008).

²⁵⁴ Focus Group (July 23, 2007); *see also* Focus Group (Aug. 1, 2007); Interview with law enforcement officer (Oct. 25, 2007); Interview with judge (Jan. 3, 2008).

²⁵⁵ Interview with law enforcement officer (Jan. 2, 2008); *see also* Focus Group (July 23, 2007); Focus Group (Aug. 1, 2007).

²⁵⁶ Interview with attorney (Oct. 24, 2007).

²⁵⁷ Interview with advocate (Jan. 18, 2008).

²⁵⁸ Interview with healthcare provider (Jan. 29, 2008); Interview with healthcare provider (Feb. 11, 2008).

but once escaped from her trafficker by planning a doctor visit for her child.²⁶⁷

Good Practice for Healthcare Providers: Training on the Clinical Presentation of Trafficking for Emergency Healthcare Providers

A website sponsored by the Mount Sinai Emergency Medical Department, the American Osler Society, the American Medical Student Association, and Brown Medical School features training modules specifically designed for emergency healthcare providers to educate them about the possible clinical presentation of a trafficked person.²⁶⁸

Local law enforcement agencies (“LEAs”) often lack screening tools to identify trafficked women or have screening protocols in place that may prove ineffective.²⁶⁹ For example, law enforcement agencies typically interview women shortly after executing a search warrant on a brothel to separate trafficked persons from their traffickers.²⁷⁰ In initial interviews, ICE victim-witness coordinators have twelve pages of carefully-worded questions for victims asking about their experiences, knowledge of the operation and the use and threat of force.²⁷¹ Stings often create additional fear and uncertainty in women who were already in a frightening situation. This coupled with the acute psychological harm some may suffer after leaving the trafficking situation²⁷² may diminish the ability to immediately identify trafficked persons by asking them a series of questions.

²⁶⁷ Interview with survivor (Nov. 29, 2007).

²⁶⁸ Human Trafficking, Information and Resources for Emergency Healthcare Providers, <http://www.humantraffickinged.com/edtools.html> (last visited Aug. 23, 2008).

²⁶⁹ Interview with law enforcement officer (Oct. 16, 2007).

²⁷⁰ Interview with law enforcement officer (Jan. 29, 2008).

²⁷¹ These questions may not be the current questions used by ICE. U.S. Immigration and Customs Enforcement, “Areas to Cover in Initial Victim Interviews,” Victim-Witness Coordinator’s Manual pt. 11 (undated) (on file with author).

²⁷² ZIMMERMAN ET AL., *supra* note 24, at 13, 18 (2007).

Interviews also revealed inadequacies in service provider screening protocols after a sting. An advocate described an incident in which a service provider interviewed women identified as trafficked who were being held in custody after a law enforcement sting on a brothel.²⁷³ The service provider repeatedly failed to adequately identify herself to women and then spoke to them in a formal, distant manner.²⁷⁴ The advocate described the service provider’s tone as threatening and reported that the approach ultimately proved ineffective.²⁷⁵ The fact that law enforcement officials had already previously interrogated the women may have played a role in diminishing the women’s trust. After being released from custody, however, the women disclosed key details about the trafficking episode to the advocate that they had failed to disclose to the service provider.²⁷⁶

²⁷³ Interview with advocate (Jan. 2, 2008).

²⁷⁴ *Id.*; *see also* BRUNOVSKIS & SURTEES, *supra* note 20, at 8 (describing how trafficked women may decline services when they do not fully understand the assistance being offered).

²⁷⁵ Interview with advocate (Jan. 2, 2008).

²⁷⁶ *Id.*; *see also* Interview with advocate (Oct. 8, 2007).

Good Practice for Law Enforcement Agencies: Reflection Period

The Council of Europe Convention on Action Against Trafficking in Human Beings provides for a reflection period of at least thirty days for all trafficked victims.²⁷⁷

This provision requires states to enact provisions in their internal laws to allow for a “recovery and reflection period of at least thirty days, when there are reasonable grounds to believe that the person concerned is a victim.”²⁷⁸ **This period affords potentially trafficked persons time to “recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.”**²⁷⁹ **During this period, authorities may not remove the individual from the country and must affirmatively authorize the individual’s presence in the country.**²⁸⁰ **In a study of the impact of trafficking on women’s health, police officers reported that the “reflection period” can bolster women’s ability to participate in criminal proceedings against their trafficker.**²⁸¹

As discussed in more detail in the next section of this report, the lack of cultural competency in service provision and staff members can impede efforts to screen for sex trafficking. For example, a healthcare provider noted that screening questions must reflect sensitivity to immigrant issues so as not to insinuate that “we don’t think they have a right to be there.”²⁸² Whether with a service provider or law enforcement officer, trafficked persons may feel more comfortable

²⁷⁷ Convention on Action Against Trafficking in Human Beings, May 16, 2005, art. 13(1), C.E.T.S. 197, http://www.coe.int/T/E/human_rights/trafficking/PDF_Conv_197_Trafficking_E.pdf. As of January 9, 2008, the COE Convention has 26 signatories and 11 ratifications/accessions. Council of Europe, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=8&DF=1/9/2008&CL=ENG> (last visited Aug. 16, 2008).

²⁷⁸ Convention on Action Against Trafficking in Human Beings, art. 13(1).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ ZIMMERMAN, *supra* note 22, at 5.

²⁸² Interview with healthcare provider (Feb. 11, 2008).

disclosing their situation to someone from a similar background.²⁸³ Interviewees from various public and private agencies affirmed their commitment to hiring staff members reflective of the populations they serve, although they did so with varying degrees of success.²⁸⁴

RECOMMENDATIONS

Screening protocols to identify trafficked persons should be developed based on good practices from Minnesota and other states. These screening protocols should be widely disseminated to governmental and non-governmental agencies, which should be trained on how to effectively administer the protocols.

4. LACK OF RESPONSE PROTOCOLS

The failure to draft and enact response protocols results in trafficked persons receiving piecemeal or inadequate assistance. Having formal response protocols in place “standardize[s] the procedure so that even inexperienced workers will be able to provide the same level of service to victims and prevent any unnecessary trauma.”²⁸⁵

With some exceptions, few local law enforcement agencies have specific response protocols for sex trafficking cases. The 2007 report *Human Trafficking in Minnesota* found that only 4% of the

²⁸³ Interview with advocate (Feb. 14, 2008); Interview with advocate (Oct. 26, 2007). However, a former service provider attributed her success in working with American Indian women experiencing violence to the fact that she was non-Native. According to the advocate, being non-Native enabled Native women to develop a relationship with her and trust that she would keep their information confidential. Interview with former advocate (Dec. 5, 2007). Another interviewee echoed this opinion, but also emphasized the importance of “connecting” with her clients and the community through spirituality, humor and respect for their individual situations. Interview with former advocate (Dec. 5, 2007).

²⁸⁴ Interview with advocate (Oct. 3, 2007); *see also* Interview with advocate (Oct. 25, 2007); Interview with advocate (Oct. 26, 2007).

²⁸⁵ HEATHER J. CLAWSON ET AL., NEEDS ASSESSMENT FOR SERVICE PROVIDERS AND TRAFFICKING VICTIMS 21 (2003), http://www.calib.com/home/practice_areas/cfcs/pdf/traffick.pdf.

235 law enforcement respondents reported having a formal written policy on how to handle trafficking cases.²⁸⁶ In cases where local LEAs properly identify trafficking victims, they should be treated as crime victims in accordance with general state crime victim guidelines.²⁸⁷ However, unlike the federal guidelines, the state victim-witness guidelines lack specific provisions to address the needs of trafficking victims.²⁸⁸

One advocate addressed the problem of trafficked persons seeking help at battered women's shelters, which typically lack protocols for staff members with guidance on how to assist these victims. She explained that "you have the problem that none of these shelters are really serving these women. Even if they are identified, they do not know where to refer them."²⁸⁹

Another interviewee described a situation where an American Indian girl disclosed to a different service provider that she was trafficked into prostitution from a reservation in another state. The girl reported to this interviewee that the other service provider minimized her experience.²⁹⁰ The girl described how the service provider blamed her for the situation, as though she had "got[ten] herself into it."²⁹¹ This attitude clearly created barriers to this girl seeking safety from her trafficker. She eventually contacted the interviewee who helped her create a safety plan to relocate.²⁹² The existence of a response protocol for the service provider would likely have better addressed the girl's needs and promoted her safety.

An employee of a service provider reported that the agency had no written plan or protocol for staff

members to use in assisting trafficked persons after police stings on brothels or in emergency situations.²⁹³ When asked if there was an organizational plan to address the activities of staff in a crisis or situations involving a police raid, the employee stated, "It basically emanates from me. I guess there have not been enough raids, certainly not enough raids that have followed a pattern to have a plan. [Our plans just] cover the basics."²⁹⁴

In one case, a service provider reportedly had advance notice of the raid, but still did not contact interpreters, healthcare providers, shelters, or even social workers in advance.²⁹⁵ Furthermore, different advocates and volunteers were assigned to talk to women, forcing them to re-tell their story numerous times.²⁹⁶ For many trafficked persons, repeating their story can take them back into the traumatic experience they are discussing. Introducing new people also inhibits the trust-building that many interviewees noted is essential to productive relationships with trafficked women.²⁹⁷ One advocate reported that even after working with advocates and volunteers from a non-profit organization for an entire day, the women reported not understanding who they were and why they were there.²⁹⁸

Interviews also revealed that confidentiality was not always maintained. An advocate told a story of another advocate discussing a case in the hallway of a hotel where ICE had temporarily housed the women.²⁹⁹ This breach of confidentiality inhibits the trust-building process interviewees stressed.

²⁸⁶ 2007 REPORT, *supra* note 13, at 13.

²⁸⁷ MINN. OFFICE OF JUSTICE PROGRAMS, CRIME VICTIM RIGHTS INFORMATION GUIDE (2007),

<http://www.ojp.state.mn.us/publications/Bluebook.pdf>.

²⁸⁸ Compare *id.*, with U.S. DEP'T OF JUSTICE, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 67-74 (2005), <http://www.usdoj.gov/olp/final.pdf>.

²⁸⁹ Interview with advocate (Oct. 25, 2007); see also Interview with attorney (Oct. 25, 2007).

²⁹⁰ Interview with advocate (Nov. 9, 2007).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Interview with advocate (Oct. 26, 2007).

²⁹⁴ *Id.*

²⁹⁵ *Id.*; see also Interview with advocate (Oct. 8, 2007) (received no advanced notice to interpret for trafficking victims); Interview with advocate (Jan. 2, 2008) (received no advanced notice to interpret for trafficking victims).

²⁹⁶ Interview with attorney (Oct. 24, 2007); Interview with advocate (Jan. 2, 2008); Interview with advocate (Oct. 8, 2007); Interview with attorney (Dec. 21, 2007).

²⁹⁷ Focus Group (July 23, 2007); Focus Group (Aug. 1, 2007); Focus Group (Aug. 13, 2007). See discussion in the section "Inadequate Screening Protocols" *supra* p. 37.

²⁹⁸ Interview with advocate (Jan. 2, 2008).

²⁹⁹ *Id.*

Good Practice for Collaboration: Victim Response Protocols, Sgt. Gerald D. Vick Human Trafficking Task Force

The Sergeant Gerald D. Vick Human Trafficking Task Force has created victim response protocols for its members. The goal of these protocols is to clearly define members' roles and responsibilities concerning the treatment of trafficking victims. The development of these protocols is a critical step in responding to trafficking victims' needs.

One interviewee noted the improved response to cases of juvenile sexual exploitation after the implementation of multi-agency and multi-disciplinary protocols in one county.³⁰⁰ The protocols have facilitated communication between governmental and non-profit agencies and led to better responses in these cases.³⁰¹

RECOMMENDATIONS

Response protocols that provide guidance on how to effectively address trafficked persons' needs should be developed based on good practices from Minnesota and other states. These protocols should be widely disseminated to governmental and non-governmental agencies, which should be trained on how to effectively administer the protocols.

5. MULTI-AGENCY AND MULTI-DISCIPLINARY COLLABORATION

Collaboration and communication are needed across agencies and disciplines in Minnesota regarding sex trafficking and trafficked persons' needs.³⁰² However, the lack of a common

³⁰⁰ Interview with prosecutor (Dec. 10, 2007).

³⁰¹ *Id.*

³⁰² The Government Accountability Office defines collaboration as "any joint activity by two or more organizations that is intended to produce more public value than could be produced when the

understanding about the definition of sex trafficking and misunderstandings and distrust among members may impede the success of multi-agency and multi-disciplinary collaborations. Collaboration is the most effective way to assist trafficked persons and prosecute traffickers. It allows members from various disciplines to "achieve something that may be more difficult or impossible to achieve on their own."³⁰³ A simple example of this collaboration is the need for law enforcement agencies to communicate with those serving trafficked persons to secure the victim's testimony for prosecution and ensure her safety while doing so.³⁰⁴ International law requires U.S. government agencies to share information with each other and cooperate with non-profit organizations, other relevant organizations and other elements of civil society to combat transnational human trafficking.³⁰⁵

Multi-disciplinary collaborations may include representatives from federal, state, county, local and tribal law enforcement, federal and state government agencies, victim-witness advocates, as well as organizations such as battered women's shelters, programs serving women in prostitution and homeless youth advocates. Numerous interviewees emphasized the practical benefits of collaboration in trafficking cases,³⁰⁶ with a former law enforcement official saying "[i]t's really the only way to go."³⁰⁷

organizations act alone." U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 14, at n.5 (2007). Collaboration includes both formalized initiatives, such as multi-disciplinary task forces, and informal relationships between organizations, such as referral networks. Collaboration can occur exclusively among government agencies or among non-profit organizations. It can also refer to joint or multi-disciplinary efforts between government agencies, non-profit organizations and other types of groups, such as faith-based organizations.

³⁰³ FARRELL, McDEVITT & FAHY, *supra* note 51, at 106.

³⁰⁴ See discussion about the importance of trafficked persons' testimony in the section "Law Enforcement Agencies" *infra* p. 94.

³⁰⁵ U.N. Trafficking Protocol, *supra* note 7, art. 9(3); see also U.N. Children's Protocol, *supra* note 140, art. 10(1) ("States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.").

³⁰⁶ Interview with advocate (Jan. 17, 2008); see also Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Oct. 4, 2007) (discussing relationship with service provider and federal law enforcement agencies); Interview with law enforcement officer (Jan. 3, 2008) (discussing benefits of

The federal government has established and funded various collaborative efforts to combat human trafficking within the executive branch and among government agencies and non-profit organizations, including the Sergeant Gerald D. Vick Human Trafficking Task Force³⁰⁸ coordinated by the St. Paul Police Department.³⁰⁹ This task force is one of forty-two federally-funded, law enforcement-led task forces established to combat human trafficking.³¹⁰ Representatives from the U.S. Attorney's Office, Immigration and Customs Enforcement ("ICE"), Minnesota Bureau of Criminal Apprehension, Hennepin County Sheriff's Office, Ramsey County Sheriff's Office, Minneapolis Police Department and the non-profit organizations Civil Society and Breaking Free meet regularly to coordinate their efforts.³¹¹ The Minneapolis FBI office also heads the Minnesota Child Prostitution Initiative, a law enforcement collaborative that seeks to dismantle criminal enterprises that traffic children into prostitution.³¹²

city's collaboration with school, healthcare providers and county services); Interview with advocate (May 16, 2008) ("It's wonderful to get advocates in all different areas coming together to attack the problem."); Interview with advocate (Oct. 12, 2007) (discussing collaboration with prosecutors, defense attorneys and judges).

³⁰⁷ Interview with former law enforcement officer (Nov. 26, 2007).

³⁰⁸ This task force was named in honor of Sergeant Gerald D. Vick, a St. Paul police officer killed in the line of duty in 2005. He was dedicated to helping women exit prostitution safely. See Sergeant Jerry Vick Fundraiser for Breaking Free Transitional Housing, About, <http://www.badge186.com/about.html> (last visited Aug. 21, 2008).

³⁰⁹ See, e.g., TVPRA 2003 §§ 4(a)(1), 6(c), 117 Stat. at 2877, 2881 (2003) (establishing Senior Policy Operating Group ("SPOG") to "coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of this division" and facilitating cooperation between foreign governments and non-governmental organizations) (as codified at 22 U.S.C. § 7105(a)(1)(B) (2007)). See discussion in the section "Summary of Federal and State Law and Policy" *supra* p. 28.

³¹⁰ FARRELL, McDEVITT & FAHY, *supra* note 51, at 90. In 2005, this task force received a three-year grant of \$450,000 from the Bureau of Justice Assistance ("BJA"). FY 2005 FUNDS REPORT, *supra* note 158, at 17.

³¹¹ As of October 1, 2008, Breaking Free will be the federally-funded partner in the task force.

³¹² Minneapolis Division FBI, FBI Priorities, http://minneapolis.fbi.gov/priorities.htm#violent_crime (last visited Aug. 20, 2008).

Another collaboration involves the Safe Harbor Youth Intervention Project ("SHYIP") in Ramsey County.³¹³ Although not exclusively addressing sex trafficking of juveniles, SHYIP seeks to "promote closer coordination and better communication among all agencies to improve services" for sexually exploited youth in Ramsey County.³¹⁴ More than forty government agencies and non-profit organizations have actively participated in SHYIP.³¹⁵ The St. Paul organization Breaking Free coordinates a committee of non-profit organizations and government agencies called "Stop the Demand," which addresses issues surrounding men's demand for women and girls in prostitution.³¹⁶

Interviewees reported belonging to federal crime task forces, statewide gang strike task forces, drug task forces or county sexual assault response teams that may uncover sex trafficking cases while investigating those other crimes.³¹⁷

In the Twin Cities metropolitan area, there are unfunded, ad hoc groups comprised primarily of service providers who meet regularly to coordinate services and discuss policies for individuals in prostitution, including the Hennepin County

³¹³ In 2006, Ramsey County received \$100,000 from the state to implement this project. SAFE HARBORS YOUTH INTERVENTION PROJECT, *supra* note 253, at 4; see S.F. 2915, 84th Leg. (Minn. 2006).

³¹⁴ SAFE HARBORS YOUTH INTERVENTION PROJECT, *supra* note 253, at 3.

³¹⁵ *Id.* at 4.

³¹⁶ Interview with advocate (May 29, 2008); see Jessica Mador, *Advocates Promote Tougher Tactics to Combat Prostitution*, Mar. 14, 2008,

<http://minnesota.publicradio.org/display/web/2008/03/14/prostitution/?refid=0>. See generally Saint Paul City Council, Summary Minutes of the Saint Paul City Council, Resolution – 07-896, Sept. 27, 200, at 3 <http://mn-stpaul.civicplus.com/archives/30/09%2026%202007%20approved%20minutes.pdf> (authorizing funding for St. Paul Police Department to participate in Stop the Demand (Resolution 07-896)).

³¹⁷ See Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Jan. 2, 2008); Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Nov. 26, 2007); Interview with law enforcement officer (Feb. 17, 2008); see generally FARRELL, McDEVITT & FAHY, *supra* note 51, at 85.

Prostitution Task Force³¹⁸ and a group for youth service providers, teachers and probation officers coordinated by PRIDE in Minneapolis.³¹⁹ Interviewees also reported maintaining working relationships and referral systems with organizations, law enforcement agencies, prosecutors and other agencies outside of a formal task force that nevertheless facilitate providing services to trafficked persons.³²⁰

Interviews revealed that despite these very critical efforts at collaboration, there is often significant disagreement about the definition of sex trafficking between law enforcement agencies and service providers that diminishes their ability to cooperate.³²¹ In a case study of three federally-funded trafficking task forces, researchers observed situations “where members of the groups did not agree about whether or not someone was in an exploitative situation freely or whether they were a victim of force, fraud or coercion.”³²²

Distrust or misunderstandings about members’ roles can also be an obstacle to the establishment of constructive working relationships within a collaboration and, thus, the group’s success. An attorney stressed the importance of recognizing where members’ interests coincide and diverge to facilitate successful cooperation.³²³ Interviews

demonstrated, however, that this understanding was often lacking. Law enforcement officials expressed concern that service providers and non-profit organizations saw them as the “bad guys.”³²⁴ One interviewee stated:

A lot of people don’t understand that we are after the criminals. We’re not there to pick up prostitutes. We’re after the leaders. We don’t have resources to go arrest illegal aliens. But we are not here for that – we are criminal investigators. If we do encounter criminals, we will arrest them.³²⁵

This law enforcement officer acknowledged the need for collaboration with the service providers and the non-profit organizations serving trafficked persons and expressed concern that these organizations are not connecting them with victims.³²⁶ Another local law enforcement officer cited an example of such conduct.³²⁷ After a brothel sting, law enforcement officers turned over a group of trafficked women to local organizations that provided housing and supportive services.³²⁸ Subsequently, an organization’s representative refused to tell the officer where the women were, depriving the prosecution of potentially valuable witnesses.³²⁹

³¹⁸ The Hennepin County Prostitution Task Force also includes members from the Department of Corrections and other government agencies in Hennepin County. Interview with advocate (May 29, 2008).

³¹⁹ Interview with advocate (Oct. 3, 2007).

³²⁰ Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Oct. 4, 2007); Interview with probation officer (Mar. 18, 2008); Interview with probation officer (Oct. 12, 2007); Interview with advocate (Feb. 13, 2008); Interview with advocate (Oct. 12, 2007); Interview with advocate/survivor (Feb. 20, 2008); Interview with advocate (Jan. 16, 2008).

³²¹ Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Oct. 15, 2007); Interview with law enforcement officer (Jan. 10, 2008); Interview with advocate/survivor (Feb. 13, 2008);

³²² Researchers conducted case studies of task forces in Boston, Massachusetts, Houston, Texas, and Phoenix, Arizona. They did not study the Sergeant Gerald D. Vick Human Trafficking Task Force in St. Paul. FARRELL, McDEVITT & FAHY, *supra* note 51, at 104.

³²³ Interview with attorney (Dec. 21, 2007).

³²⁴ Interview with law enforcement officer (Oct. 25, 2007).

³²⁵ Interview with law enforcement officer (Oct. 4, 2007).

³²⁶ *Id.*; see also Interview with employee of prosecutor (Nov. 7, 2007).

³²⁷ Interview with law enforcement officer (Jan. 29, 2008).

³²⁸ *Id.*

³²⁹ *Id.*; see also Interview with law enforcement officer (Feb. 1, 2008).

Good Practice: Coalition of Immokalee Workers, Immokalee, Florida

The Coalition of Immokalee Workers (“CIW”) is a community-based worker organization comprised largely of Latino, Haitian, and Mayan Indian immigrants who work in low-wage jobs throughout the state of Florida. Part of their work is devoted to uncovering, documenting and assisting in the federal prosecution of human trafficking cases in the agricultural industry. The CIW has developed close partnerships with federal and local law enforcement. The organization assists law enforcement officials with the planning of investigations and actually conducts investigations by sending CIW workers undercover. After workers exit an exploitative situation, the FBI affords CIW time to develop relationships with workers and learn their stories. Only later does the FBI interrogate the newly liberated workers. The relationship has been so effective that it has yielded convictions on slavery and related charges in seven federal cases since 1997.³³⁰

RECOMMENDATIONS

Guidelines should be developed for effective multi-agency and multi-disciplinary collaboration. Guidelines should clearly outline members’ roles and responsibilities in specific situations. Collaborative groups or task forces should work to identify the obstacles that impede their effective communication and regularly monitor and discuss these obstacles. Guidelines should be developed “to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence.”³³¹ Mechanisms should also be established “to facilitate the exchange of information concerning traffickers and their methods of operation.”³³²

6. LACK OF UNIFORM AND CENTRALIZED DATA COLLECTION

The lack of uniform data collection about traffickers, trafficked persons and patrons of trafficked persons impedes efforts to identify the nature and extent of sex trafficking in Minnesota.³³³ Without these data, the community may develop ineffective policies and interventions³³⁴ and governments and funders may dismiss sex trafficking as a minor problem.³³⁵

³³¹ U.N. Econ. & Soc., *supra* note 68, guideline 11(5).

³³² *Id.* guideline 11(6).

³³³ This problem is not limited to Minnesota. In a recent report, the U.S. Government Accountability Office urged the development of an effective mechanism for assessing the number of trafficking victims or analyzing the trafficking-related data from various government agencies. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 14, at 2, 10 (2006).

³³⁴ Tyldum & Brunkovskis, *supra* note 19, at 17 (citations omitted).

³³⁵ For example, a controversial article asserted that existing data demonstrated that the extent of human trafficking in the United States was greatly exaggerated, especially in light of federal government expenditures of \$28.5 million to fight human trafficking in the United States in 2006 alone. See Jerry Markon, *Human Trafficking Evokes Outrage, Little Evidence*, THE WASH. POST, Sept. 23, 2007, <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/22/AR2007092201401.html> (last visited Aug. 12, 2008). In response, an anti-trafficking activist pointed out numerous inaccuracies in the article, while noting that the federal government’s allocation of grants to groups with little

³³⁰ Coalition of Immokalee Workers, About CIW, <http://www.ciw-online.org/about.html> (last visited Aug. 12, 2008); Coalition of Immokalee Workers, *Slavery in the Fields and the Fast Food We Eat* (on file with author); Gerardo Reyes, *Remarks at Bethlehem Lutheran Church* (2007) (on file with author).

Service and healthcare providers reported that the lack of data on sex trafficking makes it difficult to secure funding to combat sex trafficking.³³⁶ Most service providers and healthcare providers reported that their facilities do not maintain data on trafficked persons they may have served.³³⁷ Service providers who work with American Indian women repeatedly cited the lack of reliable data on sex trafficking in their community as an obstacle.³³⁸ They emphasized the need for “hard data” to secure funding from grantors to begin addressing sex trafficking in their community: “we need data and we have no numbers, only anecdotes.”³³⁹ However, a healthcare provider explained that the need to present reliable data to obtain funding can be difficult if the organization lacks resources to collect that data in the first place.³⁴⁰

While advocating for better data, a service provider cautioned against tracking too much data because of the possibility that they could jeopardize the interests of her clients in the future.³⁴¹ Specifically, her organization only tracks demographic information and basic services provided out of concern that more detailed data about prostitution activities might harm women involved with Child Protection Services or the criminal justice system.³⁴²

The lack of computer programs with capacity to capture certain types of data negatively affects the

ability to track data on sex trafficking. A healthcare provider discussed the impact of changing computer programs on her facility’s data collection capabilities: “the prior [computer] system included a section on victimization. Then we could track [sex trafficking] pretty well. But, with the new computer system, all of that disappeared. What we are doing instead is following the providers we know, but I think that we miss a lot of data.”³⁴³

Similarly, law enforcement officers reported that the lack of a centralized database on sex trafficking cases impedes their ability to conduct investigations, which often span jurisdictions.³⁴⁴ Each agency maintains its own information in databases that may not be able to “talk” to each other or track comparable information.³⁴⁵ Law enforcement officers reported keeping information about investigations in a drawer³⁴⁶ or marking their files with “HT” for “human trafficking” for their own reference.³⁴⁷ An officer explained that in one case, if there had been a database of on-going investigations, it would have revealed to him that the brothel operators came from New York.³⁴⁸ Instead, he had to rely on his personal contacts with federal agents to obtain that information.³⁴⁹ While the relationship in the previous example was productive, reliance on personal relations with agents in other jurisdictions can hinder investigations. Another officer described an investigation in which the

experience has impeded anti-trafficking efforts. Donna M. Hughes, *Looking Beneath the Surface A Response to Washington Post’s Attack on the Anti-trafficking Movement in the U.S.*, NAT’L REV. ONLINE, Oct. 1, 2007, <http://article.nationalreview.com/?q=ZTk0OTFjYzQ1MmFjNTA1YmU0YjIxZDYxMTZkMiBIY2Y> (last visited Aug. 12, 2008).

³³⁶ Focus Group (Aug. 13, 2007); Focus Group (July 23, 2007).

³³⁷ Focus Group (Aug. 6, 2007); Focus Group (July 23, 2007) (discussing need for data collection); see also Interview with healthcare provider (Jan. 29, 2008).

³³⁸ Focus Group (July 23, 2007). Extensive secondary research revealed little information about the sex trafficking of American Indians in Minnesota or the United States.

³³⁹ Focus Group (July 23, 2007).

³⁴⁰ Interview with healthcare provider (Jan. 29, 2008); see also Interview with healthcare provider (Jan. 23, 2008) (citing her organization’s lack of capacity to collect extensive data).

³⁴¹ Focus Group (July 23, 2007).

³⁴² *Id.* See discussion in the section “Child Protection Services” *infra* p. 75.

³⁴³ Interview with healthcare provider (Jan. 4, 2008).

³⁴⁴ Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Jan. 29, 2008). While law enforcement agencies and prosecutors track arrest and conviction data, data collection varies between jurisdictions and may not always reflect the extent of sex trafficking crimes accurately. As explained in the report HUMAN TRAFFICKING IN MINNESOTA, arrest data in Minnesota is not tracked on a statewide level. Local police departments track their own arrest data, using different statutes and descriptors, as well as varied recording procedures. This makes the data unsuitable for comparison. 2007 REPORT, *supra* note 13, at 6.

³⁴⁵ Frank Laczko & Marco A. Gramegna, *Developing Better Indicators of Human Trafficking*, 10 BROWN J. OF WORLD AFFAIRS 179, 184, 186 (2003).

³⁴⁶ Interview with law enforcement officer (Oct. 4, 2007).

³⁴⁷ Interview with law enforcement officer (Jan. 29, 2008).

³⁴⁸ Interview with law enforcement officer (Oct. 4, 2007).

³⁴⁹ *Id.*

Federal Bureau of Investigation (“FBI”) held back information that would have “shave[d] months off our case,” demonstrating the downside of reliance on personal contacts.³⁵⁰

Good Practice for Data Collection: National Human Trafficking Reporting System

The Institute on Race and Justice at Northeastern University, in collaboration with the Urban Institute, has designed “a sustainable data collection and reporting system to develop and disseminate state and local data regarding persons engaged in human trafficking for Bureau of Justice Statistics, U.S. Department of Justice.” The Human Trafficking Reporting System (HTRS) will provide members of the forty-two human trafficking task forces funded by the Bureau of Justice Assistance (BJA), including the Sergeant Gerald Vick Task Force in St. Paul, with “systematic information on cases of human trafficking that have come to the attention of law enforcement and will establish a sustainable data collection and reporting mechanism specific to the problem of human trafficking.”³⁵¹

Also, since the anti-trafficking statute is included under the Minnesota law addressing all forms of promotion of prostitution, data collected in the legal system do not distinguish sex trafficking crimes from other promotion of prostitution offenses.³⁵² Similarly, statistics on arrests, charges and convictions for solicitation of prostitution include both individuals in prostitution and patrons, making it more difficult to estimate the number of trafficked persons in Minnesota.³⁵³

³⁵⁰ Interview with law enforcement officer (Jan. 29, 2008).

³⁵¹ Northeastern Univ. Inst. on Race and Justice, Developing a National Trafficking Reporting System, <http://www.humantrafficking.neu.edu/> (last visited Aug. 12, 2008).

³⁵² See MINN. STAT. § 609.321 (2007).

³⁵³ See *id.* § 609.324; see also Interview with law enforcement officer (Jan. 29, 2008) (need to make generalizations based on number of prostitution arrests).

RECOMMENDATIONS

The Legislature should allocate funds to research and develop comprehensive statewide systems for data collection. Data should employ uniform fields and definitions and be employed across disciplines to ensure collection of comparable data. Specifically, separate data should be collected for trafficked persons, prostituted persons who do not qualify as trafficked, patrons and traffickers. This system should have a separate, secure database for law enforcement agencies and prosecutors to facilitate multi-jurisdictional sex trafficking investigations.

D. NON-PROFIT ORGANIZATIONS

Non-profit organizations in Minnesota provide critical assistance to women and children who are in or exiting sex trafficking situations. Some organizations also conduct outreach and programs designed to discourage the demand that fuels sex trafficking.

Trafficked persons require comprehensive services,³⁵⁴ including emergency shelter, transitional and permanent housing, counseling, educational assistance, job training, medical care, mental healthcare, legal representation and culturally-specific programming, as well as specialized programming for youth and persons who have been in prostitution.³⁵⁵

The nature and extent of services varies greatly among organizations in Minnesota. This section addresses services offered by organizations assisting populations at risk for sex trafficking. These organizations include:

- battered women's shelters;
- non-profit organizations dedicated to serving women and girls in prostitution and sex trafficking;
- organizations serving runaway, homeless and street youth;
- organizations traditionally serving refugees;
- non-profit legal service providers; and
- faith-based organizations.³⁵⁶

These organizations, directly or indirectly, provide important services to trafficked persons. As noted previously, only one organization in Minnesota, Civil Society, receives federal and some state funding

³⁵⁴ STEPHEN WARNATH, U.S. AGENCY FOR INT'L DEV., EXAMINING THE INTERSECTION BETWEEN TRAFFICKING IN PERSONS AND DOMESTIC VIOLENCE 24, 25 (2007), http://nicosia.usembassy.gov/USpolicy/TIP-DV_study072307.pdf.

³⁵⁵ *Id.* at 22.

³⁵⁶ Services by healthcare providers, mental health professionals and chemical dependency treatment facilities are discussed in the section entitled "Healthcare for Trafficked Persons." See *infra* p. 59.

designated for direct services to trafficked foreign national women.³⁵⁷ Civil Society does reimburse partner organizations that provide services to trafficked clients. Legal Services Corporation, which provides free legal representation to low-income clients, may also use its funds to represent trafficked women in immigration and family law matters.³⁵⁸ Accordingly, this section focuses on the experiences of the majority of service providers in Minnesota assisting trafficked women and girls with funds not specifically dedicated to sex trafficking.

In addition to providing direct services, some organizations also engage in work to prevent sex trafficking. The U.N. Trafficking Protocol, the TVPA and its subsequent reauthorizations identify prevention efforts as powerful tools in combating human trafficking.³⁵⁹ Prevention denotes a wide range of activities, including raising public awareness, targeting populations at risk of sex trafficking, protecting trafficked persons from re-traumatization and discouraging the demand that drives sex trafficking.³⁶⁰ Despite these strong policy statements, prevention efforts have received comparatively fewer resources and attention than programs focusing on prosecution or protection.

For three years, local groups Breaking Free and Civil Society have received federal funding for education and outreach programs designed to raise public awareness about human trafficking; train law enforcement, medical, and legal professionals; and

³⁵⁷ Civil Society does not only serve trafficked persons. In conjunction with its partners, Civil Society operates free walk-in clinics that offer legal services to immigrants, refugees and people of color. Civil Society, <http://www.civilsocietyhelps.org> (last visited Aug. 31, 2008). See discussion about the lack of funding for trafficked women and girls in the section "Lack of Funding and Resources" *supra* p. 36.

³⁵⁸ Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, § 104, 119 Stat. 2959, 2978 (2006) (amending Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 105-119, § 502, 111 Stat. 2510 (1998)) [hereinafter VAWA 2005].

³⁵⁹ See TVPA §§ 106(c), 107(a)(1), 114 Stat. at 1474-75; TVPRA 2003 § 4(a)(2), 117 Stat. at 2877; U.N. Trafficking Protocol, *supra* note 7, art. 9.

³⁶⁰ U.N. Trafficking Protocol, *supra* note 7, art. 9(1)-(3), (5).

identify trafficked persons.³⁶¹ Civil Society also oversees the Minnesota state trafficking hotline, through which individuals can share tips about trafficking cases or receive assistance.³⁶² Other organizations also raise public awareness by speaking about sex trafficking at churches, mosques, or community events. Organizations providing services to women known to be trafficked work to ensure they are not re-trafficked, although one interviewee acknowledged that it may take two to five attempts to leave, due in part to the complicated nature of a woman or girl's relationship with her trafficker.³⁶³

Prevention efforts also encompass broader, long-range programs addressing the conditions that make people vulnerable to trafficking, including poverty, underdevelopment, and lack of equal opportunity.³⁶⁴ Such an approach integrates long-standing human rights principles, such as the principle of non-

discrimination, into the fight against trafficking.³⁶⁵ In Minnesota, some programs do engage in such "big picture" endeavors, such as teaching girls about healthy relationships with partners and families.³⁶⁶ Services such as job training programs, English as a second language (ESL) classes, housing assistance and other programs protect trafficked women and help to prevent re-trafficking or trafficking in the first instance. When effective, these services help women use resources that make them less vulnerable to sex trafficking.

In most cases, organizations reported insufficient funds and resources to provide direct services, much less to engage in prevention initiatives. Most organizations lack sufficient shelter, housing, funding, staff members or other appropriate services to meet the myriad needs of trafficked persons. No service provider reported having all of the necessary services available in-house, although they utilize informal or formal referral systems to help clients receive comprehensive services.³⁶⁷ Often, organizations stretch existing budgets to extend services to trafficked women and girls.³⁶⁸ Moreover, some organizations rely on volunteer involvement to meet the many needs of trafficked persons, including case management.³⁶⁹ While service

³⁶¹ See FY 2005 FUNDS REPORT, *supra* note 158, at 19; FY 2006 FUNDS REPORT, *supra* note 166, at 16, 21, 22; U.S. DEP'T OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, UNITED STATES GOVERNMENT FUNDS OBLIGATED IN FY 2007 FOR ANTI-TRAFFICKING IN PERSONS PROJECTS 26, 27 (2008), <http://www.state.gov/documents/organization/101403.pdf>.

³⁶² Civil Society, Welcome to the Minnesota Human Trafficking Watch page!, <http://www.civilsocietyhelps.org/test/html/modules.php?name=Content&pa=showpage&pid=8> (last visited Aug. 23, 2008). There is also a twenty-four-hour national hotline run by the National Human Trafficking Resource Center (NHTRC) "to provide information and resources to victims of human trafficking, other individuals or organizations seeking information about this phenomenon, and accept tips from individuals wishing to provide information about possible victims." In some cases, the NHTRC also refers callers to "local organizations that assist victims with counseling, case management, legal advice, and other appropriate services, as well as makes referrals to law enforcement agencies in order to help trapped victims reach safety." U.S. Dep't of Health & Human Servs., About the National Human Trafficking Resource Center, <http://www.acf.hhs.gov/trafficking/hotline/index.html> (last visited Aug. 23, 2008). See Appendix G for list of resources for trafficked persons in Minnesota *infra* p. 193.

³⁶³ Interview with advocate (Oct. 3, 2007).

³⁶⁴ U.N. Trafficking Protocol, *supra* note 7, art. 9(4); see also BARBARA LIMANOWSKA, TRAFFICKING IN HUMAN BEINGS IN SOUTH EASTERN EUROPE 9 (2005), <http://www.unicef.org/ceecis/Trafficking.Report.2005.pdf> (citing STABILITY PACT FOR SOUTH EASTERN EUROPE, NATIONAL PROGRAMMES TO COMBAT TRAFFICKING IN HUMAN BEINGS (NATIONAL PLANS OF ACTION) BACKGROUND PAPER1-2 (2001)).

³⁶⁵ Development agencies, such as the Asian Development Bank, have recently begun to explore how best to mainstream anti-trafficking efforts into general development programs. ASIAN DEV. BANK, INTEGRATING HUMAN TRAFFICKING AND SAFE MIGRATION CONCERNS FOR WOMEN AND CHILDREN INTO REGIONAL COOPERATION 1, 4 (2008), <http://www.adb.org/Documents/TARs/REG/40320-REG-TAR.pdf>; see also *Communication from the Danish Delegation on Social Aspects of Human Trafficking*, submitted to Council of the Eur. Union 3 (May 23, 2007), <http://www.legislationline.org/upload/legislations/a1/21/66b07763f1485c65224189064c2c.pdf>; LIMANOWSKA, *supra* note 364, at 9; Jonathan Todres, *The Importance of Realizing 'Other Rights' to Prevent Sex Trafficking*, 12 CARDOZO J. L. & GENDER 885 (2006), available at <http://ssrn.com/abstract=912250>.

³⁶⁶ Interview with advocate (Feb. 28, 2008); Interview with prosecutor (Dec. 10, 2007); Interview with advocate (Feb. 13, 2008). Exhaustive treatment of this topic was not possible given the timeline of this project. The Advocates encourages additional inquiry into how existing anti-poverty, anti-discrimination, and other programs may help prevent sex trafficking in Minnesota.

³⁶⁷ See discussion in the section "Lack of Funding and Resources" *supra* p. 36.

³⁶⁸ See, e.g., Interview with advocate (May 29, 2008).

³⁶⁹ Interview with advocate (Oct. 26, 2007).

providers in larger cities suffer from limited resources, service providers in Greater Minnesota struggle with these issues to an even greater degree. One service provider noted that the inability of an agency to provide comprehensive services may render services difficult to access or too “chaotic” for trafficked women.³⁷⁰

1. LACK OF APPROPRIATE EMERGENCY SHELTER

Minnesota lacks facilities to provide safe, appropriate emergency shelter to trafficked persons. Interviews revealed a largely ad hoc system of emergency housing. Trafficked persons may use or be referred to battered women’s shelters, homeless shelters, hotel rooms, or informal alternatives, such as volunteers who shelter trafficked women on an emergency basis. While organizations must use the limited resources they have, none of these options are appropriate for trafficked women and girls. The lack of appropriate shelter can result in women and youth returning to the trafficking situation.

Interviewees reported that battered women’s shelters sometimes will not admit trafficked women, citing funding restrictions.³⁷¹ For example, a shelter in the metropolitan area had a policy of accepting only people who were currently being abused, thus excluding a trafficking victim who had not immediately escaped the situation; the victim slept at her lawyer’s house instead.³⁷² An advocate at a battered women’s shelter stated, “[s]ometimes the person who answers the phone at a battered women’s shelter doesn’t consider prostitution a form of domestic violence and won’t offer shelter to the

caller.”³⁷³ Other interviews, however, demonstrated that many battered women’s shelters throughout Minnesota have served trafficked women.³⁷⁴ One service provider reported serving trafficked women for years, despite her organization’s lack of funding for sex trafficking.³⁷⁵

While battered women’s shelters may admit trafficked women, a policy maker estimated that possibly less than half of them are equipped to offer services to trafficked persons.³⁷⁶ In some instances, when shelters admit trafficked women, the women may be ridiculed, chastised or judged by shelter personnel or by the other residents due to their history of prostitution.³⁷⁷ For example, two advocates with little experience serving trafficked women criticized a client involved in the sex industry for her inappropriate sexual behavior in public.³⁷⁸ However, interviews also revealed that some battered women’s shelter staff recognize that trafficked women who seek shelter are most likely trying to escape a violent trafficker. Shelter staff accept their different needs with tolerance and respect. “We’re here no matter what her choices are. We have to respect her choices unless it goes against the safety of others,” stated a shelter employee.³⁷⁹ Another staff member said that they have had instances where traffickers send other women into the shelter to find a missing woman,³⁸⁰ highlighting the need for staff training on safety issues.

³⁷³ Interview with advocate (Oct. 12, 2007).

³⁷⁴ Interview with probation officer (Oct. 12, 2007). *See generally* WARNATH, *supra* note 354, at 22-28 (discussing issues posed by mixing populations of trafficked women and domestic violence victims in common shelters).

³⁷⁵ Interview with advocate (May 29, 2008).

³⁷⁶ Interview with advocate (Oct. 10, 2007).

³⁷⁷ Interview with advocate (Oct. 12, 2007); Interview with advocate (Oct. 3, 2007); *see also* FAMILY VIOLENCE PREVENTION FUND, TURNING PAIN INTO POWER: TRAFFICKING SURVIVORS’ PERSPECTIVES ON EARLY INTERVENTION STRATEGIES 27 (2007), <http://www.endabuse.org/programs/immigrant/files/PainToPower.pdf>; UNIV. CAL. BERKELEY, FREE THE SLAVES & HUMAN RIGHTS CTR., HIDDEN SLAVES: FORCED LABOR IN THE UNITED STATES 45 (2004), http://www.hrcberkeley.org/download/hiddenslaves_report.pdf.

³⁷⁸ The client’s trafficking status was unclear. Interview with advocate (Nov. 26, 2007).

³⁷⁹ Interview with advocate (Dec. 7, 2007).

³⁸⁰ Interview with advocate (Feb. 13, 2008).

³⁷⁰ Focus Group (Aug. 6, 2007).

³⁷¹ Interview with advocate (Oct. 12, 2007); *see also* Interview with advocate (Nov. 18, 2007); Interview with advocate (May 29, 2008). However, as previously noted, the statewide Minnesota Coalition for Battered Women (“MCBW”) understands prostitution as a form of violence against women and extends the services of its members to women in prostitution. Freedom and Justice Ctr. for Prostitution Resources, *supra* note 29.

³⁷² Interview with advocate (Nov. 18, 2007).

Some members of the faith-based community house trafficked women on an informal basis, assisting women who do not satisfy a shelter's requirements.³⁸¹ They do so quietly due to the danger they feel from the traffickers.³⁸²

Trafficked women needing shelter after a law enforcement sting on a brothel may want to stay together³⁸³ and it can be difficult to find a shelter with enough space. While they may have the capacity to deal with groups of women, homeless shelters can be dangerous, inappropriate places for women, especially if they also serve men.³⁸⁴ Interviews revealed that pimps have used homeless shelters as recruiting grounds.³⁸⁵

Trafficked youth face a dearth of available, age-appropriate housing. "A major draw is the hotels that pimps provide, and we don't have a better option," stated one healthcare provider.³⁸⁶ Less than 100 beds are available statewide to provide emergency shelter to youth, and frequently shelters have a waiting list for those spaces.³⁸⁷ An advocate reported that when she worked for an organization that provided emergency shelter, as soon as they had an opening, three children would be at the door waiting to fill the space.³⁸⁸ Only two shelters in the metropolitan area serve young teens under fifteen, which stems in part from different licensing requirements for programs based on participants' ages.³⁸⁹ Young people ages eighteen to twenty-one may stay in youth or adult shelters, but those facilities also have limited capacity and most often lack services for trafficked youth.³⁹⁰

³⁸¹ Interview with advocate (Sept. 26, 2007).

³⁸² *Id.*

³⁸³ Interview with advocate (Jan. 2, 2008).

³⁸⁴ Interview with advocate (Oct. 15, 2007); Interview with advocate (May 16, 2008); Interview with advocate (Sept. 26, 2007).

³⁸⁵ Focus Group (Aug. 6, 2007); Interview with advocate (Nov. 9, 2007).

³⁸⁶ Interview with healthcare provider (Jan. 23, 2008).

³⁸⁷ Interview with advocate (Nov. 9, 2007).

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

As with trafficked women, battered women's shelters either lack the space for trafficked youth or simply do not want to take them. One advocate said:

[w]hen you have teens and you really need to get them off the streets now, there is nowhere else to go and there are not enough shelter beds. That is one of my biggest frustrations. I can spend three hours calling battered women's shelters and no one has space for anyone.³⁹¹

Another juvenile advocate explained, "It still takes a long time for battered women's shelters to accept a girl who is battered by a pimp. They're concerned about safety."³⁹²

RECOMMENDATIONS

The Legislature should allocate funds for the creation of specific emergency housing facilities for trafficked women and girls. These programs should provide services tailored to these groups. All providers of emergency housing should receive training on sex trafficking, prostitution and the resources available for these groups in order to make appropriate referrals.

2. LACK OF TRANSITIONAL AND PERMANENT HOUSING

Interviews revealed that transitional and permanent housing for trafficked persons is extremely difficult to obtain, yet it is essential to being able to permanently leave a trafficking situation.³⁹³ This scarcity has been exacerbated by the recent housing crisis, which has reduced women and girls'

³⁹¹ Interview with advocate (Oct. 12, 2007).

³⁹² Interview with advocate (Oct. 2, 2007).

³⁹³ Interview with advocate (Feb. 13, 2008); *see also* Interview with advocate (May 29, 2008); Interview with advocate (May 29, 2008).

ability to rely on their families and friends for housing.³⁹⁴

Most organizations lack transitional or permanent housing facilities, which service providers emphasize are crucial to transition successfully from the life of prostitution.³⁹⁵ A service provider stated that housing can “change women’s lives [...] the women who are in housing stay out of the life.”³⁹⁶ “It can take two years just to get a grip, [so] how can you rebuild your life if you don’t know where you are going to lay your head,” stated an interviewee.³⁹⁷ Social workers who work with GLBT youth agreed that housing is their most important tool to promote long-term, sustainable choices. With housing resources, the social worker explained, risky behaviors are reduced: “If you have a place to sleep at night, you are less likely to contract HIV [or] hepatitis and be in emotional turmoil.”³⁹⁸

One service provider in the metro area can accommodate only two women in two apartments.³⁹⁹ Another organization offers transitional housing where youths pay 30% of their income for one or two years.⁴⁰⁰ When they receive the housing, they may still be in prostitution. However, the organization subsidizes their rent and assists them in transitioning out of prostitution.⁴⁰¹

This lack of long-term housing options can result in trafficked women remaining in shelters for long periods of time. One service provider reported housing a trafficked woman in a shelter for more than ten months.⁴⁰² She emphasized that this situation negatively impacted the woman, who saw many battered women come and go from the shelter

during her stay and became withdrawn due to her continued residence.⁴⁰³ Moreover, such long-term stays may jeopardize funding for emergency shelters whose funds may be restricted to short-term stays of two weeks or thirty days.⁴⁰⁴

The lack of available housing may deter trafficked persons from seeking services at all. A service provider reported that “[w]e tell them right away [during street outreach] that we have sixty people on the waiting list for housing and then they never come in for the intake.”⁴⁰⁵

Finally, interviewees emphasized that housing alone does not meet the needs of trafficked women. An advocate explained that a recent trend in federal funding to combat homelessness promoted the “four walls” approach, with advocates providing long-term housing with no additional services.⁴⁰⁶ The advocate noted that without supportive services, simply providing housing to trafficked women and youth will not promote their safety or escape from prostitution.⁴⁰⁷

Good Practice: Breaking Free’s Transitional and Permanent Housing Facility

Breaking Free in St. Paul maintains a transitional and permanent housing program for women, and occasionally girls, escaping prostitution, many of whom qualify as trafficked. They have the capacity to provide transitional housing for eighteen months to eight women who successfully complete their programs. They also maintain seventeen units of permanent housing for women and their children.

³⁹⁴ Interview with advocate (May 16, 2008).

³⁹⁵ Interview with advocate (Oct. 31, 2007); Interview with advocate/survivor (Jan. 14, 2008).

³⁹⁶ Interview with advocate (Feb. 13, 2008). “The life” is a euphemism for the life in prostitution.

³⁹⁷ Interview with advocate/survivor (Jan. 14, 2008).

³⁹⁸ Interview with advocate (Feb. 14, 2008).

³⁹⁹ Interview with advocate (Oct. 12, 2007).

⁴⁰⁰ Interview with advocate (Feb. 13, 2008).

⁴⁰¹ *Id.*

⁴⁰² Interview with advocate (May 29, 2008).

⁴⁰³ See, e.g., Interview with advocate (May 29, 2008).

⁴⁰⁴ Interview with advocate (Jan. 22, 2008).

⁴⁰⁵ Focus Group (Aug. 6, 2007).

⁴⁰⁶ Interview with advocate (May 16, 2008).

⁴⁰⁷ *Id.*

RECOMMENDATIONS

The Legislature should allocate funds to create transitional and permanent housing facilities designated for trafficked women and girls. These facilities should provide supportive, non-judgmental services.

3. SERVICES UNAVAILABLE AT TIMES WOMEN AND GIRLS MOST NEED THEM

According to some interviewees, services for some trafficked women, specifically women in street prostitution, are unavailable when they need them most. While service providers typically operate during normal business hours, those are not the times when trafficked women may be most likely to seek help. An advocate and survivor with twenty-three years of chemical dependency shared her thoughts from her low moments when she wanted help, but could not find it:

If you've gone two to three weeks without a good sleep, then you're at a higher risk. At least after some rest, you can think about "what am I doing?" It's at two or three in the morning when you start to decide "what the hell am I doing?" It's that time between two and four in the morning, "I want somewhere to go." Shelters are locked down at that time, but that's the time when you think, "I want to leave Bloomington and Lake." It's from three to six in the morning that tricks are not traveling, unless you get a trucker, which is usually on a Thursday. That's when you try to hook up with some dope or get a trick and a hotel room. You're hungry, tired, and trying to think of a hustle to do.⁴⁰⁸

The advocate noted that by seven in the morning, "then she's turned to a dope deal. Now she's gone

again because she's high. Then she's right back where she started."⁴⁰⁹

A healthcare provider emphasized the need for services at the time when people are ready.⁴¹⁰ This approach also applies to the lengthy waitlists that those seeking services or housing often face:

We need services that are ready when they're ready, but there's a six-month to two-year waiting list. There's a feeling of hopelessness with that. They think, "I don't see a better option for myself." You need to be able to leave an address, but what if you're at the Marriott tonight? You can't hold on to paperwork because what if the pimp finds it?⁴¹¹

RECOMMENDATIONS

The Legislature should allocate funds to establish twenty-four hour drop-in centers for individuals in prostitution. Staff in these centers should receive training on providing individualized, non-judgmental assistance to clients.

4. LACK OF CULTURALLY-SPECIFIC SERVICES AND SERVICES TAILORED TO WOMEN AND YOUTH IN PROSTITUTION

Interviews revealed a lack of services addressing the unique needs of trafficked women and girls. Programming must take into account women and girls' experiences in prostitution. Moreover, effective programming must consider clients' ethnic or racial background, age, gender and sexual orientation.

Only two programs in the metropolitan area provide services tailored specifically to women and girls who

⁴⁰⁹ *Id.*

⁴¹⁰ Interview with healthcare provider (Jan. 23, 2008).

⁴¹¹ *Id.*

⁴⁰⁸ Interview with advocate/survivor (Jan. 14, 2008).

have been in prostitution, PRIDE and Breaking Free. Located in Minneapolis, PRIDE (from Prostitution to Independence, Dignity and Equality) is a division of Family and Children's Services designed to "help women get out, and stay out, of prostitution" by offering outreach, supportive services and court advocacy.⁴¹² PRIDE also has a program for girls called Teen PRIDE.⁴¹³ Breaking Free is in St. Paul and provides supportive services, transitional and permanent housing and systems advocacy "to prostituted women/youth to permit escape from violence and exploitation."⁴¹⁴ An advocate emphasized the importance of addressing prostitution issues directly.⁴¹⁵ Failure to do so may ultimately lead a woman or girl back to the trafficker.⁴¹⁶

Minnesota lacks services capable of meeting the needs of trafficked women and girls based on their specific backgrounds. For example, only one domestic violence shelter exists for Asian women in the state and no Hmong programs exist in juvenile centers, an advocate noted.⁴¹⁷ Advocates who serve trafficked women from minority ethnic and racial groups stated a need for training, education and money for staffing a model that works for their particular communities.⁴¹⁸ Some examples provided were appointment flexibility, bilingual/ethnic staff members to promote comfort levels, and therapy rooms large enough to accommodate family members.⁴¹⁹ Culturally-specific treatment and therapies are another need. Advocates in the American Indian community unanimously highlighted the importance of traditional ceremonies such as

⁴¹² PRIDE (from Prostitution to Independence, Dignity and Equality), http://www.famchildserv.org/index.asp?Type=B_BASIC&SEC=%7B06C4C9B8-8DA9-4AFE-BA8C-658065E23661%7D (last visited Aug. 23, 2008).

⁴¹³ *Id.* (follow "TeenPRIDE" hyperlink under "Our Work").

⁴¹⁴ Breaking Free, *supra* note 29.

⁴¹⁵ Interview with advocate (May 16, 2008); *see also* Interview with advocate (Oct. 12, 2007); Interview with advocate (Oct. 3, 2007).

⁴¹⁶ Interview with advocate (Dec. 21, 2007).

⁴¹⁷ Interview with advocate (Jan. 7, 2008).

⁴¹⁸ Interview with advocate (Dec. 10, 2007).

⁴¹⁹ Interview with healthcare provider (Jan. 4, 2008).

smudging, talking circles and sweat lodges in their programs.⁴²⁰ Offering such ceremonies can help women to "find a place where they belong," according to one advocate.⁴²¹

Residents of Greater Minnesota have more difficulty in obtaining culturally-specific services, but advocates in these areas employ a wide support network and work hard to link people together without violating rules of confidentiality.⁴²²

Good Practice: The Phoenix Project, Minneapolis, MN

The Minnesota Indian Women's Resource Center ("MIWRC") and Division of Indian Work have partnered with the Minneapolis Police Department's Third Precinct to create the Phoenix Project. This pilot project aims to establish a formalized referral mechanism for American Indian girls suspected of involvement in prostitution. When police officers in the Third Precinct identify a girl, they will refer her directly to MIWRC. MIWRC will offer services targeting the specific cultural needs of American Indians.

Service providers emphasized the special needs of trafficked youth, as distinct from adults. Minnesota lacks a residential facility specifically serving youth who have been used in commercial sexual exploitation. A law enforcement officer stated the

⁴²⁰ Interview with advocate (Feb. 14, 2008); Interview with advocate (May 29, 2008); Interview with advocate (Jan. 29, 2008); Interview with advocate (Sept. 25, 2007); Interview with advocate (Nov. 16, 2007). Smudging is a practice where herbs or plants are burned to purify oneself, an object or a place. Interview with advocate (May 29, 2008). A talking circle involves a group of women sitting in a circle for an unstructured discussion led by the participants. A talking stick is passed from person to person. The person with the stick cannot be interrupted. This traditional forum allows women to express themselves and listen to others. Interview with advocate (Feb. 14, 2008). Sweat lodge ceremonies take place in a small structure similar to a sauna. Their purpose is to cleanse the mind, body and soul, with one service provider likening it to prayer. Interview with advocate (Jan. 22, 2008).

⁴²¹ Interview with advocate (Feb. 14, 2008).

⁴²² *See, e.g.*, Interview with advocate (Jan. 16, 2008); Interview with advocate (Oct. 31, 2007).

only one in the country is Children of the Night in California.⁴²³ While youth can reap benefits from having an adult mentor in a mixed program, an advocate nonetheless stressed the importance of creating comprehensive services for youth:

We need to have a specific facility where youth in trafficking, prostituted boys and girls, trans-gendered, lesbian, could come together for shelter, healing, case management, mental health...One girl, the john would put her in a coffin [for sex.] A boy had a trick who was a priest who [had sex with] him on a cross. It's a different kind of sexual trauma. Given these complex sexual, psychological experiences, [treatment] is more complex.⁴²⁴

Gay, lesbian, bi-sexual and transgender (“GLBT”) youth constitute another group requiring specific services. A healthcare provider in greater Minneapolis said, “We don’t see [GLBT] youths. We tried to identify some issues with that. We think they feel stereotyped because they are probably embarrassed in this conservative community.”⁴²⁵ One healthcare provider said, “If transgender youth are coming from the suburbs, we have nowhere to send them really. Many of them are in a circle of prostitution. There’s not a lot of shelters or drop-in centers. That community is wrapped up in prostitution as a means of survival.”⁴²⁶ Existing facilities may not account for the heightened privacy needs of transgendered individuals because sleeping areas, groups and even restrooms are gender segregated.⁴²⁷

⁴²³ Interview with law enforcement officer (Oct. 25, 2007); see Children of the Night, <http://www.childrenofthenight.org/> (last visited Aug. 17, 2008).

⁴²⁴ Interview with advocate (Oct. 3, 2007).

⁴²⁵ Interview with healthcare provider (Jan. 17, 2008).

⁴²⁶ Interview with healthcare provider (Jan. 23, 2008).

⁴²⁷ Interview with advocate (Feb. 14, 2008).

RECOMMENDATIONS

Non-profit organizations should develop and distribute models of treatment for trafficked women and girls based on their history in prostitution, ethnicity, race, age, gender, sexual orientation or other relevant characteristics. Organizations should conduct research into good practices to develop these models.

5. LANGUAGE BARRIERS AND INTERPRETATION SERVICES

Although service providers have some success hiring staff members with diverse cultural and language backgrounds,⁴²⁸ they face barriers providing interpretation services to clients.⁴²⁹ Interviewees noted similar issues of competence, professionalism and confidentiality. However, they also noted additional issues — such as interpreters’ fear of retaliation from traffickers — that further demonstrate the need for professional interpreters trained on trafficking issues.

An advocate identified interpreter confidentiality as a problem in some communities.⁴³⁰ One agency addresses this problem by requiring interpreters to sign a confidentiality agreement.⁴³¹ An attorney explained that she gives clear directions to the interpreter before meeting with the client, telling her to interpret every word and not to have conversations on the side.⁴³² Trafficked women’s need to know and trust everyone working with their case makes use of the telephone interpretation service Language Line less desirable to advocates.⁴³³ In addition, the Language Line may

⁴²⁸ Interview with attorney (Oct. 5, 2007); Interview with advocate (Oct. 25, 2007); Interview with attorney (Oct. 2, 2007).

⁴²⁹ See discussion in the section “Lack of Response Protocols” *supra* p. 42.

⁴³⁰ Interview with advocate (Oct. 24, 2007).

⁴³¹ Interview with attorney (Oct. 2, 2007).

⁴³² Interview with attorney (Oct. 5, 2007).

⁴³³ The Language Line provides immediate access by telephone to interpreters in over 170 languages. When in need of an interpreter, an advocate or police officer calls the Language Line,

be expensive for non-profit agencies with limited budgets.⁴³⁴

Advocates also cited problems with interpreters refusing to interpret for trafficked women. In one case, an agency could not interview a trafficked woman from a small country because interpreters felt endangered by her story and left.⁴³⁵ The woman was never properly interviewed and, to the advocate's knowledge, remains in danger.⁴³⁶ In another case an interpreter refused to interpret for a Southeast Asian woman, saying "I won't interpret what she said she did."⁴³⁷

Interviewees detailed other instances of unprofessional behavior. For example, an interpreter from the Language Line called an attorney back to comment about the case.⁴³⁸ She stated that the interpreter was trying to be "helpful," but that such conduct was inappropriate.⁴³⁹ An advocate described a case where a Russian-language interpreter was condescending to a client from Kazakhstan, suggesting possible ethnic, class or nationality bias.⁴⁴⁰ Conflicts can also arise when women rely on interpreters from shelters. One attorney has seen this pose a problem when clients are at odds with the shelter workers.⁴⁴¹

RECOMMENDATIONS

The Legislature should provide increased funding for interpretation services for non-profit organizations. Congress should allocate federal funds for this purpose. Non-profit organizations should receive training on working effectively with interpreters.

requests the language, and waits for an appropriate interpreter to be found. Many government agencies and non-profit organizations reported having access to the Language Line. See Language Line Servs.,

http://www.languageline.com/page/our_company/ (last visited Aug. 14, 2008).

⁴³⁴ Interview with attorney (Oct. 8, 2007).

⁴³⁵ Interview with advocate (Oct. 26, 2007).

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ Interview with attorney (Oct. 5, 2007).

⁴³⁹ *Id.*

⁴⁴⁰ Interview with advocate (Dec. 3, 2007).

⁴⁴¹ Interview with attorney (Oct. 5, 2007).

E. HEALTHCARE FOR TRAFFICKED PERSONS

Trafficked women and girls have unique physical and psychological health needs stemming from pre-existing issues, the trafficking experience, and the post-trafficking experience.⁴⁴² These acute needs are often not comprehensively met because, despite on-the-job experience and good instincts about victims of abuse, healthcare providers lack training, protocols and resources to enable them to identify and effectively treat trafficked persons. Complex public benefits laws and regulations also limit access to healthcare. This section will primarily address lack of access to healthcare and discuss the unique healthcare needs of trafficked persons. Information about the lack of screening protocols, response protocols and funding is addressed more thoroughly in the section “Universal Issues” of this report.⁴⁴³

The World Health Organization has articulated the right to health as “a state of complete physical, mental, and social well being,” including the right to the enjoyment of a variety of facilities and conditions that are necessary for good health.⁴⁴⁴ The *U.N. Recommended Principles and Guidelines* emphasize the importance of ensuring that trafficked persons are unconditionally protected from further exploitation and harm and have access to adequate physical and psychological care.⁴⁴⁵ Governments and organizations should also ensure that trafficked persons can access primary healthcare and counseling without being subjected to mandatory testing for diseases.⁴⁴⁶

Trafficked persons need immediate and long-term, well-funded, culturally-appropriate and confidential

healthcare services provided only with their consent. The trafficked person’s need for healthcare does not end with the immediate crisis, but continues through detention, criminal investigation, deportation (for foreign nationals) and the re-integration process.⁴⁴⁷ Moreover, trafficked women face multiple health risks and the consequences overlap and multiply, such that the “physical risks cause negative psychological responses, which in turn may result in additional physical health problems.”⁴⁴⁸

1. LACK OF ACCESS TO HEALTHCARE

Trafficked U.S. citizens and foreign nationals both experience gaps in access to healthcare and health insurance coverage. Anecdotal evidence suggests these gaps dramatically affect trafficked foreign nationals and specific populations of trafficked U.S. citizens, including American Indians. Trafficked women and girls should have access to an effective and integrated healthcare system on the same basis as all citizens of the United States, regardless of their nationality.⁴⁴⁹

Immigration and welfare reform in the 1990s restricted foreign nationals’ eligibility for federal or state benefits funded by the federal government, including Medicaid’s healthcare coverage for individuals with limited income.⁴⁵⁰ State

⁴⁴⁷ ZIMMERMAN ET AL., *supra* note 24, at 21-27.

⁴⁴⁸ *Id.* at 24.

⁴⁴⁹ Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71, art. 25(1) (1948), <http://www.un.org/Overview/rights.html> (last visited Aug. 16, 2008) [hereinafter “UDHR”]. The UDHR is not a binding treaty or convention. Rather, it is a General Assembly declaration, so it may be binding on the United States as “customary international law or as authoritative interpretation of the U.N. charter.” Additionally, the United States has signed, but not ratified the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which means that it is politically, but not legally, binding. JEAN CARMALT & SARAH ZAIDI, *THE RIGHT TO HEALTH IN THE UNITED STATES OF AMERICA: WHAT DOES IT MEAN?*, n.9 & 10 (2004),

<http://www.nhchc.org/Advocacy/RighttoHealthinAmerica.pdf> (citing HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 143 (2d ed. 2000)).

⁴⁵⁰ 8 U.S.C. § 1611 (2007), *amended by* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 401, 110 Stat. 2105, 2261 (1996); *see also* 8 U.S.C. §

⁴⁴² See ZIMMERMAN ET AL., *supra* note 24, at 21 (discussing origins of health problems for trafficked women).

⁴⁴³ See *supra* p. 33.

⁴⁴⁴ *The Right to Health in the United States*, The Advocates for Human Rights Fact Sheet (The Advocates for Human Rights, Minneapolis, Minn.), Mar. 2008, *available at* http://discoverhumanrights.org/sites/7cc8fb84-899d-457d-a486-470ccb03fb16/uploads/Health_Fact_Sheet_National_Revised_2_008.pdf.

⁴⁴⁵ U.N. Econ. & Soc., *supra* note 68, princ. 8.

⁴⁴⁶ U.N. Econ. & Soc., *supra* note 68, guideline 6(2).

governments were also authorized under federal law to exclude certain non-citizens from receiving state-funded general cash public assistance.⁴⁵¹ Such restrictions affect many trafficked persons.

Trafficked foreign nationals may experience a gap in access and coverage before immigration relief is granted.⁴⁵² The type of immigration relief sought will determine whether a trafficked foreign national has immediate or long-term access to government healthcare benefits.⁴⁵³ In Minnesota, only certain foreign nationals lawfully present in the United States, such as asylees, refugees, and certain battered immigrants who meet the other eligibility requirements, may receive state healthcare coverage.⁴⁵⁴

1641 (2007), *amended by* Illegal Immigration and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, §§ 501, 503-505, 510 (food stamp ineligibility); 42 U.S.C. § 1436a(d), *amended by* Pub. L. No. 104-208, §§ 574, 576, 110 Stat. 3009-3546, 3009-3685, 3009-3687 (1996) (eligibility and verification of eligibility for public housing) [hereinafter IIRAIRA].

⁴⁵¹ 8 U.S.C. § 1641, *amended by* IIRAIRA § 553, 110 Stat. at 3009-681 (1996) (codified at 8 U.S.C. § 1624 (2007)).

⁴⁵² See discussion in the section “Immigration Relief” *infra* p. 79.

⁴⁵³ Trafficked women who apply for a T visa are eligible for benefits only upon certification from the U.S. Department of Health and Human Services (“HHS”) as a victim of a severe form of trafficking. 22 U.S.C. § 7105(b)(1)(A). This certification is contingent upon their participation in the prosecution of their traffickers. *Id.* § 7105(b)(1)(E)(i)(II). It is also contingent upon the trafficked woman filing for a T visa or receiving the temporary status of continued presence. 28 C.F.R. § 1100.35 (2007). In some cases, law enforcement and prosecutors may not make the necessary requests to renew the continued presence status. *Id.* § 1100.35(a) (discretionary request). Thus, without certification from HHS, trafficked women lack coverage for vital health care services. Women seeking immigration relief under the Violence Against Women Act (“VAWA”) may face a similar gap in coverage. An attorney pointed out that in some cases women wait up to a year to receive the prima facie determination of their application. Interview with attorney (Oct. 2, 2007). Without that prima facie determination, women do not have access to the federal and state health care coverage or the other public benefits accorded to battered immigrants. Lastly, U visa applicants and recipients are not eligible for health care or public assistance at any time. See discussions in the sections “Public Assistance” and “Immigration Relief” *infra* pp. 72, 79.

⁴⁵⁴ LAURA MELNICK, SOUTHERN MINN. REG’L LEGAL SERVS., INC., GOVERNMENT BENEFITS FOR NON-CITIZENS 13-15 (2007) (citing MINN. STAT. §§ 256B.055, 256B.06, subds. 4, 5 (2007) (Medical Assistance); MINN. STAT. § 256B.06, subd. 4(k) (Medical Assistance coverage for torture survivors); *id.* § 256D.03, subd. 3 (General Medical Assistance Care); *id.* § 256D.05, subd. 8(a) (General Medical Assistance); *id.* § 256B.06, subd. 4(f)-(i) (Emergency Medical Assistance); 42 U.S.C. § 1396b(v) (Emergency Medical Assistance); MINN. STAT. § 256B.06, subd.

Good Practices: California Access to State-Level Assistance for Trafficked Women

In 2006, California passed The Access to Benefits for Human Trafficking and Other Serious Crime Victims Act. This legislation sought to respond to the lack of benefits some women experience while they wait up to two years for federal certification as “victims of severe forms of trafficking.” By passing this law, California became the first state in the country to create a “‘bridge’ of temporary services to offer immediate assistance to victims as they await federal certification.”⁴⁵⁵

Trafficked U.S. citizens also experience gaps in healthcare access because they lack health insurance coverage.⁴⁵⁶ Disparate government spending can also impact access. In a recent report on violence against Indigenous women in the United States, Amnesty International reported that the projected “national per capita health expenditure for the average person in the [United States] for [2003] would be US\$5,775, while [Indian Health Services] would spend a projected average of US\$1,900 per [Native] person for all medical care.”⁴⁵⁷ This disparity, combined with the hidden nature of sex trafficking and the increased vulnerability of American Indian women and girls, creates a barrier to trafficked American Indians receiving effective medical care.

4(i) (Emergency Medical Assistance for Pregnant Women); *id.* § 256L.04, subds. 10, 10a (Minnesota Care)) (on file with author).

⁴⁵⁵ CAL. ALLIANCE TO COMBAT SLAVERY TASK FORCE, HUMAN TRAFFICKING IN CALIFORNIA 24 (2007), http://www.safestate.org/documents/HT_Final_Report_ADA.pdf, (citing CAL. WELF. & INST. CODE § 18,945 *et seq.* (passed by S.B. 1569, Chapter 672 (Sept. 29, 2006)).

⁴⁵⁶ See discussion in the section “Public Assistance” *infra* p. 72.

⁴⁵⁷ AMNESTY INT’L, *supra* note 27, at 76 (quoting U.S. COMM’N ON CIVIL RIGHTS, A QUIET CRISIS: FEDERAL FUNDING AND UNMET NEEDS IN INDIAN COUNTRY (2003)).

Non-American Indian U.S. citizens reported having access to the healthcare system in some cases, but not in others. A survey of women in prostitution in the Twin Cities revealed that eighty-four percent of those surveyed had some type of medical insurance, usually government healthcare benefits, to cover the cost at least part of the time.⁴⁵⁸ One survivor reported access to healthcare through government-funded medical assistance.⁴⁵⁹ But another survivor reported limited access to healthcare because clinics often require the patient's address, which many prostituted and trafficked women lack.⁴⁶⁰

RECOMMENDATIONS

The Legislature and Congress should amend the law to require government-funded medical coverage for trafficked persons without regard to nationality or immigration status. They should allocate sufficient funds for this purpose.

⁴⁵⁸ Ruth Parriott, Health Experiences of Twin Cities Women Used in Prostitution: Survey Findings and Recommendations, <http://www.angelfire.com/mn/fjc/healthex2.html> (last visited Aug. 23, 2008).

⁴⁵⁹ Interview with survivor (Nov. 29, 2007).

⁴⁶⁰ Interview with advocate/survivor (Jan. 14, 2008).

Proposed Good Practice: Principles for Promoting the Health Rights of Trafficked Women

Based on the findings of a two-year European study, researchers proposed the following principles to ensure respect for trafficked women's healthcare needs:

1. The right to health of trafficked women, including the right to necessary care and treatment, is a fundamental human right.
2. Trafficked women have the right to be asked specific questions to determine whether they require medical assistance (physical or psychological). State authorities must fully inform women of their rights to healthcare, and the health service options available to them. Medical assistance must be provided to trafficked women who request it or require it, before any other action may be taken.
3. No legal proceedings, or other actions that are likely to negatively impact the physical security, or physical or psychological health of trafficked women should be taken by State authorities unless women's health and wellbeing can be assured.
4. Trafficked women, given the level of harm and mistreatment they have experienced, should be offered access to quality healthcare on the same basis as citizens of the country which they are in.

5. Trafficked women have the right to non-discriminatory, gender-appropriate healthcare.

6. In all health interventions for trafficked women, the best interests of the woman must be the primary consideration. Governments, medical professionals, public health workers, and NGOs [non-governmental organizations] should collaborate to ensure that necessary and appropriate medical resources, including physical healthcare and psychological support, are made available. Care should be provided in women's own language, whenever possible.

7. Trafficked women should not be subjected to mandatory medical investigation, procedures or clinical testing, including for HIV/AIDS.

8. Trafficked women's right to privacy and confidentiality must be respected. This includes the right to a private setting for interviews, confidential testing, treatment, and medical files, and non-disclosure of personal information.

9. Trafficked women have the right to their medical and health records. In cases of deportation, removal or voluntary return, these records must be made available to women before their departure.

10. Trafficked women have the right to timely forensic examinations and medical reports to pursue cases of sexual or other violence against traffickers.⁴⁶¹

⁴⁶¹ ZIMMERMAN, *supra* note 22, at 109.

2. SPECIFIC HEALTHCARE NEEDS OF TRAFFICKED PERSONS

Trafficked women and girls have very specific healthcare needs. They frequently suffer from pre-existing physical and psychological abuse and from immediate serious injuries due to violent assault or rape. They may have infections or sexually transmitted diseases with debilitating effects. After escaping a trafficking situation, they continue to need healthcare to address the serious long-term effects of their abuse.

Minnesota healthcare providers and others expressed a need for more effective tools to identify and respond to trafficked persons' immediate healthcare needs.⁴⁶² None of the healthcare providers interviewed for this report had any training on trafficking laws or specific issues related to clinical presentation or medical care for trafficked persons. A healthcare provider noted that "there's just a general paucity of educational resources for providers."⁴⁶³

a) NEED TO ADDRESS IMMEDIATE HEALTH CONSEQUENCES OF SEX TRAFFICKING

Trafficked women and girls need healthcare services to address the immediate health consequences of sex trafficking, including sexual trauma, rape, sexually transmitted diseases including HIV/AIDS, physical assault resulting in head trauma, broken bones, mouth and teeth injuries, post-traumatic stress disorder ("PTSD"), anxiety disorders, dissociative disorders, personality disorders, depression, substance abuse, and chemical dependency. If left unaddressed, the immediate healthcare needs of trafficked women and girls not only prevent them from recovering from sex

trafficking, but also create more significant and serious long-term health consequences.

Interviews revealed that victims may not disclose their immediate healthcare needs due to embarrassment. In one case, interviews revealed that women's pressing medical needs were not met for the first twenty-four hours they were in custody.⁴⁶⁴ Advocates reported that all the women in this case had some medical or mental health issues,⁴⁶⁵ but that they had not expressed those needs to law enforcement out of fear or embarrassment.⁴⁶⁶ When asked about this case, ICE explained that women in custody were offered medical assistance pursuant to law,⁴⁶⁷ but the women failed to disclose their needs.

Good Practice for Healthcare Providers: Sexual Assault Nurse Examiners (SANE) Program

In the 1990s, SANE programs sprang up in hundreds of communities across the country to address the inadequacy of the traditional model for sexual assault medical evidentiary exams. SANE programs made it possible for sexual assault victims to consistently receive prompt and compassionate emergency care from medical professionals who understand victimization issues. A SANE examiner can speed up and improve the quality of the evidentiary exam because an experienced SANE examiner is adept at identifying physical trauma and psychological needs, ensuring that victims receive appropriate medical care, knowing what evidence to look for and how to document injuries and other forensic evidence, and providing necessary referrals.⁴⁶⁸

⁴⁶⁴ Interview with advocate (Oct. 26, 2007); Interview with advocate (Jan. 2, 2008); Interview with advocate (Oct. 8, 2007).

⁴⁶⁵ Interview with advocate (Jan. 2, 2008); Interview with advocate (Oct. 8, 2007).

⁴⁶⁶ Interview with attorney (Oct. 11, 2007).

⁴⁶⁷ 22 U.S.C. § 7105(c)(1)(B); 28 C.F.R. § 1100.31(d) (2007).

⁴⁶⁸ Kristin Littel, *Sexual Assault Nurse Examiner (SANE)*

Programs: Improving the Community Response to Sexual Assault Victims, OFFICE FOR VICTIMS OF CRIME (OVC) BULLETIN (U.S. Dep't of Justice, Office of Justice Programs), Apr. 2001, at 2.

⁴⁶² See discussions in the sections "Inadequate Screening Protocols" and "Lack of Response Protocols" *supra* pp. 37, 42.

⁴⁶³ Interview with healthcare provider (Jan. 29, 2008).

Trafficked individuals need immediate healthcare services dealing with sexual trauma, which often occurs at the hands of multiple actors, including pimps/traffickers, patrons and intimate partners.⁴⁶⁹ Of 108 trafficked women who attended the Women's Recovery Center in St. Paul, Minnesota, 76% reported being prostituted seven days a week.⁴⁷⁰ While most women (53%) reported between four to ten sexual encounters per day with patrons, a little over nine percent of respondents reported sixteen to twenty sexual encounters per day with patrons.⁴⁷¹ An advocate noted that "[t]he sexual trauma is a specific kind of trauma. It involves your mouth, breasts, vagina, anus...the most intimate parts of the human being. That's what's hard to recover from. That's why they need specialized treatment."⁴⁷²

Trafficked persons need medical treatment for harm resulting from rape. Women trafficked into prostitution experience rates of rape beyond that of the general population. In one study, fifty-eight out of sixty-four women in prostitution in the Twin Cities reporting being raped since being in prostitution, with a third of women reporting being raped "at least several times a year" by various perpetrators.⁴⁷³ These experiences can lead to complications for women's sexual and reproductive health, including pelvic pain, urinary pain, vaginal pain or discharge, gynecological infections, sexually transmitted infections, HIV/AIDS,⁴⁷⁴ and irregular or painful periods.⁴⁷⁵

⁴⁶⁹ Parriott, *supra* note 458, at 12.

⁴⁷⁰ This report is based on self-reporting by clients when they entered the program at the Women's Recovery Center. Trafficking was defined as being moved to other cities, states or countries for the purpose of prostitution. WOMEN'S RECOVERY CTR., PROSTITUTION REPORT 5 (2007); E-mail from advocate (July 30, 2008) (on file with author).

⁴⁷¹ Twelve percent of respondents did not answer this question. WOMEN'S RECOVERY CTR., *supra* note 470, at 5.

⁴⁷² Interview with advocate (Oct. 3, 2007).

⁴⁷³ This study defined rape as "being forced to have sex without giving consent, or being forced into a type of sex not agreed to." Parriott, *supra* note 458, at 12.

⁴⁷⁴ While trafficked women have concerns about sexually transmitted diseases, historically medical treatment and study of women have focused on them as vectors of disease, which has "functioned to monitor and control women in prostitution, but rarely, if ever, to medically monitor, control, or stop the more

Trafficked individuals need healthcare services for harm caused by physical assault. In addition to sexual violence, trafficked women suffer physical abuse resulting in injuries such as bruising, head trauma, fractures, and mouth and teeth injuries.⁴⁷⁶ In Ruth Parriott's 1994 study of the health of sixty-four women in prostitution, half of the women reported being physically assaulted by a patron, with a third of those women experiencing physical assaults many times a year.⁴⁷⁷

Trafficked individuals also need healthcare services to address the immediate psychological health consequences of sex trafficking. Trafficked women and girls report experiencing significant psychological trauma as a result of sex trafficking, including post-traumatic stress disorder (PTSD), anxiety disorders, dissociative disorders, personality disorders, depression, substance abuse, and chemical dependency. While women experience the most acute symptoms immediately after leaving the trafficking situation, depression, anxiety, and hostility symptoms persist for some women three months after leaving and beyond.⁴⁷⁸

In a nine-country study of people currently or recently in prostitution, researchers found that 68% met the criteria for post-traumatic stress disorder,

numerous male purchasers of sex." JANICE G. RAYMOND ET AL., A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS: PATTERNS, PROFILES AND HEALTH CONSEQUENCES OF SEXUAL EXPLOITATION IN FIVE COUNTRIES (INDONESIA, THE PHILIPPINES, THAILAND, VENEZUELA AND THE UNITED STATES) 202 (2002),

<http://action.web.ca/home/catw/attach/CATW%20Comparative%20Study%202002.pdf>. This approach fails to recognize the full

spectrum of health issues women in prostitution face, including chronic colds, complications from multiple, severe head traumas and post-traumatic stress disorder. Nonetheless, sexual violence has been acknowledged as a risk factor for HIV contraction among women. Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA & PRACTICE 33, 58 (2003) (citation omitted); see discussion in the section "Need to Address Long-Term Health Consequences of Sex Trafficking" *infra* p. 65.

⁴⁷⁵ Barton & Sachrajda, *supra* note 265, at 13.

⁴⁷⁶ RAYMOND ET AL., *supra* note 474, at 204-05.

⁴⁷⁷ Parriott, *supra* note 458, at 13.

⁴⁷⁸ ZIMMERMAN ET AL., *supra* note 24, at 13, 18. See discussion in the section "Need to Address Long-Term Health Consequences of Sex Trafficking" *infra* p. 65.

with 69% of U.S. respondents meeting the criteria.⁴⁷⁹ The severity of women's PTSD correlated with the number of types of violence women had experienced in their lives.⁴⁸⁰ Trafficked individuals experience conditions some would describe as torture. In fact, a survivor described her experience as being "brutally physical... [with] serious psychological torture."⁴⁸¹

b) NEED TO ADDRESS PRE-EXISTING HEALTH CONDITIONS

Trafficked women and girls need healthcare services to address their pre-existing health conditions. Trafficked individuals may have experienced sexual abuse, sexual assault, child abuse, fetal alcohol syndrome, chemical dependency, and other forms of physical and psychological trauma. Abuse prior to being trafficked may not only make women and girls more vulnerable to being trafficked, but also result in conditions that may be exacerbated during the trafficking experience.⁴⁸² Interviewees identified prior sexual assault or abuse as a child, including incest, as increasing the vulnerability for girls to be initiated into prostitution.⁴⁸³ In a study of Twin Cities prostituted women, 62% reported being sexually assaulted or abused in some way before they entered into prostitution.⁴⁸⁴

Another advocate noted that American Indian girls may suffer from fetal alcohol syndrome or have underdeveloped social skills that make them more vulnerable to abusers.⁴⁸⁵ A healthcare provider suggested that "a lot of social issues you see on tribal lands [...] can have a way of supporting [PTSD

and depression]. The highest rate of suicide [is] among Native teens."⁴⁸⁶

At the same time, providers should not assume every trafficked woman or girl has been sexually abused, assaulted, or suffers from some other pre-existing condition. Research shows that Hmong girls exploited in prostitution in Minnesota reported no significant incidents of sexual abuse prior to initiation into prostitution.⁴⁸⁷ In another recent study, only one of six African-American women who had experienced early childhood abuse directly linked it to her involvement in prostitution.⁴⁸⁸ The remaining respondents cited economic reasons as their primary motive.⁴⁸⁹ This evidence demonstrates the need to discuss women's experiences with them in a victim-centered and culturally-appropriate context.

c) NEED TO ADDRESS LONG-TERM HEALTH CONSEQUENCES OF SEX TRAFFICKING

Trafficked women and girls need healthcare services to address the long-term health consequences of sex trafficking as they begin to heal. A survey of twenty-one American women out of prostitution for at least eighteen months revealed that women suffer from various chronic health problems more frequently after leaving prostitution:

- 95% reported chronic problems stemming from injuries caused by violence they experienced
- 72% reported memory problems

⁴⁷⁹ Farley et al., *supra* note 474, at 33, 34, 47.

⁴⁸⁰ *Id.* at 48.

⁴⁸¹ Interview with survivor (Nov. 29, 2007).

⁴⁸² ZIMMERMAN ET AL., *supra* note 24, at 8-9.

⁴⁸³ Focus Group (Aug. 1, 2007); Focus Group (Aug. 6, 2007); see also Susan F. McClanahan et al., *Pathways into Prostitution Among Female Jail Detainees and Their Implications for Mental Health Services*, PSYCHIATRIC SERVS. 1606, 1609 (1999) (finding that 35.5% of 1,142 female offenders reported a history of child abuse).

⁴⁸⁴ Parriott, *supra* note 458, at 13.

⁴⁸⁵ Interview with advocate (Nov. 16, 2007).

⁴⁸⁶ Interview with healthcare provider (Jan. 29, 2008).

⁴⁸⁷ Laurel Edinburgh et al., *Sexual Exploitation of Very Young Hmong Girls*, 39 J. OF ADOLESCENT HEALTH 111, 115 (2006).

⁴⁸⁸ Valandra, *Reclaiming Their Lives and Breaking Free: An Afrocentric Approach to Recovery from Prostitution*, 22 AFFILIA 195, 205 (2007),

http://www.prostitutionresearch.com/pdfs/Breaking_Free_Valandra.pdf.

⁴⁸⁹ *Id.*

- 95% reported head injury
- 38% reported rapid or irregular heartbeat
- 48% reported painful menstruation.⁴⁹⁰

One interviewee listed long-term symptoms present in trafficking cases, including pelvic inflammatory disorder from sexually transmitted diseases, injuries, and chronic infections.⁴⁹¹ Headaches and abdominal pain are the two most frequent complaints, especially with chronic infections.⁴⁹² As discussed earlier, trafficked women experience physical trauma to the reproductive system and sexually transmitted diseases, both of which place women at heightened risk for reproductive organ cancers and infertility, among other health problems.⁴⁹³ A healthcare provider explained that sexually exploited women would also exhibit these chronic problems, in part because traffickers deny them access to healthcare.⁴⁹⁴

A survivor who was trafficked into prostitution described what it is like to live with chronic health issues:

I try to shut it down, what my memory comes up with. I tell myself that that's just stuff that's passed. I try to keep a spiritual connection. I only sleep two to three hours a night, and I'm very restless. I have to sleep in my own bed. My male friend sleeps in his own bed. I talk a lot in my sleep. My brain never stops. There's no peaceful, restful sleep. I wish I could sleep. I've been given stuff to relax. I have arthritis [in] some of the bones in my neck from beat downs with no medical care.⁴⁹⁵

One commentator explained that sex trafficking adversely affects women's mental health in the short- and long-term, involving "prolonged periods of

repeated or 'chronic trauma,' that results in psychological [secondary effects] that are often the most enduring and complex health outcomes among women who have been trafficked."⁴⁹⁶ Medical services often do not address these long-term psychological health issues.⁴⁹⁷

Long waits, lack of services, or trafficked persons' own resistance to services are obstacles to effective long-term treatment. A probation officer noted that the earliest she can schedule someone for a psychiatry appointment is three months, although she felt that her agency was improving.⁴⁹⁸ Another advocate observed that overall mental health issues were underserved in the Hmong community.⁴⁹⁹ A healthcare provider explained that his predominantly American Indian clients are reluctant to access any medical treatment.⁵⁰⁰ They are "resistant to dealing in the system, getting into the system, and utilizing the system [using] tools to navigate the system."⁵⁰¹

Lack of funding poses an obstacle for both mental health treatment providers and trafficked women and girls.⁵⁰² A healthcare provider explained that cognitive behavioral approaches are effective when working with trafficked juveniles, but that more funding is needed for therapists to provide these services.⁵⁰³ A youth advocate also noted the importance of fully funding care because some girls and their families cannot even afford the co-payment of a therapy visit.⁵⁰⁴

⁴⁹⁰ Farley et al., *supra* note 474, at 54.

⁴⁹¹ Interview with healthcare provider (Jan. 17, 2008).

⁴⁹² *Id.*

⁴⁹³ Parriott, *supra* note 458, at 13.

⁴⁹⁴ Interview with healthcare provider (Jan. 17, 2008).

⁴⁹⁵ Interview with advocate/survivor (Jan. 14, 2008).

⁴⁹⁶ ZIMMERMAN, *supra* note 22, at 23.

⁴⁹⁷ Interview with probation officer (Oct. 12, 2007).

⁴⁹⁸ *Id.*

⁴⁹⁹ Interview with advocate (Jan. 7, 2008).

⁵⁰⁰ Interview with healthcare provider (Jan. 29, 2008).

⁵⁰¹ *Id.*

⁵⁰² See discussion in the section "Lack of Funding and Resources" *supra* p. 36.

⁵⁰³ Interview with healthcare provider (Nov. 1, 2007).

⁵⁰⁴ Interview with advocate (Nov. 9, 2007).

A healthcare provider noted that mental health issues are time- and resource-intensive:

The deeper issues, the PTSD, are something that requires a considerable amount of time. It requires a great deal of history taking and sometimes referral to specific providers, to specialized support. [You] see other types of things, depressive disorders, mood disorders, personality disorders that are much harder to work with. Multiple personality disorder that requires another level of care.⁵⁰⁵

Good Practice for the Judiciary: Hennepin County Mental Health Court

Hennepin County Mental Health Court strives to connect eligible individuals to much needed mental healthcare services, keeping them out of jails, hospitals and detox centers and reducing recidivism. Defendants with prostitution offenses comprise 16% of the Mental Health Court's docket. This court has been praised as a highly effective solution to the revolving door of the criminal justice system for women in prostitution with mental health needs.⁵⁰⁶

⁵⁰⁵ Interview with healthcare provider (Jan. 29, 2008).

⁵⁰⁶ See generally FOURTH JUDICIAL DIST. RESEARCH DIV., EVALUATION OF THE HENNEPIN COUNTY MENTAL HEALTH COURT 4, 10 (2006), http://www.mncourts.gov/documents/4/Public/Research/MHC_eva1.doc.

RECOMMENDATIONS

Healthcare providers should develop screening and response protocols to identify and treat trafficked patients. At minimum, these protocols should address pre-existing health issues, as well as the immediate and long-term consequences of the trafficking experience. Healthcare providers should develop protocols and procedures to promote the safety and treatment of trafficked women, such as safely excluding potential traffickers from an exam room.

Healthcare providers should receive regular training on the issue of sex trafficking, applicable laws and specialized medical treatment for trafficked persons. The Legislature, state agencies, and relevant professional boards should consider amending requirements for continuing education to include training on sex trafficking and prostitution.

3. CHEMICAL DEPENDENCY TREATMENT OFTEN FAILS TO ADDRESS SPECIFIC NEEDS OF TRAFFICKED WOMEN

Recovery from trafficking and chemical dependency is extremely difficult.⁵⁰⁷ For trafficked women with substance abuse problems, chemical dependency treatment often proves unsuccessful because programs are too short and, in some cases, not covered by insurance. More critically, many chemical dependency treatment programs fail to specifically address women's individual needs or prostitution-related issues, which can contribute to relapse.

In the Parriott study of women in prostitution in the metro area, 94% self-identified as chemically addicted.⁵⁰⁸ Nearly 73% of women on probation for

⁵⁰⁷ Interview with probation officer (Oct. 12, 2007).

⁵⁰⁸ Parriott, *supra* note 458, at 10.

prostitution offenses in North Minneapolis reported drug use.⁵⁰⁹ Interviewees identified chemical dependency as a problem in the American Indian community generally and speculated that it may have a specific impact on trafficked women in that community,⁵¹⁰ with one healthcare provider reporting chemical dependency in over 90% of his predominantly Native patients.⁵¹¹

Drug use or chemical dependency may have led women into prostitution or been used by a trafficker as an enticement.⁵¹² Women may also use drugs as a survival strategy to tolerate prostitution. In some cases, women may have drug dealers who also function as pimps and traffickers. As one service provider said, “The dope dealers are the pimp. They will fix your debt for a [sexual favor] behind their house.”⁵¹³ She added that the women would not characterize the relationship in those terms,⁵¹⁴ yet this controlling relationship may constitute trafficking.

Chemical dependency often keeps women trapped in prostitution.⁵¹⁵ A law enforcement officer observed that most women in street-level prostitution were addicts.⁵¹⁶ A healthcare provider noted that for the 9% of her juvenile clients in prostitution, many were motivated by drugs or a place to stay.⁵¹⁷

Chemical dependency also damages women’s physical health. A survivor commented that “drugs are not drugs anymore. It’s not so much ‘coke,’ instead it’s carbon monoxide and bleach in crack cocaine. That does serious permanent damage in the brain.”⁵¹⁸ Women who use drugs are at risk for contracting other diseases, such as HIV or hepatitis in the case of intravenous drug users.⁵¹⁹

The duration of many drug treatment programs is often too short for trafficked persons. Most drug treatment programs run for twenty-eight days. One advocate explained that it was unrealistic to expect someone to become sober in that short period of time.⁵²⁰ In her experience, people enter treatment heavily addicted.⁵²¹ It takes two weeks for their bodies to detoxify leaving them only two more weeks in the program.⁵²² For chronic users, “it’s ludicrous to think, ‘go for twenty-eight days and you’ll be cured.’”⁵²³ A client from Breaking Free in St. Paul agreed with this observation: “The [counselors] don’t understand that it’s taken me thirty years to get this way, and it’s unrealistic to think that a ninety-six-day treatment program is going to help me just start feeling and sharing emotions, especially in front of strangers.”⁵²⁴ This advocate reported seeing women who have attended six or seven short-term inpatient treatments and none have worked.⁵²⁵

Chemically dependent women may lack health insurance coverage for treatment programs, which makes treatment cost-prohibitive. An advocate reported that in cases where women attend treatment programs and subsequently relapse, women often want to return to treatment or are court-ordered to do so. If women attend treatment too frequently, private insurance companies or the state-funded Consolidated Chemical Dependency

⁵⁰⁹ MARTIN & RUD, *supra* note 74, at 10. Drug use is not equivalent to chemical dependency, but may indicate current or future chemical dependency issues.

⁵¹⁰ Interview with healthcare provider (Jan. 29, 2008); Interview with advocate (Dec. 5, 2007).

⁵¹¹ Interview with healthcare provider (Jan. 29, 2008).

⁵¹² *Id.*

⁵¹³ Interview with advocate/survivor (Jan. 14, 2008).

⁵¹⁴ *Id.*

⁵¹⁵ Interview with advocate (Nov. 26, 2007); Interview with prosecutor (Jan. 2, 2008); Interview with survivor (Nov. 29, 2007); Interview with advocate/survivor (Jan. 14, 2008).

⁵¹⁶ Interview with law enforcement officer (Oct. 4, 2007).

⁵¹⁷ Interview with healthcare provider (Nov. 1, 2007); *see also* Dan Browning & Pam Louwagie, *One Girl’s Ordeal of Terror*, STAR TRIBUNE, Oct. 8, 2005, <http://www.startribune.com/local/11594646.html?pt=y> (last visited Aug. 16, 2008) (gang member provided young Hmong girl methamphetamines); *Chang v. Minnesota*, 521 F.3d 828, 830 (8th Cir 2008) (Chang provided Hmong girls with methamphetamine); *State v. Loewen*, 2003 Minn. App. LEXIS 790 (Minn. Ct. App. July 1, 2003) (defendant had 16 year-old boy perform oral sex in exchange for marijuana).

⁵¹⁸ Interview with advocate/survivor (Jan. 14, 2008).

⁵¹⁹ Parriott, *supra* note 458, at 11.

⁵²⁰ Interview with advocate (Oct. 12, 2007).

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Id.*

⁵²⁴ Valandra, *supra* note 489, at 202.

⁵²⁵ Interview with advocate (Oct. 12, 2007).

Treatment Fund⁵²⁶ will not cover additional treatment.⁵²⁷ An advocate reported that the restrictions are even more stringent regarding in-patient treatment.⁵²⁸

Interviewees stressed the importance of addressing women's individual needs in chemical dependency treatment. State rules governing licensure of chemical dependency treatment facilities provide that "treatment services provided to individual clients must be provided according to the individual treatment plan and must address cultural differences and special needs of all clients."⁵²⁹ A client from Breaking Free suggested that "counselors need to assess women's needs and help them get into the right programs. One size fits all doesn't work. Treatment can help you stay sober, but it can't teach you how to live."⁵³⁰ Other interviewees echoed this sentiment, emphasizing the importance of listening and accepting people "where they are at."⁵³¹

On its own, chemical dependency treatment may prove ineffective for trafficked women unless it also address prostitution-related issues. Healthcare providers, judges, and advocates often know how to screen and refer for chemical dependency issues, but not for trafficking and prostitution.⁵³² For trafficked women, addressing the chemical dependency alone is ineffective because it ignores the mental health and prostitution-related issues they face.⁵³³ Based on her clients' experiences, one advocate said:

I think they need to deal more with the mental health, chemical dependency and the prostitution. And it must be together and must be at least sixty days...A lot of times, one of them was never diagnosed.⁵³⁴

RECOMMENDATIONS

Chemical dependency treatment centers should offer long-term, in-patient care that stresses an individual's needs, including their experiences in prostitution. The Minnesota Department of Human Services should consider amending its rules to require chemical dependency facilities serving women in prostitution to address prostitution-related issues as part of patients' treatment. It should also consider amending its rules to require all chemical dependency counselors and directors to receive training on sex trafficking. It should also ensure that the Consolidated Chemical Dependency Treatment Fund covers chemical dependency treatment for trafficked women.

4. NEED FOR CULTURALLY-SPECIFIC, LANGUAGE-ACCESSIBLE, AND CONFIDENTIAL HEALTHCARE SERVICES

The provision of effective medical care, mental healthcare and chemical dependency treatment for trafficked persons may be impeded by the lack of culturally-specific and language-accessible services and the lack of preservation of confidentiality in healthcare settings.

A lack of understanding of an individual's culture will frequently discourage women from seeking care. A healthcare provider who works with many American Indians described a pervasive "hesitancy to get involved with the system, even signing up for health insurance."⁵³⁵ He added that there is a reluctance to call the police or access social services because

⁵²⁶ This program will pay the entire cost of chemical dependency treatment for eligible applicants. To be eligible for this fund, an individual must be eligible for the Minnesota Family Investment Plan (the state's welfare program); medical assistance; general assistance, general assistance medical care, or work readiness; or earn income within current household size and income guidelines for entitled persons. MINN. R. 9530.7015, subp. 1 (2008); see also MINN. STAT. § 254B.04 (2007).

⁵²⁷ MINN. R. 9530.7015, subp. 1; see also MINN. STAT. § 254B.04; Interview with advocate (May 16, 2008).

⁵²⁸ Interview with advocate (May 16, 2008).

⁵²⁹ MINN. R. 9530.6430, subp. 1(B) (2008).

⁵³⁰ Valandra, *supra* note 489, at 202.

⁵³¹ Interview with advocate (Dec. 21, 2007); Interview with advocate/survivor (Jan. 14, 2008).

⁵³² Interview with healthcare provider (Jan. 29, 2008).

⁵³³ Interview with advocate (Dec. 21, 2007); Interview with advocate (Oct. 12, 2007).

⁵³⁴ Interview with advocate (Oct. 12, 2007).

⁵³⁵ Interview with healthcare provider (Jan. 29, 2008).

“there are stories out there that people are worse off than before.”⁵³⁶ Knowing this, the service provider understood the need to build a trusting relationship over time: “It’s a thing of comfort. The Native community trusts me because I’ve been here a long time.”⁵³⁷

Interviewees also emphasized the importance of addressing cultural beliefs about gender roles. One healthcare provider reported knowing male nurses who do not feel comfortable asking challenging follow-up questions when they hear stories that raise red flags.⁵³⁸ However, an advocate noted that while her agency tries to make a female nurse available, some trafficked women and girls prefer to have a male healthcare provider.⁵³⁹

Interviewees reported a shortage of interpreters, “especially for more obscure languages.”⁵⁴⁰ Interviewees noted attempts to hire multi-lingual and multicultural staff members to fill these gaps.⁵⁴¹

Interviews also revealed concerns about the quality of interpretation in healthcare settings. Unlike court interpreters, interpreters in healthcare settings are not required to be certified.⁵⁴² No professional standards exist for interpretation in medical institutions, although medical institutions accepting federal funding, such as Medicare and Medicaid, must comply with the limited English proficiency requirements of Title VI of the Civil Rights Act.⁵⁴³

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ Interview with healthcare provider (Jan. 17, 2008).

⁵³⁹ Interview with advocate (Nov. 26, 2007).

⁵⁴⁰ Interview with judge (Jan. 3, 2008); Interview with healthcare provider (Jan. 4, 2008).

⁵⁴¹ Interview with healthcare provider (Jan. 23, 2008).

⁵⁴² The Minnesota Judicial Branch is committed to providing access to justice to everyone, regardless of the language they speak. To ensure that individuals receive a fair opportunity to explain their case and participate in court, the Minnesota Supreme Court created the Court Interpreter Training and Certification Program, the Code of Professional Responsibility for Interpreters, and rules that explain the role of interpreters in court. Minn. Judicial Branch, Court Interpreters, <http://www.mncourts.gov/?page=304> (last visited Aug. 24, 2008)

⁵⁴³ Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000); Civil Rights Act, Title VI, 42 U.S.C. § 2000d et seq.; *see generally* MINN. ADVOCATES FOR HUMAN RIGHTS, THE GOVERNMENT

Interpreters must understand medical terminology and the potentially life-threatening consequences of failing to get treatment for certain health conditions. A judge verified that interpretation was a problem before cases reach his courtroom, particularly in medical settings.⁵⁴⁴

Interviewees cited problems with interpreters providing inaccurate interpretations. For example, one interviewee noted: “Sometimes you ask the patient a question through the interpreter [and] the person is talking for a long time. Then the interpreter translates the person’s response as ‘no.’”⁵⁴⁵ Another healthcare provider echoed this concern, commenting that misinterpretation is always a concern when working with non-professional interpreters.⁵⁴⁶

One healthcare provider described a troubling situation where she relied on an interpreter to independently provide information about a patient’s history: “[a] lot happens before or after the actual doctor’s appointment... [the interpreter’s] perception is very helpful and acts as a trigger. I really trust their intuition.”⁵⁴⁷ While interpreters may provide an important bridge between the healthcare provider and patient, it is inappropriate for healthcare providers to learn more about a patient through the interpreter than from talking directly with the patient.⁵⁴⁸

RESPONSE TO DOMESTIC VIOLENCE AGAINST REFUGEE AND IMMIGRANT WOMEN IN THE MINNEAPOLIS/ST. PAUL METROPOLITAN AREA: A HUMAN RIGHTS REPORT 122-125 (2004), http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/FINAL_REPORT_Dec_10_2004_2.pdf (discussing issues with interpretation in healthcare facilities).

⁵⁴⁴ Interview with judge (Jan. 3, 2008).

⁵⁴⁵ Interview with healthcare provider (Feb. 11, 2008).

⁵⁴⁶ Interview with healthcare provider (Jan. 17, 2008).

⁵⁴⁷ Interview with healthcare provider (Jan. 4, 2008).

⁵⁴⁸ Minnesota Statute section 595.02(h) provides that

[a]n interpreter for a person disabled in communication shall not, without the consent of the person, be allowed to disclose any communication if the communication would, if the interpreter were not present, be privileged. For purposes of this section, a “person disabled in communication” means a person who, because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language, is

Trafficked persons are often concerned about confidentiality. Minnesota law provides for the confidentiality of a patient's treatment and medical information.⁵⁴⁹ An interviewee who has worked with some trafficked juveniles emphasized that in many cases, patients will only share information with her after building a trusting relationship.⁵⁵⁰ Another healthcare provider echoed the importance of building up trust because, in most cases, trafficking does not present itself as the primary health issue.⁵⁵¹ Of the 79% of Twin Cities prostituted women surveyed who believed that they had a place to go for primary healthcare, only 35% actually told their provider about their experience of being prostituted.⁵⁵² Given the acute awareness trafficked women have of the stigma around prostitution,⁵⁵³ they might be even more disinclined to share stories with a small-town healthcare provider. A provider from Greater Minnesota shared the story of a sexual assault victim who feared losing her business if she was identified.⁵⁵⁴ She explained, "Many people ...think, 'If I go in [to the clinic], what if my next door neighbor is at the desk?' They have a fear of going back into the community."⁵⁵⁵

Women may also be reluctant to share information about prostitution due to a fear the doctor will disclose such information to authorities, and it will negatively impact their chances of getting custody of their children.⁵⁵⁶ A provider noted that women may

unable to understand the proceedings in which the person is required to participate. The presence of an interpreter as an aid to communication does not destroy an otherwise existing privilege.

MINN. STAT. § 595.02(h) (2007).

⁵⁴⁹ *Id.* § 144.651, subds. 15, 16 (treatment privacy and confidential treatment of patient records); *Id.* § 254A.09 (confidentiality of records for alcohol and drug abuse treatment).

⁵⁵⁰ Interview with healthcare provider (Jan. 23, 2008).

⁵⁵¹ Interview with healthcare provider (Jan. 29, 2008).

⁵⁵² Parriott, *supra* note 458, at 13.

⁵⁵³ *See, e.g.*, Interview with advocate (Oct. 3, 2007); Interview with survivor (Nov. 29, 2007).

⁵⁵⁴ Interview with healthcare provider (Jan. 17, 2008).

⁵⁵⁵ *Id.*

⁵⁵⁶ In the 1994 study of Twin Cities women in prostitution, the illegality of their activities, the stigma of prostitution, drug use, threats from pimps and abusive partners, and the fear of losing children to child protection influenced their decisions not to tell of their history in prostitution. Interestingly, among women who told

seek healthcare pursuant to a mandate from the legal system related to regaining custody of their children.⁵⁵⁷ But the failure to disclose information will likely impact the healthcare they receive.⁵⁵⁸

RECOMMENDATIONS

Healthcare providers should ensure that treatment is sensitive to culture and language. They should also ensure that information about trafficked patients remains confidential, as specified by law. The Legislature, Minnesota Department of Human Services, and relevant professional boards should consider promulgating a code of ethics and certification process for interpreters in medical settings modeled on the Minnesota Court Interpreter Program.

their providers, 90% would tell again and none reported negative experiences due to the disclosure. Parriott, *supra* note 458, at 14.

⁵⁵⁷ Interview with healthcare provider (Jan. 29, 2008).

⁵⁵⁸ Parriott, *supra* note 458, at 13.

F. PUBLIC ASSISTANCE

As discussed throughout this report, trafficked persons have immediate and long-term needs that require diverse, specialized services. The Trafficking Victims Protection Act (“TVPA”) recognized that access to federal and state public assistance in the form of food stamps, medical insurance, public housing programs, Section 8 housing vouchers,⁵⁵⁹ employability services,⁵⁶⁰ and cash assistance programs provides trafficked women and children with a safety net as they attempt to leave the trafficking situation.⁵⁶¹ These benefits are crucial due to the finite resources of service providers, as discussed above.⁵⁶²

Accordingly, the TVPA established a “certification process” for the Department of Health and Human Services (“HHS”) to grant victims of “severe forms of trafficking” access to public benefits to the same extent as refugees.⁵⁶³ Few trafficked persons, however, access these benefits due to the requirement that they be willing to assist in “every reasonable way in the investigation and prosecution” of their traffickers.⁵⁶⁴ Additionally, access to these generous benefits is limited to eligible foreign nationals, which precludes U.S. citizens and lawful permanent residents (“LPRs”) from qualifying.⁵⁶⁵

⁵⁵⁹ Section 8 vouchers allow recipients to choose their own housing from private landlords who accept the vouchers. The public housing authority (“PHA”) then pays the landlord a portion of the rent. 24 C.F.R. § 982.1(b) (2007); U.S. Dep’t of Housing & Urban Dev., Section 8 Rental Voucher Program, <http://www.hud.gov/progdesc/voucher.cfm> (last visited Aug. 24, 2008).

⁵⁶⁰ Services include instruction in English as a Second Language (“ESL”), employment assessment services, on-the-job training, day care, transportation and case management. 45 C.F.R. § 400.154.

⁵⁶¹ TVPA § 107(b)(1)(A), 114 Stat. at 1475 (codified at 22 U.S.C. § 7105(b)(1)(A) (2007)); see also SENIOR POLICY OPERATING GROUP ON TRAFFICKING IN PERSONS, FINAL REPORT AND RECOMMENDATIONS (2007), <http://www.acf.hhs.gov/trafficking/SPOGReport-Final9-5-07.pdf> (overview of all services available to foreign national and U.S. national trafficked persons).

⁵⁶² See discussion in the section “Non-Profit Organizations” *supra* p. 50.

⁵⁶³ TVPA § 107(b)(1)(E), 114 Stat. at 1475 (codified at 22 U.S.C. § 7105(b)(1)(E) (2007)).

⁵⁶⁴ 22 U.S.C. § 7105(b)(1)(E) (2007).

⁵⁶⁵ *Id.* § 7105(b)(1)(A).

Linking receipt of long-term public assistance to cooperation with law enforcement deprives many trafficked adults of public assistance.⁵⁶⁶ It also contravenes the *United Nations Recommended Principles and Guidelines*, which state that protection of trafficked persons “shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.”⁵⁶⁷ To receive HHS certification as a victim of a “severe form of trafficking,” a person must be:

1. willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and
2. either have made a bona fide application for a T visa or received the temporary status of continued presence from Citizenship and Immigration Services (“CIS”).⁵⁶⁸

This provision places law enforcement in a gate-keeping role, determining which trafficked persons receive benefits.⁵⁶⁹ Service providers cannot provide clients access to long-term public benefits without the assistance of law enforcement.⁵⁷⁰ As discussed in depth in the “Law Enforcement” section of this report, trafficked persons are often reluctant to approach or cooperate with law enforcement due to previous negative experiences with law enforcement, fear of punishment, fear of removal from the country, or a host of other reasons. Thus, in one service provider’s experience, “most people

⁵⁶⁶ This section will focus on the process for adult certification because interviews revealed no cases of trafficked minors applying for federal benefits based on their status as a victim of a “severe form of trafficking.” It is important to note that the process for children differs. The Department of Health and Human Services issues “letters of eligibility” to children to receive public benefits. However, through fiscal year 2007, only 131 minors have received these letters. U.S. DEP’T OF JUSTICE, *supra* note 154, at 4.

⁵⁶⁷ U.N. Econ. & Soc., *supra* note 68, princ. 8.

⁵⁶⁸ 22 U.S.C. § 7105(b)(1)(E)(i).

⁵⁶⁹ This problem also arises when trafficked persons seek temporary and permanent immigration status. See discussion in the section “Immigration Relief” *infra* p. 79.

⁵⁷⁰ See Interview with advocate (Oct. 26, 2007).

do not want to be certified.⁵⁷¹ Interviews revealed that very few trafficked women had received this certification and the resulting public assistance in Minnesota.⁵⁷² Nationwide, the certification process has yielded only 1,379 certifications for all victims of human trafficking from fiscal year 2001 through fiscal year 2007.⁵⁷³

An additional problem is the exclusion of U.S. citizens (“USCs”) and LPRs from receiving public assistance designated for victims of “severe form[s] of trafficking.”⁵⁷⁴ This policy ignores the fact that USCs and LPRs face many of the same barriers as foreign nationals: loss of personal identification documents, threats to personal safety, lack of services tailored to trafficked persons and an inability to find employment or housing.⁵⁷⁵

LPRs, commonly referred to as “green card” holders, are not specifically barred by statute from being certified as victims or applying for a T visa. However, limited federal mandates that focus on the trafficking of non-USCs and non-LPRs make it unlikely that trafficked LPRs would receive the necessary support from federal law enforcement officers to be certified as a victim of a severe form of trafficking or to receive a T visa.⁵⁷⁶

⁵⁷¹ *Id.*

⁵⁷² Interview with attorney (Oct. 24, 2007) (discussing problems with benefits after receiving continued presence); Interview with attorney (Oct. 16, 2007); Interview with attorney (Nov. 20, 2007); Interview with advocate (Oct. 26, 2007).

⁵⁷³ U.S. DEP’T OF JUSTICE, *supra* note 154, at 4 (2008). The number of certifications does not correspond to the number of T visas granted to trafficking victims because certified individuals may not apply for a T visa. See discussion in the section “T Visa” *infra* p. 81.

⁵⁷⁴ See 22 U.S.C. § 7105(b)(1)(A) (2007).

⁵⁷⁵ POLARIS PROJECT, *supra* note 230, at 1, 2, 3. However, U.S. citizens do not have comparable issues with language barriers or immigration status.

⁵⁷⁶ For example, federal funding for the local Sergeant Gerald D. Vick Human Trafficking Task Force is designated only for the trafficking of non-USCs and non-LPRs. See U.S. DEP’T OF JUSTICE, JOINT CALL FOR FY 2005 HUMAN TRAFFICKING TASK FORCE AND VICTIM SERVICES CONCEPT PAPERS 5 (2005), <http://www.ojp.usdoj.gov/BJA/grant/05HTTFsol.pdf>; U.S. DEP’T OF JUSTICE, OVC FY08 SERVICES FOR HUMAN TRAFFICKING VICTIMS 1 (2008) (on file with author).

Policymakers have justified excluding USCs and LPRs based on the mistaken notion that these groups are already eligible for public benefits.⁵⁷⁷ In actuality, these groups are often ineligible for public assistance. For example, trafficked USCs and LPRs may have criminal histories that render them ineligible for some public benefits, such as public housing.⁵⁷⁸ According to the anti-trafficking organization Polaris Project, USC trafficking victims may not be eligible for Temporary Assistance for Needy Families (“TANF”) because it is only available to persons with children.⁵⁷⁹ Moreover, TANF requires participation in jobs that may be too demanding of trafficking victims, given the program’s timeframes and lack of supportive services for jobholders.⁵⁸⁰ LPRs face a five-year waiting period before they may receive many forms of federal means-tested public benefits, including TANF, food stamps, Medicaid and the State Children’s Health Insurance Program (SCHIP).⁵⁸¹ All of these factors indicate that parity in aid and services is essential for all trafficked women and girls, regardless of their nationality or immigration status.⁵⁸²

⁵⁷⁷ POLARIS PROJECT, *supra* note 230, at 4 (2007); see SENIOR POLICY OPERATING GROUP ON TRAFFICKING IN PERSONS, *supra* note 561, at 7-8 (chart of services available to foreign national and U.S. citizen trafficked persons).

⁵⁷⁸ POLARIS PROJECT, *supra* note 230, at 2; see also Margaret Baldwin, *Living in Longing: Prostitution, Trauma Recovery and Public Assistance*, in PROSTITUTION TRAFFICKING AND TRAUMATIC STRESS 267 (Melissa Farley ed. 2003) (discussing unique obstacles women in prostitution may have when seeking public assistance); HUMAN RIGHTS WATCH, NO SECOND CHANCE: PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING (2004), <http://www.hrw.org/reports/2004/usa1104/usa1104.pdf>.

⁵⁷⁹ POLARIS PROJECT, *supra* note 230, at 2.

⁵⁸⁰ *Id.* at 2.

⁵⁸¹ SENIOR POLICY OPERATING GROUP ON TRAFFICKING IN PERSONS, *supra* note 561, at 9.

⁵⁸² POLARIS PROJECT, *supra* note 230, at 3.

**Good Practice for Data Collection and Advocacy:
Breaking Free Pilot Project**

In 2007, in conjunction with the Polaris Project, Breaking Free began collecting data on the number of U.S. citizens who qualified as victims of “severe forms of trafficking.” Breaking Free developed an application to capture relevant information about U.S. citizens’ trafficking experiences to submit to HHS for certification. As of February 2008, Breaking Free had submitted seventy applications and already had thirty that were certified as “victims of severe forms of trafficking.” Current limitations in the federal laws prohibit participants from accessing federal benefits, as discussed in this section. However, data from this project document the extent of sex trafficking among U.S. citizens and their need for public benefits. Using materials developed by Breaking Free, the Polaris Project has expanded this project to a nationwide level.

RECOMMENDATIONS

Congress should amend federal law and regulations to ensure that access to public benefits is not contingent on assisting with the investigation or prosecution of traffickers. It should also amend federal law and regulations to ensure that access to public benefits based on status as a victim of a “severe form of trafficking” is not restricted based on nationality or immigration status. The Legislature should ensure that state legislation reflects these principles.

G. CHILD PROTECTION SERVICES

Trafficked girls are not adequately served by Child Protection Services in Minnesota. County welfare agencies throughout Minnesota are charged with responding to reports of abuse or neglect of children by their parents or guardians. Trafficked girls or girls at risk of being trafficked may be the subject of reports of abuse or neglect. The response of Child Protection Services to these reports can impact girls' ability to either leave or avoid a trafficking situation.

Child abuse and neglect are defined by both federal and state laws, although state laws are more relevant for this report due to the primary role of state agencies in administering child welfare laws.⁵⁸³ In addition, the Indian Child Welfare Act ("ICWA") establishes unique procedures in tribal courts that accept jurisdiction to handle allegations of abuse or neglect involving enrolled members of Indian tribes.⁵⁸⁴ Minnesota's policy is to

protect children whose health or welfare may be jeopardized through physical abuse, neglect or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment.⁵⁸⁵

To further this policy, county Child Protection Services ("CPS") workers must investigate reports of abuse or neglect by parents, guardians or other persons responsible for caring for a child⁵⁸⁶ within forty-five days of receiving the report.⁵⁸⁷ If a CPS worker determines that maltreatment occurred and that services are needed in the family, CPS will notify the parent of their decision and the parents' rights of review.⁵⁸⁸ CPS will create a plan for services such as counseling and educational programming for the family.⁵⁸⁹ If the investigation finds the child's residence unsafe, CPS may remove the child for temporary placement with relatives, in foster care or in group homes for juveniles.⁵⁹⁰ If the parents do not agree to allow the child to be removed, CPS must obtain a court order to do so.⁵⁹¹ Law enforcement officers have authority to remove children from the home if the child's health or welfare is endangered.⁵⁹² Egregious cases may result in on-going services from CPS⁵⁹³ or even permanent loss of child custody.⁵⁹⁴ Parents or guardians who disagree with a maltreatment determination may contest the decision in court.⁵⁹⁵

Due to limited resources and a narrow mandate, the CPS system is not properly equipped to prevent trafficking. CPS declines to take most cases involving trafficked girls. As a result, these children miss a vital opportunity to be directed to state resources, which although imperfect, may preclude their entry into prostitution or hasten their exit.

⁵⁸³ See 42 U.S.C. § 5101 *et seq.* (2007); *Id.* § 5116 *et seq.*; 45 C.F.R. § 1340 (2007); MINN. STAT. § 626.556 (2007).

⁵⁸⁴ Pub. L. No. 95-608, §§ 1901 *et seq.*, 92 Stat. 3069 (1978); see also 25 C.F.R. § 23. In addition, Minnesota has recently implemented the American Indian Child Welfare Initiative. This project transfers authority and responsibility for responding to reports of child abuse and neglect from Minnesota counties to the appropriate tribes. The project is currently in place with the Leech Lake Band of Ojibwe and White Earth Band of Ojibwe. Press Release, Minn. Dep't of Human Servs., Two Tribal Nations to Provide Full Array of Child Welfare Services (May 9, 2008), http://www.dhs.state.mn.us/main/groups/agencywide/documents/pub/dhs16_141318.pdf.

⁵⁸⁵ MINN. STAT. § 626.556, subd. 1.

⁵⁸⁶ *Id.* § 626.556, subd. 2(e).

⁵⁸⁷ *Id.* § 626.556, subd. 10e.

⁵⁸⁸ *Id.* § 626.556, subd. 10f.

⁵⁸⁹ This can be done voluntarily or pursuant to a court order. *Id.* § 626.556, subds. 10f, 10m.

⁵⁹⁰ *Id.* § 626.556, subd. 10(e)(4).

⁵⁹¹ *Id.* § 260C.201.

⁵⁹² *Id.* § 260C.175(b).

⁵⁹³ Interview with child protection worker (Mar. 7, 2008).

⁵⁹⁴ MINN. STAT. § 260C.301.

⁵⁹⁵ *Id.* §§ 626.556, subd. 10i & 626.022.

1. CPS FAILS TO PREVENT SEX TRAFFICKING

Interviews revealed that CPS' inaction can contribute to the risk factors for the sex trafficking of girls. While interviewees recognized the constraints CPS faces,⁵⁹⁶ many expressed a desire for reforms to the CPS system and ultimately greater CPS involvement on the issue of sex trafficking of juveniles.⁵⁹⁷

Advocates reported that CPS is generally unresponsive to complaints regarding children age twelve or older, regardless of whether they were trafficked.⁵⁹⁸ This focus on younger children excludes most trafficked girls, who are initially trafficked at the age of twelve to sixteen years old, on average.⁵⁹⁹ CPS has jurisdiction to take cases involving older children,⁶⁰⁰ but an advocate stated that "Child Protection just does not want to hear about the fourteen year olds [who] are raped."⁶⁰¹ After sharing stories of cases CPS declined, an advocate expressed the desire to better understand which cases CPS accepts.⁶⁰² In one healthcare provider's experience, CPS requires clear physical marks like bruises to take cases involving older children.⁶⁰³ But CPS' mandate includes not only cases that might leave physical marks, such as cases involving physical⁶⁰⁴ and sexual abuse,⁶⁰⁵ but also cases of maltreatment less likely to leave marks, such as those involving threatened injury,⁶⁰⁶ mental injury,⁶⁰⁷ emotional harm⁶⁰⁸ and neglect.⁶⁰⁹

⁵⁹⁶ Interview with advocate (Feb. 13, 2008); Interview with advocate (Oct. 3, 2007).

⁵⁹⁷ Interview with advocate (Nov. 9, 2007).

⁵⁹⁸ *Id.* (problems with CPS taking cases of twelve year olds); see also Interview with healthcare provider (Jan. 23, 2008) (problems with CPS taking cases of children fourteen and older); Interview with advocate (Oct. 3, 2007) (problems with CPS taking cases of fourteen to fifteen year olds).

⁵⁹⁹ See *supra* p. 23.

⁶⁰⁰ See MINN. STAT. § 626.556 (2007) (cross-referencing Minnesota statutes defining "minor").

⁶⁰¹ Interview with advocate (Oct. 3, 2007).

⁶⁰² Interview with advocate (Feb. 13, 2008).

⁶⁰³ Interview with healthcare provider (Jan. 23, 2008).

⁶⁰⁴ MINN. STAT. § 626.556, subd. 2(g)(1)-(10).

⁶⁰⁵ *Id.* § 626.556, subd. 2(d).

⁶⁰⁶ *Id.* § 626.556, subd. 2(n)(1)-(4).

⁶⁰⁷ *Id.* § 626.556, subd. 2(m).

⁶⁰⁸ *Id.* § 626.556, subd. 2(f)(9).

Advocates attributed the lack of response to these cases to CPS' limited and outmoded resources, which one advocate characterized as targeted to helping children who are too young to run away.⁶¹⁰

Moreover, many trafficked girls first experience some form of maltreatment at home, causing them to run away and become homeless and vulnerable to traffickers/pimps.⁶¹¹ A county prosecutor described a recent case involving trafficked girls.⁶¹² One of the victims had been raped by her brother. She was permanently removed from her home based on the mother's failure to protect her.⁶¹³ The girl had run away from her placement and the would-be traffickers met her at a strip mall where she had been exchanging sex for food and shelter.⁶¹⁴ The national child advocacy group End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes ("ECPAT") concluded that "[i]ntra-familial abuse is a short step to prostitution."⁶¹⁵

CPS' general failure to systematically screen children for sexual abuse or sexual activity may result in a missed opportunity to identify children at risk of trafficking. Minnesota law does not require CPS workers to screen children for this information.⁶¹⁶ The law only requires CPS workers to gather information that is relevant to the assessment or a criminal investigation.⁶¹⁷ As such, many CPS workers focus on the issues underlying

⁶⁰⁹ See *Id.* § 626.556, subd. 2(e).

⁶¹⁰ Interview with advocate (Nov. 9, 2007); see also Interview with advocate (Oct. 3, 2007) (characterizing CPS as "antiquated"); Interview with advocate (Feb. 13, 2008).

⁶¹¹ Interview with advocate (Nov. 9, 2007).

⁶¹² This case did not result in charges of sex trafficking, although the defendants were found guilty of other crimes. Interview with prosecutor (Jan. 15, 2008).

⁶¹³ *Id.*

⁶¹⁴ *Id.*

⁶¹⁵ SARA ANN FRIEDMAN, ECPAT-USA, INC., ALTERNATIVE REPORT TO THE INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE UN COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY 20 (2007), <http://www.ecpatusa.org/pdfs/AlternativeReportUSAFinal2007.pdf>

⁶¹⁶ See MINN. STAT. § 626.556, subd. 10(h) (2007).

⁶¹⁷ *Id.*

the initial report of maltreatment and may not ask additional questions on seemingly unrelated topics.⁶¹⁸ Although the law requires training for CPS workers on screening tools for domestic violence,⁶¹⁹ it does not require training on sex trafficking or prostitution.⁶²⁰ An experienced CPS worker stated that he tries to ask about these issues in a non-threatening way, even if the report was based on a seemingly unrelated issue like educational neglect.⁶²¹ However, he believed that “we should be doing [these screenings] with every kid.”⁶²²

Finally, experienced advocates cited a relationship between CPS’ failure to provide adequate exit services for youths leaving foster care and their subsequent sex trafficking.⁶²³ Many parents of children who either live in foster care or are wards of the state have had their parental rights terminated.⁶²⁴ Minnesota law requires the creation of an independent living plan for children age sixteen or older who leave foster care or state wards and will not return to their parents.⁶²⁵ Counties must assure that children “leave out-of-home care with a high school diploma; employment and/or acceptance to post-secondary education; healthcare coverage; a savings account; a safe and affordable place to live; a means of transportation; knowledge of community resources; and connections to positive adults and family members.”⁶²⁶ This obligation, however, does not apply to children in foster care whose parents have not permanently lost custody. For eligible children, an advocate indicated that these plans frequently are not comprehensive enough.⁶²⁷

Independent living plans require coordinated, comprehensive follow-through by county case workers to be effective.⁶²⁸ An advocate noted that this issue has been gaining attention recently.⁶²⁹

2. CPS DECLINES MOST CASES INVOLVING TRAFFICKED GIRLS

A more fundamental obstacle in cases of trafficked girls stems from CPS’ narrow mandate to investigate only cases of actual or potential abuse or neglect by parents, guardians or other persons responsible for a child.⁶³⁰ Although interviewees reported some examples of sex trafficking of children by their parents,⁶³¹ in most cases, girls’ traffickers are not their parents.⁶³² For cases involving abuse by someone besides a parent or guardian, CPS must refer these cases to the appropriate law enforcement agencies.⁶³³ In 2007, ECPAT reported that this problem occurs across the United States.⁶³⁴

As a result, most trafficked girls are not eligible for the county services and resources available to children who are the subject of a CPS report, such as therapy or medical care.⁶³⁵ The inability to access county services leaves few options for organizations working to assist and protect youth. Organizations working with youth have limited resources, especially for housing.⁶³⁶

⁶¹⁸ Interview with child protection worker (Mar. 7, 2008).

⁶¹⁹ MINN. STAT. § 626.559, subd. 2(5).

⁶²⁰ See Interview with child protection worker (Mar. 7, 2008).

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ Interview with advocate (Nov. 9, 2007); Interview with advocate (Oct. 3, 2007).

⁶²⁴ MINN. DEP’T OF HUMAN SERVS., HELPING YOUTH TRANSITION FROM OUT-OF-CARE TO ADULTHOOD: BEST PRACTICES GUIDE 3 (2006), http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_FILE&RevisionSelectionMethod=LatestReleased&Rendition=Primary&allowInterrupt=1&noSaveAs=1&dDocName=dhs_id_057253.

⁶²⁵ MINN. STAT. § 260C.212(1)(8) (2007).

⁶²⁶ MINN. DEP’T OF HUMAN SERVS., *supra* note 624, at 3.

⁶²⁷ Interview with advocate (Oct. 3, 2007).

⁶²⁸ Minnesota Coalition for the Homeless, Best Practices for Transitioning Youth,

<http://www.mnhomelesscoalition.org/resources/toolkits/foster-care-toolkit/practices/> (last visited Aug. 25, 2008).

⁶²⁹ Interview with advocate (Nov. 9, 2007).

⁶³⁰ MINN. STAT. § 626.556, subd. 2(e); see Interview with advocate (May 29, 2008).

⁶³¹ Interview with law enforcement officer (Oct. 4 2007); Interview with advocate/survivor (Jan. 14, 2008); Interview with advocate (May 29, 2008).

⁶³² Interview with child protection worker (Mar. 7, 2008).

⁶³³ MINN. STAT. § 626.556, subd. 10a.

⁶³⁴ FRIEDMAN, *supra* note 615, at 10, 20, 23.

⁶³⁵ See Interview with advocate (Nov. 9, 2007).

⁶³⁶ *Id.*; see discussion of emergency and temporary housing for trafficked women and girls in the section “Non-Profit Organizations” *supra* p. 50.

Actually, CPS may have broader jurisdiction. Minnesota law defines the failure to protect a child from conditions or actions that “seriously endanger a child’s physical or mental health” as a form of neglect.⁶³⁷ An example of this form of neglect includes a parent’s failure to take action to protect a child from a person who poses a “serious threat to the child’s safety” or “presents a sexual threat.”⁶³⁸ This definition could include traffickers. Implementing this provision may enable CPS to respond and provide much needed services to trafficked girls and their families.

RECOMMENDATIONS

The Legislature should amend state law to require caseworkers at Child Protection Services (“CPS”) to receive training on sex trafficking and related issues. Amendments should also require CPS workers to appropriately screen for evidence of sex trafficking and risk factors associated with sex trafficking. The Legislature should allocate funds to examine how the child protection system can better prevent juvenile sex trafficking and improve its response to sex trafficking cases. The state and federal government should allocate sufficient funds to CPS for these purposes.

⁶³⁷ MINN. STAT. § 626.556, subd. 2(f)(2).

⁶³⁸ MINN. DEP’T OF HUMAN SERVS., MINNESOTA CHILD MALTREATMENT SCREENING GUIDELINES 14 (2007), <http://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5144-ENG>.

H. IMMIGRATION RELIEF

Trafficked foreign nationals may be subject to deportation,⁶³⁹ now called removal, from the United States.⁶⁴⁰ While undocumented women are most vulnerable to deportation, documented non-citizen women, including refugees and lawful permanent residents, may also be deportable because of criminal convictions for prostitution or other crimes. Traffickers may exploit this vulnerability by threatening women with having them removed if they do not comply with the traffickers' demands.⁶⁴¹ Even in cases where victims of trafficking are able to escape their traffickers, they may avoid seeking local law enforcement help because of their fear of deportation.

The U.S. Government has enacted positive legislation that begins to remove the barriers immigration status poses to combating human trafficking. The TVPA⁶⁴² established the T visa for victims of "severe forms of trafficking." To date, it has been underutilized due to its stringent eligibility requirements both in law and practice, which have placed law enforcement agencies in a gate-keeping role.⁶⁴³ The TVPA created a temporary status called

continued presence, which suffers from similar flaws. The U visa for crime victims has broader eligibility requirements, but some requirements and the application process itself may deter some trafficked women from applying.⁶⁴⁴

More established laws not specifically aimed at trafficked persons, such as the immigration remedies of the Violence Against Women Act (VAWA),⁶⁴⁵ generally pose fewer problems for trafficked women. However, only spouses, children and stepchildren of abusive U.S. citizens and lawful permanent residents may apply for VAWA relief, limiting the number of trafficking victims who qualify. Some trafficked persons may be eligible to apply for asylum based on their fear of harm if they were returned to their home country.⁶⁴⁶ Trafficked children may be eligible for Special Immigrant Juvenile Status.⁶⁴⁷ Like VAWA, however, these two

<http://isim.georgetown.edu/Publications/GMF%20Materials/TVPR A.pdf>.

⁶⁴⁴ Battered Immigrant Women Protection Act, Pub. L. No. 106-386, § 1513(a)(2)(A), 114 Stat. 1518, 1533 (2000) (codified at 8 U.S.C. § 1101(a)(15)(U)) [hereinafter BIWPA].

⁶⁴⁵ See Julie Dinnerstein, *Options for Immigrant Victims of Domestic Violence*, in AILA IMMIGRATION AND NATIONALITY HANDBOOK 2007-2008, at 482, n.3 (Richard J. Link et al. eds., 2007) (citing Immigration Act of 1990, Pub. L. No. 101-649, § 701, 104 Stat. 4978, 5085-86 (allowing conditional resident victims of domestic violence to petition to remove conditions without the abusive spouse or parent); VAWA 1994, §§ 40701-03, 108 Stat. at 1953-55 (creating VAWA self-petitions for immigrant spouses and children of abusive USC/LPR spouses and parents, and VAWA suspension of deportation for immigrant spouses and children of abusive USC/LPR spouses and parents); Victims of Trafficking and Violence Protection Act (VAWA 2000), Pub. L. No. 106-386, §§ 1501-13, 114 Stat. 1464, 1518-37 (improving access to VAWA self-petitioning); Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Pub. L. No. 109-162, §§ 801-34, 119 Stat. 2960, 3053-77 (2006)).

⁶⁴⁶ No interviewees for this report had experience filing an asylum claim based on facts that involved sex trafficking. Moreover, the Asylum Office of CIS did not respond in time for publication to The Advocates' requests for information about asylum cases from Minnesota based on facts involving sex trafficking. However, a recent article explored the outcomes of fifty-two asylum cases where trafficking or the threat of trafficking constituted a significant or central aspect of the applicant's case. The article reports a 64% approval rate at the Asylum Office; a 35% approval rate in the Immigration Courts; and a 25% approval rate at the Board of Immigration Appeals. To date there have been no successful cases at the federal circuit level and three denials. Stephen Knight, *Asylum from Trafficking: A Failure of Protection*, 7 IMMIGR. BRIEFINGS 1, 4-5 (2007) (citations omitted).

⁶⁴⁷ See INA § 101(a)(27)(J), 8 U.S.C. § 1101(a)(27)(J) (2007).

⁶³⁹ This section will discuss the responses of Citizenship and Immigration Services (CIS), Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and the Immigration Court. The discussion of ICE in this section excludes its functions as a law enforcement agency responsible for investigating human trafficking crimes, which is discussed in the section entitled "Law Enforcement Agencies" *infra* p. 94.

⁶⁴⁰ In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRAIRA") introduced the term "removal." Removal encompasses what was formerly referred to as deportation and exclusion. Before the passage of IIRAIRA, foreign nationals were placed in deportation proceedings to determine their right to remain in the United States or in exclusion proceedings to determine their right to enter the United States or adjust their status. Removal proceedings now address both of these issues. IIRAIRA § 304, 110 Stat. at 3009-589 (codified at 8 U.S.C. § 1229a (2007)).

⁶⁴¹ See TVPA § 102(20), 114 Stat. at 1468 (codified at 22 U.S.C. § 7101(20) (2007)).

⁶⁴² TVPA § 107(e), 114 Stat. at 1477.

⁶⁴³ See Natalia Walter, *Human Trafficking in the United States: Immigrant Victims Falling Through the Cracks*, in AILA IMMIGR. AND NATIONALITY HANDBOOK 2007-2008, at 539 (Richard J. Link et al. eds., 2007); Chacón, *supra* note 151, at 2977; Cianciarulo, *supra* note 48; Whitney Shinkle, *Protecting Trafficking Victims: Inadequate Measures?*, TRANSATLANTIC PERSP. ON MIGRATION, Aug. 2007,

forms of relief will only apply to a select group of trafficked women and girls.

Potential Forms of Immigration Relief for Trafficked Women and Girls

This list summarizes relief potentially available to trafficked women and girls. The eligibility requirements listed below are not comprehensive and do not address numerous details.

- 1. T Visa** – Available to victims of “severe forms of trafficking” in the United States for four years. Applicants must demonstrate that they have cooperated with all reasonable requests from law enforcement by providing a certification from a federal law enforcement agency. T visa holders receive work permission and public assistance to the same extent as refugees. Family members may also be eligible to receive T visas. After three years, T visa holders may apply for lawful permanent residency (“LPR”), also known as a “green card.”
- 2. Continued Presence** – A temporary status available to victims of “severe forms of trafficking.” Only federal law enforcement agencies can request this status. Recipients receive work permission and public assistance to the same extent as refugees.
- 3. U Visa** – Available to crime victims who have suffered “substantial physical or mental abuse” as a result of statutorily listed crimes, including sex trafficking. Applicants must demonstrate they have been, are or will be helpful to the investigation or prosecution of the crime by providing a letter from a law enforcement agency, prosecutor, judge or other certifying official. U visa holders receive permission to work. Family members may also be eligible to receive U visas. After three years, U visa holders may apply for LPR status.
- 4. VAWA Self-Petition** – Available to spouses, unmarried children and unmarried stepchildren of U.S. citizens (“USCs”) or LPRs who have suffered

battery or “extreme cruelty” at the hands of their abuser. Parents of children may also apply even if they were not abused or married to the abuser. Parents of abusive USCs may also apply. Depending on the family relationship and immigration status of the abuser, recipients may either immediately apply for LPR status or wait until their priority date becomes current. The priority date is the date of filing of either the VAWA application or a previously filed application for status.

5. VAWA Cancellation of Removal – Available to spouses, unmarried children and unmarried stepchildren of USCs or LPRs who have suffered battery or “extreme cruelty” at the hands of their abuser. Parents of children may also apply even if they were not abused or married to the abuser. The applicant must be in removal proceedings. If granted, the applicant receives LPR status.

6. Battered Spouse Waiver – Available to spouses of USCs or LPRs who experienced abuse or extreme cruelty during the marriage. Applicants can request a waiver of the requirement to file for LPR status jointly with their spouse based on the abuse.

7. Asylum – Available to trafficked persons able to demonstrate that they experienced past persecution or have a well-founded fear of future persecution in their home country based on their religion, nationality, political opinion, race, or membership in a particular social group. After one year, asylees can apply for LPR status.

8. Special Immigrant Juvenile Status – Available to unmarried children under twenty-one years old under the jurisdiction of a juvenile court and “deemed eligible for long term foster care.” A judge must find that it is not in the best interest of the child to return to his home country. Recipients can apply for LPR status.

1. T VISA

Despite hopes that the T visa would provide much needed immigration relief and assistance to trafficked women and girls,⁶⁴⁸ it has proved problematic and undesirable for trafficking victims.⁶⁴⁹ The T visa's narrow eligibility requirements limit the number of trafficking victims who qualify. Moreover, as currently administered, the T visa primarily functions as a tool to ensure trafficking victims' cooperation as witnesses in the criminal trials of their prosecutors. This practice discourages otherwise eligible trafficking victims from applying.⁶⁵⁰

Statistics on T visa applications reflect these trends. From fiscal year 2001 to the end of fiscal year 2007, the Department of Homeland Security had issued only 1,008 T visas to survivors of sex and labor trafficking nationwide, and another 906 T visas to their family members.⁶⁵¹ This total represents a small fraction of trafficking victims.⁶⁵² Similarly, this report's findings reflect these low numbers. Only three interviewees mentioned participating in the preparation of four T visas, although one interviewee was unsure whether an application was ever filed in one case.⁶⁵³

⁶⁴⁸ Haynes, *supra* note 81, at 358 (citing H.R. Rep. No. 106-487, pt. 2, at 1 (2000)).

⁶⁴⁹ See Walter, *supra* note 643, at 539-40; Chacón, *supra* note 151, at 3011-12; Cianciarulo, *supra* note 48, at 1, 6-8, 22-23; Shinkle, *supra* note 643, at 5-6.

⁶⁵⁰ Interview with advocate (Oct. 26, 2007); see Interview with attorney (Dec. 21, 2007); Interview with attorney (Nov. 20, 2007); Interview with attorney (Oct. 15, 2007).

⁶⁵¹ This figure was reached by adding figures from two different reports. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2007, at 49 (2007), <http://www.state.gov/documents/organization/82902.pdf> (reporting issuance of 729 T visas to survivors of trafficking and 645 T visas for their family members through FY 2006); U.S. DEP'T OF JUSTICE, *supra* note 154, at 20-21 (reporting approval of 279 T visas for survivors of trafficking and 261 T visas for family members in FY 2007).

⁶⁵² Results from a 2006 survey of eighteen recipients of federal funds for street outreach demonstrate that only 3.9% of victims found by these organizations ultimately received a T visa. WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 20 (citing Alison L. Darrell, Calvin Edwards & Company, Trafficking Victim Outreach Grant: The Results, Presentation at the U.S. Dep't of Health & Human Servs. Conference on Survivors of Sex Trafficking (Sept. 28, 2006)).

⁶⁵³ The advocate was unsure whether the cases were based on labor or sex trafficking. Interview with advocate (Oct. 31, 2007);

The T visa allows victims of "severe forms of trafficking" to legally live and work⁶⁵⁴ in the United States for up to four years, with the possibility to apply for lawful permanent residence, commonly referred to as a "green card," after three years.⁶⁵⁵ T visa holders can also receive work permission and access to public benefits to the same extent as refugees. This is intended to provide a safety net to help them recover from their traumatic experiences.⁶⁵⁶

Each of the requirements for a T visa poses a significant obstacle to trafficked women. To be eligible, a foreign national must demonstrate that she: (1) is or was a victim of a "severe form of trafficking," as defined in the TVPA;⁶⁵⁷ (2) is physically present in the United States on account of such trafficking;⁶⁵⁸ (3) has complied with any reasonable request for assistance in the investigation or prosecution of the traffickers, if she is an adult;⁶⁵⁹ and (4) would suffer extreme hardship involving unusual and severe harm if removed from the United States.⁶⁶⁰

These requirements make it virtually impossible to apply for a T visa without the support of law enforcement agencies or prosecutors. Accordingly, many attorneys characterized the T visa as a last

E-mailed correspondence with advocate (July 30, 2008). One case involved labor trafficking. Interview with attorney (Oct. 24, 2007). In one sex trafficking case, the interviewee had not yet filed the T visa as of the interview. Interview with attorney (Oct. 8, 2007).

⁶⁵⁴ 8 C.F.R. § 274a.12(c)(16) (2007).

⁶⁵⁵ INA § 245(l)(1), 8 U.S.C. § 1255(l)(1) (2007); see 8 C.F.R. § 214.11(p)(2). Time on continued presence prior to receiving a T visa may be counted towards the three-year requirement for an application for lawful permanent residency. INA § 245(l)(1)(A), 8 U.S.C. § 1255(l)(1)(A). T visa holders can maintain that status for up to four years or longer with permission from law enforcement. INA § 214(o)(7), 8 U.S.C. § 1184(o)(7).

⁶⁵⁶ 8 C.F.R. § 274a.12(a)(16); 22 U.S.C. § 7105(b)(1)(A) (public benefits). See discussion of trafficking victims' access to public benefits in the section entitled "Public Assistance" *supra* p. 72.

⁶⁵⁷ INA § 101(a)(15)(T)(i)(I), 8 U.S.C. § 1101(a)(15)(T)(i)(I).

⁶⁵⁸ INA § 101(a)(15)(T)(i)(II), 8 U.S.C. § 1101(a)(15)(T)(i)(II).

⁶⁵⁹ INA § 101(a)(15)(T)(i)(III), 8 U.S.C. § 1101(a)(15)(T)(i)(III).

Trafficked children under 18 do not have to comply with reasonable requests from law enforcement in order to apply for a T visa. TVPRA 2003 § 4(b)(1)(A), 117 Stat. at 2878 (codified at INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb) (2007)).

⁶⁶⁰ INA § 101(a)(15)(T)(i)(IV), 8 U.S.C. § 1101(a)(15)(T)(i)(IV).

resort to be used only if no other forms of relief are possible.⁶⁶¹

a) VICTIM OF A “SEVERE FORM OF TRAFFICKING”

The “severe form of trafficking” standard for the T visa is an obstacle for trafficked women.⁶⁶² To establish that she was a “victim of a severe form of trafficking,” she must prove that she experienced force, fraud or coercion during the trafficking situation.⁶⁶³ This issue presents two problems. First, the definition itself is problematic because it essentially requires women to prove that they did not consent to being trafficked. Second, even though regulations allow trafficked women to satisfy this requirement with secondary evidence besides an LEA declaration or proof of continued presence status, in practice, such applications have a low rate of success.

Although not explicitly stated in the law, the distinction between severe and non-severe forms of trafficking essentially lies in whether the individual “consented” at any point in time during the enticement, recruitment or employment by the trafficker. Creating these two tiers of trafficking victims reflected lawmakers’ concerns about according benefits only to such persons they view as “innocent.”⁶⁶⁴ The burden is on the trafficked women

⁶⁶¹ Interview with attorney (Oct. 24, 2007); *see also* Interview with attorney (Dec. 21, 2007); Interview with attorney (Oct. 2, 2007); Interview with attorney (Nov. 20, 2007).

⁶⁶² Interview with advocate (Oct. 8, 2007); Interview with attorney (Dec. 21, 2007).

⁶⁶³ INA § 101(a)(15)(T)(i)(I), 8 U.S.C. § 1101(a)(15)(T)(i)(I); 8 C.F.R. § 214.11(b)(1) (2007). In sex trafficking cases, minors do not need to prove force, fraud or coercion and are automatically considered victims of a “severe form of trafficking.” *See* discussion of the requirement to demonstrate “force, fraud or coercion” to receive assistance under federal law in the section “U.S. Government Law and Policy” *supra* p. 28.

⁶⁶⁴ Jennifer Chacón writes that “Congressional debate over the TVPA also failed to acknowledge the complexities of identifying trafficking victims. Legislators tended to paint trafficking victims as ignorant and innocent victims, targeted by evil traffickers operating sophisticated international crime rings.” Chacón, *supra* note 151, at 3022-23. This distinction contradicts the U.N. Trafficking Protocol, which clearly states that the consent of

to prove they did not consent to their exploitation, shifting the focus from the exploitation they experienced to whether they “chose” to be trafficked. Pursuant to international human rights law, however, a person can never consent to exploitation.⁶⁶⁵

Advocates and some law enforcement officers stated that in some cases the standard was construed too rigidly, especially by ICE.⁶⁶⁶ Based on his experience, a local law enforcement officer observed that in Minnesota women are rarely involved in prostitution as a result of brute physical force.⁶⁶⁷ Rather, more subtle forms of coercion are used, which can be difficult to prove.⁶⁶⁸ An advocate explained:

[It was] difficult to say, “were you able to leave?” [It was] hard to get concrete facts. Some of the women went out dancing, but don’t know if they felt they were able to leave [the traffickers]. There’s a difference between not being locked in, but feeling able to leave. Some of them said [the traffickers] were looking after their documents because they didn’t want them to get lost.⁶⁶⁹

trafficked persons is irrelevant when traffickers employ “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person” for the purpose of exploitation. It also contradicts the United States’ own position with regard to human trafficking in other countries as expressed in the annual Trafficking in Persons Report, which emphasizes the need to focus on the exploitative conditions individuals find themselves in, rather than whether they consented to such treatment. *Id.* at 3022, nn.271 & 272. Minnesota law similarly provides that pimps may not cite the consent of a trafficked person as a defense to their criminal acts. MINN. STAT. § 609.325, subd. 2 (2007); *see supra* p. 31.

⁶⁶⁵ U.N. Trafficking Protocol, *supra* note 7, art. 3(b).

⁶⁶⁶ Interview with advocate (Oct. 26, 2007); Interview with law enforcement officer (Jan. 10, 2008) (discussing ICE); Interview with law enforcement officer (Oct. 4, 2007) (discussing clear federal guidelines on which cases department can pursue).

⁶⁶⁷ Interview with law enforcement officer (Jan. 29, 2008).

⁶⁶⁸ *Id.*

⁶⁶⁹ Interview with advocate (Jan. 2, 2008).

Many women actively resist the label of “victim”⁶⁷⁰ and for this reason may be reluctant to recognize or admit the use of force, fraud or coercion in the trafficking situation. Some women may simply be afraid to disclose that information, especially to law enforcement officers or ICE in the aftermath of a brothel sting.

The application of this requirement has proved problematic because Citizenship and Immigration Services (“CIS”) largely accepts only LEA declarations as proof of an applicant’s status as a victim of a “severe form of trafficking,” even though regulations allow T visa applicants to submit secondary evidence of this fact.⁶⁷¹ An endorsement from a federal law enforcement agency or proof that CIS granted the applicant “continued presence,” a temporary status for trafficking victims discussed below, constitutes primary proof of “victim status” for a T visa application.⁶⁷² Secondary evidence must include

an original statement by the applicant indicating that he or she is a victim of a severe form of trafficking in persons; credible evidence of victimization and cooperation, describing what the alien has done to report the crime to an LEA; and a statement indicating whether similar records for the time and place of the crime are available.⁶⁷³

The regulations provide that CIS will consider “all credible and relevant evidence” of the force, fraud or coercion used by traffickers,⁶⁷⁴ but also place a high burden on a trafficked woman who does not or cannot obtain an LEA declaration. She must provide evidence explaining “the nonexistence or

unavailability of the primary evidence,” as well as her efforts to report the crime to an LEA and obtain an endorsement.⁶⁷⁵ Thus, even in T visa cases based on secondary evidence, law enforcement agencies play a crucial role that may deter trafficked women from applying for a T visa.

Reports from around the United States suggest that T visa applications lacking an LEA declaration of this fact will not succeed.⁶⁷⁶ CIS maintains no statistics about the number and outcomes of T visa applications submitted without a law enforcement agency declaration, but reports suggest the numbers in both instances are low.⁶⁷⁷ No interviewees for this report had ever submitted a T visa without an LEA declaration.

This requirement poses other obstacles, as well. State and local law enforcement officials cannot certify a woman as a victim of a severe form of trafficking, which effectively forecloses the possibility of a T visa for foreign nationals whose traffickers are prosecuted on the state level.⁶⁷⁸

Moreover, although CIS ultimately approves or denies the T visa application, this certification requirement effectively determines whether a trafficking victim will receive a T visa. Federal law enforcement officers are given wide discretion in determining whether to provide certification or endorsement as a victim of a severe form of trafficking. Moreover, they alone have the capability to request continued presence for a trafficking

⁶⁷⁰ BRUNOVSKIS & SURTEES, *supra* note 20, at 20; *see* Interview with attorney (Dec. 21, 2007). This can be the case especially for women in prostitution, which often requires women to “play” different roles and hide their identity.

⁶⁷¹ 8 C.F.R. § 214.11(f)(3) (2007).

⁶⁷² *Id.* § 214.11(f)(2).

⁶⁷³ *Id.* § 214.11(f)(3).

⁶⁷⁴ *Id.* § 214.11(f).

⁶⁷⁵ *Id.* § 214.11(f)(3).

⁶⁷⁶ WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 21; *see also* Haynes, *supra* note 81, at 359 (referring to opinions of advocates assisting T visa applicants).

⁶⁷⁷ WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 21 (citing Interview with George Murphy, Vermont Serv. Center (Sept. 21, 2006)).

⁶⁷⁸ *See* 8 C.F.R. § 214.11(a) (2007) (defining law enforcement agencies as federal agencies with “responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons”). Interviews and research did not reveal any cases of sex trafficking prosecuted on the state level that involved trafficked foreign national women or girls.

victim.⁶⁷⁹ An attorney planning to proceed with a T visa application for a client emphasized that the decision was strongly influenced by the institutional support from federal LEAs.⁶⁸⁰ No recourse exists for a trafficked woman if law enforcement declines to provide the certification.

Federal law enforcement officers expressed willingness to certify women as victims,⁶⁸¹ but the low number of T visa applications suggests that this requirement may deter women from proceeding with a T visa. An attorney noted that this applies with particular force to trafficked women who are not “found” by law enforcement agencies: “if [the case] didn’t come through ICE, then it comes down to turning your client over to ICE. And what attorney’s going to do that?”⁶⁸²

b) PHYSICAL PRESENCE IN THE UNITED STATES ON ACCOUNT OF TRAFFICKING

The requirement that the woman be in the United States “on account of” trafficking also prevents some trafficked women from qualifying for the T visa. Foreign nationals who are not trafficked *to* the United States, but who are trafficked *after arriving*, are not eligible.⁶⁸³ A 2005 study of human trafficking in the United States found that in approximately one-third of their case studies traffickers recruited foreign nationals from inside the United States.⁶⁸⁴

Interviewees indicated that some trafficked women face this situation in Minnesota, as well.⁶⁸⁵

Responding to a brothel sting in Minneapolis in

December 2007, the Minneapolis Police Department stated that some women “came willingly for financial opportunities not possible in their homeland, but then got drawn in to a prostitution network that is difficult to escape.”⁶⁸⁶ Being trafficked from within the United States effectively excludes them from relief under the T visa, as well as services available prior to receiving the T visa.⁶⁸⁷

In addition, the “on account of” requirement may exclude trafficked women who are not found by law enforcement, but instead manage to leave the trafficking situation by themselves. The T visa regulations place a heightened burden on women who leave traffickers on their own,⁶⁸⁸ requiring them to show that they did not have a “clear chance” to leave the United States in the interim period.⁶⁸⁹ One report notes that “[m]ost victims of human trafficking will not be ‘rescued’ by anyone.”⁶⁹⁰ Advocates and attorneys consistently reported that law enforcement agencies view such cases skeptically and are reluctant to help.⁶⁹¹ A federal law enforcement agent noted that most of the trafficking victims they have seen are referred by local law enforcement agencies.⁶⁹² Another said that trafficking victims never approach them independently.⁶⁹³

⁶⁸⁶ David Chanen, *Minneapolis Cops Join Feds to Bust Sex Racket*, MINNEAPOLIS STAR TRIBUNE, Dec. 13, 2007, <http://www.startribune.com/lcoal/12494456.html?pt=y>.

⁶⁸⁷ The regulations allow T visa applicants to show the connection between their presence in the United States and the trafficking incident by showing they are

1. currently a victim of trafficking; or
2. recently liberated from a trafficking situation; or
3. here on account of past trafficking and whose continued presence in the U.S. is directly related to the original trafficking.

8 C.F.R. § 214.11(g) (2007)

⁶⁸⁸ *Id.* § 214.11(g)(2).

⁶⁸⁹ *Id.*

⁶⁹⁰ Haynes, *supra* note 81, at 351.

⁶⁹¹ Focus Group (Aug. 13, 2007); Interview with advocate (Oct. 26, 2007); *see also* Interview with attorney (Oct. 8, 2007) (discussing ICE’s disinterest in smaller cases not resulting from public busts).

⁶⁹² Interview with law enforcement officer (Nov. 8, 2007).

⁶⁹³ Interview with law enforcement officer (Nov. 8, 2007).

⁶⁷⁹ 22 U.S.C. § 7105(c) (2007).

⁶⁸⁰ Interview with attorney (Oct. 8, 2007).

⁶⁸¹ *See generally* Interview with law enforcement officer (Nov. 8, 2007) (discussing how cooperating with law enforcement can “only benefit” victims); Interview with law enforcement officer (Nov. 8, 2007).

⁶⁸² Interview with attorney (Dec. 21, 2007).

⁶⁸³ INA § 101(a)(15)(T)(i)(II), 8 U.S.C. § 1101(a)(15)(T)(i)(II) (2007).

⁶⁸⁴ This equaled between 855 to 1235 trafficked persons. BALES & LIZE, *supra* note 21, at 24.

⁶⁸⁵ Interview with attorney (Oct. 11, 2007); Interview with advocate (Oct. 8, 2007); Interview with advocate (Jan. 2, 2008).

c) COOPERATION WITH LAW ENFORCEMENT

The T visa also requires the victim to cooperate with law enforcement in investigation or prosecution of her trafficker.⁶⁹⁴ As in subpart a) of this section, T visa applicants can submit either primary or secondary evidence of this element.⁶⁹⁵ An LEA endorsement constitutes primary evidence that the applicant has cooperated with all reasonable requests for assistance.⁶⁹⁶ Trafficked women may submit secondary evidence demonstrating their compliance with LEA requests for assistance.⁶⁹⁷ However, “[a]n 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] nonimmigrant status.”⁶⁹⁸ As applied, this requirement gives significant power to law enforcement to determine which trafficked women should be protected based primarily on their value as witnesses, rather than on the victim’s need for protection.

Many trafficked women are not willing to comply with this requirement.⁶⁹⁹ Trafficked women may fear contact with law enforcement officials. An advocate described a trafficked woman who, upon hearing of the requirement to cooperate with police and ICE, refused to proceed.⁷⁰⁰ Concerns about their own criminal liability, immigration status and other needs expressed in this report make such cooperation risky for many women. Interviewees repeatedly commented that this condition jeopardized women’s

safety⁷⁰¹ and may serve to prolong their involvement with their traffickers. One advocate said, “[i]f she is international and doesn’t want to give up information, they might as well hand-carry her back to her pimp.”⁷⁰²

Moreover, complying with this request may be unrealistic for trafficked women, who may be traumatized by the experience. Although the Secretary of Homeland Security can determine that a trafficking victim is unable to cooperate with law enforcement requests due to psychological or physical trauma, this decision is discretionary.⁷⁰³ Thus, a trafficked woman cannot appeal this decision to a court.⁷⁰⁴ No interviewees reported attempting to use this exception.

Making services and status for foreign national trafficked women conditional on cooperation undermines the intent of the TVPA:

I think that the law is inadequate because it focuses too much on investigation and prosecution – doesn’t allow people to access the visas. The whole purpose of the law was to create a crime. The victim services came and decided they needed a visa just for victims. That was the original intent of the law, so if what you really want is a human rights approach then it shouldn’t matter if they report the crime. They should have access to the services they need. If they can’t get the services they need at home, they should be able to stay here.⁷⁰⁵

⁶⁹⁴ INA § 101(a)(15)(T)(i)(III)(aa), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa) (2007). Children under eighteen years old are not required to assist in the investigation or prosecution of the crime. INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb).

⁶⁹⁵ 8 C.F.R. § 214.11(h) (2007).

⁶⁹⁶ *Id.* § 214.11(h)(1); *see also id.* § 214.11(f)(1) (law enforcement agency endorsement as primary evidence of “victim status”).

⁶⁹⁷ 8 C.F.R. § 214.11(h)(2).

⁶⁹⁸ *Id.*

⁶⁹⁹ Interview with attorney (Nov. 20, 2007).

⁷⁰⁰ Focus Group (Aug. 13, 2007).

⁷⁰¹ Interview with advocate (Feb. 14, 2008); Focus Group (Aug. 6, 2007); Interview with attorney (Oct. 15, 2007); Interview with attorney (Dec. 21, 2007).

⁷⁰² Focus Group (Aug. 6, 2007).

⁷⁰³ INA § 101(a)(15)(T)(iii), 8 U.S.C. § 1101(a)(15)(T)(iii) (2007)

⁷⁰⁴ INA § 242(a)(2)(B)(ii), 8 U.S.C. § 1252(a)(2)(B)(i) provides that “Notwithstanding any other provision of law, no court shall have jurisdiction to review...any other decision or action of the Attorney General the authority for which is specified under this subchapter [§§ 1151-1378] to be in the discretion of the Attorney General,” except for asylum cases.

⁷⁰⁵ Interview with attorney (Oct. 15, 2007).

**d) UNUSUAL AND SEVERE HARDSHIP
UPON REMOVAL FROM THE
UNITED STATES**

The final T visa requirement, establishing “unusual and severe” hardship upon removal from the United States, may be the most difficult to overcome.⁷⁰⁶ For women kept in confinement by their traffickers, it will likely be difficult to demonstrate sufficient ties to the United States to show why it would cause them hardship to leave. A focus group participant cited this requirement as a reason why women may not proceed with a T visa, assuming they satisfied the other three elements.⁷⁰⁷ While CIS will consider numerous factors cumulatively in assessing the level of hardship,⁷⁰⁸ this standard is significantly higher than other immigration applications’ hardship

⁷⁰⁶ 8 C.F.R. § 214.11(i) (2007).

⁷⁰⁷ Focus Group (Aug. 6, 2007).

⁷⁰⁸ 8 C.F.R. § 214.11(i)(1). The regulations list eight factors:

- (i) The age and personal circumstances of the applicant;
- (ii) Serious physical or mental illness of the applicant that necessitates medical or psychological attention not reasonably available in the foreign country;
- (iii) The nature and extent of the physical and psychological consequences of severe forms of trafficking in persons;
- (iv) The impact of the loss of access to the United States courts and the criminal justice system for purposes relating to the incident of severe forms of trafficking in persons or other crimes perpetrated against the applicant, including criminal and civil redress for acts of trafficking in persons, criminal prosecution, restitution, and protection;
- (v) The reasonable expectation that the existence of laws, social practices, or customs in the foreign country to which the applicant would be returned would penalize the applicant severely for having been the victim of a severe form of trafficking in persons;
- (vi) The likelihood of re-victimization and the need, ability, or willingness of foreign authorities to protect the applicant;
- (vii) The likelihood that the trafficker in persons or others acting on behalf of the trafficker in the foreign country would severely harm the applicant; and
- (viii) The likelihood that the applicant’s individual safety would be seriously threatened by the existence of civil unrest or armed conflict as demonstrated by the designation of Temporary Protected Status, under section 244 of the Act, or the granting of other relevant protections.

Factors specifically associated with being a victim of a severe form of trafficking will also be taken into account. *Id.*

standards.⁷⁰⁹ This last factor can preclude a successful T visa application even for women who satisfy the other three requirements.

RECOMMENDATIONS

Congress should amend the law to remove the requirement to demonstrate force, fraud or coercion to be eligible for a T visa. Absent this policy change, CIS should accept any credible secondary evidence of a person’s status as a victim of a “severe form of trafficking.”

Congress should amend the law to enable foreign nationals to apply for a T visa regardless of whether they were trafficked to the United States or from within the United States. CIS should amend the regulations to lower the burden of proof for T visa applicants who leave the trafficking situation on their own without the help of law enforcement agencies.

Congress should amend the law to allow T visa applicants to demonstrate either cooperation with law enforcement or extreme hardship to qualify for a T visa, but not require both.⁷¹⁰ Absent this policy change, CIS should accept any credible secondary evidence of individuals’ cooperation with law enforcement.

Congress should amend the law and replace the “extreme hardship involving unusual and severe harm” with the lower “extreme hardship” standard.⁷¹¹

⁷⁰⁹ See 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 (2002).

⁷¹⁰ WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 4.

⁷¹¹ *Id.*

2. U VISA

Although generally regarded as a preferable form of immigration relief compared to the T visa, trafficked women have encountered obstacles to obtaining the necessary law enforcement certification when seeking the U visa. Passed as part of the Battered Immigrant Women Protection Act in 2000,⁷¹² the U visa provides immigration status to crime victims to “strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes while offering protection to victims of such crimes.”⁷¹³ However, as with the T visa, U visa status prioritizes the woman’s value as a witness over her need for protection and services. Although the obligation to cooperate with law enforcement is less onerous than for the T visa, it may still deter trafficked women from pursuing a U visa. Moreover, obtaining the necessary crime victim certification can pose obstacles for women seeking a U visa.

The U visa allows individuals to live and work⁷¹⁴ legally in the United States for up to four years, with the possibility to apply for legal permanent residency after three years.⁷¹⁵ U visa holders may also petition for their spouse and children to come to the United States.⁷¹⁶ Unlike the T visa, U visa recipients are not automatically eligible for public benefits.

⁷¹² BIWPA § 1513, 1513(a)(2)(A), 114 Stat. at 1533-37.

⁷¹³ After a seven year delay, CIS issued an interim rule containing regulations to implement the U visa on September 17, 2007. These rules went into effect on October 17, 2007. New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status, 72 Fed. Reg. 53014 (Sept. 17, 2007) (to be codified at 8 C.F.R. §§ 103, 212, 214, 248, 274a and 299). Prior to the issuance of these regulations, CIS granted U visa applicants a temporary status called U visa interim relief. Interim relief allowed applicants to receive “deferred action” status, which is a temporary reprieve from being removed from the United States. Individuals with U visa interim relief also received work permission and the ability to apply for their qualifying family members. Individuals with interim relief must resubmit an application to CIS in order to be eligible for a U visa. 8 C.F.R. § 214.14(c) (2007).

⁷¹⁴ 8 CFR § 274a.12(a)(19).

⁷¹⁵ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U) (2007); 8 C.F.R. § 214.14(g).

⁷¹⁶ U visa holders under 21 years of age may petition for their spouse, children, parents and unmarried siblings under eighteen. INA § 101(a)(15)(U)(ii), 8 U.S.C. § 1101(a)(15)(U)(ii).

The U visa provides immigration relief to foreign nationals who have suffered “substantial physical or mental abuse” as a result of being a victim of an enumerated crime⁷¹⁷ that violates the laws of the United States or occurred in the United States.⁷¹⁸ The foreign national must also possess information about the crime and demonstrate that she “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the crime.⁷¹⁹

Attorneys characterized the U visa crime victim certification as easier to obtain than the T visa LEA declaration.⁷²⁰ Unlike the T visa, which largely depends on cooperation of federal law enforcement agents, U visa applicants can obtain the necessary certification from numerous sources, including “a Federal, State, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity.”⁷²¹ This definition includes executive agencies that also “have criminal investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Equal Employment Opportunity Commission, and the Department of Labor.”⁷²² An attorney noted that she

⁷¹⁷ The U visa covers criminal activity that involves

one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

INA § 101(a)(15)(U)(iii), 8 U.S.C. § 1101(a)(15)(U)(iii).

⁷¹⁸ INA § 101(a)(15)(U)(i)(IV), 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

⁷¹⁹ INA § 101(a)(15)(U)(i)(III), 8 U.S.C. § 1101(a)(15)(U)(i)(III).

Children under 16 years old are not required to assist in the investigation or prosecution of the crime. However, their “parent, guardian, or next friend” must demonstrate that she “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of the crime. *Id.*

⁷²⁰ Interview with attorney (Dec. 21, 2007).

⁷²¹ 8 C.F.R. § 214.14(a)(2) (2007).

⁷²² *Id.*

found it relatively easy to secure certifications in smaller counties because she has more direct access to law enforcement officers and prosecutors than in the metro area.⁷²³ Nevertheless, attorneys reported problems in securing certifications from law enforcement officers and prosecutors.⁷²⁴

Attorneys reported that some law enforcement officers' anti-immigrant attitudes influence their decisions to provide law enforcement certifications. A Minnesota attorney had to obtain a law enforcement certification from an officer in Chicago because the underlying crime occurred there. The officer refused to provide a certification for an attorney's client, saying "I don't think anyone deserves legal status for reporting a crime."⁷²⁵ When the attorney attempted to explain Congress's intent to assist crime victims, the officer replied that "plenty of crimes" get reported by U.S. citizens, and they do not get special rewards.⁷²⁶ The attorney observed that the officer was concerned that he was giving the applicant immigration status, when he was simply providing evidence that CIS would consider in adjudicating her application.⁷²⁷ To the attorney, these seemed like the officer's personal positions, as opposed to the official position of the department.⁷²⁸

The same attorney expressed frustration with the lack of knowledge and occasional outright hostility encountered regarding requests for law enforcement letters in U visa cases.⁷²⁹ Some law enforcement officers interviewed believed that their involvement in this process was not part of their job,⁷³⁰ with some officers referring individuals with immigration issues

to ICE or Customs and Border Protection.⁷³¹ A former law enforcement officer cited a general lack of understanding of the procedures in the law enforcement community that can stem, in part, from some officers' personal views that they are somehow "rewarding someone for being involved in a conspiracy."⁷³² The law does not allow a victim to compel an official to sign a certification in a case where the victim is eligible for a U visa. An attorney confronted this situation in a case where the prosecutor did not want to sign the certification because she believed that the case was a "slam dunk," meaning that she did not necessarily require the witness' testimony to secure a prosecution.⁷³³ Certifying officials have discretion not only in determining whether to sign the certification letter, but also in rescinding the certification.⁷³⁴ They may rescind the certification at any time, even after approval of the U visa.⁷³⁵

Even when certifying officials agree to provide the certification, they may not correctly word the letter, jeopardizing the U visa application.⁷³⁶ An attorney described a case where, despite the absence of an arrest record or even a police report, a law enforcement officer from the state where the abuse took place filled out the certification for the U visa.⁷³⁷ On the certification, however, he made critical errors. He indicated that there was "no physical violence," but failed to cite to the provision of the state penal code that criminalizes non-physical abuse.⁷³⁸ The officer cited only the provision criminalizing physical abuse.⁷³⁹ CIS found that the facts of abuse as stated in the certification did not match the crime of

⁷²³ Interview with attorney (Oct. 2, 2007).

⁷²⁴ Interview with attorney (Oct. 5, 2007).

⁷²⁵ Interview with attorney (Oct. 2, 2007).

⁷²⁶ *Id.*

⁷²⁷ *Id.*

⁷²⁸ *Id.* In another example of the role of officers' personal beliefs, a different attorney mentioned a domestic violence case where an officer said the woman had endangered her child by remaining with the abuser, so the officer did not want to "reward" her putting her child in danger by filling out the law enforcement certification for the U visa. Interview with attorney (Dec. 7, 2007).

⁷²⁹ Interview with attorney (Oct. 2, 2007).

⁷³⁰ Interview with law enforcement officer (Jan. 29, 2008).

⁷³¹ Interview with law enforcement officer (Oct. 4, 2007).

⁷³² Interview with former law enforcement officer (Nov. 26, 2007).

⁷³³ Interview with attorney (Oct. 16, 2007).

⁷³⁴ New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014, 53,031 (Sept. 17, 2007) (to be codified at 8 C.F.R. § 214.14(h)(2)).

⁷³⁵ *Id.* No interviewees reported cases where certifications were later rescinded.

⁷³⁶ Interview with attorney (Oct. 2, 2007).

⁷³⁷ *Id.*

⁷³⁸ *Id.*

⁷³⁹ *Id.*

domestic violence as defined in the provision cited by the officer.⁷⁴⁰

Recently promulgated U visa regulations restrict who constitutes a “certifying official” able to sign law enforcement certifications.⁷⁴¹ Attorneys raised the concern of having to deal with a difficult certifying official who may not want to sign certifications. This rule defines a “certifying official” as the “head of the certifying agency or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency or [a] Federal, State, or local judge.”⁷⁴² According to the Federal Register, this requirement was intended to “encourage” certifying agencies to designate a certifying official and promulgate internal policies so applications are “properly vetted.”⁷⁴³

Notably, future U visa applicants are ineligible for the temporary status of continued presence available to future T visa applicants. This ineligibility leaves them without much-needed benefits prior to the approval of their U visa application. Specifically, U visa applicants cannot work legally in the United States until CIS approves the U visa application.⁷⁴⁴ Moreover, at no point in time are U visa applicants or recipients eligible for public benefits. These problems are magnified in cases where a criminal investigation or prosecution delays the filing of the U visa application, leaving women unable to work legally to support themselves until the proceedings conclude.

Despite difficulties in securing crime victim certifications, an attorney characterized the U visa as preferable to the T visa and a “good alternative”

for those who cannot establish that they are the victim of a “severe form of trafficking.”⁷⁴⁵ The program is generally regarded as efficient. One attorney reported obtaining a determination in one hour from the Vermont Service Center.⁷⁴⁶

RECOMMENDATIONS

Congress should allocate funds to train U visa “certifying officials” on their role in the U visa application process. CIS should amend the regulations and remove the requirement for government agencies to designate a single “certifying official” for U visa applications.

3. COMMON OBSTACLES WITH U AND T VISAS

Although they are distinct forms of relief, trafficked women seeking to apply for either a U or T visa may face similar issues. Both U and T visa applicants may be forced to delay filing their applications until the conclusion of criminal proceedings against their traffickers, which also delays family reunification and the ability of U visa applicants to support themselves. They also share concerns about the confidentiality of their applications. Both U and T visa applicants may ultimately be unable to file for these visas due to their inability to pay the mandatory fees for the supplemental waiver application.

a) DELAYS IN FILING U AND T VISA APPLICATIONS POSTPONE FAMILY REUNIFICATION AND ACCESS TO BENEFITS

Federal law enforcement agencies, in the case of the T visa, and certifying officials, in the case of the

⁷⁴⁰ *Id.*

⁷⁴¹ 8 C.F.R. § 214.14(a)(3) (2007); *see also* Interview with attorney (Oct. 2, 2007).

⁷⁴² 72 Fed. Reg. at 53,023 (to be codified at 8 C.F.R. § 214.14(a)(3)).

⁷⁴³ *Id.*

⁷⁴⁴ Employment authorization can only be received after CIS has granted the U visa status, not after applying for the U visa. INA § 214(p)(3)(B), 8 U.S.C. § 1184(p)(3)(B) (2007); 8 C.F.R. §§ 214.14(c)(7) & 274a.12(a)(19) (2007).

⁷⁴⁵ Interview with attorney (Nov. 20, 2007).

⁷⁴⁶ Interview with attorney (Nov. 5, 2007). As with VAWA self-petitions and T visas, the VSC has sole jurisdiction to adjudicate these petitions.

U visa, will frequently provide the necessary certifications for either application only after the prosecution is completed. Women must receive the visa to petition for family members to come to the United States. Postponement of the visa application delays resettlement and reunification with family.⁷⁴⁷ There are few legal options for trafficking victims' families to enter the United States before women receive U or T visa status. This delay deprives women and girls of a valuable support system during investigation and prosecution of sex trafficking crimes. Moreover, family members may be in danger of retaliation from victims' traffickers. Thus, any delay in family reunification may keep them in harm's way for longer periods of time.

The delay impacts future U visa applicants more than T visa applicants. Unlike the T visa, no comparable provision for continued presence protects future U visa applicants from removal or permits employment and access to benefits.⁷⁴⁸ During this time, future U visa applicants have no status, access to benefits or permission to work legally. An advocate from Greater Minnesota described a case in which her client lacked immigration status and could not work until the completion of the criminal trial, at which point she planned to apply for a U visa.⁷⁴⁹

b) COURT PROCEEDINGS BREACH CONFIDENTIALITY ACCORDED TO U AND T VISA APPLICATIONS

The U visa and T visa both provide for confidentiality, limiting use or disclosure of applications to sworn officers in the Department of Homeland Security.⁷⁵⁰ Although these protections are an important step forward, they may be hollow in

cases where the application becomes discoverable evidence at trial.

A case mentioned by two interviewees demonstrates the limited scope of confidentiality provided for women not classified as "victims of severe forms of trafficking" or who are assisting in purely local investigations or prosecutions.⁷⁵¹ A prosecutor and law enforcement officer mentioned a case in which the U visa application became an issue at trial.⁷⁵² The prosecutor received a U visa certification form from the immigration attorney representing the victim-witness, but then had to disclose that fact to the defense attorney.⁷⁵³ This fact created a defense that the woman falsified her testimony about the brutal rapes and sexual abuse she suffered to stay in the country.⁷⁵⁴ The defense attorney painted the U visa as a motive for her to falsify her testimony, even though the abuser had smuggled the woman into the country and she had a first-grade level education.⁷⁵⁵ The abuser was ultimately convicted.⁷⁵⁶

Unfortunately, this was not an isolated case. In an even more damaging scenario, an attorney described prosecutors using the law enforcement certification as leverage for their clients' testimony at trial.⁷⁵⁷

One attorney noted that the process "is wrapped up in prosecution and a high-profile public record. It will always be in the record."⁷⁵⁸ Moreover, because of the multi-agency response to trafficking on the federal level, multiple agencies share information

⁷⁵¹ Interview with law enforcement officer (Feb. 1, 2008); Interview with prosecutor (Jan. 22, 2008).

⁷⁵² Interview with law enforcement officer (Feb. 1, 2008); Interview with prosecutor (Jan. 22, 2008). Neither the prosecutor nor the law enforcement officer considered the case a sex trafficking case. The case did not involve commercial sexual exploitation or prostitution, but did involve bringing a woman to the United States for sexual abuse.

⁷⁵³ Interview with prosecutor (Jan. 22, 2008).

⁷⁵⁴ *Id.*

⁷⁵⁵ *Id.*

⁷⁵⁶ The prosecutor did not reveal the result of the U visa application. *Id.*

⁷⁵⁷ Interview with attorney (Oct. 2, 2007).

⁷⁵⁸ Interview with attorney (Oct. 24, 2007).

⁷⁴⁷ CIS approves petitions for family members of T and U visa applicants only after approving the application of the trafficking victim. 8 C.F.R. §§ 214.11(o)(9), 214.14(f)(6)(i).

⁷⁴⁸ U visa recipients cannot access public benefits.

⁷⁴⁹ Interview with advocate (Jan. 16, 2008).

⁷⁵⁰ 8 U.S.C. § 1367(a)(1)(E)-(F) (2007).

about any given trafficked woman, again rendering the confidentiality protections of limited value.⁷⁵⁹ For these reasons, numerous attorneys recommended changing the entire T visa process to provide true confidentiality to victims.⁷⁶⁰

c) FEES FOR WAIVER APPLICATIONS ARE COST-PROHIBITIVE

Trafficked women cannot afford the fees required to file applications to waive the negative immigration consequences of crimes they committed as a result of the trafficking situation. As discussed throughout this report, women often fear that they will be treated as criminals due to their involvement in prostitution or other trafficking crimes. Criminal conduct can preclude a foreign national's hope of obtaining immigration status in the United States. U.S. immigration law limits the ability of foreign nationals who commit even certain misdemeanor crimes from changing status, obtaining LPR status or citizenship. Recognizing that many trafficked women would otherwise be barred from obtaining status for these reasons, CIS created special waivers for U and T visa applicants that waive the negative consequences of crimes and other grounds of inadmissibility. For the T visa, crimes incident to the severe form of trafficking are waivable if it is in the "national interest."⁷⁶¹ The waiver for the U visa is even broader, covering virtually all grounds of inadmissibility if it is in the "public or national interest."⁷⁶²

⁷⁵⁹ See generally U.S. DEP'T OF STATE, OVERVIEW OF U.S. GOVERNMENT AGENCIES' PRINCIPAL ROLES TO COMBAT TRAFFICKING IN PERSONS (TIP) (2007), <http://www.state.gov/g/tip/rls/fs/07/87547.htm> (summarizing responsibilities of multiple federal agencies in combating human trafficking).

⁷⁶⁰ Interview with attorney (Dec. 21, 2007); Interview with attorney (Oct. 24, 2007).

⁷⁶¹ This waiver also waives health related and public charge grounds. INA § 212(d)(13), 8 U.S.C. § 1182(d)(13) (2007).

⁷⁶² This waiver has some limitations for security crimes and will not waive Nazi crimes, participation in genocide, participation in torture or extrajudicial killings. INA § 212(d)(14), 8 U.S.C. § 1182(d)(14).

The downside of these waiver applications has been the high filing fee. U or T visa applicants needing the waivers must pay a \$545 filing fee.⁷⁶³ Under recent changes to the USCIS fee waiver regulations, the \$545 fee may not be excused.⁷⁶⁴ This expense has precluded many trafficked women from applying due to their inability to pay.⁷⁶⁵ It also contravenes the policy underlying existing CIS fee structures for U and T visa applicants that either provide no fees for the U and T visa applications⁷⁶⁶ or allow for other fees to be waived.⁷⁶⁷ USCIS announced its intention to publish a proposed regulation to allow fee waivers for the \$545 fee for U visa applicants.⁷⁶⁸

⁷⁶³ 8 C.F.R. §§ 103.7(b)(1), (c) (2007); see also U.S. Citizenship & Immigr. Servs., I-92 Application for Advance Permission to Enter as Nonimmigrant, <http://www.uscis.gov/files/form/i-192instr.pdf> (last visited Aug. 17, 2008) (showing \$545 filing fee).

⁷⁶⁴ U.S. Citizenship & Immigr. Servs., Interoffice Memorandum, Fee Waiver Guidelines as Established by the Final Rule of the Immigration and Naturalization Benefit Application and Petition Fee Schedule (July 20, 2007), available at <http://www.uscis.gov/files/pressrelease/FeeWaiver072007.pdf>.

⁷⁶⁵ Interview with advocate (Jan. 16, 2008).

⁷⁶⁶ 8 C.F.R. § 214.14 (c); see 72 Fed. Reg. 54,813, (Sept. 27, 2007) (correcting portions of interim rules stating fee required for U visa application to show that only proof of biometric fee required).

⁷⁶⁷ For example, U and T visa applicants can apply for fee waivers for fingerprinting fees and work authorization. 8 C.F.R. §§ 214.14(c), 214.11(d)(2)(i).

⁷⁶⁸ This would also apply to T visa applicants. U.S. Citizenship & Immigr. Servs., USCIS Announces Update for Processing Petitions for Nonimmigrant Victims of Criminal Activity, Apr. 10, 2008, <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=5143cc32ba639110VgnVCM100004718190aRCRD&vgnnextchannel=ea0db6f2cae63110VgnVC M1000004718190aRCRD>. No interviewees, however, cited the waiver fee as an issue for T visa applicants, most likely because only one interviewee had actually prepared the application and filed for a T visa.

RECOMMENDATIONS

Congress should establish a temporary status for intending U visa applicants that would stay their removal from the United States, grant them work permission and give them access to public benefits. CIS should facilitate family reunification for intending U and T visa applicants whose visa applications are delayed by an on-going investigation or prosecution.

Evidence of the details of a current or future application for a U or T visa should be inadmissible in criminal, civil and administrative proceedings.

CIS should amend the regulations to reduce the fee for the waiver application. CIS should promulgate regulations allowing indigent U and T visa applicants to waive the application fee altogether.

4. CONTINUED PRESENCE

The temporary status continued presence presents problems for trafficking victims. Although it offers benefits and protections, this temporary immigration status essentially requires a trafficked woman to remain in the country as a witness in the event the traffickers go to trial, regardless of her desire to do so. Continued presence protects trafficking victims from removal from the United States; entitles women to work legally;⁷⁶⁹ and, upon certification from the Department of Health and Human Services, grants women access to public benefits and assistance to the same extent as refugees.⁷⁷⁰ Enumerated federal law enforcement officers may request continued

⁷⁶⁹ 28 C.F.R. § 1100.35(b)(1).

⁷⁷⁰ 22 U.S.C. § 7105(b)(1)(A) (eligibility); *id.* § 7105(b)(1)(E)(i)(II)(bb) (certification for foreign nationals with continued presence). See discussion in the section “Public Assistance” *supra* p. 72.

presence for potential witnesses, although they are not required to make such a request.⁷⁷¹

Unlike material witnesses, women with continued presence are not imprisoned. However, “[they] have no freedom of movement.”⁷⁷² The lack of freedom stems from ICE’s ability to file a Notice to Appear (“NTA”) in Immigration Court if a woman flees.⁷⁷³ In her absence, an immigration judge could issue an in absentia removal order, which would bar her from returning to the United States for five years.⁷⁷⁴ The potential for adverse immigration consequences pressures women to cooperate and essentially forces them to remain in the United States.

Given the trauma the women have experienced, an attorney characterized continued presence status as representative of a “huge gap in the victim-centered approach.”⁷⁷⁵ Indeed, a group of women with continued presence repeatedly expressed their desire to return to their families, but remained in Minnesota on this status throughout the criminal proceedings against their traffickers.⁷⁷⁶

Moreover, only federal law enforcement agents can request continued presence. This limitation means that foreign national women assisting in state-level prosecutions of their traffickers cannot receive continued presence. In addition, non-profit organizations and immigration attorneys cannot independently request this status for clients.

⁷⁷¹ Individuals may not petition on their own for continued presence. 28 C.F.R. § 1100.35(a). DHS will make a determination and issue the individual status. *Id.* § 1100.35(b). DHS may issue deferred action (8 C.F.R. § 274A.12(c)(14)), parole (*id.* § 212.5), voluntary departure (*id.* § 240.25), stay of removal (*id.* § 241.6) or any other authorized form of continued presence to a trafficked woman, including applicable nonimmigrant visas. 22 U.S.C. § 7105(c)(3) (2007); 28 C.F.R. § 1100.35(b).

⁷⁷² Interview with attorney (Oct. 24, 2007).

⁷⁷³ Interview with law enforcement officer (Nov. 8, 2007). See further discussion about NTAs in the section “Problems with ICE’s Dual Role” *infra* p. 113.

⁷⁷⁴ INA § 240(b)(5), 8 U.S.C. § 1229a(b)(5) (2007); INA § 212(a)(6)(B), 8 U.S.C. § 1182(a)(6)(B) (five-year bar).

⁷⁷⁵ Interview with attorney (Oct. 24, 2007).

⁷⁷⁶ Interview with advocate (Feb. 13, 2008); Interview with attorney (Oct. 16, 2007).

RECOMMENDATIONS

Congress should amend the law to allow non-profit organizations, immigration attorneys, prosecutors and tribal and local law enforcement officers to make requests for continued presence. Absent this policy change, federal law enforcement officers should request continued presence only for victim-witnesses who want to cooperate in the investigation and prosecution of their traffickers. For such cases, Congress should amend the law to mandate that federal law enforcement officers request continued presence.

I. LAW ENFORCEMENT AGENCIES

An effective law enforcement response to sex trafficking is an essential component to combating the problem. The *U.N. Recommended Principles and Guidelines* promote an increased focus on the prosecution of traffickers and law enforcement efforts to adequately address the needs of trafficked persons, including, most importantly, their protection.⁷⁷⁷

As discussed above, Minnesota and federal laws criminalize sex trafficking.⁷⁷⁸ Minnesota law also criminalizes the acts of soliciting and engaging in prostitution by patrons and individuals in prostitution.⁷⁷⁹ The fact that prostitution is a crime creates an inherent conflict for law enforcement officers responding to potential sex trafficking cases. In these cases, officers' obligations to secure public safety and enforce criminal laws may conflict with their obligation to identify and assist trafficking victims.

Law enforcement agencies ("LEAs") in the Minneapolis/St. Paul metropolitan area have taken significant steps to improve their response to sex trafficking cases, including training personnel, revising policies, and coordinating activities with courts and other government and non-profit organizations, as exemplified by the efforts of the Sergeant Gerald D. Vick Human Trafficking Task Force.⁷⁸⁰

The last two years have seen increased enforcement efforts against sex trafficking organizations in the metro area, including high profile actions against brothels. Local and federal officers jointly conducted stings on May 19, 2007,⁷⁸¹

December 13, 2007,⁷⁸² and March 6, 2008.⁷⁸³ The Minneapolis Police Department conducted a sting on July 5, 2007.⁷⁸⁴ Interviewees mentioned law enforcement actions in Greater Minnesota, as well.⁷⁸⁵

Some LEAs have recently stepped up enforcement efforts against patrons.⁷⁸⁶ In particular, the St. Paul Police Department has used postings on the internet and in newspapers in efforts to arrest patrons.⁷⁸⁷ Police departments in Rochester, St. Cloud, Duluth and the metro area suburbs have also done sting operations to arrest patrons.⁷⁸⁸

Despite the efforts of some LEAs, interviews revealed that an urgent need exists throughout the state for a more effective law enforcement response to traffickers and more comprehensive promotion of victim safety. Approximately two-thirds of law enforcement officers surveyed in Minnesota reported that sex trafficking and prostitution were not problems in their communities.⁷⁸⁹ Interviews revealed that law enforcement agencies in Minnesota do not consistently identify traffickers to prosecute and do not fully understand the needs of trafficked persons. With limited exceptions, LEAs in Greater Minnesota have not taken steps to address the issue of sex trafficking.⁷⁹⁰

http://minnesota.publicradio.org/display/web/2007/05/21/prostituti_on_ring/.

⁷⁸² David Chanen, *Minneapolis Cops Join Feds to Bust Sex Racket*, MINNEAPOLIS STAR TRIBUNE, Dec. 13, 2007, available at <http://www.startribune.com/local/12494456.html?pt=y>.

⁷⁸³ Harvey T. Rockwood, *Feds Raid Prostitution Operation Near Jefferson High School*, SUN NEWSPAPERS, Mar. 19, 2008, available at

<http://www.mnsun.com/articles/2008/03/16/news/fw03brothel prt>.

⁷⁸⁴ David Chanen, *Bust of Minneapolis Brothel Launches Sweep*, MINNEAPOLIS STAR TRIBUNE, July 6, 2007, at A1. All of the law enforcement actions referred to in footnotes 781 through 784 involved women who were foreign nationals.

⁷⁸⁵ Interview with law enforcement officer (Nov. 26, 2007);

Interview with law enforcement officer (Jan. 29, 2008).

⁷⁸⁶ See discussion in the section "Charging and Prosecuting Patrons" *infra* p. 120.

⁷⁸⁷ See Lonetree & Lopez, *supra* note 128.

⁷⁸⁸ E-mail from law enforcement officer (Sept. 16, 2008).

⁷⁸⁹ 2007 REPORT, *supra* note 13, at 15.

⁷⁹⁰ Interview with law enforcement officer (Oct. 16, 2007).

⁷⁷⁷ U.N. Econ. & Soc., *supra* note 68.

⁷⁷⁸ MINN. STAT. § 609.322 (2007); 18 U.S.C. § 1591 (2007). See discussion in the section "Summary of Federal and State Law and Policy" *supra* p. 28.

⁷⁷⁹ MINN. STAT. § 609.324.

⁷⁸⁰ See discussion in the section "Multi-Agency and Multi-Disciplinary Collaboration" *supra* p. 44.

⁷⁸¹ Elizabeth Stawicki, *Feds Break Up Prostitution Ring* (Minnesota Public Radio broadcast May 21, 2007), available at

When LEAs identify cases of sex trafficking, interviews revealed that they do not always treat trafficked persons appropriately. In some instances, LEAs are detaining and arresting trafficked persons for prostitution or other crimes, which can result in criminal prosecution. In some cases, LEAs do not provide neutral language interpretation to non-English speaking trafficked persons. Interviewees reported incidents in which LEAs used their own or other law enforcement officers to provide interpretation for trafficked persons, which, as explained more fully below, may compromise the trafficked person's interests.

LEAs considered in this report include municipal LEAs, county sheriffs, tribal LEAs, the Federal Bureau of Investigation ("FBI") and Immigration and Customs Enforcement ("ICE"). ICE is not limited to enforcement of immigration laws. It has an investigative branch that is responsible for enforcing over 400 statutes ranging from human trafficking to financial crimes.⁷⁹¹ The Bloomington, Minnesota, ICE office has investigators specializing in human trafficking. In addition, an officer from the Minnesota Bureau of Criminal Apprehension is assigned to their office to facilitate cooperation with local LEAs. Some agencies in larger cities have specialized vice units that target organized prostitution, such as brothels. Other agencies report not having a significant enough problem to justify a specialized vice unit, so they rely on their own general criminal investigators or sex crimes specialists to address the problem. Forces in some jurisdictions are so small that the officer on duty must respond to all calls, regardless of the crime being investigated.

The following sections will address how the LEA response to sex trafficking can be improved; the needs of trafficked persons in this context; and the needs of LEAs to effectively investigate and prosecute sex trafficking cases.

⁷⁹¹ U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, ICE: FISCAL YEAR 2006 ANNUAL REPORT 2 (2007), <http://www.ice.gov/doclib/about/ICE-06AR.pdf>.

1. IDENTIFICATION OF TRAFFICKED PERSONS BY LAW ENFORCEMENT OFFICERS

Law enforcement officers must properly identify trafficking situations to effectively prosecute traffickers and to treat trafficking victims appropriately.⁷⁹² As previously noted, trafficked persons do not readily self-identify.⁷⁹³ This complicates the work of law enforcement officers. They may only have one opportunity to correctly identify an individual as a trafficked person and make proper referrals for services rather than an arrest.⁷⁹⁴

Interviews revealed that there are several factors that contribute to the failure to identify sex trafficking cases in Minnesota. These factors include: the clandestine nature of trafficking; the trafficked persons' concern for criminal liability; the confusion between the state and federal definitions of trafficking; and misunderstandings about the role of local law enforcement in enforcing federal immigration law. These factors help explain the low numbers of trafficked persons identified in Minnesota. In July 2008, Sergeant John Bandemer, head of the Sergeant Gerald D. Vick Human Trafficking Task Force, reported that, pursuant to its federal mandate, the task force has identified twenty-nine potential victims who were trafficked into the United States in the previous three years.⁷⁹⁵

The failure to properly identify trafficking situations diminishes the ability of law enforcement agencies to effectively enforce laws against sex trafficking and to protect and assist trafficked persons. The failure to

⁷⁹² See discussion in the section "Inadequate Screening Protocols" *supra* p. 37.

⁷⁹³ Focus Group (July 23, 2007); Interview with law enforcement officer (Jan. 2, 2008).

⁷⁹⁴ Interview with law enforcement officer (Nov. 9, 2007).

⁷⁹⁵ *Investigating and Prosecuting Human Trafficking Cases: Informational Hearings Before the State Senate Judiciary Committee*, 84th Leg. Sess. (July 29, 2008) (statement of Sgt. John Bandemer), http://www.senate.leg.state.mn.us/media/media_list.php?ls=85&archive_year=2008&archive_month=07&category=committee&type=audio#monthnav.

identify trafficked persons denies them assistance and safety, access to interpreters, social and healthcare services and legal counsel. It can also lead to police harassment or arrest for prostitution or other crimes. Foreign nationals may be denied the opportunity to apply for immigration relief in the United States and may be removed from the country.

a) CLANDESTINE NATURE OF TRAFFICKING AND TRAFFICKED PERSONS' CONCERNS ABOUT CRIMINAL LIABILITY IMPEDE LAW ENFORCEMENT EFFORTS

The fear of criminal sanctions deters women from talking to the police about sex trafficking. This complicates the work of law enforcement officers responding to sex trafficking cases. Unlike other types of violence women experience, sex trafficking for the purpose of prostitution⁷⁹⁶ or commercial sex acts⁷⁹⁷ by definition involves illegal conduct. In addition, while in a trafficking situation, women often become involved or implicated in other types of criminal activity, such as drug crimes. Thus, trafficked persons do not typically present themselves to law enforcement officers.⁷⁹⁸

An advocate reported that trafficked women commonly say the laws blame them and make them feel like criminals.⁷⁹⁹ One agency that serves many potentially trafficked individuals reported that most women have charges on their records for other crimes.⁸⁰⁰ Police departments continue to conduct “Jane sweeps” of women in prostitution,⁸⁰¹ although a service provider positively noted that her local LEA

was arresting fewer women.⁸⁰² The St. Paul Police⁸⁰³ and Minneapolis Police’s Third and Fourth Precincts⁸⁰⁴ publish arrested women’s photos online, which can further the stigmatization and shame already felt by some prostituted women.⁸⁰⁵

Numerous interviewees observed that arrests and criminal convictions add to the vulnerability of foreign nationals because it may render them removable, commonly referred to as deportable.⁸⁰⁶ For these and many other reasons, trafficked persons often seek help through channels other than law enforcement.⁸⁰⁷

Officers themselves cited the clandestine nature of the crime as an obstacle in identifying and assisting trafficked persons:

It is hard to find these girls. [The] addresses they give are not their own. The dancing circuit [makes women move] around every couple of days — certain circuits just assume that you will be doing prostitution. Many people are not willing to tell law enforcement about people. [They are] not real forthcoming....[Women] use a stage name [so as] to not be found....[It is] hard to

⁷⁹⁶ See MINN. STAT. § 609.321, subd. 7a (2007).

⁷⁹⁷ See 18 U.S.C. § 1591(c)(1) (2007) (defining “commercial sex act” as “any sex act, on account of which anything of value is given to or received by any person”).

⁷⁹⁸ Interview with law enforcement officer (Nov. 8, 2007).

⁷⁹⁹ Interview with advocate (Nov. 26, 2007).

⁸⁰⁰ Interview with advocate (Oct. 12, 2007).

⁸⁰¹ Interview with advocate (Oct. 2, 2007).

⁸⁰² Interview with advocate (Feb. 13, 2008).

⁸⁰³ St. Paul Police Department, “St. Paul Vice Arrests for Prostitution and Indecent Conduct Convictions,” <http://mn-stpaul.civicplus.com/index.asp?NID=2351> (last visited Aug. 26, 2008).

⁸⁰⁴ City of Minneapolis, Third Precinct, <http://www.ci.minneapolis.mn.us/police/about/3rd-precinct.asp> (follow “CLEAN List” hyperlinks) (last visited Aug. 25, 2008); Fourth Precinct CARE Task Force, Viewing Prostitution, http://4thprecinctcare.org/view_offenders/categories/1 (last visited Aug. 25, 2008).

⁸⁰⁵ Interview with advocate (Oct. 3, 2007). These websites also feature pictures of patrons arrested for soliciting or engaging in prostitution.

⁸⁰⁶ Interview with attorney (Oct. 8, 2007); Interview with attorney (Oct. 24, 2007).

⁸⁰⁷ Officers expressed frustration that non-profit organizations with trafficked clients are not giving them opportunities to speak with women on an informal basis. Interview with law enforcement officer (Oct. 4, 2007).

track their criminal record [because] many [women] get booked under fictitious names and are known that way for the rest of their lives.⁸⁰⁸

In recognition of these obstacles, some law enforcement officers make efforts to assist trafficked women and girls by referring them to service providers⁸⁰⁹ or even taking them directly to service providers without arresting them.⁸¹⁰ One officer stated, “We’re not driven by statistics or convictions. It’s not a personal affront to me if they go back and two months later they’re arrested again.”⁸¹¹ However, officers noted that their efforts to help trafficked women in this context are limited by women’s desire to seek assistance.⁸¹²

While many law enforcement officers expressed the desire to speak and work with trafficked persons,⁸¹³ the reality remains that trafficked persons who come forward risk criminal sanction. For example, an advocate described a case in which a trafficked woman gave information to the police about her pimp’s intentions to commit a violent crime.⁸¹⁴ She spoke with various agents at different levels, including Internal Affairs.⁸¹⁵ The officers suddenly stopped contacting her once they learned of an outstanding warrant for her arrest for non-violent offenses in another county.⁸¹⁶ By then, her pimp knew that she had informed on him and had threatened her life.⁸¹⁷ The woman ultimately relocated with the help of a service provider.⁸¹⁸

b) HISTORY OF POLICE INACTION, HARASSMENT AND ABUSE DETERS TRAFFICKED PERSONS FROM COMING FORWARD

Some trafficked persons’ negative experiences with police officers further deter them from coming forward and thus diminish the effective prosecution of traffickers and protection of victims. Although some LEAs have improved their overall response to sex trafficking, advocates, attorneys, law enforcement and a trafficking survivor described incidents of police misconduct ranging from unresponsive to abusive. Although isolated to individual officers, these incidents have a ripple effect that impacts the efforts of those LEAs trying to assist trafficked women.

Numerous interviewees noted that trafficked persons from other countries often harbor negative perceptions of police as ineffective or corrupt based on experiences in their home country. One advocate described how in Mexico, when mothers report their daughters missing, the police blame the victims.⁸¹⁹ This experience may lead some Mexican-born residents to assume that law enforcement in the United States will respond similarly.⁸²⁰ Thus, parents may not report their missing children to police. This perception can also result in trafficked persons’ failure to disclose their situations to law enforcement officers. The history of police inaction may become a tool that traffickers exploit as leverage over trafficked persons.⁸²¹

⁸⁰⁸ Interview with law enforcement officer (Nov. 26, 2007).

⁸⁰⁹ Interview with law enforcement officer (Oct. 4, 2007).

⁸¹⁰ Interview with law enforcement officer (Oct. 4, 2007).

⁸¹¹ *Id.*

⁸¹² Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Nov. 8, 2007).

⁸¹³ Interview with law enforcement officer (Jan. 29, 2008);

Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement officer (Nov. 8, 2007).

⁸¹⁴ Interview with advocate/survivor (Feb. 20, 2008).

⁸¹⁵ *Id.*

⁸¹⁶ *Id.*

⁸¹⁷ *Id.*

⁸¹⁸ Interview with advocate/survivor (June 9, 2008).

⁸¹⁹ Focus Group (Aug. 6, 2007).

⁸²⁰ *Id.*

⁸²¹ Focus Group (Aug. 13, 2007).

Good Practice for Law Enforcement Agencies: Community Liaisons

Some police departments in the Minneapolis/St. Paul metropolitan area have community liaison positions. The Joint Community Police Project seeks to help “immigrants become successful partners and feel safe in their new community in order to foster understanding and relationships between law enforcement and the community. This will be uniquely accomplished by the blending of public safety and social services working collaboratively to anticipate and meet the social service and public safety needs of our new neighbors.”⁸²²

Negative perceptions of law enforcement are not derived only from experiences in foreign countries. Although an advocate reported having an excellent relationship with some local police officers,⁸²³ the same advocate and others described cases in which they characterized the behavior of some law enforcement officers in Minnesota as harassing and abusive.

Advocates who assist women in prostitution reported instances of “blatant [police] harassment” of women seeking services at their organizations.⁸²⁴ One service provider described clients who reported officers telling them to “[g]et out of this neighborhood.”⁸²⁵ Her clients also commonly report to her that officers ticket women, but fail to fully inform them about the nature of the criminal charges.⁸²⁶ In some cases, her clients reported never receiving a physical ticket at the scene.⁸²⁷ Whether a citation or complaint was later mailed and did not reach the addressee was not clear. The

⁸²² City of Brooklyn Park, Joint Community Police Projects, <http://www.brooklynpark.org/sitepages/pid775.php> (last visited Aug. 25, 2008).

⁸²³ Interview with advocate (Feb. 13, 2008).

⁸²⁴ Interview with advocate (Oct. 12, 2007); *see also* Interview with advocate (June 9, 2008); Interview with advocate (June 9, 2008).

⁸²⁵ Interview with advocate (Oct. 12, 2007).

⁸²⁶ *Id.*

⁸²⁷ *Id.*

effect of not receiving a ticket is that women fail to appear in court and a bench warrant is issued for their arrest, resulting in increased fines and a possible jail sentence.⁸²⁸ The failure to appear may also cause more onerous bail or release conditions to be imposed.⁸²⁹

A few service providers reported more egregious harm by a select few police officers known to women in prostitution. One experienced service provider estimated that clients disclose incidents of serious police misconduct several times each year.⁸³⁰ Another provider described cases in which the police have beaten up women, sexually assaulted them, and offered not to arrest women in exchange for sex and then still arrested the women.⁸³¹ When questioned about this misconduct, some law enforcement officers acknowledged that they know it goes on, but were not willing to provide information on the record for this report. When this information was brought to the Mayor of Minneapolis, he stated that he viewed the allegations as extremely serious and that his office would take immediate steps to review the claims, determine their validity and conduct an internal review of grievance procedures.

Despite these accounts, interviewees reported only two cases that resulted in criminal charges or

⁸²⁸ In Minnesota, failure to appear in court when charged with a misdemeanor or gross misdemeanor, such as solicitation for prostitution, is a misdemeanor. The court is authorized to order defendants to pay any costs “incurred by the prosecuting authority or governmental agency due to the defendant’s failure to appear.” MINN. STAT. § 609.49, subds. 2, 5 (2007); *see also* Interview with judge (Mar. 13, 2008); Interview with advocate (Oct. 12, 2007).

⁸²⁹ Failure to appear in court is a factor in setting bail amounts and enhanced release conditions. MINN. R. CRIM. P. § 6.02, subd. 2.

⁸³⁰ Interview with advocate (June 9, 2008).

⁸³¹ Interview with advocate (Oct. 12, 2007). Another advocate also described cases where officers demand sex in exchange for not arresting women. Interview with advocate (June 9, 2008). A third advocate reported clients discussing an officer known for beating up women in prostitution. Interview with advocate/survivor (June 9, 2008). This same advocate also shared a story about a probation officer demanding sexual favors from a probationer while driving her to a treatment center. She left the treatment facility shortly after arriving. *Id.* Probation officers are not sworn police officers.

disciplinary action for such cases.⁸³² One law enforcement officer cited an older case involving criminal charges against a Minneapolis police officer to demonstrate that the Minneapolis Police Department (“MPD”) takes reports of police misconduct seriously.⁸³³ The Advocates learned of only one other case from 2005 where disciplinary charges were brought against one Minneapolis police officer for taking lewd photographs of a woman he had arrested.⁸³⁴ The officer knew the woman was involved in prostitution.⁸³⁵ He was ultimately discharged for violating the MPD Code of Ethics and the City of Minneapolis declined to defend or indemnify the former officer in the civil rights case filed by the woman.⁸³⁶

Another troubling account came from two advocates who reported a story about police in Greater Minnesota perpetrating long-term sexual abuse, blackmailing families, and making pornography of American Indian women and girls.⁸³⁷ According to the advocate, this case was widely known in the community and people were terrified to cooperate with the FBI’s investigation for fear of being framed or having their homes burned down.⁸³⁸ The Advocates is not aware of formal criminal or disciplinary charges brought against the officers. The advocate reflected on her feeling that American Indians are disproportionately impacted by

institutional abuses: “[t]he system re-victimizes the victims so much. They struggle with oppression already, and the police don’t treat them right. People just don’t want to come forward. They get chewed up and spit out.”⁸³⁹ A healthcare provider echoed the advocate’s concern and added that he has heard some American Indians describe serious issues with police maltreatment that have led to “a lot of mistrust with the Native community with police.”⁸⁴⁰

Runaway, homeless and street youth are also a population at risk for sex trafficking. According to one study, one in eight young people in this group reported trading sex for shelter, food, clothing or other items, which may indicate some involvement in sex trafficking.⁸⁴¹ Their negative interaction with police may deter them from confiding in police and working with them to enforce criminal laws against sex trafficking.⁸⁴² For example, youth report police harassment when they are in public places, particularly youth of color.⁸⁴³

⁸³² A law enforcement officer explained that in his experience official complaints of police misconduct were rare. In 1999 and 2000, this officer participated in approximately 600 arrests of women in prostitution, which resulted in only one official complaint. Interview with law enforcement officer (Jan. 29, 2008); Interview with law enforcement officer (Sept. 16, 2008). The Minnesota Court of Appeals ultimately upheld the prostituted woman’s conviction, finding that the undercover officer’s conduct in this case was permissible in the “attempt to obtain evidence sufficient to justify an arrest for prostitution.” *State v. Artishon*, 2002 Minn. App. LEXIS 177 (Minn. Ct. App. Feb. 5, 2002).

⁸³³ Interview with law enforcement officer (Jan. 22, 2008).

⁸³⁴ In the matter of *Hudson v. Minneapolis*, No. 6-6010-16110-3 (Office of Admin. Hearings for the Minneapolis City Council Feb. 8, 2005).

⁸³⁵ *Id.* ¶ 2.

⁸³⁶ *Id.* ¶ 8; see Complaint, *Hudson v. City of Minneapolis*, No. 04-3313 (D. Minn. July 19, 2004). As of the writing of this report, the civil case was still pending.

⁸³⁷ Interview with former advocate (Dec. 5, 2007); Interview with advocate (Dec. 7, 2007).

⁸³⁸ Interview with advocate (Dec. 7, 2007).

⁸³⁹ *Id.*

⁸⁴⁰ Interview with healthcare provider (Jan. 29, 2008).

⁸⁴¹ SAFE HARBORS YOUTH INTERVENTION PROJECT, *supra* note 253, at 17.

⁸⁴² A report on law enforcement and prostitution in Washington, D.C., found that the

[c]riminalization of youth in the District seems to be a common reaction whenever there is a perceived increase in crime, regardless of whether or not the crimes are connected to youth. A section of the Omnibus Public Safety Emergency Act of 2006 set more stringent curfew laws for D.C. youth under the age of 16 and framed it as a way of “protecting” young people from violence. Youth and young adults may also be perceived as not having a “legitimate” reason to be in public space, another criteria used by police when enforcing prostitution free [sic] zones and related controls.

ALLIANCE FOR A SAFE & DIVERSE DC, MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C. 58 (2008), <http://www.differentavenues.org/MoveAlongReport.pdf>.

⁸⁴³ Interview with healthcare provider (Nov. 1, 2007). With the majority of Minnesota’s runaway population being young people of color, racial profiling by police is an issue. SAFE HARBORS YOUTH INTERVENTION PROJECT, *supra* note 253, at 6. An advocate reported complaints from African-American homeless youth that police officers in downtown Minneapolis harass them because of business complaints. Interview with advocate (Oct. 3, 2007).

Despite the lack of criminal charges or convictions in previously discussed cases, reporting police misconduct is a crucial step to holding police departments accountable for their actions. Procedures for reporting police misconduct may vary slightly throughout Minnesota, but generally, a city or police department will have multiple agencies able to receive a complaint. For example, in Minneapolis, an individual can file a complaint with the MPD itself,⁸⁴⁴ the Minneapolis Civil Rights Department,⁸⁴⁵ or the Civilian Police Review Authority,⁸⁴⁶ depending on the nature of the alleged violation.

Some police departments have taken affirmative steps to combat these negative perceptions. For example, in response to cases of alleged police brutality by MPD officers, MPD worked with a community-based mediation team, with assistance from the U.S. Department of Justice, to draft and sign a Memorandum of Agreement (MOA) addressing key issues “such as use-of-force policies and procedures, training, investigations, canine use, and public education and outreach.” MPD continues to implement this agreement and comply with its terms.⁸⁴⁷ An advocate in the Minneapolis American Indian community characterized his community’s current relationship with MPD as “stronger than it has ever been in the community’s history.”⁸⁴⁸ Another metro area advocate described how local police officers have been responsive to complaints

of harassment and stalking of their clients, many of whom are trafficked women.⁸⁴⁹

Building trust and relationships with individuals in an officer’s jurisdiction can help counter negative images of police and lead to cooperation in combating sex trafficking.⁸⁵⁰

Officers described positive outcomes based on their relationships with trafficked persons or community members, illustrating the potentially positive impact of community policing on sex trafficking cases.⁸⁵¹ One officer described a case involving trafficked juveniles that developed from a tip that he received from a student who had seen a trafficker with other students.⁸⁵² The officer commented:

I think that this could have been one of those cases that would have continued if I didn’t have that relationship with the kids. It just wouldn’t have been on law enforcement’s radar. I’ve never seen a kid come into a police department and say “hey there’s [someone] prostituting minors.” I could be wrong, but I haven’t seen it.⁸⁵³

⁸⁴⁴ City of Minneapolis, Police Complaint Procedure, <http://www.ci.minneapolis.mn.us/police/about/ia-complaint-procedure.asp> (last visited Aug. 25, 2008).

⁸⁴⁵ MINNEAPOLIS, MINN., CITY CHARTER § 141.40(6) (2008); see also City of Minneapolis, How to File a Complaint, <http://www.ci.minneapolis.mn.us/civil-rights/commission/complaints.asp> (last visited Aug. 25, 2008).

⁸⁴⁶ MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 9, ch. 172 (2008); see also City of Minneapolis, Civilian Police Review Authority, <http://www.ci.minneapolis.mn.us/cra/> (last visited Aug. 25, 2008).

⁸⁴⁷ City of Minneapolis, Office of Professional Standards Mediation Compliance Unit, <http://www.ci.minneapolis.mn.us/police/about/mcu/index.asp#TopOfPage> (last visited Aug. 25, 2008); see Memorandum of Agreement, Minneapolis Police Department and Unity Community Mediation Team (Dec. 4, 2003), <http://www.ci.minneapolis.mn.us/police/about/mcu/federal-mediation-agreement.pdf>.

⁸⁴⁸ Interview with advocate (July 23, 2008).

⁸⁴⁹ Interview with advocate (Feb. 13, 2008).

⁸⁵⁰ *Id.*; see also Interview with law enforcement officer (Dec. 4, 2007).

⁸⁵¹ Interview with law enforcement officer (Dec. 4, 2007); Interview with law enforcement officer (Feb. 19, 2008). An advocate also discussed the role community members can play in alerting police to trafficking activity in their neighborhoods. Interview with advocate (Feb. 11, 2008).

⁸⁵² Interview with law enforcement officer (Feb. 19, 2008).

⁸⁵³ *Id.*

c) PERCEPTION THAT LOCAL LAW ENFORCEMENT AGENTS ENFORCE FEDERAL IMMIGRATION LAW DETERS TRAFFICKED IMMIGRANTS FROM CONTACTING LEAS

Trafficked immigrants may avoid any contact with LEAs if they perceive them as enforcing immigration law or even as cooperating with immigration authorities. Some officers routinely work with immigration agents outside the context of sex trafficking in areas such as customs enforcement. Service providers reported that officers in Greater Minnesota regularly contacted Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) when dealing with foreign nationals. One advocate reported that law enforcement used CBP officers for Spanish language interpreters as a matter of course.⁸⁵⁴ An officer attributed this to local agencies' overall lack of resources, particularly along the Canadian border.⁸⁵⁵

Both Minneapolis and St. Paul have separation ordinances clarifying that the primary responsibility of local police is enforcement of Minnesota laws, not federal immigration laws.⁸⁵⁶ The St. Paul and Minneapolis Police Departments, however, do work with ICE investigators in sex trafficking investigations involving foreign nationals. This cooperation is consistent with the separation ordinances because these are not actions related to enforcement of civil immigration laws, but criminal investigations.

In May 2007, MPD's presence at an ICE sting on brothels suspected of sex trafficking in South Minneapolis created the perception that the Minneapolis Police Department ("MPD") was

conducting an immigration raid in the neighborhood, in violation of the city's separation ordinance.⁸⁵⁷ Although MPD officers were present only to provide a uniformed presence while ICE executed search warrants,⁸⁵⁸ the incident fostered fear and distrust in immigrant communities.⁸⁵⁹ After a brothel sting in December, MPD prioritized community relations by holding a community meeting to discuss how the sting was handled and the case's outcome.⁸⁶⁰

A recent executive order signed by Governor Tim Pawlenty may deepen fears of local police functioning as immigration officers. The February 6, 2008, executive order has the stated goal of facilitating cooperation between state and local law enforcement and federal agents, including ICE, as part of the Agreement of Cooperation in Communities to Enhance Safety and Security ("ACCESS") program.⁸⁶¹ Activities through the ACCESS program include "immigration Cross-Designation pursuant to section 287(g) of the federal Immigration and Nationality Act for a select number of state law enforcement officers" and conducting joint operations with ICE.⁸⁶² Cross-designation permits designated local law enforcement officers to perform the functions of an immigration officer.⁸⁶³ While cross-designation of law enforcement officers may facilitate investigations of sex trafficking, it also negatively affects the willingness of trafficked persons to come forward due to fears that the police are now also immigration officers.

⁸⁵⁴ Interview with advocate (Oct. 31, 2007).

⁸⁵⁵ See also Interview with law enforcement officer (Jan. 10, 2008).

⁸⁵⁶ These policies recognize that foreign nationals' fears about removal can prevent them from reporting crimes. In keeping with this policy, metro area officers do not ask suspects about their immigration status or report crime victims who lack status. MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 2, ch. 19 (2008); ST. PAUL, MINN., ADMINISTRATIVE CODE ch. 44 (2008).

⁸⁵⁷ Associated Press, *Attorney: 25 Indicted in 'Major Prostitution Ring,'* May 21, 2007,

<http://wcco.com/topstories/prostitutionring.Twin.2.367644.html>.

⁸⁵⁸ Interview with law enforcement officer (Dec. 4, 2007).

⁸⁵⁹ Interview with law enforcement officer (Jan. 29, 2008).

⁸⁶⁰ *Id.*

⁸⁶¹ Exec. Order 08-02, Directing Cooperation with Federal Immigration Authorities (2008),

<http://www.governor.state.mn.us/priorities/governorsorders/executeorders/PROD008599.html>.

⁸⁶² *Id.* An officer knowledgeable about sex trafficking and focused on the needs of trafficked persons stated that he was slated to receive section 287(g) training, saying that access to immigration records benefits investigations of gangs. Interview with law enforcement officer (Oct. 4, 2007).

⁸⁶³ INA § 287(g), 8 U.S.C. § 1357 (2007).

2. INVESTIGATING SEX TRAFFICKING CASES

Successful investigations of traffickers are often dependent on trafficked persons' willingness to cooperate. However, trafficked persons must be treated in a manner appropriate to their status, regardless of their statements or participation. The practice of detaining trafficked persons or threatening them with prosecution violates human rights standards. The *U.N. Recommended Principles and Guidelines* provide that the protection and care that public authorities must accord trafficked persons "shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings."⁸⁶⁴

Some interviews revealed law enforcement practices that showed acute sensitivity to victims' dangerous and difficult situations. But others revealed harmful, disrespectful or coercive treatment during investigations of sex trafficking or potential sex trafficking cases. In addition, extensive resources are needed to properly investigate sex trafficking cases, and law enforcement agencies often do not have those resources. Interviewees reported that sex trafficking cases are among the most difficult to investigate due to the challenges of working with trafficked women as witnesses, the resource-intensive nature of investigations and the challenges of gathering corroborating evidence.

a) WORKING WITH TRAFFICKED PERSONS DURING AN INVESTIGATION

Successful investigations of traffickers often require active involvement and testimony from the trafficked persons. This can be a frightening and traumatizing experience. Trafficked persons may be under direct threat from their traffickers if they cooperate with an investigation or may have family members in their home country who have been threatened. Although

some trafficked persons appreciate the opportunity to be heard, working with trafficked persons during an investigation often places the goals of law enforcement and trafficked persons in direct conflict. Though some law enforcement officers treat victims with respect and sensitivity, interviews revealed that others further harm trafficked persons by using coercive or threatening tactics to secure their testimony, failing to protect witnesses from their traffickers and not being sensitive to their needs.

Many officers were keenly aware of trafficked persons' disinclination to participate in an investigation,⁸⁶⁵ whether because of fear of retaliation or their personal relationship with the trafficker,⁸⁶⁶ among other reasons. Officers also recognized the need to take time to build trust, so that the trafficked person will be comfortable and forthcoming with information.⁸⁶⁷ One officer explained that he tried to secure female interpreters for women to make them more comfortable.⁸⁶⁸ The statement of another officer revealed sensitivity to the difficulty trafficked persons face in describing their experiences:

I used to do trainings with police. I would tell everyone, "We are all friends here, turn to the person next to them, and spend a couple of minutes talking about your last sexual experience." And they all look around, and they're mortified. I've done that with the press when I was a police officer. And they're like, "No." But you expect people to sit down and tell you this horrible thing, because you're wearing a uniform. And some of them don't even trust police because of [experiences in] their own countries, and to tell them now to sit down and do that... Even though we have good in our heart, it doesn't mean we are

⁸⁶⁵ Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Nov. 26, 2007).

⁸⁶⁶ Interview with law enforcement officer (Jan. 2, 2008).

⁸⁶⁷ Interview with law enforcement officer (Feb. 19, 2008).

⁸⁶⁸ Interview with law enforcement officer (Jan. 10, 2008).

⁸⁶⁴ U.N. Econ. & Soc., *supra* note 68, princ. 8.

trustworthy. There is work on our part for us to become trustworthy, so people can tell us something.⁸⁶⁹

However, many law enforcement officers emphasized the need for women to cooperate in an investigation. One officer simply said, “They need counseling. We need answers.”⁸⁷⁰ This officer emphasized the overarching law enforcement goal of preventing sex traffickers from resuming their operations locally or elsewhere.⁸⁷¹

While approving of the progress made in law enforcement’s approach to sex trafficking and prostitution, a service provider, who is also a survivor of trafficking, nonetheless reported that some “police are insensitive to women on the street, and that’s a problem.”⁸⁷² She reported a personal experience in which police officers followed her to a house where drugs were being sold and then executed a search warrant at the house.⁸⁷³ This sequence of events made her appear to be an informant and endangered her life.⁸⁷⁴ Such practices discourage cooperation with law enforcement and do not promote safety for the trafficked person.

Officers may employ various tactics to ensure cooperation from trafficked persons. In some cases, officers detain or threaten the woman with criminal sanctions, particularly in cases involving U.S. citizens or “domestic trafficking.” One officer said, “You have to hold something over their head.... Almost always, they don’t want to take the charge, they will cooperate.”⁸⁷⁵ Sending women to jail is a “tool” officers can use to make a case.⁸⁷⁶ An advocate told a story about a juvenile who was held in jail for five months until she agreed to cooperate

in the prosecution of her pimp.⁸⁷⁷ She did not want to provide information about him because she believed that he was her boyfriend and was going to take care of her.⁸⁷⁸

A foreign national’s immigration status could be used as leverage to gain her cooperation. When dealing with ICE, a woman’s lack of immigration status renders her vulnerable to pressures to cooperate in investigations. In some cases, her only option to get proper documentation to stay in the country is contingent on cooperating and participating in the prosecution of her traffickers.

One officer made very clear that he was not concerned about immigration status and did not use it to gain leverage over a trafficked woman.⁸⁷⁹ He described interacting with a woman after a law enforcement action on a brothel:

We did not want to overwhelm them. We spent half an hour calming one woman down that she was not being deported and not being arrested, with the help of translation. If I’m here, then she’s going to be scared. I told her “I am not an ICE agent. Do not fear that from me.” They knew what they needed to know. I told them that they were not under arrest for immigration.⁸⁸⁰

This example confirms the importance of separating law enforcement duties from enforcement of immigration law.

In some cases, LEAs prioritize investigating other crimes, such as drug trafficking, over sex trafficking, which may impede law enforcement and human rights objectives. This practice minimizes the sexual violence trafficked women experience and, even worse, uses the women as pawns. A mother of a young woman who narrowly escaped being

⁸⁶⁹ Focus Group (Aug. 1, 2007).

⁸⁷⁰ Interview with law enforcement officer (Jan. 29, 2008).

⁸⁷¹ *Id.*

⁸⁷² Interview with advocate/survivor (Jan. 14, 2008).

⁸⁷³ *Id.*

⁸⁷⁴ *Id.*

⁸⁷⁵ Interview with law enforcement officer (Oct. 25, 2007).

⁸⁷⁶ Interview with law enforcement officer (Jan. 29, 2008).

⁸⁷⁷ Interview with advocate/survivor (Feb. 20, 2008).

⁸⁷⁸ *Id.*

⁸⁷⁹ Interview with law enforcement officer (Jan. 29, 2008).

⁸⁸⁰ *Id.*

trafficked by a gang, described how law enforcement chose not to pursue the sexual assault and trafficking of other girls because the officers wanted to pursue the drug charges against the perpetrators, which carry steeper penalties.⁸⁸¹ She found this “very upsetting,” and the gang subsequently harassed her daughter.⁸⁸²

Another officer reflected on a large drug case that occurred before the state anti-trafficking law was passed.⁸⁸³ In that case, women were involved in prostitution and transporting drugs, money and people. The officer stated that the women in prostitution were “secondary victims. They were never the targets; they were the way we got to the target. We were re-victimizing them in that way.”⁸⁸⁴ About half of the women proffered evidence, although they were not required to testify. While some of the women were charged, the charges were ultimately dropped. The officer added that “we didn’t want to have them carry a criminal record for a gross misdemeanor.”⁸⁸⁵ Again, the availability of higher penalties for narcotics crimes influenced the decision to make the case on those grounds, as opposed to sex trafficking.⁸⁸⁶

Because investigations take from six months to several years to complete, women and youth who cooperate with law enforcement remain at risk of retaliation during the lengthy investigative process. This period presents many challenges to law enforcement officers, advocates and trafficked persons. Federal law enforcement officers have obligations to identify⁸⁸⁷ and to notify crime victims, including trafficked persons, of their rights and available services.⁸⁸⁸ But those obligations must

only be exercised to the extent they do not interfere with the investigation.⁸⁸⁹ This restriction likely limits the extent to which officers can assist trafficked persons during the investigation.

Any assistance trafficked women and girls receive during the investigation may be determined by whether it is a state or federal investigation. For example, victim safety during state-level investigations presents an enormous challenge because Minnesota does not fund its witness protection program.⁸⁹⁰ A trafficked woman’s nationality or immigration status may also determine the protections she can access during the investigation. As previously discussed, the federal system provides funding for organizations and access to public benefits for trafficked foreign nationals, so U.S. citizens and many lawful permanent residents who are trafficked are ineligible to receive those resources.⁸⁹¹

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- (b) His or her right entitlement, on request, to the services listed in 42 U.S.C. § 10,607(c). (42 U.S.C. § 10,607(b)(2)).
 - (c) The name, title, business address, and telephone number of the responsible official to whom such a request for services should be addressed. (42 U.S.C. § 10,607(b)(3))
 - (d) The place where the victim may receive emergency medical or social services. (42 U.S.C. § 10,607(c)(1)(A))
 - (e) The availability of any restitution or other relief (including crime victim compensation programs) to which the victim may be entitled under this or any other applicable law and the manner in which such relief may be obtained. (42 U.S.C. § 10,607(c)(1)(B))
 - (f) Public and private programs that are available to provide counseling, treatment, and other support to the victim. (42 U.S.C. § 10,607(c)(1)(C))
 - (g) The right to make a statement about the pretrial release of the defendant in any case of interstate domestic violence, violation of a protection order, or stalking. (18 U.S.C. § 2263)
 - (h) The availability of protections from intimidation and harassment.

⁸⁸¹ Interview with advocate (Dec. 7, 2007).

⁸⁸² *Id.*

⁸⁸³ Interview with law enforcement officer (Nov. 26, 2007).

⁸⁸⁴ *Id.*

⁸⁸⁵ *Id.*

⁸⁸⁶ *Id.*

⁸⁸⁷ 42 U.S.C. § 10,607(b)(1) (2007).

⁸⁸⁸ Responsible officials must advise a victim as soon as possible without jeopardizing the investigation of:

- (a) His or her rights as enumerated in 18 U.S.C. § 3771(a). (18 U.S.C. § 3771(c)(1))

U.S. DEPARTMENT OF JUSTICE, ATTORNEY GENERAL GUIDELINES FOR VICTIM AND WITNESS ASSISTANCE 23-25 (2005), <http://www.usdoj.gov/olp/final.pdf> (last visited Aug. 14, 2008) [hereinafter ATTORNEY GENERAL GUIDELINES].

⁸⁸⁹ *Id.*; MINN. STAT. § 13.82, subd. 13(a) (2007).

⁸⁹⁰ Interview with law enforcement officer (Jan. 2, 2008); see MINN. STAT. § 299C.065, subd. 1a (2007) (Witness and Victim Protection Fund).

⁸⁹¹ See discussions of disparate funding for services for trafficked U.S. citizens in the sections “Lack of Funding and Resources” and “Public Assistance” *supra* pp. 36, 72.

Cases involving trafficked runaway youth present distinct challenges for law enforcement officers. Some officers do not effectively interact with young people and in some cases may talk down to them. An advocate explained that in dealing with children, “people should not be heaving a sigh and saying ‘when are you getting out of this?’”⁸⁹² An officer reported that the most difficult aspect of the investigation was dealing with the victims’ parents. Parents often called him looking for their child or resources to keep their child safe — resources he could not provide. He said that “[b]esides making the report, [there is] not a lot you can do.”⁸⁹³ While he clearly stated that trafficked persons should not be detained, he wondered, “When it comes to their safety and you don’t have a choice, I mean, what do you do?”⁸⁹⁴

b) LENGTHY, RESOURCE-INTENSIVE INVESTIGATIONS

Interviewees agreed that to be conducted properly, sex trafficking investigations require significant personnel, time and training that local law enforcement agencies often lack. One sex trafficking case from May 2007 took more than eighteen months to investigate.⁸⁹⁵

Law enforcement must gather extensive evidence in sex trafficking investigations. As a practical matter, successful prosecution of sex trafficking cases requires corroboration beyond a witness’s testimony,⁸⁹⁶ although many interviewees

emphasized the central role of a trafficked woman’s testimony in a successful prosecution.⁸⁹⁷ Acquiring corroborating evidence requires additional resources, such as undercover work or training officers on writing effective police reports.⁸⁹⁸

One officer simply said that you “have to fund it in order to end it. We need funding to properly investigate.”⁸⁹⁹ Suburban law enforcement agencies lack the resources and personnel for these types of cases.⁹⁰⁰ An officer from Greater Minnesota noted that his superiors would have a difficult time reassigning officers from an armed robbery, a shooting and a murder to dedicate the necessary resources for a sex trafficking investigation.⁹⁰¹ For one officer, the 2005 Minnesota anti-trafficking law represented another “unfunded mandate” that his agency lacked the resources to enforce.⁹⁰²

Among those with experience in investigating at least one trafficking case, many local law enforcement agents expressed a preference to prosecute the case on the federal level and work with federal LEAs due to their increased resources and experience.⁹⁰³ This decision is also influenced by the possibility of harsher penalties at the federal level, which helps justify the expense of the investigation.⁹⁰⁴

⁸⁹² Interview with advocate (Nov. 26, 2007).

⁸⁹³ Interview with law enforcement officer (Feb. 19, 2008).

⁸⁹⁴ This officer did not discuss the possibility of accessing Child Protection Services in such cases. *Id.*; see discussion of child protection issues in the section “Child Protection Services” *supra* p. 75.

⁸⁹⁵ Interview with law enforcement officer (Oct. 25, 2007).

⁸⁹⁶ Interview with law enforcement officer (Feb. 1, 2008); see MINN. STAT. § 609.347, subd. 1 (2007); see also *State v. Chang*, No. A03-1802, 2005 Minn. App. LEXIS 167 (Minn. Ct. App. Feb. 15, 2005) (affirming that testimony by a complainant in a criminal sexual conduct case does not require corroboration and that conviction can rest on the uncorroborated evidence of a single witness); *State v. Ani*, 257 N.W.2d 699, 700 (Minn. 1977).

⁸⁹⁷ See discussion in the section “Holding Sex Traffickers and Patrons Accountable” *infra* p. 118.

⁸⁹⁸ Interview with prosecutor (Jan. 22, 2008); Interview with law enforcement officer (Dec. 4, 2007).

⁸⁹⁹ Interview with law enforcement officer (Feb. 1, 2008).

⁹⁰⁰ Interview with law enforcement officer (Jan. 2, 2008).

⁹⁰¹ Interview with law enforcement officer (Nov. 8, 2007). Officers from other states have cited the same problem, noting that “local law enforcement is reticent to engage their limited resources in pursuit of human trafficking suspects and victims when previous state laws suffice and local political and organizational imperatives do not necessarily seek to forward the vague and apparently contradictory federal statutes.” *Crossing the Border: Immigrants in Detention and Victims of Trafficking, Part II: Hearings Before the H. Subcomm. on Border, Maritime & Global Counterterrorism*, 110th Cong. 4 (2007) (statement of Lt. Derek J. Marsh, Co-Director Orange County Human Trafficking Task Force), available at <http://homeland.house.gov/SiteDocuments/20070321101447-62337.pdf>.

⁹⁰² Interview with law enforcement officer (Feb. 1, 2008).

⁹⁰³ Interview with law enforcement officer (Feb. 19, 2008);

⁹⁰⁴ Interview with law enforcement officer (Jan. 2, 2008).

⁹⁰⁴ *Id.*

Lack of resources forces officers to be selective about which cases they pursue. One metro area officer's unit receives many more tips than it can investigate, so officers look for a nexus with their jurisdiction or cases involving juveniles.⁹⁰⁵ Another officer remarked that his unit had more than enough cases to keep busy within their mandate of focusing on online and off-street prostitution.⁹⁰⁶ Even federal agents feel the pinch of budget constraints, with a former officer remarking that "budget drives everything at some point."⁹⁰⁷ As an example of the high costs involved in these investigations, he noted that it costs at least \$50,000 per month to operate a Title III order for a wire tap.⁹⁰⁸

c) LANGUAGE BARRIERS AND INTERPRETATION

Although most law enforcement officers expressed satisfaction with their ability to access interpreters in sex trafficking cases, some interviewees noted persistent problems with interpretation during investigations. The lack of qualified, neutral interpreters during an investigation may result in harm to trafficked persons who do not speak English and may impede effective investigation.

Trafficked women have a right to an interpreter whether they are considered a crime victim or are accused of a crime. For instance, federal regulations require responsible officials to ensure that trafficking victims have "reasonable access" to

translation or interpretation services.⁹⁰⁹ Minnesota law specifically provides that anyone accused of a crime is entitled to be informed of the reasons for the arrest.⁹¹⁰ It also requires law enforcement officers to immediately make the necessary arrangements to obtain an interpreter for arrestees or detainees with limited English proficiency "at the earliest possible time at the place of detention."⁹¹¹ Prosecutors are required to make any formal criminal charges within thirty-six hours of detention.⁹¹²

Advocates from Greater Minnesota reported that the absence of interpretation posed a problem to trafficked women in their dealings with law enforcement. A general lack of resources for law enforcement agencies in Greater Minnesota can mean that agencies lack competent interpreters.⁹¹³ Officers in Greater Minnesota expressed familiarity with the language resources available to them — such as officers who speak the language, Language Line, interpretation agencies, local universities, service providers and immigration officials.⁹¹⁴ However, they were also cognizant of the cost involved with utilizing Language Line or professional interpreters.⁹¹⁵

The lack of an interpreter not only violates LEAs' obligation to provide meaningful access to interpreters, but can compromise law enforcement objectives. In a case from Greater Minnesota

⁹⁰⁵ Interview with law enforcement officer (Oct. 4, 2007).

⁹⁰⁶ Interview with law enforcement officer (Jan. 29, 2008). Online prostitution refers to the use of websites like Craigslist.com or Live Links to solicit for prostitution. Even though pimps or traffickers may not seem to be involved, the recent case of Justine Reisdorf demonstrates that they can play a large role in online solicitation. See Criminal Complaint at ¶ 3, *United States v. Reisdorf*, No. 07-276 (June 14, 2007) (describing how Reisdorf promoted prostitution operation on Craigslist). Off-street prostitution, as distinguished from street prostitution, refers to the more organized forms of prostitution that take place in massage parlors, spas, brothels, residential homes, hotels, escort services and other locations.

⁹⁰⁷ Interview with former law enforcement officer (Nov. 26, 2007).

⁹⁰⁸ *Id.*; see 18 U.S.C. §§ 2510-2521 (2007).

⁹⁰⁹ 28 C.F.R. § 1100.33(b) (2007). Trafficked persons as defined under either state or federal law would fall under agencies' general obligations to provide "meaningful access" to interpretation services regarding their rights as crime victims. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 16, 2000); Civil Rights Act, Title VI, 42 U.S.C. § 2000d et seq. (2007).

⁹¹⁰ "Every person arrested by virtue of process, or taken into custody by an officer, has a right to know from such officer the true ground of arrest." MINN. STAT. § 611.01 (2007).

⁹¹¹ MINN. STAT. § 611.32, subd. 2.

⁹¹² MINN. R. CRIM. P. 4.02, subd. 5(1).

⁹¹³ See Gretchen Hunt, *Human Trafficking: A New Problem for State Courts*, NASJE NEWS QUARTERLY (National Ass'n of State Judicial Educators) Spring 2007, at 17, available at <http://nasje.org/news/newsletter0702/features01.htm>.

⁹¹⁴ See Interview with law enforcement officer (Nov. 8, 2007); Interview with law enforcement officer (Jan. 10, 2008); Interview with law enforcement officer (Nov. 26, 2007); Interview (Nov. 8, 2007).

⁹¹⁵ Interview with law enforcement officer (Nov. 26, 2007).

involving both labor abuses and sexual assault, advocates reported that police used no interpreter when taking the Spanish-speaking women's statements.⁹¹⁶ According to one advocate, this discussion produced an inaccurate police report which led the county prosecutor to decline the case. After the advocate met with the women and ensured that the police retook their statements correctly, the case went forward, ultimately resulting in a guilty plea for criminal sexual conduct.⁹¹⁷ This advocate's colleague reported that the situation was not unusual: "[t]hat is [why] the advocates have to advocate constantly."⁹¹⁸

Advocates also reported that law enforcement agencies in Greater Minnesota sometimes use Customs and Border Patrol agents as interpreters.⁹¹⁹ The use of immigration officials as interpreters is problematic. Their mandate to remove foreign nationals who are undocumented or out-of-status conflicts with the need for meaningful, neutral interpretation for crime victims. This scenario results in trafficked women or girls withholding information that may identify them as trafficking victims for fear of not only criminal liability, but also removal from the country.

One law enforcement officer noted the discrepancy in resources for interpretation between local and federal law enforcement agencies. He observed one trafficking case in which ICE provided and paid for interpreters for all the detainees and trafficked persons.⁹²⁰ The local officer was impressed with ICE's ability to simply make a phone call and be connected with a Mandarin Chinese speaker in about thirty seconds, which enhanced the local officer's ability to communicate with a trafficked

woman.⁹²¹ In this instance, the local officer said that he would not have known where to get a Chinese interpreter and that "[i]t was nice to have a conversation for fifteen minutes, instead of taking six hours to find a translator."⁹²² Ultimately, resources can be saved by using qualified, neutral interpreters.

This is not always the case with federal agencies, however. After one brothel sting involving federal law enforcement agents, advocates reported that a sufficient number of interpreters was not available to non-English speaking women.⁹²³

d) LACK OF INTERDEPARTMENTAL COOPERATION IN LAW ENFORCEMENT AGENCIES IMPEDES INVESTIGATION OF SEX TRAFFICKING CASES

LEAs' failure to cooperate across departments can lead to trafficked persons going unidentified and traffickers going unprosecuted. Officers reported that coordination between different divisions in an agency frequently does not occur.

Because specialized units may handle sex trafficking investigations, precinct level officers in larger jurisdictions may be unaware of activities and procedures necessary to properly identify and investigate sex trafficking cases.⁹²⁴ For example, one officer with a large caseload did not know that his LEA had a vice unit dedicated to investigating prostitution and sex trafficking.⁹²⁵

The compartmentalization of enforcement functions is common and can cause cases to slip through the cracks or be viewed solely through a unit's particular lens. An officer observed that "[w]e're all off in our

⁹¹⁶ Interview with advocate (Oct. 31, 2007).

⁹¹⁷ *Id.*

⁹¹⁸ Interview with advocate (Oct. 31, 2007). However, a law enforcement officer from Greater Minnesota said that Customs and Border Patrol refuses to interpret for his agency because they do not want to become part of the chain of evidence. Interview with law enforcement officer (Nov. 26, 2007).

⁹¹⁹ *Id.*

⁹²⁰ Interview with law enforcement officer (Jan. 29, 2008).

⁹²¹ *Id.*

⁹²² *Id.*

⁹²³ Interview with attorney (Oct. 24, 2007); Interview with advocate (Jan. 2, 2008); Interview with advocate (Oct. 8, 2007).

⁹²⁴ Interview with law enforcement officer (Dec. 4, 2007).

⁹²⁵ Interview with law enforcement officer (Feb. 1, 2008).

separate entities: burglary, sex crimes, vice. Sometimes people don't even know we exist or what we do."⁹²⁶ For example, officers in a missing persons unit might treat a juvenile solely as a missing persons case and not explore information about sexual violence or exploitation.⁹²⁷ One officer reported frustration with being required to send his cases to another unit when they involve criminal sexual conduct because he does not have the opportunity to complete the case himself.⁹²⁸

Another officer expressed concern that "[p]atrol officers are dealing with juvenile prostitution and not interviewing [the young people]. They should be asking, 'Why are you here? You can work with the police. Let's work with you.'"⁹²⁹ He noted that juveniles are typically not charged with solicitation of prostitution or loitering with intent to commit prostitution.⁹³⁰ He added, however, that juveniles are not necessarily getting the help they need to leave traffickers either.⁹³¹ He emphasized that juveniles are not getting the opportunity to "go somewhere [and] get involved. They need to take a look at life and where they're headed. Then they are more apt to work with us."⁹³² This officer also expressed concern that his department was "out of the loop" because he has not seen those types of cases.⁹³³

Another officer described how she maintains open lines of communications with commanders on cases that "[look] odd."⁹³⁴ When reviewing cases, she looks for red flags from youth, including statements such as "You know I got raped," or "I was brought to another house."⁹³⁵ The officer told a story about how her agency mobilized to assist two girls from out of state who had been repeatedly raped, prostituted

and then brought to Minnesota, where one girl ran away.⁹³⁶ Officers from multiple units in this agency coordinated to investigate the various angles of the case and secure help for the girls.⁹³⁷

⁹²⁶ Interview with law enforcement officer (Jan. 3, 2008).

⁹²⁷ Interview with law enforcement officer (Jan. 10, 2008).

⁹²⁸ Interview with law enforcement officer (Jan. 3, 2008).

⁹²⁹ Interview with law enforcement officer (Feb. 1, 2008).

⁹³⁰ *Id.*

⁹³¹ *Id.*

⁹³² *Id.*

⁹³³ *Id.*

⁹³⁴ Interview with law enforcement officer (Jan. 10, 2008).

⁹³⁵ *Id.*

⁹³⁶ Interview with law enforcement officer (Jan. 10, 2008).

⁹³⁷ *Id.*

RECOMMENDATIONS

The Minnesota Department of Public Safety should develop and fund basic and advanced training for law enforcement officers on identifying sex trafficking cases. Training for investigators should include a discussion of the complex nature of sex trafficking cases and techniques for working with trafficked persons as victims to avoid further harming them. The Legislature should allocate funds dedicated to keeping all victim-witnesses safe during investigative proceedings, including trafficked women and girls.

LEAs should focus enforcement efforts on sex traffickers, rather than on trafficked persons. LEAs should coordinate their efforts with other LEAs in different jurisdictions and non-profit organizations that provide assistance to trafficked persons.

Law enforcement officers should provide language-accessible legal information and assistance to trafficked persons in accordance with federal and state law. LEAs should make their best efforts to ensure that trafficked persons receive access to qualified and neutral interpreters.

The Minnesota Department of Public Safety should mandate that all law enforcement officers, not just specialized vice or trafficking units, are trained to identify and respond to sex trafficking cases. LEAs should establish policies and protocols for regular interdepartmental communication regarding sex trafficking and related cases.

3. COMPLEX JURISDICTIONAL ISSUES MAY RESULT IN THE FAILURE TO INVESTIGATE SEX TRAFFICKING CASES

Gaps in the jurisdictional authority of law enforcement agencies in Minnesota may result in investigative delays or the complete lack of investigation in sex trafficking cases. This is particularly true in the Port of Duluth-Superior and on American Indian reservations.

a) THE PORT OF DULUTH-SUPERIOR

Investigation of sex trafficking into the Port of Duluth-Superior⁹³⁸ ("Port") involves negotiating multiple jurisdictions. To date, this complexity has resulted in a dearth of sex trafficking investigations and enforcement of sex trafficking laws, and ultimately in no assistance for trafficked persons or prosecutions of traffickers. Numerous respondents throughout Minnesota reported hearing about young women being trafficked for prostitution in the Duluth port, with many interviewees specifying that those trafficked were American Indian girls.⁹³⁹ Typically, girls are brought on to ships for exploitation by the crew. Authorities from Duluth and other jurisdictions attempted to address this issue in 2002, with little success.⁹⁴⁰ One interviewee noted that the

⁹³⁸ Duluth, Minnesota, and Superior, Wisconsin, are located on Lake Superior and constitute one of the largest inland sea ports in the world. The port features "iron ore docks, coal docks, grain elevators and specialized cargo facilities...[and] serves shippers and receivers throughout the U.S. Midwest and the Great Plains." The Duluth Seaway Port Authority reports that the port averages "about 45 million net tons annually of cargo in a navigation season that usually begins in late March and continues until mid-January." Duluth Seaway Port Authority, <http://www.duluthport.com/seawayoverview.html> (last visited Aug. 21, 2008).

⁹³⁹ Focus group (July 23, 2007); Focus Group (Aug. 6, 2007); Interview with judge (Feb. 14, 2008); Interview with law enforcement officer (Feb. 17, 2008); Interview with law enforcement (Jan. 2, 2008).; Interview with law enforcement officer (Oct. 4, 2007); Interview with law enforcement (Feb. 1, 2008); Interview with law enforcement officer (Nov. 26, 2007).

⁹⁴⁰ Although the police investigated complaints, no convictions resulted. See *Duluth Vice Inquiry Focuses on Use of Minors*, MINNEAPOLIS STAR TRIBUNE, May 4, 2002; *FBI Investigating Youth Prostitution Ring*, DULUTH NEWS TRIBUNE, May 4, 2002, at 1C; *Port Declares Zero-Tolerance Policy Towards Prostitution*,

prostitution persists and has “[l]ots of money behind it.”⁹⁴¹

Federal, state and local jurisdictions collide in the Port. Duluth borders Superior, Wisconsin, which also serves as an international port. One official noted that the majority of the vessel traffic for the port is on the Wisconsin side, although many of the girls come from Minnesota.⁹⁴² The official added that the area around the Superior port has numerous motels and “gentlemen’s clubs.”⁹⁴³ Minnesota state officers and Duluth police lack jurisdiction to respond to any incidents that may happen in Superior. Moreover, if Wisconsin law enforcement intervenes, girls from Minnesota would be processed in Wisconsin.

Maritime law also poses barriers to the law enforcement response in the Port. It prohibits local and state law enforcement officers from boarding ships in the Port.⁹⁴⁴ They must make a request to board ships with Customs and Border Patrol (“CBP”), within the Department of Homeland Security (“DHS”).⁹⁴⁵ Escorting officers onto ships, however, comprises the extent of CBP’s authority.⁹⁴⁶ Even though it represents the federal government, it is unable to do anything more than accompany law enforcement officers onto the boat and monitor what goes on and off the boat.⁹⁴⁷

The Duluth ICE office also lacks authority to address crimes that occur in the Port in Superior.⁹⁴⁸ ICE, also within DHS, has the authority to investigate sex trafficking cases and maintains an office in Duluth. However, its jurisdiction ends at the top of the bridge crossing into Superior, Wisconsin. The ICE office

responsible for Superior is in Milwaukee, which is more than 450 miles away. This distance prevents ICE from effectively responding to reports of sex trafficking.⁹⁴⁹

The Coast Guard has authority to “make inquiries, examinations, inspections, searches, seizures, and arrests upon...waters over which the United States has jurisdiction.”⁹⁵⁰ But an interviewee reported that the Coast Guard never intervenes in trafficking cases.⁹⁵¹

The Duluth Seaway Port Authority is an independent public agency primarily concerned with “trade development and ...advocat[ing] port interests” — economic interests that may conflict with the goals of protecting trafficked individuals and holding perpetrators accountable.⁹⁵²

Despite the attention given to this issue in Duluth-Superior in 2002, interviewees expressed their belief that sex trafficking of girls continues and is facilitated by complicated jurisdictional issues.⁹⁵³

Good Practice for Collaboration: Duluth Working Group

In a renewed effort to stop the traffic of girls to the Port of Duluth-Superior, service providers, law enforcement officials and the U.S. Coast Guard recently convened a working group to discuss a coordinated response to this problem. Participants hope to include the FBI, Port Authority and tribal leaders to formulate a strategy to address the complex jurisdictional issues at issue.⁹⁵⁴

DULUTH NEWS TRIBUNE, May 23, 2002, at 4D; David Lush, *Superior Joins in Youth Prostitution Investigation*, THE DAILY TELEGRAM, Aug. 23, 2002.

⁹⁴¹ Interview with law enforcement officer (Nov. 26, 2007).

⁹⁴² Interview with immigration official (Nov. 27, 2007).

⁹⁴³ *Id.*

⁹⁴⁴ 18 U.S.C. § 7 (2007).

⁹⁴⁵ Interview with immigration official (Nov. 27, 2007).

⁹⁴⁶ *Id.*

⁹⁴⁷ 19 U.S.C. § 1581; *see also* Interview with law enforcement officer (Nov. 26, 2007).

⁹⁴⁸ Interview with immigration official (Nov. 27, 2007).

⁹⁴⁹ *Id.*

⁹⁵⁰ 14 U.S.C. § 89(a).

⁹⁵¹ Interview with law enforcement officer (Nov. 26, 2007).

⁹⁵² *See* MINN. STAT. §§ 469.048-.068, 469.074 (2007); Duluth Seaway Port Authority, *supra* note 938.

⁹⁵³ Interview with advocate (Feb. 14, 2008); Interview with law enforcement officer (Nov. 26, 2007); Interview with immigration official (Nov. 27, 2007).

⁹⁵⁴ *See* Dan Browning, *First of Human Traffickers Sentenced to 24 Years*, MINNEAPOLIS STAR TRIBUNE, Nov. 6, 2007, available at <http://www.startribune.com/local/minneapolis/11593326.html>.

**b) RED LAKE AND BOIS FORTE
(NETT LAKE) INDIAN
RESERVATIONS⁹⁵⁵**

A maze of jurisdictional issues often results in sexual violence against American Indian women going unpunished on tribal land.⁹⁵⁶ Service providers characterized these jurisdictional hurdles as a source of increased risk for an already vulnerable population, since perpetrators typically go unpunished.⁹⁵⁷ Of particular concern on two Minnesota reservations is the gap between the FBI's enforcement priorities and the jurisdiction of tribal police. Sex trafficking of adults falls into this gap. No interviews revealed any past or present cases that were prosecuted involving trafficking of American Indian women or girls to, from or within any reservation.

Minnesota is home to eleven Native American tribes with varying jurisdictions. Nine Minnesota tribes⁹⁵⁸ are referred to as "Public Law 280" ("PL-280") tribes.⁹⁵⁹ For PL-280 tribes, the State of Minnesota retains jurisdiction to investigate and punish violations of criminal law that occur on these tribes' land.⁹⁶⁰ Individual tribes retain jurisdiction to enforce regulatory laws, even those with criminal penalties,⁹⁶¹ as well as provisions of their own tribal criminal code that do not overlap with federal or

⁹⁵⁵ This section primarily discusses the Red Lake Reservation due to more available information. Because Bois Forte (Nett Lake) is also a non-Public-Law-280 reservation, trafficked women on that reservation could face similar barriers.

⁹⁵⁶ AMNESTY INTERNATIONAL, *supra* note 27, at 2, 27 (2007).

⁹⁵⁷ Focus Group (July 23, 2007).

⁹⁵⁸ Those nine reservations are Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, White Earth, Lower Sioux, Prairie Island, Shakopee-Mdewakanton, and Upper Sioux. See 18 U.S.C. 1162(a) (2007).

⁹⁵⁹ Passed in 1953, Public Law 280, as it is commonly called, marked an expansion of individual states' authority over American Indians. Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified as amended at 18 U.S.C. § 1162, 28 U.S.C. § 1360, and 25 U.S.C. §§ 1321-26).

⁹⁶⁰ 18 U.S.C. § 1162 (2007).

⁹⁶¹ For example, a recent Minnesota Court of Appeals case found that the State of Minnesota lacked jurisdiction to apply a civil vehicle forfeiture law when the conduct involved an enrolled tribal member and occurred on tribal land. *Morgan v. 2000 Volkswagon, Lic. No. 279, No. C0-0722* (Minn. Ct. App. Aug. 12, 2008).

state law.⁹⁶² The tribal police departments of the Mille Lacs Band of Chippewa Indians and the Lower Sioux Indian Community have the same powers as peace officers employed by local law enforcement officers.⁹⁶³

The remaining two tribes, Red Lake and Bois Forte (Nett Lake) are referred to as non-PL-280 tribes, which means that tribal authorities have concurrent jurisdiction with the federal government.⁹⁶⁴ On these reservations, the tribes retain jurisdiction over minor crimes committed on their territories where both the perpetrator and victim are American Indian.⁹⁶⁵ In most other instances, the FBI would investigate the crime⁹⁶⁶ and, if applicable, the U.S. Attorney's Office would prosecute that crime. The U.S. Attorney's Office has an Assistant U.S. Attorney who serves as a tribal liaison to both Red Lake and Bois Forte (Nett Lake).⁹⁶⁷ With a few exceptions for cases involving non-Indian perpetrators and victims, local and state law enforcement agents do not have jurisdiction over crimes committed on those two reservations.⁹⁶⁸

The crime of sex trafficking is notably absent from the list of seven crimes the FBI has prioritized to "ensure that the most egregious and violent criminal acts receive priority attention" on non-PL-280

⁹⁶² RESEARCH DEP'T OF THE MINNESOTA HOUSE OF REPRESENTATIVES, INDIANS, INDIAN TRIBES AND STATE GOVERNMENT 29, 31 (4th ed. 2007), available at <http://www.house.leg.state.mn.us/hrd/pubs/indiangb.pdf>.

⁹⁶³ MINN. STAT. § 626.90, subd. 3 (2007); *id.* § 626.91, subd. 4.

⁹⁶⁴ 18 U.S.C. § 1162(a) (2007) (extending jurisdiction to all Indian Country in Minnesota except Red Lake Reservation); Act of May 23, 1973, ch. 625, 1973 Minn. Laws 1500 (retroceding state jurisdiction over Bois Forte reservation).

⁹⁶⁵ 25 U.S.C. § 1301.

⁹⁶⁶ 18 U.S.C. § 1153. Tribal law enforcement may assist the FBI with the investigation of a crime. Interview with law enforcement officer (Apr. 21, 2008).

⁹⁶⁷ Interview with law enforcement officer (Feb. 17, 2008). The Advocates was unable to obtain more detailed information about what the tribal liaison position entails.

⁹⁶⁸ The state would have jurisdiction over crimes involving a non-Indian perpetrator and a non-Indian victim. In 1978, the U.S. Supreme Court found that Tribal courts lack criminal jurisdiction over non-Indians, unless that power is specifically conferred by Congress. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=435&invol=191>.

reservations.⁹⁶⁹ These crimes are homicide/death; child sexual/physical abuse; violent felony assault; drugs and gangs; corruption/fraud against the government/theft of tribal funds; gaming violations; and property crimes.⁹⁷⁰ Although the FBI's mandate to investigate child sexual abuse extends to investigations of sex trafficking of minors, the FBI does not prioritize the investigation of sex trafficking of adults.⁹⁷¹ The absence of a mandate coupled with limited resources essentially renders sex trafficking of adults a non-punishable offense on non-PL-280 reservations.⁹⁷²

This void cannot realistically be filled by tribal law enforcement agencies and courts, given their limited jurisdiction. For example, tribal LEAs on non-PL-280 reservations only retain jurisdiction over crimes committed by an American Indian against an American Indian on land owned or controlled by the bands.⁹⁷³ Tribal police lack jurisdiction over non-Indian offenders, who would be punished at the federal level in cases with an Indian victim and at the state level in cases with a non-Indian victim.⁹⁷⁴

For crimes concerning Indians, the Red Lake criminal code lacks a specific provision on sex

trafficking, but does contain provisions that could be used to address the various crimes often implicated in sex trafficking, including prostitution,⁹⁷⁵ kidnapping,⁹⁷⁶ false imprisonment,⁹⁷⁷ aggravated sexual assault⁹⁷⁸ and domestic violence.⁹⁷⁹ Any cases would be processed through the tribal court system because the U.S. Attorney's Office only accepts cases that come through the FBI.⁹⁸⁰ Tribal courts have limited power to punish perpetrators. The Indian Civil Rights Act limits punishments tribal courts can administer to up to one year imprisonment and a fine of \$5,000, or both.⁹⁸¹ Without federal investigative and prosecutorial efforts to eliminate sex trafficking, tribal courts' limited authority to punish perpetrators creates another disincentive to investigate major crimes such as sex trafficking.⁹⁸²

⁹⁶⁹ FBI, Indian Country Crime: Jurisdiction, www.fbi.gov/hq/cid/indian/jurisdiction.htm. (last visited Aug. 22, 2008); Interview with law enforcement officer (Feb. 17, 2008).
⁹⁷⁰ 18 U.S.C. § 1153 (2007); FBI, *supra* note 969; Interview with law enforcement officer (Feb. 17, 2008). However, recently, the Executive Assistant Director of the FBI's National Native American Law Enforcement Association, Grant D. Ashley, mentioned human trafficking in Indian Country, stating that "the FBI relates to Indian Country — there is not Indian Country and then everything else. We understand that you are vulnerable to the same threats as someone living in Washington, D.C., including terrorism [and] human trafficking." Grant D. Ashley, Remarks at FBI National Training Conference (Nov. 15, 2005), <http://www.fbi.gov/pressrel/speeches/ashley11152005.htm>.
⁹⁷¹ Interview with law enforcement officer (Feb. 17, 2008) (discussing how if a "couple of women were hooking," the FBI probably would not get involved).
⁹⁷² Interview with law enforcement officer (Feb. 17, 2008).
⁹⁷³ 18 U.S.C. § 1153.
⁹⁷⁴ RESEARCH DEP'T OF THE MINNESOTA HOUSE OF REPRESENTATIVES, *supra* note 962, at 29. As discussed previously, because local and state law enforcement officials report limited cooperation with Red Lake authorities, they might lack the information or authority to investigate on the reservation about sex trafficking cases exclusively involving non-Natives on reservation territory.

⁹⁷⁵ Prostitution is defined as "[a]ny Indian who (a) is an inmate of a house of prostitution, manages a house of prostitution, or is otherwise engaged in sexual activity as a business; or (b) solicits another person to hire a prostitute or commit an act of prostitution; or (c) loiters in view of any public place with the intent of being hired to engage in sexual activity; or (d) hires a prostitute to engage in sexual activity or enters or remains in a house of prostitution with intent to engage in sexual activity, is guilty of prostitution or patronizing a prostitute. Prostitution is a gross misdemeanor." Red Lake Band of Chippewa Indians Tribal Code § 508.01 (2006), *available at* <http://www.rlenn.com/main/RedLakeTribalCode.html>.

⁹⁷⁶ *See id.* § 502.02.

⁹⁷⁷ *See id.* § 502.03.

⁹⁷⁸ *See id.* § 508.07.

⁹⁷⁹ *See id.* § 503.05.

⁹⁸⁰ Interview with law enforcement officer (Feb. 17, 2008).

⁹⁸¹ 25 U.S.C. § 1302(7) (2007).

⁹⁸² An advocate cited a movement to promote creative sentencing in tribal courts, to foster judges "thinking outside the box." Despite the limited sentencing capability, judges may overlap sentences and charge one count for every instance of sexual assault or prostitution of an individual, which could foster sentences more in parity with the gravity of the crime. She is also working to train judges on how to conduct proceedings so as not to traumatize women in cases involving violence, which could also positively impact trafficked women's interactions with tribal courts. Interview with advocate (Dec. 7, 2007).

RECOMMENDATIONS

Federal, state, tribal and local LEAs should coordinate their efforts both within and outside their own agencies by developing cooperative agreements, mechanisms to routinely share information, and procedures and protocols for joint operations. The Department of Public Safety should direct local law enforcement agencies to incorporate the *U.N. Recommended Principles and Guidelines* into their policies and procedures to ensure a more effective law enforcement response to sex trafficking. ICE and the FBI should also incorporate the *U.N. Recommended Principles and Guidelines* into their policies and procedures.

4. TRAFFICKED WOMEN DO NOT RECEIVE IMMEDIATE ACCESS TO COUNSEL

Competent legal advice is necessary to ensure that a woman's status as a trafficked person is not jeopardized by misconstrued statements or overzealous law enforcement officers. Attorneys expressed concern about interviews with unrepresented trafficked persons because of the risk of criminal liability or negative immigration consequences in sex trafficking cases.⁹⁸³ Legal representation is even more important when dealing with ICE investigators. Although they specialize in human trafficking investigations, they also retain the authority to place foreign nationals into removal proceedings.⁹⁸⁴

Local and federal officers stressed the utility of talking to trafficked women outside the presence of an attorney: "We got to hear her story. There were no lawyers involved. As a cop, then everything changes. [There were no] lawyers from the

⁹⁸³ Interview with attorney (Oct. 24, 2007); Interview with attorney (Oct. 8, 2007).

⁹⁸⁴ ICE agents have prosecutorial discretion to issue Notices to Appear. 8 C.F.R. § 239.1(a) (2007).

prosecution or the defense. We read them their rights right away."⁹⁸⁵

In contrast, an attorney for trafficked persons stressed the need for early contact with women. The attorney described meeting women for the first time more than twenty-four hours after a sting on a brothel, and they were "already scared" after having been in ICE custody during that time.⁹⁸⁶

When ICE conducts the interview without the victim being represented by an attorney, there are additional concerns about the potentially negative consequences to the trafficked person's immigration status if the U.S. Attorney does not determine that she is a "victim of a severe form of trafficking."⁹⁸⁷ In addition, a prosecutor and state law enforcement officer reported deferring to ICE agents to give women information about immigration issues.⁹⁸⁸ This raises concerns that ICE may be women's only source of information about immigration issues.

5. PROBLEMS WITH ICE'S DUAL ROLE

ICE's dual role in investigating human trafficking while also enforcing immigration law through the apprehension, detention and removal of aliens, results in a significant risk of harm to trafficked persons. While ICE officers specializing in human trafficking cases primarily function as criminal investigators, they also have authority to enforce immigration laws. This puts trafficked persons at risk of removal should ICE deem them not to be trafficking victims.⁹⁸⁹

⁹⁸⁵ Interview with law enforcement officer (Jan. 29, 2008).

⁹⁸⁶ Interview with attorney (Nov. 5, 2007).

⁹⁸⁷ See discussion in the section "Immigration Relief" *supra* p. 79.

⁹⁸⁸ Interview with prosecutor (Oct. 15, 2007); Interview with law enforcement officer (Oct. 25, 2007).

⁹⁸⁹ One interviewee distinguished ICE's role as a victim-witness advocate from that of local law enforcement. While local law enforcement agencies must also balance enforcement with victim protection and assistance, balancing these duties is new to ICE, which typically focuses on deporting foreign nationals from the United States. He characterized ICE as an "opaque" agency that lacks the checks and balances imposed on local police officers. Interview with attorney (Oct. 8, 2007).

Interviewees provided an example of the problem with ICE's dual role: the issuance of Notices to Appear ("NTAs") for women after the execution of a search warrant on a brothel. ICE's issuance of NTAs to trafficked women contradicts their status as crime victims and may hinder their ability to legally enter the United States in the future. An NTA serves as a charging document for aliens in Immigration Court and alleges the basis for their removability from the United States.⁹⁹⁰ Nationwide, ICE issues NTAs to trafficked persons who lack valid immigration status,⁹⁹¹ although they do not file them in immigration court.⁹⁹² Locally, attorneys reported that ICE issued NTAs to trafficked women in custody after executing a search warrant on a brothel.⁹⁹³

Interviewees reported that women feared that the NTA would become an issue at the U.S. consulate the next time they tried to enter the United States.⁹⁹⁴ In two cases, attorneys confirmed the women's FBI files contained a general charge of inadmissibility⁹⁹⁵ against their clients.⁹⁹⁶ This charge appeared in

⁹⁹⁰ See generally INA § 239, 8 U.S.C. § 1229 (2007); see *supra* note 984.

⁹⁹¹ GLOBAL ALLIANCE AGAINST TRAFFIC IN WOMEN, COLLATERAL DAMAGE: THE IMPACT OF ANTI-TRAFFICKING MEASURES ON HUMAN RIGHTS AROUND THE WORLD 243 (2007), available at http://www.gaatw.net/Collateral%20Damage_Final/CollateralDamage_US.pdf. An attorney reported that ICE did not issue NTAs for trafficked women who had a form of legal immigration status in the United States. Interview with attorney (Nov. 5, 2007); see also Interview with law enforcement officer (Nov. 8, 2007).

⁹⁹² Filing an NTA with the Immigration Court initiates removal proceedings against the respondent named in the NTA. INA § 239, 8 U.S.C. § 1229.

⁹⁹³ Interview with attorney (Oct. 24, 2007); Interview with attorney (Oct. 8, 2007).

⁹⁹⁴ Interview with attorney (Dec. 21, 2007).

⁹⁹⁵ Inadmissibility refers to a long list of criminal acts, terrorist acts, war crimes, health-related issues, immigration violations and other types of violations that prohibit an individual from receiving a visa, entering the United States or adjusting to lawful permanent residency status. See INA § 212, 8 U.S.C. § 1182. Persons can apply for waivers to some grounds of inadmissibility in order to enter the United States or receive lawful permanent residency status. See, e.g., INA § 212(d)(3)(A), 8 U.S.C. § 1182(d)(3)(A) (general waiver for nonimmigrant visa holders); INA § 212(d)(13), 8 U.S.C. § 1182(d)(13) (waiver for T visa applicants); INA § 212(d)(14), 8 U.S.C. § 1182(d)(14) (waiver for U visa applicants); INA § 212(h), 8 U.S.C. § 1182(h) (waiver for crimes involving moral turpitude, prostitution and a single offense of simple possession of 30 grams or less of marijuana).

⁹⁹⁶ Interview with attorney (Oct. 24, 2007); Interview with attorney (Oct. 8, 2007); Interview with attorney (Oct. 16, 2007).

their FBI file as a result of the fingerprint check that ICE ran to issue the NTA. This file could cause problems for the women if they try to re-enter the United States at a later date. At the very least, it could prompt delays in travel and interrogation by a consular officer as to the grounds of inadmissibility. At worst, the consulate might require women to file a waiver application⁹⁹⁷ or deny them entry to the United States altogether. While ICE assured the attorneys that it would delete the information from the database when the women leave the United States, the attorneys voiced concerns about the lack of established procedures and policies to address this issue.⁹⁹⁸ No procedure exists to expunge these records.⁹⁹⁹

Women also expressed concern to attorneys that the information about their circumstances would reach their families.¹⁰⁰⁰ In one case, an interviewee reported a confidentiality breach.¹⁰⁰¹ After a raid, women remained in the United States as witnesses for the prosecution of traffickers. They had to fabricate stories for their families as to why they remained in the United States beyond their expected departure date.¹⁰⁰² A family member in another state did not believe one woman's story, hired an attorney, obtained the NTA,¹⁰⁰³ which specifically

⁹⁹⁷ In some cases, foreign nationals who do not have qualifying relationships with U.S. citizens cannot file for waivers of certain grounds of inadmissibility. See, e.g., INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) (waiver for unlawful presence requires applicant to be spouse or child of USC or LPR).

⁹⁹⁸ Interview with attorney (Oct. 24, 2007); Interview with attorney (Oct. 8, 2007).

⁹⁹⁹ There is a procedure for canceling an NTA before it has been filed with the Immigration Court, but no procedure exists to "expunge" the NTA from ICE or FBI databases. See 8 C.F.R. § 239.2 (2007) (canceling an NTA).

¹⁰⁰⁰ Interview with attorney (Dec. 21, 2007); Interview with attorney (Oct. 24, 2007).

¹⁰⁰¹ Interview with attorney (Oct. 24, 2007).

¹⁰⁰² *Id.*

¹⁰⁰³ In order to access a foreign national's immigration records, an attorney must file Form G-28 with the appropriate agency in the Department of Homeland Security. For filing, Form G-28 requires the signatures of foreign nationals who are lawful permanent residents in the United States. Form G-28 does not require the foreign national's signature if present in the United States with any other status or no status. See U.S. Department of Justice, Immigration and Naturalization Service, Form G-28 (Sept. 26, 2000), available at <http://www.uscis.gov/files/form/g-28.pdf>.

alleged prostitution,¹⁰⁰⁴ and confronted the woman.¹⁰⁰⁵ There was no effective remedy for this breach and the harm it caused.

When this issue was brought to the attention of ICE, officials reported that they had knowledge of the allegations, but never received documentation to substantiate the claims. ICE also affirmed that there is a process for addressing confidentiality breaches and that the agency takes such allegations very seriously.

RECOMMENDATIONS

ICE should enforce immigration laws and human trafficking laws to hold sex traffickers accountable and assist trafficked persons. To do so, gaps in training should be identified to ensure training sufficiently addresses the complex nature of sex trafficking cases. ICE investigators specializing in human trafficking cases should be allocated significant and appropriate investigative resources, develop policies that take the complex nature of sex trafficking cases into account, focus enforcement efforts on the sex trafficker or pimp and coordinate their efforts with other agencies and non-profit organizations. NTAs should not be issued to trafficked persons. ICE should also establish a procedure for expunging NTAs already issued to trafficked persons. ICE should ensure that information about trafficked persons remains confidential. ICE should ensure that breaches of confidentiality are investigated and addressed.

¹⁰⁰⁴ Interview with attorney (Dec. 21, 2007).

¹⁰⁰⁵ Interview with attorney (Oct. 24, 2007).

Good Practice for Immigration Officials: Strict Confidentiality Provisions of the Violence Against Women Act (VAWA)

Passed initially in 1994, the Violence Against Women Act (“VAWA”)¹⁰⁰⁶ contains numerous provisions that protect the confidentiality and safety of victims of domestic violence.¹⁰⁰⁷

Congress subsequently expanded these protections to address the unique needs of immigrant victims of domestic violence, trafficked persons applying for T visas and qualifying crimes under the U Visa,¹⁰⁰⁸ including trafficking.¹⁰⁰⁹

Longtime advocate Leslye Orloff writes that VAWA:

Protects the confidentiality of information provided to the Department of Homeland Security, the Department of Justice or the Department of State by an immigrant victim from disclosure in order to prevent abusers,

traffickers and crime perpetrators from using the information to harm the victim or locate her.¹⁰¹⁰

Stops immigration enforcement agencies from using information provided solely by an abuser, trafficker or U visa crime perpetrator, a relative, or a member of their family,¹⁰¹¹ to take an adverse action regarding admissibility or deportability against an immigrant victim, without regard to whether a victim has ever filed or qualifies to file for VAWA-related immigration relief.¹⁰¹²

Requires that enforcement actions not be taken at [locations such as a domestic violence shelter or courthouse]. If any part of an enforcement action took place at any of these locations, DHS must disclose this fact in the Notice to Appear and must certify that such action did not violate [confidentiality provisions].¹⁰¹³

Most significantly, violations of these provisions by government officers, including ICE, are punishable by a \$5,000 fine and disciplinary action.¹⁰¹⁴

¹⁰⁰⁶ Although entitled the “Violence Against Women Act,” VAWA applies to all persons experiencing domestic violence regardless of their sex.

¹⁰⁰⁷ See Leslye E. Orloff, *VAWA Confidentiality: History, Purpose and Violations*, *VAWA Confidentiality Protections* (2007) (on file with the Immigrant Women Program, Legal Momentum), available at

[http://www.legalmomentum.org/site/DocServer/VAWA_Confidentiality_Chapter_LEX11-2-](http://www.legalmomentum.org/site/DocServer/VAWA_Confidentiality_Chapter_LEX11-2-07_For_more_VAWA_C.doc?docID=2081)

[07_For more VAWA C.doc?docID=2081](http://www.legalmomentum.org/site/DocServer/VAWA_Confidentiality_Chapter_LEX11-2-07_For_more_VAWA_C.doc?docID=2081) (citing Violent Crime Control and Law Enforcement Act (“VAWA 1994”), Pub. L. No. 103-322, § 40153, 108 Stat. 1796 (1994) (Confidentiality of Communications between Sexual Assault or Domestic Violence Victims and their Counselors); §40281, (Confidentiality of Abused Person’s Address); and §40508, (Report on Confidentiality of Addresses for Victims of Domestic Violence)).

¹⁰⁰⁸ See *supra* note 717.

¹⁰⁰⁹ Orloff, *supra* note 1007, at 4 (citing Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRAIRA”), Pub. L. No. 104-208, § 384; codified at 8 U.S.C. § 1367 (1996); Victims of Trafficking and Violence Protection Act of 2000 (“VAWA 2000”), Pub. L. No. 106-386, Div B, Title V, § 1513(d) (2000); Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA 2005”), Pub. L. No. 109-162, tit. VIII, subtit. B, § 817 (2006)). While these provisions apply to trafficked persons applying for a U or T visa, they do not apply to individuals with the temporary status of continued presence. See discussions in the sections “T Visa” and “Continued Presence” *supra* pp. 81, 92.

¹⁰¹⁰ Orloff, *supra* note 1007, at 4 (citing IIRAIRA § 384 (a)(2); 8 U.S.C. § 1367(a)(2)).

¹⁰¹¹ *Id.* (citing Non-Disclosure and Other Prohibitions Relating to Battered Aliens: IIRAIRA Section 384, May 5, 1997, Office of Programs, /s/ Paul W. Virtue, Acting Executive Associate Commissioner (“Virtue memo”).

¹⁰¹² *Id.* (citing IIRAIRA § 384 (a)(1); 8 U.S.C. § 1367(a)(1)).

¹⁰¹³ *Id.* at 4-5 (citing INA § 239(e), 8 U.S.C. § 1229(e)).

¹⁰¹⁴ *Id.* at 5 (citing VAWA 2005 at §§ 817, 825(c); INA § 239(e), 8 U.S.C. § 1229(e)).

J. PROSECUTORS AND JUDGES

The *U.N. Recommended Principles and Guidelines* strongly recommend a focus on prosecuting sex traffickers and protecting trafficked persons.¹⁰¹⁵ Specifically, the guidelines include the following guarantees:

- Sex traffickers should be prosecuted for sex trafficking, its component acts and related conduct.¹⁰¹⁶
- Sex traffickers should be punished and sanctions should be proportionate to the offense, including enhanced sentences when children are trafficked or government officials are involved, and the confiscation of assets involved in trafficking.¹⁰¹⁷
- Trafficked persons should not be detained, charged or prosecuted for their illegal entry into transit or destination countries, nor should their protection be conditioned on cooperation in legal proceedings.¹⁰¹⁸
- Trafficked persons should have access to legal counsel, witness protection, reparation and rehabilitation for harm, consular and diplomatic representatives, and immigration relief.¹⁰¹⁹

Federal and state law complies in part with the *U.N. Recommended Principles and Guidelines* by providing that a trafficked person should be treated as a crime victim.¹⁰²⁰ Minnesota law provides additional protections by establishing an affirmative

defense to prostitution-related charges for a sex trafficking victim¹⁰²¹ who is compelled by another by explicit or implicit threats of harm to solicit or engage in prostitution.¹⁰²² Federal law lacks comparable provisions protecting trafficked women from prosecution.

Nonetheless, effectively combating sex trafficking in Minnesota will require a paradigm shift in the way the criminal justice system currently handles sex trafficking and prostitution cases. The paradigm must shift from an approach that technically criminalizes the activity, but in practice tolerates sexual exploitation, to one that aggressively prosecutes those who exploit women, girls, boys, and other vulnerable populations. The U.S. Department of State concluded that “prostitution and related activities — including pimping and patronizing or maintaining brothels — fuel the growth of modern-day slavery by providing a façade behind which traffickers for sexual exploitation operate.”¹⁰²³

Federal prosecutors in Minnesota have made a concerted effort to address sex trafficking.¹⁰²⁴ Former U.S. Attorney Rachel Paulose stated, “One of the things that I did when I walked in was to implement the national priority of human trafficking in this district.”¹⁰²⁵ In 2007, federal prosecutors in

¹⁰²¹ MINN. STAT. § 609.325, subd. 4 (2007).

¹⁰²² The affirmative defense applies to the crimes of

- engaging in, hiring, or agreeing to hire a minor to engage in prostitution,
- housing an unrelated minor engaged in prostitution,
- solicitation or acceptance of solicitation to engage in prostitution, and
- engaging in, hiring, or agreeing to hire an adult to engage in prostitution.

See MINN. STAT. § 609.325, subd. 4 (cross-referencing MINN. STAT. § 609.324).

¹⁰²³ U.S. Dep’t of State, Bureau of Public Affairs, *The Link between Prostitution and Sex Trafficking* (Nov. 24, 2004), <http://www.state.gov/r/pa/ei/rs/38790.htm>.

¹⁰²⁴ Interview with prosecutor (Nov. 19, 2007).

¹⁰²⁵ Dan Browning, *U.S. Attorney Rachel Paulose’s Crackdown Starts with Minneapolis Man*, MINNEAPOLIS STAR TRIBUNE, Nov. 5, 2007, available at <http://www.startribune.com/local/minneapolis/11593326.html>.

¹⁰¹⁵ See U.N. Econ. & Soc., *supra* note 68.

¹⁰¹⁶ *Id.* princ. 12.

¹⁰¹⁷ *Id.* princ. 16.

¹⁰¹⁸ *Id.* princ. 7.

¹⁰¹⁹ *Id.* princ. 9.

¹⁰²⁰ See generally ATTORNEY GENERAL GUIDELINES, *supra* note 888; MINNESOTA OFFICE OF JUSTICE PROGRAMS, CRIME VICTIM RIGHTS INFORMATION GUIDE (2007), <http://www.ojp.state.mn.us/publications/Bluebook.pdf> (last visited Aug. 16, 2008).

Minnesota indicted thirty-eight defendants on trafficking charges.¹⁰²⁶

Interviews with prosecutors and judges revealed that there is an urgent need throughout Minnesota to more effectively hold sex traffickers and patrons accountable for criminal offenses and to offer protection and practical assistance to the victims of sex trafficking.

Few state prosecutors¹⁰²⁷ identified the prosecution of sex traffickers and patrons as a priority.¹⁰²⁸ Many prosecutors on the state level are unfamiliar with the laws. They have not received training and describe numerous barriers to prosecution. Some judges were familiar with the laws and had received training or independently studied the laws. Several state prosecutors recognized the need for awareness and education “on what [sex] trafficking is all about,” and what “policy makers mean and how that translate[s] to our caseload, and what we should do differently with these cases.”¹⁰²⁹

Through training and re-conceptualizing their approach to such cases, some prosecutors have tried to improve not only their prosecution statistics, but their interaction with trafficked women, as well. Despite these efforts, Minnesota has not yet prosecuted a trafficker under its 2005 sex trafficking statute — a problem reflected in the almost universal lack of state-level prosecutions around the country.¹⁰³⁰

¹⁰²⁶ Interview with prosecutor (Oct. 15, 2007).

¹⁰²⁷ State prosecutors fall into two categories: county attorneys and city attorneys. County attorneys generally prosecute felony cases and some gross misdemeanor cases, while city attorneys prosecute misdemeanor and some gross misdemeanor cases.

¹⁰²⁸ Interview with prosecutor (Feb. 5, 2008).

¹⁰²⁹ Interview with prosecutor (Feb. 5, 2008); Interview with prosecutor (Apr. 1, 2008); Interview with prosecutor (Dec. 5, 2007).

¹⁰³⁰ John Miller, former congressman from Washington and former State Department ambassador-at-large on modern slavery from 2004 to 2006, observed that “[a]lthough 33 states have enacted human-trafficking legislation, those laws have resulted in almost no convictions.” Ruth Teichroeb, *State’s Human Trafficking Law Fails to Snag a Conviction*, SEATTLE POST-INTELLIGENCER, July 22, 2008, available at http://seattlepi.nwsource.com/local/371716_law22.html. New York recently indicted an accused trafficker under its new sex

trafficking law. Anthony Destefano, *First Prosecution under New York’s Sex Trafficking Law*, NEWSDAY.COM, June 18, 2008 (on file with author). The lack of state-level prosecutions may result in part from the fact that the state sex trafficking statutes are all relatively new, as one Minnesota prosecutor observed. Untested statutes may increase the risk of successful challenges when the case is appealed, making prosecutors wary of using them. Interview with prosecutor (Dec. 10, 2007).

Many trafficked women enter the criminal justice system on prostitution, drug or other charges and are classified as criminals. Prosecutors perceive it to be difficult to take cases to trial due to difficulties in working with other agencies, securing the cooperation of trafficked women and girls as witnesses, and the sufficiency of sentences for traffickers.¹⁰³¹ Prosecutors in both the U.S. Attorney’s Office and in various county attorney offices throughout Minnesota cited these barriers in varying degrees.

The following sections will address the problems with the criminal justice system’s response to human sex trafficking in Minnesota, highlight the needs of prosecutors, judges, and other criminal justice system professionals, and discuss the needs of trafficked persons.

1. HOLDING SEX TRAFFICKERS AND PATRONS ACCOUNTABLE

Aggressive prosecution of sex traffickers and patrons is essential to effectively address sex trafficking. State and federal prosecutors are obligated to protect individuals from sex trafficking by prosecuting perpetrators and offering protection and practical assistance to the victims of sex trafficking.¹⁰³² Sex traffickers have been convicted by both federal and state prosecutors, although in many instances on charges other than sex

trafficking law. Anthony Destefano, *First Prosecution under New York’s Sex Trafficking Law*, NEWSDAY.COM, June 18, 2008 (on file with author). The lack of state-level prosecutions may result in part from the fact that the state sex trafficking statutes are all relatively new, as one Minnesota prosecutor observed. Untested statutes may increase the risk of successful challenges when the case is appealed, making prosecutors wary of using them. Interview with prosecutor (Dec. 10, 2007).

¹⁰³¹ Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Jan. 15, 2008); Interview with healthcare provider (Nov. 1, 2007); (citing a case where jury found defendant not guilty because they did not believe testimony of juvenile who was allegedly trafficked here); Interview with advocate/survivor (Feb. 20, 2008).

¹⁰³² See ATTORNEY GENERAL GUIDELINES, *supra* note 888; MINNESOTA OFFICE OF JUSTICE PROGRAMS, CRIME VICTIM RIGHTS INFORMATION GUIDE (2007), available at <http://www.ojp.state.mn.us/publications/Bluebook.pdf>.

trafficking. These cases, however, have had a limited impact on the problem of sex trafficking in Minnesota.¹⁰³³

Patrons fuel the demand for the sex industry into which women and girls are trafficked.¹⁰³⁴ As described earlier, a patron is defined in Minnesota law as “an individual who hires or offers or agrees to hire another individual to engage in sexual penetration or sexual contact.”¹⁰³⁵ Although they are as culpable as the individual in prostitution for prostitution-related crimes, patrons often go unpunished.¹⁰³⁶ According to interviewees, when they are punished, patrons often receive lighter sentences than the women in prostitution.¹⁰³⁷

¹⁰³³ See Appendices D and E for more information on recent federal and state convictions for sex trafficking, prostitution and related crimes *infra* pp. 183, 185.

¹⁰³⁴ Many anti-trafficking activists have emphasized the importance of increased law enforcement initiatives against patrons, arguing that without patrons there would be no market for trafficked women and girls. See *e.g.*, CHICAGO COALITION FOR THE HOMELESS, BUYING SEX: A SURVEY OF MEN IN CHICAGO (2004), available at

http://www.chicagohomeless.org/files/Archive/factsfigures/buyings_ex.pdf; DONNA HUGHES, THE DEMAND FOR VICTIMS OF SEX TRAFFICKING (2005), available at

http://www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf. However, some have critiqued this approach because it diverts funds and attention from the causes of the “supply” of trafficked persons, such as “poverty, unemployment, the search for economic and other opportunities and gender inequality.” In support of this position, they cite studies demonstrating the ineffectiveness of programs like “John Schools” designed to address patrons’ “demand.” EMILIA CASELLA AND IRENE MARTINETTI, CRITIQUE OF FOCUS ON DEMAND IN THE CONTEXT OF TRAFFICKING IN PERSONS (2007), available at <http://www.sexworkersproject.org/working-group/downloads/20070330BriefingPaperOnDemand.pdf>.

Recently, a study found a sustained drop in recidivism rates among patrons in San Francisco, California, after the city began the First Offender of Prostitution Program for patrons. MICHAEL SHIVELY ET AL, FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER OF PROSTITUTION PROGRAM (2008), available at http://www.abtassociates.com/reports/FOPP_Evaluation_FULL_R_EPORT.pdf.

¹⁰³⁵ MINN. STAT. § 609.321, subd. 4 (2007).

¹⁰³⁶ Interview with advocate (May 16, 2008); see *infra* note 1055.

In 1976, the Minnesota Supreme Court upheld selective enforcement of prostitution laws against women in prostitution versus their typically male patrons. *City of Minneapolis v. Buschette*, 307 Minn. 60 (Minn. 1976) (holding there was a rational relationship between selective enforcement and the government objective of controlling prostitution).

¹⁰³⁷ Interview with advocate/survivor (Jan. 14, 2008). Women may receive higher penalties due to a previous failure to appear in court. See *supra* notes 828, 829.

a) CHARGING, PROSECUTING AND CONVICTING TRAFFICKERS¹⁰³⁸

Federal prosecutors have more successfully charged and convicted sex traffickers than have state prosecutors in Minnesota. Federal prosecutors attribute this success to the priority assigned to such cases, training on the issues and law related to sex trafficking, and investigative resources.¹⁰³⁹ At the state level, interviews revealed few prosecutions for solicitation, inducement and promotion of prostitution by pimps, which includes the crime of sex trafficking.¹⁰⁴⁰ From 2003 to 2006, there were only sixty-nine convictions statewide for all promotion of prostitution crimes combined.¹⁰⁴¹ Interviewees reported that to the extent traffickers are prosecuted under state laws, state prosecutors try to use provisions of Minnesota law other than the promotion of prostitution to maximize the penalties against sex traffickers.¹⁰⁴²

Prosecutions have proven successful when prosecutors: 1) know and understand the laws on sex trafficking; 2) have adequate investigative and financial resources; 3) have trafficked persons who are willing and able to testify; and 4) have evidence to prove sex trafficking.

Prior to 2006, the U.S. Attorney’s Office for Minnesota had not indicted any defendants for human trafficking crimes.¹⁰⁴³ However, since that time, federal prosecutors have charged approximately twenty defendants per year in human trafficking cases.¹⁰⁴⁴ Federal prosecutors report that they are encouraged by recent sentences. For example, Daniel McNeal was recently sentenced to

¹⁰³⁸ See Appendix F for a summary of the Rules of Criminal Procedure *infra* p. 189.

¹⁰³⁹ Interview with prosecutor (Oct. 15, 2007); see also Interview with prosecutor (Nov. 19, 2007).

¹⁰⁴⁰ Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Nov. 27, 2008); Interview with prosecutor (Dec. 10, 2007); Interview with prosecutor (Jan. 15, 2008).

¹⁰⁴¹ 2007 REPORT, *supra* note 13, at 7.

¹⁰⁴² Interview with prosecutor (Jan. 15, 2008).

¹⁰⁴³ Interview with prosecutor (Nov. 19, 2007).

¹⁰⁴⁴ Interview with prosecutor (Oct. 15, 2007).

293 months in prison for sex trafficking of a minor.¹⁰⁴⁵ However, as noted previously, Minnesota cases involving trafficked adults have not yielded convictions under TVPA provisions and have resulted in low sentences.¹⁰⁴⁶

Most state prosecutors interviewed report that they have not received training on sex trafficking as defined in Minnesota law.¹⁰⁴⁷ In fact, most interviewees expressed very little, if any, familiarity with the law,¹⁰⁴⁸ although one prosecutor stated that the law was “not written very well [and is not] very usable for prosecutors.”¹⁰⁴⁹ As with law enforcement officers, prosecutors find it difficult to recognize trafficked persons. One county attorney explained that “we are not recognizing these cases.”¹⁰⁵⁰ This attorney reported that they are, however, recognizing other cases of sexual exploitation, including a number of cases involving criminal sexual conduct with child victims.¹⁰⁵¹

As discussed previously, the investigation of sex trafficking cases poses several challenges that affect prosecutors’ ability to charge a defendant with sex trafficking.¹⁰⁵² State prosecutors express frustration

at the lack of state funding to combat human sex trafficking, and frustration that federal funds do not often trickle down to prosecutors and victim-witness services.¹⁰⁵³ “Prosecuting defendants is one outcome from having more resources,” stated one prosecutor. In addition, “you need to put [the] infrastructure in place.”¹⁰⁵⁴

b) CHARGING AND PROSECUTING PATRONS

Numerous interviewees identified the selective and uneven enforcement of prostitution laws against patrons as a problem.¹⁰⁵⁵ Of 284 misdemeanor prostitution cases submitted to one metro area prosecutor, only thirty involved patrons.¹⁰⁵⁶ This results in few prosecutions of patrons.

One advocate simply explained: “[i]t’s easy to arrest women.”¹⁰⁵⁷ Women in street prostitution often stand on streets and sidewalks, while the patrons tend to be more hidden in their cars. As such, women are easier to target than patrons and are arrested for prostitution-related and non-prostitution-related offenses in far greater numbers.¹⁰⁵⁸

The failure to arrest patrons stems in part from the resources law enforcement agencies must employ in

¹⁰⁴⁵ *Id.* McNeal pled guilty to sex trafficking of a minor, 18 U.S.C. § 1591, and transportation of a minor with the intent to engage in criminal activity, 18 U.S.C. § 2423. Judgment at 1, 2, United States v. McNeal, No. 06-406 (Dist. Minn. Nov. 5, 2008), *appeal filed* (8th Cir. Nov. 5, 2007).

¹⁰⁴⁶ Interview with prosecutor (Dec. 17, 2007); see United States v. Ramirez, No. 07-166 (D. Minn. 2008) (twenty-one of twenty-five defendants pleaded guilty to charges of conspiracy, 18 U.S.C. §§ 2, 371, yielding significantly lower sentences than TVPA sex trafficking crimes).

¹⁰⁴⁷ Interview with prosecutor (Dec. 5, 2007); Interview with prosecutor (Dec. 10, 2007); Interview with prosecutor (Nov. 27, 2007); Interview with prosecutor (Jan. 17, 2008); Interview with prosecutor (Apr. 1, 2008); Interview with prosecutor (Feb. 5, 2008); Interview with prosecutor (Apr. 10, 2008); Interview with prosecutor (Apr. 10, 2008).

¹⁰⁴⁸ Interview with prosecutor (Dec. 5, 2007); Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Jan. 17, 2008); Interview with prosecutor (Apr. 1, 2008); Interview with prosecutor (Apr. 10, 2008); Interview with prosecutor (Apr. 10, 2008).

¹⁰⁴⁹ Interview with prosecutor (Feb. 8, 2008).

¹⁰⁵⁰ Interview with prosecutor (Nov. 27, 2007).

¹⁰⁵¹ *Id.* Another prosecutor stated that “trafficked women don’t seem to be trafficked on the street. But again, we don’t know if they are trafficked.” Interview with prosecutor (Apr. 10, 2008).

¹⁰⁵² See *supra* p. 102. The Minneapolis non-profit organization WATCH published a case study of a pimp’s multiple interactions

with the criminal justice system that yielded few convictions and low sentences. *Chronology of a Pimp*, WATCH POST (WATCH, Minneapolis, Minn.), Winter 2004, at 6, available at <http://www.watchmn.org/PDF/newsletterfeb04.pdf>.

¹⁰⁵³ Interview with prosecutor (Dec. 10, 2007).

¹⁰⁵⁴ *Id.*

¹⁰⁵⁵ Interview with advocate (May 16, 2008); Interview with advocate (Feb. 13, 2008); Interview with advocate/survivor (Jan. 14, 2008). Uneven enforcement of the law stems in part from the focus on street prostitution. Most arrests of patrons involve street-based prostitution, as opposed to escort services or massage parlors. Men are typically caught when police employ stings in which female police officers pose as prostitutes. The stings are typically in response to complaints from community members about the visible, or street-based, prostitution activity. Interview with law enforcement officer (Dec. 4, 2007). However, law enforcement agencies have recently placed advertisements on the Internet to arrest large numbers of patrons. See Lonetree & Lopez, *supra* note 128.

¹⁰⁵⁶ Interview with prosecutor (Apr. 10, 2008).

¹⁰⁵⁷ Interview with advocate (Feb. 13, 2008).

¹⁰⁵⁸ Interview with advocate/survivor (Jan. 14, 2008).

stings designed to arrest them. Officers may have difficulty devoting resources to stings due to budget constraints, lack of personnel and lack of vocal community concern about prostitution.¹⁰⁵⁹ A service provider noted that police are sometimes limited by the lack of sufficient female officers to pose as decoys.¹⁰⁶⁰

Some interviewees, including both law enforcement officers and advocates, attributed the failure to focus on patrons, in part, on aversion to revealing who these patrons really are.¹⁰⁶¹ This reluctance can be seen in cases where agency resources are not at issue, such as when a patrol officer arrests a woman for solicitation, but allows the patron to leave without a charge.¹⁰⁶² An advocate explained that it is difficult to remove the cloak of anonymity that surrounds patrons because “[i]t might be my husband, my son, my father. To admit to that is to see that it might be my husband buying them. Since she’s out there visible, I want to blame her.”¹⁰⁶³

As previously noted, some LEAs have increased their efforts to hold patrons accountable.¹⁰⁶⁴ According to a St. Paul Police spokesman, the message of such actions is clear: “If you engage in prostitution, go someplace else. It’s not going to be here.”¹⁰⁶⁵ In July 2008, a two-day sting in St. Paul led to the arrest of thirty-five patrons, including a prominent political activist.¹⁰⁶⁶ Previous actions also involved arrests of political figures, among others.¹⁰⁶⁷ The St. Paul Police Department also has agreements with the City Attorney’s Office and Breaking Free to ensure that patrons are held

accountable.¹⁰⁶⁸ Specifically, these agreements stipulate that sentencing to Breaking Free’s “John School” is mandatory.¹⁰⁶⁹

Good Practice for Law Enforcement and Judiciary: Consolidated Calendar for Patrons

The Cleveland (England) Police Department’s Middlesbrough Police District scheduled all defendants charged with soliciting a prostitute for court on the same day. Concentrating the cases in this way helped judges to become aware of the problem’s scope, ensured consistent sanctions, and raised media interest and, as a result, public awareness.¹⁰⁷⁰ This strategy could assist jurisdictions in Greater Minnesota in addressing patrons’ cases.

c) OBTAINING AND SECURING EVIDENCE TO PROSECUTE SEX TRAFFICKERS

Some prosecutors identified the difficulty in obtaining sufficient evidence to convict sex traffickers as an obstacle to pursuing prosecution.¹⁰⁷¹ While evidence from undercover work, subpoenas, and the execution of search warrants aids in the prosecution of sex trafficking cases,¹⁰⁷² prosecutors said they believe that the testimony of trafficked persons is necessary to convict sex traffickers.¹⁰⁷³

¹⁰⁶⁸ E-mail from law enforcement officer (Sept. 16, 2008).

¹⁰⁶⁹ *Id.*

¹⁰⁷⁰ SCOTT & DEDEL, *supra* note 1060.

¹⁰⁷¹ Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Jan. 15, 2008); Interview with healthcare provider (Nov. 1, 2007); (citing a case where jury found defendant not guilty because they did not believe testimony of juvenile who was allegedly trafficked here); Interview with advocate/survivor (Feb. 20, 2008).

¹⁰⁷² Interview with prosecutor (Oct. 15, 2007); Interview with prosecutor (Dec. 10, 2007); *see also* Interview with law enforcement officer (Jan. 22, 2008) (importance of detailed police reports).

¹⁰⁷³ Interview with prosecutor (Oct. 15, 2007); Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Jan. 15, 2008). State level convictions demonstrate the importance of victim-witness testimony to securing convictions. *See State v. Chang*, No. A03-1802, 2005 Minn. App. LEXIS 167 (Minn. Ct. App. Feb. 15, 2005); *State v. Hamilton*, No. C2-02-638, 2003

¹⁰⁵⁹ Interview with law enforcement officer (Nov. 8, 2007).

¹⁰⁶⁰ Interview with advocate (Feb. 13, 2008); *see* MICHAEL S. SCOTT & KELLY DEDEL, *COMMUNITY ORIENTED POLICING SERVICE (COPS), STREET PROSTITUTION 22* (2d ed. 2006), *available at* http://www.popcenter.org/problems/street_prostitution/.

¹⁰⁶¹ Interview with law enforcement officer (Nov. 26, 2007).

¹⁰⁶² Focus Group (July 23, 2007); Interview with advocate (May 16, 2008); Interview with advocate/survivor (Jan. 14, 2008).

¹⁰⁶³ Interview with advocate/survivor (Jan. 14, 2008).

¹⁰⁶⁴ *See* discussion in the section “Law Enforcement Agencies” *supra* p. 94.

¹⁰⁶⁵ Lonetree & Lopez, *supra* note 128.

¹⁰⁶⁶ *Id.*

¹⁰⁶⁷ *Id.*

Prosecutors identified several barriers to obtaining convincing testimony from trafficked persons, including a bias against trafficked and prostituted women and girls, as well as the trafficked person's fears of the public nature of legal proceedings, their traffickers, and detention. As in other types of sexual exploitation, sexual violence, and domestic violence cases, these barriers must be addressed to hold the offenders accountable and promote safety and assistance to crime victims/survivors.

(1) BIAS AGAINST TRAFFICKED AND PROSTITUTED PERSONS

Prosecutors reported that bias against individuals with a history in prostitution may be a barrier to successful prosecution of sex traffickers and patrons.¹⁰⁷⁴ They expressed concern that jury members or defense attorneys would question the credibility of these witnesses.¹⁰⁷⁵ For example, a defense attorney rejected the characterization of two girls who were at risk of being trafficked into prostitution as “blameless teenage girls.” He noted that before their involvement with the traffickers, both girls were sexually active and added that one of the girls was a “tough broad,” although he

Minn. App. LEXIS 326 (Minn. Ct. App. Mar. 23, 2003); State v. Connor, No. C1-02-1439, 2003 Minn. App. LEXIS 787 (Minn. Ct. App. July 1, 2003); State v. Powell, No. C4-99-1357, 2000 Minn. App. LEXIS 599 (Minn. Ct. App. June 20, 2000); *see also* Interview with healthcare provider (Nov. 1, 2007) (citing a case where jury found defendant not guilty because they did not believe testimony of juvenile who was allegedly trafficked here). As noted by Anti-Human Trafficking Unit of the U.N. Office on Drugs and Crime, “evidence provided by trafficked victims is extremely valuable to any prosecution case and can result in the maximum enforcement of the law against the traffickers. Without evidence given by the victim, the elements of the trafficking crime are extremely hard to prove in human trafficking cases and it is probable that traffickers will receive a relatively light punishment in relation to the severity of the crime they have committed.” Vienna Forum to Fight Human Trafficking, Vienna, Austria, Feb. 13-15, 2008, Background Paper, Workshop 007, *From Protection to Prosecution: A Strategic Approach*, p. 2, UN.GIFT B.P.: 007 (2008), available at <http://www.ungift.org/docs/ungift/pdf/vf/backgroundpapers/BP007FromProtectionToProsecution.pdf>.

¹⁰⁷⁴ Interview with prosecutor (Jan. 15, 2008); Interview with prosecutor (Jan. 22, 2008); *see also* Interview with law enforcement officer (Dec. 4, 2007).

¹⁰⁷⁵ Interview with prosecutor (Jan. 15, 2008).

acknowledged that she later “broke down” during the prosecution.¹⁰⁷⁶

A prosecutor affirmed that “you need good victims, credible [victims]....It’s hard to find good victims. They have problems. They are on drugs, [they are] runaways, [they have been] caught lying or stealing, [which] makes them easy to take advantage of...[But] [i]f the women can handle it, it is worth it to take them to trial.”¹⁰⁷⁷ Another prosecutor described a concern that a jury would not be comfortable with two young women, trafficked at ages fifteen or sixteen, but at the time of trial were closer to age eighteen and “look[ed] different than what a sixteen year-old would look like because they were “hardened” by “living on the streets for two to three years.”¹⁰⁷⁸

Trafficked persons’ fear that defense attorneys would use this bias to their advantage is not unfounded. A defense attorney may subject a witness to intense cross-examination about previous incidents of prostitution, history of sexually transmitted diseases, or other facts of a similar nature to try to damage her credibility in front of the jury.¹⁰⁷⁹ The fear is substantiated by a lack of evidentiary rules to protect against such prejudice. While Minnesota law prohibits evidence of previous sexual activity in criminal sexual conduct cases, these rules do not currently apply to sex trafficking or promotion of prostitution crimes generally.¹⁰⁸⁰

¹⁰⁷⁶ Interview with defense attorney (Jan. 3, 2008).

¹⁰⁷⁷ Interview with prosecutor (Jan. 22, 2008).

¹⁰⁷⁸ Interview with prosecutor (Jan. 15, 2008).

¹⁰⁷⁹ Interview with prosecutor (Jan. 15, 2008).

¹⁰⁸⁰ First, in criminal sexual conduct cases, the prosecutor need not show the victim resisted the accused. Second, evidence of the victim’s previous sexual conduct is inadmissible and no reference may be made to it in the presence of the jury except by court order and under limited circumstances. Third, the accused may not offer evidence of the victim’s previous sexual conduct except upon motion to the court. The court reviews the motion and offer of proof, and weighs the probative value of the evidence against its inflammatory or prejudicial nature. If the court determines the evidence is admissible, it will make an order stating the extent to which such evidence is admissible. Fourth, the court *must not* instruct the jury on several key issues:

- a. It may be inferred that a victim who has previously consented to sexual intercourse with persons other

(2) TRAFFICKED PERSONS' FEARS

As previously discussed, trafficked persons may not want to cooperate with the investigation and prosecution of sex trafficking cases.¹⁰⁸¹ Several attorneys who represent trafficked persons described their clients' fears. Not only are their clients acutely aware of the biases against them, as discussed above, but they also fear the public nature of legal proceedings and retaliation from their traffickers. Traffickers often threaten victims or threaten to harm their families. Trafficked persons also fear prosecution for criminal offenses because historically law enforcement officers more often arrest women and girls for prostitution than categorize them as "trafficking victims."¹⁰⁸²

A prosecutor reported one case in which a trafficked person did not even want to give a deposition — a recorded interview used to gather information in preparation for trial — because of the shame. She wanted no record of the act.¹⁰⁸³ Giving testimony not only subjects a woman to being attacked on cross-examination, it forces her to relive the trauma of the trafficking experience.¹⁰⁸⁴

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- than the accused would be therefore more likely to consent to sexual intercourse again; or
- b. The victim's previous or subsequent sexual conduct in and of itself may be considered in determining the credibility of the victim; or
 - c. Criminal sexual conduct is a crime easily charged by a victim but very difficult to disprove by an accused because of the heinous nature of the crime; or
 - d. The jury should not scrutinize the testimony of the victim any more closely than it should scrutinize the testimony of any witness in any felony prosecution.

Fifth, evidence of the patient's personal or medical history is not admissible except when the accused requests a hearing, and the court finds the history is relevant and probative value outweighs its prejudicial value. The court must also make an order stating the information or conduct that is admissible, and violation of such an order constitutes grounds for a mistrial. See MINN. STAT. § 609.347, subds. 2-6 (2007).

¹⁰⁸¹ See discussion in the section "Working with Trafficked Persons during an Investigation" *supra* p. 102.

¹⁰⁸² See discussion in the section "Law Enforcement Agencies" *supra* p. 94.

¹⁰⁸³ Interview with prosecutor (Oct. 15, 2007).

¹⁰⁸⁴ See discussion in the previous section "Bias against Trafficked and Prostituted Persons" *supra* p. 122.

Good Practice for Prosecutors: Use of Pre-recorded and Simultaneous Closed-Circuit Testimony of Some Juveniles¹⁰⁸⁵

When a child under twelve years old testifies about crimes of violence, physical abuse, sexual contact or sexual penetration, a state court

may, upon its own motion or upon the motion of any party, order that the testimony of the child be taken in a room other than the courtroom or in the courtroom and televised at the same time by closed-circuit equipment, or recorded for later showing to be viewed by the jury in the proceeding, to minimize the trauma to the child of testifying in the courtroom setting and, where necessary, to provide a setting more amenable to securing the child witness's uninhibited, truthful testimony.¹⁰⁸⁶

In criminal proceedings, only the judge, defense attorneys, prosecutors and "any person whose presence would contribute to the welfare and well-being of the child, and persons necessary to operate the recording or closed-circuit equipment" may be present during the child's testimony.¹⁰⁸⁷ **In such cases, the court may take measures to ensure that the defendant can see and hear the testimony, but the child witness cannot see or hear the defendant.**¹⁰⁸⁸ **For example, the defendant may watch a simultaneous broadcast of the child's testimony from a separate room.**¹⁰⁸⁹

In addition to fear of retaliation, trafficked persons may not want to testify in a prosecution because they want to protect a relationship with a

¹⁰⁸⁵ Interview with healthcare provider (Nov. 1, 2007).

¹⁰⁸⁶ MINN. STAT. § 595.02, subd. 4(a) (2007).

¹⁰⁸⁷ *Id.* § 595.02, subd. 4(b).

¹⁰⁸⁸ *Id.* § 595.02, subd. 4(c).

¹⁰⁸⁹ *Id.* § 595.02, subd. 4(c)(2).

trafficker;¹⁰⁹⁰ or they may simply want to forget the trafficking episode altogether.¹⁰⁹¹ For example, one prosecutor noted that “the girls/women [do not] make very good witnesses. They are afraid. They still love the guy. [They may have] the ‘Stockholm Syndrome.’ They are very difficult cases.”¹⁰⁹² Another prosecutor commented that “there is an emotional tie that the victims have to the person who trafficked them or who is having sex with them....Prosecuting the man is asking her...to come forward.”¹⁰⁹³

Prosecutors are not able to shield women from facing their traffickers because of a criminal defendant’s Constitutional right to confront his or her accuser.¹⁰⁹⁴ A recent ruling in a domestic violence

¹⁰⁹⁰ Interview with prosecutor (Dec. 10, 2007); Interview with probation officer (Oct. 12, 2007); Interview with advocate/survivor (Feb. 20, 2008).

¹⁰⁹¹ Interview with prosecutor (Oct. 15, 2007); *see also* Interview with advocate (Jan. 2, 2008).

¹⁰⁹² Interview with prosecutor (Jan. 22, 2008). Stockholm Syndrome is a “a psychological strategy for survival in captivity” that authors in one study described in the following way with regard to prostitution:

[it] is useful in explaining the traumatic bonding which occurs between women in prostitution and their pimps/captors. When a person holds life-or-death power over another, small kindnesses are perceived with immense gratitude. In order to survive on a day-to-day basis, it is necessary to deny the extent of harm which pimps and customers are capable of inflicting. Survival of the person in prostitution depends on her ability to predict others’ behavior. So she develops a vigilant attention to the pimp’s needs and may ultimately identify with his view of the world. This increases her chances for survival, as did Patty Hearst’s identification with her captors’ ideology.

Melissa Farley et al, *Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder*, 8 FEMINISM & PSYCHOLOGY 405, 409 (1998) (referencing discussion of Stockholm Syndrome in D.L.R. GRAHAM ET AL, *LOVING TO SURVIVE: SEXUAL TERROR, MEN’S VIOLENCE, AND WOMEN’S LIVES* (New York Univ. Press 1994)).

¹⁰⁹³ Interview with prosecutor (Dec. 10, 2007).

¹⁰⁹⁴ Interview with prosecutor (Oct. 15, 2007). The U.S. Constitution provides that

[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

case before the U.S. Supreme Court reinforced this right, making it more difficult to prosecute domestic violence offenders and protect victims. The Court held that absent intent to cause a witness to be unavailable to testify at trial, a defendant has the right to confront and cross-examine witnesses.¹⁰⁹⁵

Despite the fear of public testimony, the opportunity to testify against their traffickers can be beneficial for some trafficked persons. An advocate reported that a client “just had the chance to tell her story. That was so helpful to be heard.”¹⁰⁹⁶ A survivor characterized testifying in court against her trafficker as her “most empowering moment.”¹⁰⁹⁷

Trafficked and prostituted persons are also afraid of being detained and charged with crimes or being detained as a material witness and compelled to testify.¹⁰⁹⁸ As discussed previously, trafficked persons have concerns about their own potential criminal liability.¹⁰⁹⁹ Trafficked women need timely, competent legal advice because in some cases, a fine line exists between being a trafficker or a trafficked person.¹¹⁰⁰ In one case, a woman an attorney considered trafficked was deemed a trafficker due to her relationship with a defendant charged as a trafficker.¹¹⁰¹ Even when identified as a trafficking victim, a prosecutor or law enforcement officer could later reverse a woman’s status as a “victim” and find that she was, in fact, a trafficker.¹¹⁰² For these reasons, trafficked persons, whether U.S. citizens or foreign nationals, need criminal defense counsel throughout the process of cooperating with prosecutors to protect their own interests.

U.S. Const. amend. VI.

¹⁰⁹⁵ *Giles v. California*, No. 07-6053 (U.S. June 25, 2008), available at http://www.oyez.org/cases/2000-2009/2007/2007_07_6053/.

¹⁰⁹⁶ The proceedings in this story were civil, not criminal. Interview with former advocate (Dec. 5, 2007).

¹⁰⁹⁷ Interview with survivor (Nov. 29, 2007).

¹⁰⁹⁸ See discussion in the section “Law Enforcement Agencies” *supra* p. 94.

¹⁰⁹⁹ Interview with advocate (Jan. 2, 2008).

¹¹⁰⁰ Interview with attorney (Oct. 24, 2007).

¹¹⁰¹ *Id.*

¹¹⁰² No interviewees reported any cases where this occurred. See discussion in the section “Working with Trafficked Persons During an Investigation” *supra* p. 102.

At times, law enforcement has also detain trafficking victims, in an attempt to “protect” them.¹¹⁰³ A probation officer reported that she was asked to order a woman involved in prostitution and drug use to jail or treatment for the woman’s own safety.¹¹⁰⁴ The woman had testified against her pimp at trial, but the trial was declared a mistrial and the pimp was released. The probation officer was told to issue a warrant, so the woman could be sent to jail where the pimp would be unable to harm her.¹¹⁰⁵ At that point, state authorities would make plans for the woman to leave the state. If the woman was unable to leave the state, the hope was that the pimp would forget about her while she was in jail. The probation officer could not find the woman in this particular case, but reported that this situation was not an isolated incident.¹¹⁰⁶ The probation officer found it “incredible” that “protective” incarceration was considered an option.¹¹⁰⁷

Because of the complex nature of the proceedings, both criminal defense and immigration attorneys are vital to protecting the rights of trafficked persons. Trafficked foreign nationals need immigration attorneys to advocate for the immigration remedies to which they are entitled.¹¹⁰⁸ But during the prosecution of one trafficking case, the trafficked women were represented only by immigration attorneys.¹¹⁰⁹ These attorneys observed that trafficked women also needed criminal defense lawyers because they would have to tell prosecutors about their involvement in the trafficking organization.¹¹¹⁰ Another attorney added that some women needed a letter guaranteeing immunity to avoid self-incrimination.¹¹¹¹

As in other types of sexual exploitation, sexual violence, and domestic violence cases, the trafficked person’s fears, which create barriers to cooperation, must be addressed to ensure effective prosecution of sex traffickers and patrons and to provide appropriate assistance and protection to trafficked persons.

¹¹⁰³ Interview with attorney (Oct. 15, 2007).

¹¹⁰⁴ Interview with probation officer (Oct. 12, 2007).

¹¹⁰⁵ *Id.* The interviewee did not specify who asked her to issue the warrant.

¹¹⁰⁶ Interview with probation officer (Oct. 12, 2007).

¹¹⁰⁷ *Id.*

¹¹⁰⁸ See discussion in the section “Immigration Relief” *supra* p. 79.

¹¹⁰⁹ Interview with attorney (Dec. 21, 2007).

¹¹¹⁰ Interview with attorney (Oct. 24, 2007).

¹¹¹¹ Interview with attorney (Dec. 21, 2007); Interview with attorney (Oct. 24, 2007).

Good Practice for Prosecutors: Independent Evidence-Based Prosecutions

The *U.N. Recommended Principles and Guidelines* advocate for states to “encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.”¹¹¹² Independent evidence-based prosecutions rely on evidence other than the trafficked woman’s testimony to secure a prosecution. They have been promoted in domestic violence cases as a way to take pressure off the battered woman in the batterer’s prosecution.¹¹¹³

While independent evidence-based prosecutions require more complex investigative work by law enforcement, they enhance the likelihood of successful prosecution in all cases, particularly those in which victim-witnesses cannot testify.

Author Fiona David discusses the application of the practice to trafficking cases:

Some law enforcement agencies have gone further by adopting proactive approaches to detecting and investigating trafficking. The objective of a proactive approach is to investigate, arrest and prosecute traffickers without having to rely on the cooperation and testimony of the victim. The intention is not to disenfranchise victims but to respond to the fact that a victim’s testimony will not always be forthcoming or available. It relies on intelligence gathering, human and technical surveillance, undercover deployments and standard investigative techniques.

This approach was developed by the United Kingdom Metropolitan Police and has been incorporated into police training around the world.¹¹¹⁴

d) SENTENCING TRAFFICKERS

Both the sentencing guidelines and the actual time served by traffickers in Minnesota fail to reflect the seriousness of the crime of human sex trafficking. State and federal prosecutors cited deficiencies in their respective sentencing guidelines¹¹¹⁵ that adversely impact their ability to seek adequate sentences for sex traffickers.¹¹¹⁶ On the state level, these deficiencies included the disparity between

¹¹¹⁴ Fiona David, *Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice*, TRENDS & ISSUES IN CRIME AND CRIMINAL JUSTICE (Australian Inst. of Criminology, Canberra, Austl. Cap. Terr., Austl.), Dec. 2007 (quoting ICMPD 2004: 102; Kelly & Regan 2000: 33), available at <http://www.aic.gov.au/publications/tandi2/tandi347.pdf>.

¹¹¹⁵ Sentencing guidelines dictate a range of penalties that may be imposed for specific crimes based on the severity of the crime itself and the criminal background of the convict.

¹¹¹⁶ Interview with prosecutor (Dec. 17, 2007); Interview with prosecutor (Jan. 22, 2008); Interview with prosecutor (Dec. 10, 2007); see generally Interview with prosecutor (Jan. 17, 2008) (discussing light sentencing for promotion of prostitution and solicitation generally).

¹¹¹² U.N. Econ. & Soc., *supra* note 68, guideline 5(3).

¹¹¹³ See Interview with prosecutor (Apr. 1, 2008) (stating “[i]f it is similar to domestic abusers, it is difficult, but if we can go forward without a victim, we will. We have had situations where a victim has recanted, but we had a lot of medical evidence we used to go forward with the case.”).

sentences for sex trafficking and other felony crimes and the perceived inability to enhance the penalties for sex trafficking crimes. On the federal level, prosecutors cited gross disparities in sentencing of traffickers contingent on their ability to prove the elements of force, fraud or coercion.

At the state level, sex trafficking carries less severe penalties than other crimes, such as kidnapping or criminal sexual conduct. This disparity serves as a disincentive for prosecutors to charge defendants with a sex trafficking offense.¹¹¹⁷ When charging a case, prosecutors “look at [...] the presumptive sentence,” or what “would put [the defendant] in prison the longest, which [is] not the prostitution statutes.”¹¹¹⁸ For felony offenses, the presumptive sentence is specified by the sentencing guidelines as a term of months, and the sentence may be stayed or executed.¹¹¹⁹ A stayed sentence may include up to a year in jail and probation.¹¹²⁰ An executed sentence includes at least a year and a day in prison and a term of supervised release.¹¹²¹ If a defendant receives an executed sentence, it consists of two parts: a minimum term of imprisonment equal to two-thirds of the total

executed sentence and a supervised release term equal to the remaining one-third.¹¹²²

The difference in state sentencing is pronounced for cases involving a minor. Sentences for criminal sexual conduct are more severe than for sex trafficking.¹¹²³ Sex trafficking of a minor is categorized as crime with a severity level IX, which carries a presumptive sentence of eighty-six months if the defendant has no prior record.¹¹²⁴ But, for “[criminal sexual conduct in the first degree],”¹¹²⁵ you get 144 months” if the defendant has no prior record, a difference of fifty-eight months.¹¹²⁶ Sex offenses, criminal sexual predatory conduct, and criminal sexual conduct also carry a term of conditional release after the prison sentence is served.¹¹²⁷ Cases using minors in a sexual performance or child pornography, or cases of possessing or disseminating child pornography, also carry a term of conditional release after the prison sentence is served.¹¹²⁸ But, cases of sex trafficking of minors do not have terms of conditional release after incarceration, effectively making the penalties of such crimes less severe.

The disparities widen in cases involving the sex trafficking of adults. Sex trafficking of an adult is a level V offense with a presumptive stayed sentence of only eighteen months for a defendant with no criminal history, which may or may not include imprisonment.¹¹²⁹ Crimes such as first- and second-degree assault, kidnapping with no great bodily

¹¹¹⁷ While Minnesota law provides for up to twenty years imprisonment for the sex trafficking of a minor and up to fifteen years if the victim is an adult, those terms reflect maximum sentences that are rarely given. To determine the appropriate sentences in felony cases, judges must consult *The Minnesota Sentencing Guidelines*. The guidelines instruct judges to assess the severity of the offense, as well as the criminal history index of the defendant, to arrive at the proper sentence. The criminal history index is “comprised of the following items: (1) prior felony record; (2) custody status at the time of the offense; (3) prior misdemeanor and gross misdemeanor record; and (4) prior juvenile record for young adult felons.” While the sentencing guidelines are advisory to the sentencing judge, departures from the presumptive sentences established in the guidelines should be made only when substantial and compelling circumstances exist. MINNESOTA SENTENCING GUIDELINES COMM’N, MINNESOTA SENTENCING GUIDELINES AND COMMENTARY 1, 2, 4, 29-30 (Aug. 1, 2007), available at <http://www.msgc.state.mn.us/msgc5/guidelines.htm>.

¹¹¹⁸ Interview with prosecutor (Jan. 15, 2008); see also Interview with prosecutor (Dec. 10, 2007).

¹¹¹⁹ MINN. STAT. § 244.101 (2007); MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117 at 60.

¹¹²⁰ MINN. STAT. § 244.101 (2007); see generally MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 9.

¹¹²¹ MINN. STAT. § 244.101 (2007).

¹¹²² MINN. STAT. § 244.101 (2007); MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 23.

¹¹²³ Interview with prosecutor (Dec. 10, 2007); see also MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 61.

¹¹²⁴ The prosecutor referred to crimes charged under Minnesota Statute section 609.322, subdivision 1, which could apply to a sex trafficking offense. Interview with prosecutor (Dec. 10, 2007). See also Interview with prosecutor (Jan. 15, 2008); MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 57, 61.

¹¹²⁵ MINN. STAT. § 609.342 (2007).

¹¹²⁶ Interview with prosecutor (Dec. 10, 2007); see also MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 59.

¹¹²⁷ MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 38.

¹¹²⁸ *Id.* at 39.

¹¹²⁹ *Id.* at 57, 62.

harm and many forms of criminal sexual conduct carry higher presumptive sentences.¹¹³⁰ Sex offenses, criminal sexual predatory conduct, and criminal sexual conduct also carry a term of conditional release after the prison sentence is served.¹¹³¹ As with cases involving minors, cases of sex trafficking of adults do not mandate conditional release.

Not only are presumptive sentences for sex trafficking disproportionate to other felony-level offenses, but in practice, pimps and sex traffickers in Minnesota serve very little time. A probation officer referred to typical sentences for promotion of prostitution cases:¹¹³² “[t]hey all got some jail time. No one got sent to prison ...[so they served] no more than a year.”¹¹³³ A recent conviction in Dakota County for promoting the prostitution of adults yielded a stay of imposition, meaning the trafficker did not have to serve the remainder sentence of sixty days in jail for this felony-level offense.¹¹³⁴ Even though judges should depart from the presumptive sentences only when substantial and compelling circumstances exist, one interviewee reported that “[f]or a [promoting the prostitution of a] juvenile, I’ve seen a guideline with a mandatory eight year sentence, and then [the defendant, an adult,] walked with probation. The pimp walks, even with mandatory sentencing.”¹¹³⁵ The actual time served by sex traffickers sends the message that sex trafficking is not a priority and that they may act with relative impunity.

¹¹³⁰ See Interview with prosecutor (Jan. 15, 2008); see also MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 61, 62, 68.

¹¹³¹ MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 38.

¹¹³² The crime of sex trafficking is defined as a form of promotion of prostitution. See MINN. STAT. § 609.321, subd. 7 (2007). Penalties for promotion of prostitution are found in Minnesota Statute section 609.322.

¹¹³³ Interview with probation officer (Dec. 12, 2007).

¹¹³⁴ The pimp eventually returned to jail to serve the remainder of his sixty-day sentence for a probation violation. *State v. Arnold*, No. 19HA-CR-08-1088 (Dakota County Ct. May 19, 2008) (accessed through MNCIS), available at <http://pa.courts.state.mn.us/default.aspx> (search “criminal,” enter defendant’s name).

¹¹³⁵ Interview with law enforcement officer (Jan. 29, 2008).

One county prosecutor cited the absence of sentence enhancements as another deterrent to prosecuting offenders under the sex trafficking statute.¹¹³⁶ While the sex trafficking law currently lacks such enhancements, judges may consider “aggravating factors” in departing from the presumptive sentence and have attempted to do so in cases that could constitute sex trafficking under current law.¹¹³⁷ These departures, however, may not withstand appeal. For example, in a case involving the recruitment of a seventeen-year-old girl into an escort service for the purpose of prostitution, the judge cited aggravating factors of particular cruelty and vulnerability and sentenced the defendant to 102 months — almost double the presumptive sentence of fifty-one months.¹¹³⁸ The Minnesota Court of Appeals reversed this departure, finding that the girl was not particularly vulnerable for a seventeen-year-old girl and that placing her in an “unfamiliar motel and leaving her without financial means is not significantly different from conduct typically involved in promotion of sixteen to eighteen year olds for prostitution.”¹¹³⁹

¹¹³⁶ Interview with prosecutor (Feb. 5, 2008); see also Interview with prosecutor (Oct. 15, 2007) (discussing similar issues with federal cases).

¹¹³⁷ Case law and appellate review determine the limits of these departures. Aggravating factors include considerations such as:

- (1) The victim was particularly vulnerable due to age, infirmity, or reduced physical or mental capacity, which was known or should have been known to the offender.
- (2) The victim was treated with particular cruelty for which the individual offender should be held responsible.
- (3) The current conviction is for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured and there is a prior felony conviction for a Criminal Sexual Conduct offense or an offense in which the victim was otherwise injured.

MINNESOTA SENTENCING GUIDELINES COMM’N, *supra* note 1117, at 29-30, 33.

¹¹³⁸ *State v. Powell*, No. C4-99-1357, 2000 Minn. App. LEXIS 599 (Minn. Ct. App. 2000).

¹¹³⁹ Because a court “may not depart from presumptive sentence based on a factor that is also an element of the offense,” the court’s departure was in error. The trial court essentially held that the girl’s “particular vulnerability” was due to her “immaturity and dependent nature,” which the Court of Appeals decided was a proxy for her age, an element of the offense of promotion of prostitution of a minor. *Id.* at 11-13.

Good Practice: Sentencing Enhancements for Sex Traffickers

Minnesota law currently provides for sex trafficking sentences in Minnesota Statute section 609.322. Although sex trafficking is a felony, Minnesota law currently lacks provisions for sentence enhancements. Various state anti-trafficking legislation models¹¹⁴⁰ recommend sentencing enhancements for sex trafficking based on factors such as:

- 1. The level of physical, psychological, emotional, or financial harm involved in the sex trafficking act.**
- 2. The severity of the physical, psychological, emotional, or financial injury sustained by the trafficked person.**
- 3. The number of trafficked persons harmed.**
- 4. The length of time the trafficked person(s) was/were held in servitude.**
- 5. The actual or threatened abuse of the legal process.**

Federal prosecutors also face problems in sentencing defendants for sex trafficking. It is difficult to prove the elements of force, fraud or coercion necessary to receive the higher penalties for sex trafficking of adults as established by the TVPA.¹¹⁴¹ For example, federal prosecutors may have objective evidence demonstrating coercion, such as a trafficker withholding critical immigration documents to keep a woman captive. However, this evidence may be nullified if victim-witnesses testify that they “did this to earn money” or “to help

¹¹⁴⁰ MODEL COMPREHENSIVE STATE LEGISLATION TO COMBAT TRAFFICKING IN PERSONS § 1.11 (Polaris Project 2006), available at <http://www.polarisproject.org/images/docs/Model-Comprehensive-State-Legislation.pdf>; see also MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE, *supra* note 178, § XXX.02; THE NATIONAL INSTITUTE ON STATE POLICY ON TRAFFICKING OF WOMEN AND GIRLS, CENTER FOR WOMEN, RESOURCE GUIDE FOR STATE LEGISLATORS: MODEL PROVISIONS FOR STATE ANTI-TRAFFICKING LAWS 3 (2005), available at <http://www.centerwomenpolicy.org/pdfs/TraffickingResourceGuide.pdf>.

¹¹⁴¹ Interview with prosecutor (Dec. 17, 2007); compare 18 U.S.C. § 1591(b) (2007), with 18 U.S.C. § 2422.

my children.”¹¹⁴² A prosecutor stated that “[i]f I can’t prove fear of physical harm, then it won’t fly in front of a jury. In these cases that don’t qualify under the federal standard, then the sentence is not enough.”¹¹⁴³ In such cases, the federal sentencing guidelines stipulate a sentencing minimum of only fifteen to twenty months for sex trafficking of adults where there was no force, fraud or coercion.¹¹⁴⁴ A recent sex trafficking case involving over twenty-five defendants involved in trafficking women into brothels around Minnesota yielded sentences ranging from fifteen to seventy-one months for crimes other than sex trafficking.¹¹⁴⁵

e) SENTENCING PATRONS

Many interviewees identified the need to devise more effective and severe penalties for patrons. Under Minnesota law, a patron can receive a sentence of five to twenty years for offering, agreeing or engaging in prostitution with a minor.¹¹⁴⁶ The penalties for doing so with an adult range from a minimum \$500 fine and community service to ninety days or up to one year in prison.¹¹⁴⁷ Interviews

¹¹⁴² Interview with prosecutor (Dec. 17, 2007); Interview with prosecutor (Sept. 16, 2008).

¹¹⁴³ Interview with prosecutor (Dec. 17, 2007).

¹¹⁴⁴ This is the presumptive sentence for an offender with no criminal history. UNITED STATES SENTENCING COMM’N, FEDERAL SENTENCING GUIDELINES MANUAL ch. 5, pt. A (2007), <http://www.usc.gov/guidelin.htm> (last visited Aug. 16, 2008).

¹¹⁴⁵ The majority of defendants pleaded guilty to criminal conspiracy offenses. Interview with prosecutor (Dec. 17, 2007).

¹¹⁴⁶ MINN. STAT. § 609.324, subd. 1 (2007).

¹¹⁴⁷ For solicitation or acceptance of solicitation to engage in prostitution in a public place, an individual “may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000 or both. Except as otherwise provided in subdivision 4, a person who is convicted of violating this subdivision while acting as a patron must, at a minimum, be sentenced to pay a fine of at least \$1,500.” MINN. STAT. § 609.324, subd. 2.

Subdivision 3 provides that “[w]hoever intentionally does any of the following may be sentenced to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both:

- (1) engages in prostitution with an individual 18 years of age or above; or
- (2) hires or offers or agrees to hire an individual 18 years

revealed, however, that patrons are not being held accountable for buying sex.

Judges in specialized community courts in Minneapolis and St. Paul adjudicate cases involving misdemeanor prostitution arrests of both patrons and individuals in prostitution.¹¹⁴⁸ In other jurisdictions, Minnesota District Courts hearing

of age or above to engage in sexual penetration or sexual contact. Except as otherwise provided in subdivision 4, a person who is convicted of violating clause (1) or (2) while acting as a patron must, at a minimum, be sentenced to pay a fine of at least \$500.

Whoever violates the provisions of this subdivision within two years of a previous conviction may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. Except as otherwise provided in subdivision 4, a person who is convicted of a gross misdemeanor violation of this subdivision while acting as a patron, must, at a minimum, be sentenced as follows:

- (1) to pay a fine of at least \$1,500; and
- (2) to serve 20 hours of community work service.

The court may waive the mandatory community work service if it makes specific, written findings that the community work service is not feasible or appropriate under the circumstances of the case. MINN. STAT. § 609.324, subd. 3.

Subdivision 4 provides for community service in lieu of a fine:

The court may order a person convicted of violating subdivision 2 or 3 to perform community work service in lieu of all or a portion of the minimum fine required under those subdivisions if the court makes specific, written findings that the convicted person is indigent or that payment of the fine would create undue hardship for the convicted person or that person's immediate family. Community workservice ordered under this subdivision is in addition to any mandatory community work service ordered under subdivision 3.

MINN. STAT. § 609.324, subd. 4.

Lastly, subdivision five provides for notation in a patron's driving record if his motor vehicle was used during the commission of the offense. In such convictions, a court must make findings as to whether the person used a motor vehicle during the commission of the offense. If the court makes such a finding, "it shall forward its finding to the commissioner of public safety who shall record the finding on the person's driving record. The finding is classified as private data on individuals, as defined in section 13.02, subdivision 12." MINN. STAT. § 609.324, subd. 5.

¹¹⁴⁸ Minnesota Judicial Branch Fourth District, Community Court, <http://www.mncourts.gov/district/4/?page=2003> (last visited Aug. 28, 2008); City of St. Paul, Community Court, <http://www.stpaul.gov/index.asp?NID=128> (last visited Aug. 28, 2008).

misdemeanor offenses would adjudicate patrons' cases.

Despite the sentences provided by law, it is extremely rare for a patron to spend any time in jail for soliciting or engaging in prostitution with an adult. A judge who regularly handles these cases reported that patrons typically receive a fine plus a stay of imposition.¹¹⁴⁹ They may also receive a "stay away" order to refrain from being in the area where they were arrested.¹¹⁵⁰ In some jurisdictions, they risk forfeiture of their car upon arrest.¹¹⁵¹

Judges in the metro area may also sentence patrons to diversion programs that address the impact of prostitution on persons in prostitution, communities, their families and the patrons themselves.¹¹⁵² If patrons do not complete the course in Minneapolis, they must return to court and will have a conviction on their record.¹¹⁵³ It is unclear what added deterrent effect these programs have beyond the interaction with the criminal justice system.¹¹⁵⁴

Whatever the consequence, interviewees emphasized that in their experiences, most patrons do not re-offend after being arrested.¹¹⁵⁵ It is not clear whether patrons simply stop buying sex via street prostitution, or whether they adapt and purchase sex in off-street prostitution venues

¹¹⁴⁹ Interview with judge (Jan. 3, 2008). Except in cases requiring a life sentence or a mandatory minimum sentence, a judge can order a stay of imposition of a sentence. In such cases, a judge imposes intermediate sentences or probation rather than the penalties provided for by law. Intermediate sentences include a jail sentence, home detention, electronic monitoring or intensive probation. MINN. STAT. § 609.135 (2007).

¹¹⁵⁰ Interview with judge (Jan. 3, 2008).

¹¹⁵¹ Interview with judge (Mar. 13, 2008). In Minneapolis, patrons must pay fees to get the car out of impound and the police hold the title to the car until the case is resolved. One law enforcement officer stated that forfeiture had little impact because the prosecutor never permanently seizes the cars. Interview with law enforcement officer (Jan. 29, 2007).

¹¹⁵² Powderhorn Park Neighborhood Association, Restorative Justice Adult Program, <http://www.ppna.org/node/21> (last visited Aug. 24, 2008) (Minneapolis' over six-month counseling and restorative justice program for patrons); Breaking Free, Offenders' Prostitution Program (John School) & Community Court, <http://www.breakingfree.net/19.html> (last visited Aug. 24, 2008) (St. Paul's one-day diversion program for patrons).

¹¹⁵³ Interview with judge (Mar. 13, 2008).

¹¹⁵⁴ SCOTT & DEDEL, *supra* note 1060, at 27.

¹¹⁵⁵ Interview with law enforcement officer (Jan. 29, 2008).

instead. Regardless of where patrons buy sex, focusing resources on prosecuting patrons would contribute to reducing the demand for commercial sex.

Good Practice for Legal Reform: Swedish Law Decriminalizing Sale of Sexual Services

In 1999, Sweden passed a law decriminalizing the sale, but not the purchase of sexual services.¹¹⁵⁶ Violators may be fined or receive six months in jail,¹¹⁵⁷ although only 108 patrons went to jail in 2006.¹¹⁵⁸ In passing this law, the Swedish Government recognized that

By prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted more effectively than hitherto... The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited

by those who want only to satisfy their sexual drives.¹¹⁵⁹

By creating penalties for patrons and traffickers, this policy has led to an apparent dramatic decrease in the number of individuals in prostitution overall.¹¹⁶⁰ Moreover, Swedish law enforcement reports that as other European countries have seen the numbers of women trafficked into the sex industry soar, only 400 to 600 foreign women are brought to Sweden each year for the purpose of prostitution.¹¹⁶¹ By comparison, Finland, which is only half the size of Sweden and without similar laws, estimates between 10,000 and 15,000 foreign women are trafficked each year.¹¹⁶²

¹¹⁵⁶ SWEDISH PENAL CODE Ch. 6, § 11.

¹¹⁵⁷ *See id.*

¹¹⁵⁸ Andre Anwar, *Prostitution Ban Huge Success in Sweden*, SPEIGEL ONLINE, Nov. 8, 2007, <http://www.spiegel.de/international/europe/0,1518,516030,00.html>

¹¹⁵⁹ Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST W. 1187, 1188 (2004) (citing MINISTRY OF LABOUR, SWEDEN 5 (1998) *Kvinnofrid*. Stockholm: Author).

¹¹⁶⁰ Anwar, *supra* note 1158.

¹¹⁶¹ *Id.*

¹¹⁶² *Id.* Finland's situation may not be directly analogous to Sweden's because it shares a border with Russia and has a long history of cross-border prostitution with Russia. *See* DONNA HUGHES, INTERNATIONAL ORGANIZATION FOR MIGRATION, TRAFFICKING FOR SEXUAL EXPLOITATION: THE CASE OF THE RUSSIAN FEDERATION at 17-18 (2005), available at <http://www.uri.edu/artsci/wms/hughes/russia.pdf>.

RECOMMENDATIONS

Prosecutors and judges should receive regular training on the issue of sex trafficking and the relevant laws. At the management level, federal, state and tribal prosecutors should identify sex trafficking as a priority for prosecution and communicate this message effectively. Prosecutors and judges should assist in developing, implementing, and reviewing anti-trafficking legislation, policies and programs, particularly those addressing sex traffickers and patrons.

Federal, state, tribal and local law enforcement agencies should prioritize arresting sex traffickers and patrons. The Legislature and Congress should allocate sufficient funds for these purposes.

Federal, tribal and state prosecutors should prosecute sex traffickers for trafficking, its component acts and related conduct. Prosecutors should seek sanctions against sex traffickers that are proportionate to the offense. Judges should enforce sanctions and judgments against sex traffickers. Federal and state prosecutors, judges and the sentencing

commissions should participate in a review and revision of the sentencing guidelines at both the state and federal levels. The State of Minnesota should collect uniform data about arrests, charges, dismissals and convictions of traffickers under the sex trafficking statute. These data should be disaggregated from the other forms of promotion, solicitation and inducement of prostitution. The Minnesota Office of Justice Programs should publish these data in its annual report on human trafficking.

State prosecutors should prosecute patrons for soliciting or engaging in prostitution and related conduct. Prosecutors should seek sanctions against patrons that are proportionate to the offense. Judges should enforce sanctions and judgments against patrons. In consultation with state prosecutors, judges and non-profit organizations, the Legislature should amend the law to increase penalties for patrons and make it an enhanceable offense. The State of Minnesota should also collect uniform data on arrests, charges, dismissals and convictions of patrons. The Minnesota Office of Justice Programs should publish these data in its annual report on human trafficking.

2. PROMOTING SAFETY AND ASSISTANCE TO TRAFFICKED PERSONS

Instead of being treated as trafficked persons and crime victims, women who may be entitled to support and benefits are often treated as criminals. As previously discussed, law enforcement fails to effectively screen women arrested for street prostitution or other crimes to determine whether they may be trafficked persons.¹¹⁶³ The consequence is that service providers reported seeing many clients with some type of charge on

¹¹⁶³ See discussion in the section "Law Enforcement Agencies" *supra* p. 94.

their record,¹¹⁶⁴ indicating the high incidence of women's and girls' interaction with the criminal justice system. In turn, this criminal history may impede women from getting out of prostitution by making it difficult to obtain services, public assistance, housing, custody of their children or employment.¹¹⁶⁵

The *U.N. Recommended Principles and Guidelines* advocate "[e]nsuring that trafficked persons are not detained, charged or prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons."¹¹⁶⁶ Other recommendations include: ensuring safe shelter for trafficked persons, access to health, access to information on the right to diplomatic and consular representatives; fair legal proceedings; access to information in an understandable language about legal actions taken against their traffickers; protection from intimidation by traffickers; voluntary return to other countries; and assistance and support upon return.¹¹⁶⁷

Rather than prosecute trafficked persons, federal and state prosecutors in Minnesota should provide practical assistance to trafficked women based on their status as crime victims.

Good Practice for Prosecutors: Use of Crime Victim-Witness Advocates

To address what some believe to be an inherent conflict between prosecution and protection, victim-witness advocacy programs were started in the 1980s to form and to facilitate strong relationships between a prosecutor's office and crime victims and witnesses.¹¹⁶⁸ Crime victims and witnesses often receive services from a prosecutor's office through the assistance of a victim-witness advocate.¹¹⁶⁹ Ramsey County's program began in 1985 and currently provides information on victim rights, offers crisis counseling and referrals, facilitates contact with other agencies within the criminal justice system, obtains interpretive services, provides information regarding hearing dates and schedule changes, arranges transportation and day care, assists in obtaining time off from work to testify, secures a safe waiting area in the courthouse, assists in applying for reimbursement for expenses incurred during the course of the trial, resolves matters related to restitution and the return of property, and provides information as to eligibility from the Crime Victims Reparations Board.¹¹⁷⁰

a) CRIMINAL CHARGES AND CONVICTIONS ADVERSELY IMPACT TRAFFICKED WOMEN

When a trafficked person is charged with a crime, she will experience both the intended and

¹¹⁶⁴ Interview with advocate (Feb. 13, 2008); Interview with advocate (Oct. 12, 2007).

¹¹⁶⁵ See discussion in the section "Law Enforcement Agencies" *supra* p. 94.

¹¹⁶⁶ U.N. Econ. & Soc., *supra* note 68, princ. 7, guideline 2(5).

¹¹⁶⁷ U.N. Econ. & Soc., *supra* note 68, guideline 6.

¹¹⁶⁸ JOEL EPSTEIN, CRIMINAL JUSTICE & COMMUNITY RESPONSE TO RAPE 28 (1994).

¹¹⁶⁹ Services Provided -- Victim/Witness, Ramsey County Attorney's Office available at <http://www.co.ramsey.mn.us/attorney/servicesprovidedVictimWitness.htm> (last visited July 22, 2008).

¹¹⁷⁰ EPSTEIN, *supra* note 1168; Ramsey County, Services Provided -- Victim/Witness, <http://www.co.ramsey.mn.us/attorney/servicesprovidedVictimWitness.htm> (last visited Aug. 24, 2008).

unintended consequences of legal sanctions.¹¹⁷¹ Women and girls may move in and out of the criminal justice system virtually undetected as victims of trafficking, but suffer the serious consequences of being charged with a crime.

The same community courts that hear patrons' cases also adjudicate the cases of women charged with soliciting or engaging in prostitution in Minneapolis and St. Paul.¹¹⁷² An advocate praised the Minneapolis Community Court for working with women charged with prostitution offenses to divert or order them to appropriate programming, such as chemical dependency treatment or parenting classes.¹¹⁷³ This process nonetheless conditions assistance on women's status as criminals, as opposed to crime victims.¹¹⁷⁴ Like patrons, the court may sentence women with one prostitution offense to a stay of imposition and diversion into programs like PRIDE or Breaking Free.¹¹⁷⁵ However, the potentially beneficial impact of this low sentence is often diminished by repeat prostitution offenses or commission of more serious crimes, resulting in a lengthy criminal record.

Interviews revealed that women charged with misdemeanor prostitution offenses are not screened to see if they qualify as a "sex trafficking victim" under Minnesota law.¹¹⁷⁶ Similarly, public defenders in Minneapolis are not using the affirmative defense

to prostitution charges available to sex trafficking victims.¹¹⁷⁷

In many cases, advocates reported seeing women and girls charged with more serious crimes than soliciting or engaging in prostitution. Based on her caseload, one probation officer noted that this escalation applies with particular force to juveniles, who largely end up in court on charges other than prostitution.¹¹⁷⁸ Interviewees reported women and girls being involved in crimes including selling false identification,¹¹⁷⁹ check fraud,¹¹⁸⁰ and welfare fraud.¹¹⁸¹ Recent cases of young women in prostitution involved more serious crimes, including attempted murder¹¹⁸² and murder.¹¹⁸³

Depending on the level of the crime charged, penalties range from ninety days imprisonment and a \$1,000 fine for a misdemeanor charge of soliciting or engaging in prostitution, to up to a year imprisonment and a \$3,000 fine for a gross

¹¹⁷⁷ Interview with judge (Mar. 13, 2008).

¹¹⁷⁸ Interview with probation officer (Mar. 18, 2008). In 2007, only nineteen juveniles were arrested on prostitution charges in Minnesota. MINN. DEP'T OF PUB. SAFETY, MINNESOTA CRIME INFORMATION-2007 9, 59 (2008) <http://www.bca.state.mn.us/CJIS/documents/crime2007%5Cmci2007.pdf>.

¹¹⁷⁹ Interview with healthcare provider (Jan. 23, 2008).

¹¹⁸⁰ Interview with law enforcement officer (Jan. 3, 2008).

¹¹⁸¹ Interview with law enforcement officer (Nov. 8, 2007).

¹¹⁸² A recent news story from Coon Rapids, Minnesota, involved the shooting of a man who had set up and subsequently tried to cancel a date for prostitution from the website Craigslist.org. A twenty-two-year-old man, Brock Franklin, and an eighteen-year-old high school student were indicted for first-degree aiding an attempted murder, which could result in up to twenty years in prison. Jim Adams, *Craigslist User Shot After Canceling Call Girl*, MINNEAPOLIS STAR TRIBUNE, Apr. 8, 2008, available at <http://www.startribune.com/local/17389104.html>; Brady Gervais & Elizabeth Mohr, *She's 18, a Senior—and a Suspect in Craigslist Shooting*, ST. PAUL PIONEER PRESS, Apr. 10, 2008, available at http://www.twincities.com/north/ci_8869915.

¹¹⁸³ An unpublished Minnesota Court of Appeals decision upheld the imposition of three concurrent executed sentences of 339, 379 and 156 months for two counts of second-degree murder and first-degree assault against a young woman. The court found that she had actively assisted in the crime by "prostituting herself with one of the victims, informing her male co-defendants that the victim had a lot of money, and gaining access to the motel room that he was sharing with two other men." *State v. Weinand*, No. C8-01-1847 at 3, 5 (Minn. Ct. App. May 14, 2002), available at <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=mn&vol=appunpub%5C0205%5C1847&invol=1>.

¹¹⁷¹ See discussion of the impact of prostitution-related and non-prostitution-related arrests on women and girls in the section "Law Enforcement Agencies" *supra* p. 94.

¹¹⁷² See *supra* note 1148. With regard to the women, the goal is to "know them and the communities they come from" to more effectively deal with this issue. Interview with judge (Mar. 13, 2008). These courts do not hear the few cases that involve juveniles charged with soliciting or engaging in prostitution. Interview with judge (Mar. 13, 2008).

¹¹⁷³ Interview with advocate (Oct. 12, 2007).

¹¹⁷⁴ See discussion of challenges in working with trafficked women in the section "Clandestine Nature of Trafficking and Trafficked Persons' Concerns about Criminal Liability Impede Law Enforcement Efforts" *supra* p. 96.

¹¹⁷⁵ Interview with judge (Mar. 13, 2008).

¹¹⁷⁶ Interview with prosecutor (Apr. 10, 2008); see also Interview with judge (Mar. 13, 2008) (discussing how caseload does not contain cases of trafficked women).

misdemeanor prostitution charge.¹¹⁸⁴ Penalties for felonies are one year or more in prison.¹¹⁸⁵ The additional consequences of arrests and convictions for trafficked women are discussed below.

(1) CONSEQUENCES OF PROBATION

When prostituted women and girls are placed on probation,¹¹⁸⁶ they may be required to meet with a probation officer, remain law-abiding generally or not be prostituted again, attend counseling, and follow through on any other aspects of the probation officer's case plan and court orders. Interviewees expressed concern that probationary measures frequently do not assist women in escaping prostitution, but in fact cause them further harm.

One probation officer noted that her role as an officer of the court inherently limits her ability to work with a woman because she must ensure that women remain law-abiding.¹¹⁸⁷ She recognized that some women's current circumstances constrain them from

¹¹⁸⁴ See generally MINN. STAT. § 609.02, subs. 2-4 (2007) (defining penalties for crimes).

¹¹⁸⁵ MINN. STAT. § 609.02, subd. 2.

¹¹⁸⁶ Probationers include persons "regardless of conviction status, who were under the supervision of a probation agent as part of a court order at any time including those ordered to pay restitution, complete community service, or monitoring." MINNESOTA DEPARTMENT OF CORRECTIONS, 2006 PROBATION SURVEY at 3 (2006), available at <http://www.doc.state.mn.us/publications/documents/2006ProbationSurvey-revised.pdf>.

¹¹⁸⁷ Interview with probation officer (Oct. 12, 2008). Under Minnesota law, state probation officers must

make such investigations with regard to any person as may be required by the court before, during, or after the trial or hearing, and to furnish to the court such information and assistance as may be required; to take charge of any person before, during or after trial or hearing when so directed by the court, and to keep such records and to make such reports to the court as the court may order.

MINN. STAT. § 244.19, subd. 3 (2007). Probation officers have an obligation to "initiate programs for the welfare of persons coming within the jurisdiction of the court to prevent delinquency and crime and to rehabilitate within the community persons who come within the jurisdiction of the court and are properly subject to efforts to accomplish prevention and rehabilitation." *Id.*

exiting a trafficking situation, a decision that the probation officer cannot support due to her obligation to encourage women not to reoffend.¹¹⁸⁸

Some probation offices may not be effectively managing the cases of women and girls in prostitution, as was the case in one office until recently. Previously, probation officers did not directly supervise women in prostitution and only offered an orientation and a monthly check-in.¹¹⁸⁹ That office has since changed to establish relationships between women and the probation officers immediately at sentencing, which the probation officer believed had a positive impact on the women.¹¹⁹⁰

Probation is a challenging period for women with histories of trafficking or prostitution, whether they have been incarcerated or not. A criminological study from England found that "reoffending rates are high following imprisonment," and there is a need to "establish a better-integrated and more effective service to [women] offenders (and thus to the community) in the transition between prison and the community."¹¹⁹¹ It is also crucial to connect women offenders to programming outside of the criminal justice system.¹¹⁹²

Another probation officer noted that girls on her caseload face inconsistency at home because the family may move frequently. This instability translates to low achievement at school and low self-

¹¹⁸⁸ Interview with probation officer (Oct. 12, 2008).

¹¹⁸⁹ *Id.*

¹¹⁹⁰ *Id.*

¹¹⁹¹ The need for a better-integrated approach led to the development of a program called the National Offender Management Service (NOMS), which links prisons and probation together. The goal of such a program was to create a "single service" to prevent offenders from "falling down the cracks" between prison and probation, especially short-term prisoners who have benefited very little from developments in terms of prison-based pre-release schemes and aftercare initiatives." LORRAINE GELSTHORPE, GILLY SHARPE & JENNY ROBERTS, FAWCETT SOCIETY, PROVISION FOR WOMEN OFFENDERS IN THE COMMUNITY 23 (2007) (citations omitted), available at [http://www.fawcettsociety.org.uk/documents/Provision%20for%20women%20offenders%20in%20the%20community\(1\).pdf](http://www.fawcettsociety.org.uk/documents/Provision%20for%20women%20offenders%20in%20the%20community(1).pdf)

¹¹⁹² *Id.* at 25; see also Interview with advocate (Oct. 3, 2007).

esteem. She believed that girls really need a life coach, and although she fulfills this role to some extent, she cannot fully play that role and keep up with the demands of her job.¹¹⁹³

Good Practice for Corrections: Preventive Class for At-Risk Girls

Hennepin County has implemented a five-week class for girls on probation and at risk of being exploited or approached for prostitution. Girls with experience in prostitution or other forms of commercial sexual exploitation, such as stripping, may also attend. It is not court mandated, but voluntary, which may contribute to the high completion rate of the course.

Advocates also identified a probation requirement called “mapping,” or prohibiting women from entering certain neighborhoods or areas, as a problem for some women. This practice stigmatizes women and may impede their access to important services.¹¹⁹⁴ An advocate reported that the geographic restrictions in “stay away” orders often do not take into account clients’ needs to go from home to the service provider’s offices.¹¹⁹⁵ She reported that police often arrest women when they are in the restricted area without calling the service provider to verify the woman’s story.¹¹⁹⁶ The same advocate added that mapping restrictions impact clients who are known to police as prostitutes, even though they do not have geographic restrictions in place. One of the advocate’s clients stated that “I get harassed more often by the police, because they know who I am and pick me up when I’m not working, just trying to handle my business.”¹¹⁹⁷

¹¹⁹³ Interview with probation officer (Mar. 18, 2008).

¹¹⁹⁴ A court may also impose geographic restrictions as a condition of bail. SCOTT & DEDEL, *supra* note 1060, at 25; *see also* ALLIANCE FOR A SAFE & DIVERSE WASHINGTON, D.C., *supra* note 842, at 10.

¹¹⁹⁵ Interview with advocate (Oct. 12, 2007).

¹¹⁹⁶ *Id.*

¹¹⁹⁷ *Id.*

Although the practice of “mapping” and using “stay away” orders is common, a law enforcement manual on street prostitution notes that “forbidding [women’s] entry into certain areas may sever ties to the only social support networks they may have.”¹¹⁹⁸ Given the extensive support women need to leave prostitution, geographic restrictions could hinder women’s willingness to seek that support. Without such support, women may remain “in the life” of prostitution and either continue to be exploited by pimps and sex traffickers or be vulnerable to recruitment by them.

(2) CONSEQUENCES OF CRIMINAL RECORDS

Women and girls’ criminal records may impede their efforts to escape prostitution, and as one advocate noted, “the majority of women we serve have some type of charge on their record.”¹¹⁹⁹ Criminal records affect women and girls as they attempt to secure even their basic needs, such as housing, employment and child custody. One advocate explained: “One youth really loved kids and wanted to work with them. Once you’re charged with a sex crime like prostitution, you can’t.”¹²⁰⁰

Women and girls face similar obstacles securing housing, as discussed earlier.¹²⁰¹ Landlords often require potential tenants to submit to credit and criminal background checks. The existence of a criminal record makes housing out of reach for many women and girls formerly involved in prostitution. Many women and girls leaving prostitution also have poor credit records and histories of eviction that can hinder their ability to secure housing. For example, one Breaking Free client found it impossible to

¹¹⁹⁸ SCOTT & DEDEL, *supra* note 1060, at 25.

¹¹⁹⁹ Interview with advocate (Feb. 13, 2007).

¹²⁰⁰ Interview with healthcare provider (Jan. 23, 2008).

¹²⁰¹ *See* discussions in the sections “Lack of Transitional and Permanent Housing” and “Lack of Appropriate Emergency Shelter” *supra* pp. 52, 53; *see also* PROSTITUTION: BEYOND THE MYTHS (Volunteers of America & Twin Cities Public Television 2007).

secure housing because she had a criminal record and no income.¹²⁰²

Many women and girls in prostitution have children. A history of prostitution offenses negatively impacts child custody determinations. A 2006 study of offenders on probation for prostitution found that 76% reported having children, however, only 17% saw their children daily.¹²⁰³ One attorney called prostitution “the kiss of death” in terms of retaining or regaining child custody.¹²⁰⁴

Child custody determinations are affected by many factors. The same attorney noted that because many women and girls have lost custody of their children, they are not primary caretakers, which diminishes the likelihood that they will later re-gain custody.¹²⁰⁵ Funding for services to assist former prostitutes in securing visitation and custody of their children is not seen as a high priority. The attorney observed that “there’s not a lot of funding” in general, so it is difficult to conceive of writing grants for funding “so ex-prostitutes can visit their kids.”¹²⁰⁶

Knowledge or falsification of women’s criminal history of prostitution can become a tool of abusers. The same attorney shared one story of an American Indian client who had a history of prostitution convictions and was in a violent relationship. Even though the client was sober and a good parent, she understood the risk of losing her children if the batterer disclosed that history to the authorities.¹²⁰⁷

b) NARROW ELIGIBILITY REQUIREMENTS AND PROCEDURAL OBSTACLES HINDER TRAFFICKED WOMEN’S ABILITY TO EXPUNGE CRIMINAL RECORDS

Expungement, a judicial process to seal a criminal record, thereby removing it from public view, may play a key role in helping some women and girls move out of trafficking situations and reintegrate into society.¹²⁰⁸ Accessing and benefiting from the expungement process, however, is difficult. For example, individuals whose cases do not meet the statutory eligibility requirements for expungement will have more difficulty obtaining an expungement due to high burden of proof in such cases. In addition, it will not shield criminal records from being considered in immigration proceedings for non-citizen trafficked women seeking immigration status in the United States.¹²⁰⁹ Even those who obtain an expungement may not succeed in sealing all of their records.

Under Minnesota law, trafficked women with prostitution offenses are not automatically eligible for record expungement. An attorney reported that some judges understand that prostitution crimes are “crimes where [the woman] is a victim, but legally their hands are tied because of the way the statute is written.”¹²¹⁰ Relief is limited to those cases that fall within three categories: (1) cases in which the outcome favors the defendant; (2) cases involving

¹²⁰² After placement into Breaking Free’s supportive, permanent housing facility, today this client is self-supporting, sober and continuing to make progress toward her goals. VEDNITA CARTER, BREAKING FREE, PROVIDING SERVICES TO AFRICAN-AMERICAN PROSTITUTED WOMEN 14-15 (2003), available at <http://s100980402.onlinehome.us/article1.pdf>.

¹²⁰³ This study’s findings did not determine whether this was due to “formal loss of parent custodial rights, informal arrangements with family and friends, or adult children.” MARTIN & RUD, *supra* note 74, at 11.

¹²⁰⁴ Interview with attorney (Jan. 3, 2008).

¹²⁰⁵ *Id.*

¹²⁰⁶ *Id.*

¹²⁰⁷ Interview with attorney (Jan. 3, 2008).

¹²⁰⁸ See Minnesota Judicial Branch Self Help Center, Criminal Expungement, <http://www.mncourts.gov/servicedesk/?page=276> (last visited Aug. 24, 2008).

¹²⁰⁹ Expungements will not help a non-citizen obtain immigration status because immigration law does not recognize their effect. See *Matter of Marroquin*, 23 I. & N. Dec. 705 (2005). For immigration purposes, an expunged criminal conviction remains a conviction. See *id.*; INA § 101(a)(48), 8 U.S.C. 1101(a)(48) (2007). Immigration law has strict rules for inadmissibility and removal, generally barring classes of individuals who have been convicted of, admitted to, or admitted essential elements of crimes of moral turpitude and crimes with a punishment of imprisonment for more than one year. See 8 U.S.C. § 1182(a)(2) (rules governing inadmissible aliens); see also 8 U.S.C. § 1227(a)(2) (rules governing deportable aliens).

¹²¹⁰ Interview with attorney (Aug. 15, 2008).

controlled substance violations that are dismissed and discharged due to a diversion program; or (3) cases involving defendants who committed a crime as a juvenile, but were sentenced as an adult and excused from additional court requirements.¹²¹¹ For trafficked women whose criminal offenses fall into these categories, the district court has the authority to expunge and seal records kept by the judicial and executive branches.¹²¹²

Expungements are more difficult to obtain in cases that do not meet the statutory requirements. In such cases, a trafficked woman may seek the expungement of her record if she can establish that she has been rehabilitated¹²¹³ and the benefit of expungement outweighs the disadvantage to the public.¹²¹⁴ However, a judge reported receiving few, if any, expungement requests from women with prostitution convictions during the time he adjudicated such requests.¹²¹⁵

Numerous procedural obstacles create barriers to a successful expungement request. The process for seeking and obtaining an expungement may be expensive, complicated and time-consuming. The assistance of an attorney in the process is extremely helpful, if not vital.¹²¹⁶ Without such assistance, an

applicant must navigate the complicated court system alone, which requires paying fees or filing the necessary documents for fee waivers and requesting records from multiple agencies. Also, if the criminal record involved an adult conviction, the applicant must show that the benefit from the expungement outweighs the disadvantage to the public.¹²¹⁷

Trafficked women may not have the resources to pay filing fees or know that fee waivers are available and, therefore, perceive the process to be too costly. An advocate identified the filing fee as a barrier for women: “They need money to get felonies off their records...[but it]might as well be a million dollars. [Then they are] [r]ight back at square one.”¹²¹⁸ To expunge charges in multiple jurisdictions, one must file a detailed petition, supporting documents and the filing fee in each jurisdiction, making expungement potentially cost-prohibitive for some trafficked women.¹²¹⁹

Evidence of rehabilitation may include proof that one has been law-abiding and has attended a treatment program. Proof may also include statements from people in the community as to how the person is doing, which could be included in the affidavit. The affidavit should also address the hardship that having a criminal record creates for the applicant, including how it affects employment and housing. A person’s employment can help to show rehabilitation, but it may also help to show hardship if the person is underemployed or unable to obtain employment in an area in which they are interested or for which they are trained.¹²²⁰

¹²¹¹ MINN. STAT. § 609A.02 (2007).

¹²¹² MINN. STAT. §§ 609A.01-.02; see Interview with attorney (Aug. 14, 2008).

¹²¹³ Expungement is not available when the defendant has been convicted of an offense for which registration as a predatory offender is required. MINN. STAT. § 609A.02, subd. 4; see also Interview with attorney (Aug. 14, 2008).

¹²¹⁴ The Minnesota Judicial Branch states that convictions that are not in the defendant’s favor, meaning where a defendant pled guilty, are “not often granted.” Minnesota Judicial Branch Self Help Center, Criminal Expungement, <http://www.mncourts.gov/servicedesk/?page=276> (last visited Aug. 24, 2008); see Interview with attorney (Aug. 14, 2008).

¹²¹⁵ Interview with judge (July 25, 2008).

¹²¹⁶ For those individuals who need legal assistance filing for an expungement and have limited income, pro bono criminal expungement clinics may be available in some jurisdictions. For example, the Volunteer Lawyers Network in Minneapolis has a criminal expungement clinic where attorneys volunteer their time and offer services pro bono to those who meet the income criteria. Southern Minnesota Regional Legal Services also takes expungement cases on a case-by-case basis. See Volunteer Lawyers Network, <http://www.volunteerlawyersnetwork.org/index.php> (last visited Aug. 24, 2008); see also Interview with attorney (Aug. 15, 2008).

¹²¹⁷ The first step in the process is to file for an expungement. A filing fee is required for cases where the defendant entered a guilty plea or was convicted, but is not required for cases resolved in favor of the defendant. MINN. STAT. § 609A.03, subd. 1. Each county sets its filing fee, but the fee may be waived by a showing of poverty by completing an “Affidavit for Proceeding In Forma Pauperis.” *Id.*

¹²¹⁸ Interview with advocate/survivor (Feb. 20, 2008); see MINN. STAT. § 609A.03, subd. 1.

¹²¹⁹ MINN. STAT. § 609A.03, subd. 1.

¹²²⁰ Interview with judge (July 23, 2008).

Trafficked women may find it difficult to obtain affidavits of support for expungement given societal attitudes about women in prostitution. They may also have to show that having a criminal record negatively impacts their employment and housing options, even though the impact is well-documented:

It has become increasingly difficult for people who break the law to put their crimes behind them and to exercise the rights and responsibilities that are essential to normal adult lives. The extra-judicial collateral sanctions imposed by prospective employers, licensing agencies and landlords are often more severe and longer-lasting than criminal punishment. Many of them are disabling to an extent that is grossly disproportionate to whatever behavior or suspected behavior triggers them.¹²²¹

Demonstrating rehabilitation alone is insufficient because a judge must find that the benefit to the applicant outweighs the disadvantage to the public. Citing the disadvantage to the public, prosecutors will likely object to expungement unless the applicant has completed probation successfully, remained law abiding and passed the statutory period that would allow a sentence to be enhanced if a subsequent offense were committed.¹²²² For example, in a case currently on appeal to the Minnesota Supreme Court, the district court denied the expungement request even though the applicant had pleaded guilty to a non-violent offense, had no other convictions, earned her G.E.D. and attended college.¹²²³

¹²²¹ See Brief of Amicus Curiae Southern Minnesota Regional Legal Services, Inc. at 9-10. State v. S.L.H., No. A06-1750 (Minn. Ct. App. Sept. 25, 2007), *appeal docketed*, No. A06-1750 (Minn. S. Ct. May 6, 2008) (citing COLLATERAL SANCTIONS COMMITTEE, CRIMINAL RECORDS AND EMPLOYMENT IN MINNESOTA: REPORT AND RECOMMENDATIONS OF THE 2007 COLLATERAL SANCTIONS COMMITTEE 11-12 (Jan. 15, 2008)).

¹²²² Interview with judge (July 23, 2008).

¹²²³ Interview with attorney (Aug. 14, 2008); see also State v. S.L.H., No. A06-1750 (Minn. Ct. App. Sept. 25, 2007), *appeal docketed*, No. A06-1750 (Minn. S. Ct. May 6, 2008).

Even when an expungement applicant succeeds because her case falls into the three categories defined in the statute, she may still encounter obstacles. While theoretically her criminal records are sealed and will not appear when a potential employer, landlord, or anyone else requests a criminal background check from the state,¹²²⁴ in reality the information may have already been extracted by data miners and still be publicly available in mirror sites.¹²²⁵ In a report by Minnesota Public Radio, Hennepin County Attorney Mike Freeman stated: "You can get your records expunged but there are still a lot of people who know what happened ... a lot of employers and data miners already have that information."¹²²⁶ Under the Fair Credit Reporting Act, data miners must ensure that expunged records are not available.¹²²⁷ But, in practice, an expungement applicant's attorney must typically send a letter to the data miner stating their legal obligations to ensure compliance from data miners.¹²²⁸

When expungement is granted outside the three categories of the statute, the relief is more limited. Recent decisions by the Minnesota Court of Appeals have restricted the scope of a court order solely to the expungement of judicial records in these cases.¹²²⁹ As a result, other records, such as Bureau of Criminal Apprehension and police

¹²²⁴ LawHelp.org, Basics on Criminal Expungement (Aug. 2007), <http://www.lawhelp.org/documents/2513012007%20Criminal%20Expunge%20FS-%20LawHelp%20version.pdf?stateabbrev=MN/>.

¹²²⁵ Research has revealed that criminal records are widely available via the internet, both through the Bureau of Criminal Apprehension's website and the Minnesota Judicial Branch's website and that private parties mine this data and create mirror sites that are not impacted by the expungement orders. See Brief of Southern Minnesota Regional Legal Services, *supra* note 1221, at 14-15.

¹²²⁶ Tom Weber, *People Hampered by Criminal Records Looking to Minn. Supreme Court* (Minnesota Public Radio broadcast Apr. 10, 2008), available at <http://minnesota.publicradio.org/display/web/2008/04/09/expunge/?rsource=1>.

¹²²⁷ 15 U.S.C. § 1681 (2007).

¹²²⁸ Interview with attorney (Aug. 15, 2008).

¹²²⁹ The limitation on the district court's authority to expunge executive branch records is founded on the constitutional doctrine of separation of powers between the three branches of government. See State v. S.L.H., No. A06-1750 (Minn. Ct. App. Sept. 25, 2007).

records, will not be sealed. Legally, records within the scope of the court's expungement and sealing order must be expunged and sealed within sixty days of the court's order. This includes both hard copy records and online records.¹²³⁰

Given all of these challenges, trafficked persons with prostitution or other criminal convictions may not be willing to seek an expungement and even if they do, it may have limited benefits for them.

Good Practice: San Francisco Clean Slate Program

Recognizing that criminal records impede re-integration into mainstream society, the San Francisco Public Defender's Office operates the Clean Slate Program.¹²³¹ With dedicated offices in three San Francisco neighborhoods, the Clean Slate program works with individuals to expunge certain criminal offenses; seal and destroy arrest records; terminate probation; reduce a felony to a misdemeanor; and obtain certificates of rehabilitation for those with convictions that resulted in state prison sentences.¹²³² With select exceptions, record expungement allows someone to legally "tell a potential employer that he or she has not been convicted of a crime."¹²³³ In 2004, the Clean Slate Program cleared more than 1,500 cases.¹²³⁴

¹²³⁰ MINN. STAT. § 609A.03, subd. 9 (2007); see Interview with attorney (Aug. 15, 2008).

¹²³¹ Office of the San Francisco Public Defender, Clean Slate Program, <http://sfpublicdefender.org/clean-slate-program/>, (last visited Aug. 24, 2008).

¹²³² Office of the San Francisco Public Defender, Do I Qualify for Clean Slate?, <http://sfpublicdefender.org/clean-slate-program/general-information-and-time-lines/>, (last visited Aug. 24, 2008).

¹²³³ Julian Guthrie, *S.F. Program Gives Convicts a Chance for a Fresh Start; Hundreds of Records Cleared, If Crimes Didn't Merit Prison*, SAN FRANCISCO CHRONICLE (Mar. 14, 2005), available at <http://www.nlada.org/DMS/Documents/1110986692.83/MNGEEEP23O1.DTL>.

¹²³⁴ *Id.*

RECOMMENDATIONS

Federal prosecutors, immigration officials and judges should ensure that trafficked persons are not detained, charged, prosecuted or removed from the United States for violations of immigration laws. Federal, state and local LEAs, prosecutors and judges should ensure that trafficked persons are not detained, charged or prosecuted for the crimes committed as a direct consequence of their situation as trafficked persons. Federal and state prosecutors and judges should ensure that trafficked persons have access to criminal and immigration attorneys, victim witness advocates, witness protection services, rehabilitative services, and consular or diplomatic representatives. The State of Minnesota should collect uniform data on arrests, charges, dismissals and convictions of individuals in prostitution.

Prosecutors and judges should work closely with governmental and non-governmental agencies to ensure trafficked persons have access to safe shelter, healthcare, information on the right to diplomatic and consular representatives, fair legal proceedings, information in an understandable language, protection from intimidation by traffickers, voluntary return to other countries, and

assistance and support upon return to their country.

Congress and the Legislature should allocate funds for permanent housing facilities for trafficked persons. Prosecutors and judges should ensure that trafficked persons receive assistance with child custody cases. They should also ensure that traffickers do not misuse the legal system to further infringe upon the rights of trafficked persons.

State prosecutors and judges should work with appropriate programs within the judicial branch to ensure that trafficked persons obtain information about record expungement, including information about filing fees and fee waivers. The Legislature should consult with state prosecutors, judges and non-profit organizations to review, develop and implement legislation, policies and procedures for record expungements. The Legislature should amend the law to specifically allow individuals with misdemeanor, non-violent offenses, which would include misdemeanor prostitution charges, to be eligible to apply for record expungement. The Legislature should also allocate funds to establish free legal clinics to assist individuals, including trafficked persons, with the expungement process.

IV. CONCLUSION

This needs assessment examines the often fragmented, ad hoc and sometimes non-existent responses to the needs of persons trafficked into the sex industry. For U.S. citizens and foreign nationals alike, assistance can be difficult to access, inappropriate or insensitive to their needs, or insufficient to provide the necessary long-term, comprehensive assistance. As governmental and non-governmental actors develop more coordinated responses, they should prioritize the needs of trafficked persons. Doing so not only satisfies obligations to assist and protect trafficked persons, but evidence increasingly shows that trafficked women may provide more effective assistance in holding traffickers accountable when they receive supportive services.

Governmental and non-governmental actors should continue to develop coordinated responses to sex trafficking. This coordination includes mandating training on sex trafficking and identification of trafficked persons for all law enforcement officers, healthcare providers, non-profit organizations and other actors who may come in contact with trafficked persons. Law enforcement agencies and service providers should continue to develop formalized, ongoing relationships to ensure that trafficked women receive crucial support while interacting with the criminal justice system, whether on their own initiative or as the result of a law enforcement action.

At the state and federal levels, law enforcement agencies should enforce existing laws on sex trafficking to hold traffickers and patrons accountable. Authorities should also ensure that trafficked women are not penalized for criminal conduct that occurred as a consequence of having been trafficked.

Funding is a crucial component to the success of governmental and non-governmental responses to

sex trafficking. Congress and the Minnesota Legislature should fund the development of comprehensive residential treatment centers tailored to the needs of trafficked persons, particularly trafficked youth. Additionally, they should ensure parity in funding for all trafficked persons regardless of age, immigration status or nationality.

With the passage of anti-trafficking laws, creation of a state hotline, recent reports on trafficking and numerous initiatives by committed stakeholders, Minnesota has already begun to combat sex trafficking. In light of the needs cited in this report, the challenge remains to ensure existing and future measures fulfill their promise of assisting trafficked persons.

APPENDIX A: COMPILATION OF RECOMMENDATIONS

This section contains a comprehensive list of this report's recommendation, including those listed in the section "Key Findings and Recommendations" and those listed throughout the report.

I. KEY FINDINGS AND RECOMMENDATIONS

A. PRIORITY FINDINGS AND RECOMMENDATIONS

Finding 1.1: Federal laws on sex trafficking are ineffective due to the difficulty in proving "force, fraud or coercion." Traffickers are often not prosecuted for the trafficking offense and trafficked persons are denied access to victim assistance, including immigration relief, public benefits, and services from non-profit organizations.

Recommendation 1.1: Congress should amend the federal definition of sex trafficking to eliminate the requirement to show "force, fraud or coercion" in order to prosecute traffickers and qualify for victim assistance, including immigration relief, public benefits and federally-funded services from non-profit organizations.

Finding 1.2: Unlike the federal sex trafficking law, Minnesota law recognizes that a person can never consent to being sexually exploited and considers individuals who have been prostituted "by any means" as trafficking victims. Minnesota law, however, excludes some victims of commercial sexual exploitation, such as those exploited in stripping, by limiting the definition of sex trafficking to include only sexual contact or sexual penetration.

Recommendation 1.2: The Minnesota State Legislature ("Legislature") should expand the

definition of sex trafficking¹²³⁵ to include all victims of commercial sexual exploitation and punish all traffickers.¹²³⁶

Finding 1.3: With some notable exceptions, law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and the general public lack awareness about sex trafficking and fail to properly identify trafficked persons. As a result, trafficking victims are sometimes prosecuted for crimes related to the trafficking scheme and do not receive assistance.

Recommendation 1.3: Law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and others responding to trafficking cases should receive training relevant to their profession on properly identifying and assisting trafficked persons as defined by federal and state law. The Legislature should consider amending relevant statutes on continuing professional education to require education about sex trafficking and the unique needs of trafficked persons. The Legislature should appropriate funds for a public awareness campaign about sex trafficking in Minnesota.

Finding 1.4: Services and public benefits for trafficked persons in Minnesota are inadequate because of insufficient or narrowly-restricted funding.

Recommendation 1.4: The Legislature should appropriate funding for services and public assistance for trafficked persons based on the definitions of "sex trafficking" and "sex trafficking victim" outlined in Minnesota law, not federal law. It should also ensure that receipt of those services and public assistance is not conditioned on victims' nationality, immigration status or participation in the

¹²³⁵ MINN. STAT. § 609.321, subd. 7a (2007).

¹²³⁶ See *supra* note 66.

investigation or prosecution of sex traffickers. Congress should amend relevant federal laws to reflect these principles.

Finding 1.5: With notable exceptions,¹²³⁷ law enforcement, prosecutors, and judges frequently do not hold sex traffickers and patrons accountable for sex trafficking and prostitution crimes in Minnesota.

Recommendation 1.5: Federal, state, tribal, and local law enforcement officials and prosecutors should prioritize enforcement of sex trafficking and prostitution laws against sex traffickers and patrons. Prosecutors should seek and judges should impose the appropriate sentences for sex traffickers and patrons. The Legislature should consider amending Minnesota Statutes sections 609.322 and 609.324 to reflect mandatory minimum sentences and increased penalties for these crimes.

Finding 1.6: Arresting and prosecuting trafficked persons for crimes that occur as a result of being trafficked further harms trafficked persons.

Recommendation 1.6: Federal, state, tribal, and local law enforcement agencies and prosecutors should prioritize the protection of trafficked persons over their arrest and prosecution for prostitution and other offenses related to the trafficking situation. These authorities should recognize that other offenses may be a consequence of having been trafficked.

B. PROTECTING TRAFFICKED PERSONS

Finding 2.1: Trafficked persons need greater access to services tailored to meet their specific needs, including case management, counseling, housing, healthcare, language interpretation and legal representation.

¹²³⁷ See discussion of measures to hold patrons accountable in St. Paul in the section “Law Enforcement Agencies” *supra* p. 94.

Recommendation 2.1: The Legislature should appropriate funding for these services. Community leaders should work together to ensure there are adequate services for trafficked persons that are tailored to meet their specific needs. These services should include case management, housing, healthcare, language interpretation, and legal services. Housing resources should include emergency, transitional, and permanent housing facilities. Healthcare services should address the trafficked persons’ pre-existing health issues and the immediate and long-term consequences of the trafficking experience, including substance abuse and chemical dependency treatment. Trafficked persons should be provided legal services, including both immigration and criminal defense attorneys, to protect their rights and ensure their access to immigration remedies. Law enforcement and prosecutors should ensure that legal and other types of assistance are provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers.¹²³⁸ These services should be provided equally and confidentially to U.S. citizens and foreign nationals and be sensitive to age, culture, language, sexual orientation and gender identity.

Finding 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack screening protocols to identify trafficked persons and to screen individuals, especially juveniles, for the risk factors that may create vulnerability to sex trafficking.

Recommendation 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop screening protocols based on model practices to identify trafficked persons and to screen for risk factors for sex trafficking. Training should be provided on how to effectively administer the screening protocols.

¹²³⁸ U.N. Econ. & Soc. Council, *supra* note 68, princ. 9.

Finding 2.3: Many law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack protocols for effectively responding to trafficked persons and sex trafficking cases.

Recommendation 2.3: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop response protocols based on model practices, so they can effectively serve and assist trafficked persons and hold traffickers accountable without further harming trafficked persons.¹²³⁹ Training should be provided on how to effectively administer the response protocols.

Finding 2.4: Trafficked persons fear the criminal and immigration consequences of being trafficked for commercial sexual exploitation, particularly arrest, detention, and deportation.

Recommendation 2.4: Federal law enforcement agencies, prosecutors, and immigration officials should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, prosecuted, or removed from the country for the illegality of their entry into or residence in the United States. Federal, state, tribal, and local law enforcement agencies and prosecutors should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, or prosecuted for their involvement in unlawful activities to the extent that such involvement is a consequence of having been trafficked.

Finding 2.5: Trafficked persons may be involved in criminal proceedings against sex traffickers. These criminal proceedings may cause further harm to trafficked persons.

Recommendation 2.5: Prosecutors and judges should institute policies and procedures that ensure that any legal proceedings involving trafficked persons as victims or witnesses are not prejudicial to their rights and their physical or psychological well-being. Judges should ensure fair and impartial proceedings, including fair determinations about the admissibility and prejudicial nature of evidence in sex trafficking cases.

Finding 2.6: Interviews revealed that there are cases in which police officers harass and abuse women in prostitution, some of whom may be trafficking victims under federal or state law.

Recommendation 2.6: Federal, state, tribal and local authorities should investigate and punish such violations to the fullest extent of the law. The Minneapolis and St. Paul Police Departments should conduct an internal investigation into allegations of police misconduct and ensure that policies for filing complaints for police misconduct are accessible and effective.

C. HOLDING TRAFFICKERS AND PATRONS ACCOUNTABLE

Finding 3.1: With some exceptions, the government response to sex trafficking in Minnesota currently focuses on the arrest, prosecution, and punishment of prostituted women rather than sex traffickers. This misplaced focus leads to harmful criminal and/or immigration consequences for trafficked persons.

Recommendation 3.1: Federal, state, tribal, and local law enforcement agencies and prosecutors should focus their efforts on holding sex traffickers or pimps accountable. Federal and state prosecutors should aggressively prosecute sex traffickers for trafficking, its component acts and related conduct. They should seek sentences that reflect the severity of the offense. They should also

¹²³⁹ The Sergeant Gerald D. Vick Human Trafficking Task Force has created response protocols for use by its members. See *supra* p. 44.

dedicate resources to keep crime victims and witnesses, especially children, safe during investigations and criminal proceedings.

Finding 3.2: The government response to sex trafficking in Minnesota, with limited exceptions, effectively tolerates patrons buying sex from both trafficked persons and prostituted persons. This approach indirectly fuels the demand for women, girls, and other vulnerable populations as commodities in violation of their fundamental human rights.

Recommendation 3.2: Federal, state, tribal, and local law enforcement agencies and prosecutors should increase their enforcement efforts against individuals who buy sex. Prosecutors should prosecute patrons for soliciting or engaging in prostitution and other crimes committed against trafficked persons.

D. IMPROVING THE COORDINATED COMMUNITY RESPONSE

Finding 4.1: Most communities throughout the State of Minnesota have not developed an interagency, interdisciplinary task force or collaborative group to work together to respond to sex trafficking cases, assist trafficked persons, and hold sex traffickers accountable.¹²⁴⁰ As a result, the professionals most often involved in sex trafficking cases do not engage in regular communication, data sharing, common prosecution methodologies, and joint investigations. In addition, professionals in different jurisdictions do not always cooperate to respond to sex trafficking cases across jurisdictions.

Recommendation 4.1: The Legislature should appropriate funding for coordinated community response teams aimed at addressing human sex

¹²⁴⁰ The exceptions here are the Sergeant Gerald D. Vick Human Trafficking Task Force and Ramsey County Safe Harbors Youth Intervention Project. See discussion in the section “Multi-Agency and Multi-Disciplinary Collaboration” *infra* p. 44.

trafficking in Minnesota. Government and community leaders should expand the use of task forces such as the Sergeant Gerald D. Vick Human Trafficking Task Force to include other communities in Minnesota, or similarly organized, regionally-based task forces should be created. The goal should be to create a network of professionals able to respond immediately to sex trafficking cases; communicate regularly about cases, good practices, and obstacles to communication; develop systems for data collection and sharing; and develop common prosecution methodologies, policies, and procedures for joint or multi-jurisdictional investigations among federal, state, tribal, and local agencies.

E. AMENDING LAWS, REGULATIONS AND RULES

Finding 5.1: Immigration relief in the form of a T visa does not meet the needs of trafficked persons because its restrictive eligibility requirements limit the number of trafficked persons who qualify. Specifically, the T visa is overly burdensome in its requirements to: 1) show traffickers’ use of “force, fraud, or coercion” in the trafficking scheme; 2) demonstrate that the applicant was trafficked to the United States; 3) show “extreme hardship involving unusual and severe harm” if the applicant were removed from the United States; and 4) assist law enforcement in the investigation or prosecution of the trafficker.

Recommendation 5.1: Congress should amend federal law to eliminate the requirement to demonstrate “force, fraud, or coercion” to receive a T visa. The law should be amended to allow foreign nationals to apply for a T visa regardless of whether they were trafficked to or within the United States. Congress should amend the law to allow applicants to demonstrate “extreme hardship” upon their removal from the United States, instead of the higher standard of “extreme hardship involving

unusual and severe harm.” Congress should also amend the law to allow applicants to qualify for a T visa if they either cooperate with law enforcement or demonstrate “extreme hardship.” Both of these elements should not be required.¹²⁴¹

Finding 5.2: Many trafficked persons applying for the U visa or T visa also need to apply for a waiver to remedy the negative immigration consequences of past immigration violations or criminal histories due to having been trafficked. Without this waiver, applicants cannot receive a U visa or T visa. However, the waiver has a mandatory \$545 fee that applicants must pay, making it cost-prohibitive for many trafficked persons.

Recommendation 5.2: Citizenship and Immigration Services should amend the regulations to allow for qualified T and U visa applicants to waive the fee for this application.

Finding 5.3: Evidence of law enforcement certifications for U visas and T visas is sometimes used to diminish an applicant’s credibility in criminal proceedings against their traffickers. This evidence also compromises the confidentiality of the U visa or T visa application. Evidence of previous sexual conduct may also be used against trafficked persons to diminish their credibility as witnesses. The rules of evidence do not contain procedural safeguards limiting the introduction of such evidence, as they do for criminal sexual conduct cases. Both types of evidence may deter trafficked persons from seeking immigration relief and deny them the protection they are entitled to as crime victims.

Recommendation 5.3: Congress, the Legislature and the federal and state judiciary should amend the federal and state rules of evidence to exclude evidence of the details contained in a law enforcement certification for a T visa or U visa application. They should also amend the rules to

enact procedural safeguards limiting the introduction of evidence of trafficking victims’ previous sexual conduct.

Finding 5.4: At the state level, sex traffickers and pimps receive sentences that are disproportionately low compared to other felony crimes and which cannot be enhanced based on prior convictions.

Recommendation 5.4: The Legislature should amend state law to ensure that sentences for sex trafficking are proportionate to other felony offenses for crimes against persons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for sex trafficking offenses. The Department of Public Safety should publish these data in its annual report on human trafficking.

Finding 5.5: At the federal level, prosecutors must prove that traffickers used “force, fraud, or coercion” against adult victims to secure the high sentences provided by federal law. Prosecutors often have difficulties proving these elements due to insufficient evidence, which leads to traffickers receiving lower sentences for non-trafficking charges.

Recommendation 5.5: Congress should review and amend federal law to establish an appropriately high minimum sentence for all sex traffickers, regardless of whether there is a showing of “force, fraud, or coercion.”

Finding 5.6: At the state level, patrons are often not held accountable for soliciting or engaging in prostitution with trafficked or prostituted persons.

Recommendation 5.6: The Legislature should amend Minnesota law to increase penalties against patrons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for soliciting or engaging in

¹²⁴¹ WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 4.

prostitution. The Department of Public Safety should publish these data in its annual report on human trafficking.

F. INCREASING TRAINING

Finding 6.1: Widespread misunderstanding of the definition of sex trafficking results in harm to trafficked persons and allows traffickers and patrons to escape accountability.

Recommendation 6.1: The Legislature should appropriate funding for training on sex trafficking for both governmental and non-governmental agencies throughout the State of Minnesota. This training should address common misconceptions about the definition of sex trafficking, including the fact that sex trafficking may or may not involve 1) foreign nationals; 2) transportation or movement across borders; or 3) “force, fraud, or coercion.” Training should also explain that in some cases sex trafficking overlaps with prostitution and that many prostituted women and girls qualify as victims of sex trafficking under federal or state law. Training should educate participants on the state and federal anti-trafficking laws. Advanced training should be available to governmental and non-governmental actors specializing in sex trafficking cases.

Finding 6.2: A lack of awareness about the unique physical and psychological health needs of trafficked persons, which stem from pre-existing issues, the trafficking experience and the post-trafficking experience, results in the failure to meet the trafficked persons’ needs.

Recommendation 6.2: The Legislature should appropriate funding for training on the unique health issues of trafficked persons for both governmental and non-governmental agencies throughout the State of Minnesota. Healthcare providers should provide opportunities for such training to their employees.

Finding 6.3: Prejudicial attitudes about prostitution compromise the effectiveness of efforts to protect and assist trafficked persons.

Recommendation 6.3: The Legislature should appropriate funding for awareness-raising campaigns on sex trafficking that target the general public. These programs should be offered by non-profit organizations and others with experience assisting trafficked persons. These programs should promote tolerance and respect for the fundamental human rights and dignity of trafficked persons and all individuals in prostitution. The campaigns should include information about the harm women experience in prostitution and raise awareness about the role of patrons in fueling the demand for trafficked women.

G. INCREASING FUNDING FOR ANTI-TRAFFICKING EFFORTS

Finding 7.1: Funding for anti-trafficking efforts in Minnesota does not currently meet the needs of trafficked persons or those assisting them.

Recommendation 7.1: The Legislature should designate long-term funding for anti-trafficking measures. This funding should not adversely impact funding for other crime victims, including victims of domestic violence or sexual assault. The Legislature should also allocate funding for sex trafficking to governmental and non-profit agencies working on related issues to ensure they have adequate funding to address sex trafficking cases. Congress should support such funding at the federal level. Federal and state government should allocate funding to assist trafficking victims regardless of their nationality or immigration status, including funding for educational, employment, healthcare, housing, legal services, interpretation, and social services. Wherever possible, funding should be available and directed to non-profit organizations that specialize in

providing direct services to trafficked and prostituted persons.

Finding 7.2: At the state level, funding for anti-trafficking efforts in Minnesota does not currently meet the needs of local law enforcement agencies or state prosecutors.

Recommendation 7.2: The Legislature should appropriate significant funds for investigation and prosecution of sex traffickers and patrons, including funds dedicated to keeping victims and witnesses safe during investigations and criminal proceedings, and for programs aimed at stopping the demand. Allocation of these funds, however, should not compromise the amount of funding allocated to assisting trafficked persons or other crime victims.

II. RECOMMENDATIONS FROM THE BODY OF THE REPORT

A. UNIVERSAL ISSUES

The Legislature should allocate funds for training on sex trafficking. This training should occur throughout Minnesota for both governmental and non-governmental actors. It should address common misconceptions about sex trafficking and trafficking victims; the relationship between sex trafficking and prostitution; and state and federal anti-trafficking laws.

Federal and state governments should designate long-term funding for anti-trafficking measures. The Legislature should also allocate funding for sex trafficking to governmental and non-profit agencies working on related issues to ensure they have adequate funding to address sex trafficking cases. Federal and state governments should allocate funding to assist trafficking victims regardless of their nationality or immigration status.

Screening protocols to identify trafficked persons should be developed based on good practices from Minnesota and other states. These screening protocols should be widely disseminated to governmental and non-governmental agencies, which should be trained on how to effectively administer the protocols.

Response protocols that provide guidance on how to effectively address trafficked persons' needs should be developed based on good practices from Minnesota and other states. These protocols should be widely disseminated to governmental and non-governmental agencies, which should be trained on how to effectively administer the protocols.

Guidelines should be developed for effective multi-agency and multi-disciplinary collaboration. Guidelines should clearly outline members' roles and responsibilities in specific situations. Collaborative groups or task forces should work to identify the obstacles that impede their effective communication and regularly monitor and discuss these obstacles. Guidelines should be developed "to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence."¹²⁴² Mechanisms should also be established "to facilitate the exchange of information concerning traffickers and their methods of operation."¹²⁴³

The Legislature should allocate funds to research and develop comprehensive statewide systems for data collection. Data should employ uniform fields and definitions and be employed across disciplines to ensure collection of comparable data. Specifically, separate data should be collected for trafficked persons, prostituted persons who do not qualify as trafficked, patrons and traffickers. This system should have a separate, secure database for law enforcement agencies and prosecutors to

¹²⁴² U.N. Econ. & Soc., *supra* note 68, guideline 11(5).

¹²⁴³ *Id.* guideline 11(6).

facilitate multi-jurisdictional sex trafficking investigations.

B. NON-PROFIT ORGANIZATIONS

The Legislature should allocate funds for the creation of specific emergency housing facilities for trafficked women and girls. These programs should provide services tailored to these groups. All providers of emergency housing should receive training on sex trafficking, prostitution and the resources available for these groups in order to make appropriate referrals.

The Legislature should allocate funds to create transitional and permanent housing facilities designated for trafficked women and girls. These facilities should provide supportive, non-judgmental services.

The Legislature should allocate funds to establish twenty-four hour drop-in centers for individuals in prostitution. Staff in these centers should receive training on providing individualized, non-judgmental assistance to clients.

Non-profit organizations should develop and distribute models of treatment for trafficked women and girls based on their history in prostitution, ethnicity, race, age, gender, sexual orientation or other relevant characteristics. Organizations should conduct research into good practices to develop these models.

The Legislature should provide increased funding for interpretation services for non-profit organizations. Congress should allocate federal funds for this purpose. Non-profit organizations should receive training on working effectively with interpreters.

C. HEALTHCARE FOR TRAFFICKED PERSONS

The Legislature and Congress should amend the law to require government-funded medical coverage for trafficked persons without regard to nationality or immigration status. They should allocate sufficient funds for this purpose.

Healthcare providers should develop screening and response protocols to identify and treat trafficked patients. At minimum, these protocols should address pre-existing health issues, as well as the immediate and long-term consequences of the trafficking experience. Healthcare providers should develop protocols and procedures to promote the safety and treatment of trafficked women, such as safely excluding potential traffickers from an exam room.

Healthcare providers should receive regular training on the issue of sex trafficking, applicable laws and specialized medical treatment for trafficked persons. The Legislature, state agencies, and relevant professional boards should consider amending requirements for continuing education to include training on sex trafficking and prostitution.

Chemical dependency treatment centers should offer long-term, in-patient care that stresses an individual's needs, including their experiences in prostitution. The Minnesota Department of Human Services should consider amending its rules to require chemical dependency facilities serving women in prostitution to address prostitution-related issues as part of patients' treatment. It should also consider amending its rules to require all chemical dependency counselors and directors to receive training on sex trafficking. It should also ensure that the Consolidated Chemical Dependency Treatment Fund covers chemical dependency treatment for trafficked women.

Healthcare providers should ensure that treatment is sensitive to culture and language. They should also

ensure that information about trafficked patients remains confidential, as specified by law. The Legislature, Minnesota Department of Human Services, and relevant professional boards should consider promulgating a code of ethics and certification process for interpreters in medical settings modeled on the Minnesota Court Interpreter Program.

D. PUBLIC ASSISTANCE

Congress should amend federal law and regulations to ensure that access to public benefits is not contingent on assisting with the investigation or prosecution of traffickers. It should also amend federal law and regulations to ensure that access to public benefits based on status as a victim of a “severe form of trafficking” is not restricted based on nationality or immigration status. The Legislature should ensure that state legislation reflects these principles.

E. CHILD PROTECTION SERVICES

The Legislature should amend state law to require caseworkers at Child Protection Services (“CPS”) to receive training on sex trafficking and related issues. Amendments should also require CPS workers to appropriately screen for evidence of sex trafficking and risk factors associated with sex trafficking. The Legislature should allocate funds to examine how the child protection system can better prevent juvenile sex trafficking and improve its response to sex trafficking cases. The state and federal government should allocate sufficient funds to CPS for these purposes.

F. IMMIGRATION RELIEF

Congress should amend the law to remove the requirement to demonstrate force, fraud or coercion

to be eligible for a T visa. Absent this policy change, CIS should accept any credible secondary evidence of a person’s status as a victim of a “severe form of trafficking.”

Congress should amend the law to enable foreign nationals to apply for a T visa regardless of whether they were trafficked to the United States or from within the United States. CIS should amend the regulations to lower the burden of proof for T visa applicants who leave the trafficking situation on their own without the help of law enforcement agencies.

Congress should amend the law to allow T visa applicants to demonstrate either cooperation with law enforcement or extreme hardship to qualify for a T visa, but not require both.¹²⁴⁴ Absent this policy change, CIS should accept any credible secondary evidence of individuals’ cooperation with law enforcement.

Congress should amend the law and replace the “extreme hardship involving unusual and severe harm” with the lower “extreme hardship” standard.¹²⁴⁵

Congress should allocate funds to train U visa “certifying officials” on their role in the U visa application process. CIS should amend the regulations and remove the requirement for government agencies to designate a single “certifying official” for U visa applications.

Congress should establish a temporary status for intending U visa applicants that would stay their removal from the United States, grant them work permission and give them access to public benefits. CIS should facilitate family reunification for intending U and T visa applicants whose visa applications are delayed by an on-going investigation or prosecution.

¹²⁴⁴ WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, *supra* note 71, at 4.

¹²⁴⁵ *Id.*

Evidence of the details of a current or future application for a U or T visa should be inadmissible in criminal, civil and administrative proceedings.

CIS should amend the regulations to reduce the fee for the waiver application. CIS should promulgate regulations allowing indigent U and T visa applicants to waive the application fee altogether.

Congress should amend the law to allow non-profit organizations, immigration attorneys, prosecutors and tribal and local law enforcement officers to make requests for continued presence. Absent this policy change, federal law enforcement officers should request continued presence only for victim-witnesses who want to cooperate in the investigation and prosecution of their traffickers. For such cases, Congress should amend the law to mandate that federal law enforcement officers request continued presence.

G. LAW ENFORCEMENT AGENCIES

The Minnesota Department of Public Safety should develop and fund basic and advanced training for law enforcement officers on identifying sex trafficking cases. Training for investigators should include a discussion of the complex nature of sex trafficking cases and techniques for working with trafficked persons as victims to avoid further harming them. The Legislature should allocate funds dedicated to keeping all victim-witnesses safe during investigative proceedings, including trafficked women and girls.

LEAs should focus enforcement efforts on sex traffickers, rather than on trafficked persons. LEAs should coordinate their efforts with other LEAs in different jurisdictions and non-profit organizations that provide assistance to trafficked persons.

Law enforcement officers should provide language-accessible legal information and assistance to trafficked persons in accordance with federal and state law. LEAs should make their best efforts to ensure that trafficked persons receive access to qualified and neutral interpreters.

The Minnesota Department of Public Safety should mandate that all law enforcement officers, not just specialized vice or trafficking units, are trained to identify and respond to sex trafficking cases. LEAs should establish policies and protocols for regular interdepartmental communication regarding sex trafficking and related cases.

Federal, state, tribal and local LEAs should coordinate their efforts both within and outside their own agencies by developing cooperative agreements, mechanisms to routinely share information, and procedures and protocols for joint operations. The Department of Public Safety should direct local law enforcement agencies to incorporate the *U.N. Recommended Principles and Guidelines* into their policies and procedures to ensure a more effective law enforcement response to sex trafficking. ICE and the FBI should also incorporate the *U.N. Recommended Principles and Guidelines* into their policies and procedures.

ICE should enforce immigration laws and human trafficking laws to hold sex traffickers accountable and assist trafficked persons. To do so, gaps in training should be identified to ensure training sufficiently addresses the complex nature of sex trafficking cases. ICE investigators specializing in human trafficking cases should be allocated significant and appropriate investigative resources, develop policies that take the complex nature of sex trafficking cases into account, focus enforcement efforts on the sex trafficker or pimp and coordinate their efforts with other agencies and non-profit organizations. NTAs should not be issued to trafficked persons. ICE should also establish a procedure for expunging NTAs

already issued to trafficked persons. ICE should ensure that information about trafficked persons remains confidential. ICE should ensure that breaches of confidentiality are investigated and addressed.

H. PROSECUTORS AND JUDGES

Prosecutors and judges should receive regular training on the issue of sex trafficking and the relevant laws. At the management level, federal, state and tribal prosecutors should identify sex trafficking as a priority for prosecution and communicate this message effectively. Prosecutors and judges should assist in developing, implementing, and reviewing anti-trafficking legislation, policies and programs, particularly those addressing sex traffickers and patrons.

Federal, state, tribal and local law enforcement agencies should prioritize arresting sex traffickers and patrons. The Legislature and Congress should allocate sufficient funds for these purposes.

Federal, tribal and state prosecutors should prosecute sex traffickers for trafficking, its component acts and related conduct. Prosecutors should seek sanctions against sex traffickers that are proportionate to the offense. Judges should enforce sanctions and judgments against sex traffickers. Federal and state prosecutors, judges and the sentencing commissions should participate in a review and revision of the sentencing guidelines at both the state and federal levels. The State of Minnesota should collect uniform data about arrests, charges, dismissals and convictions of traffickers under the sex trafficking statute. These data should be disaggregated from the other forms of promotion, solicitation and inducement of prostitution. The Minnesota Office of Justice Programs should publish these data in its annual report on human trafficking.

State prosecutors should prosecute patrons for soliciting or engaging in prostitution and related conduct. Prosecutors should seek sanctions against patrons that are proportionate to the offense. Judges should enforce sanctions and judgments against patrons. In consultation with state prosecutors, judges and non-profit organizations, the Legislature should amend the law to increase penalties for patrons and make it an enhanceable offense. The State of Minnesota should also collect uniform data on arrests, charges, dismissals and convictions of patrons. The Minnesota Office of Justice Programs should publish these data in its annual report on human trafficking.

Federal prosecutors, immigration officials and judges should ensure that trafficked persons are not detained, charged, prosecuted or removed from the United States for violations of immigration laws. Federal, state and local LEAs, prosecutors and judges should ensure that trafficked persons are not detained, charged or prosecuted for the crimes committed as a direct consequence of their situation as trafficked persons. Federal and state prosecutors and judges should ensure that trafficked persons have access to criminal and immigration attorneys, victim witness advocates, witness protection services, rehabilitative services, and consular or diplomatic representatives. The State of Minnesota should collect uniform data on arrests, charges, dismissals and convictions of individuals in prostitution.

Prosecutors and judges should work closely with governmental and non-governmental agencies to ensure trafficked persons have access to safe shelter, healthcare, information on the right to diplomatic and consular representatives, fair legal proceedings, information in an understandable language, protection from intimidation by traffickers, voluntary return to other countries, and assistance and support upon return to their country.

Congress and the Legislature should allocate funds for permanent housing facilities for trafficked persons. Prosecutors and judges should ensure that trafficked persons receive assistance with child custody cases. They should also ensure that traffickers do not misuse the legal system to further infringe upon the rights of trafficked persons.

State prosecutors and judges should work with appropriate programs within the judicial branch to ensure that trafficked persons obtain information about record expungement, including information about filing fees and fee waivers. The Legislature should consult with state prosecutors, judges and non-profit organizations to review, develop and implement legislation, policies and procedures for record expungements. The Legislature should amend the law to specifically allow individuals with misdemeanor, non-violent offenses, which would include misdemeanor prostitution charges, to be eligible to apply for record expungement. The Legislature should also allocate funds to establish free legal clinics to assist individuals, including trafficked persons, with the expungement process.

APPENDIX B: METHODOLOGY

FACT-FINDING METHODOLOGY FOR EVALUATING THE STATE’S RESPONSE TO SEX TRAFFICKING IN MINNESOTA

THE ADVOCATES FOR HUMAN RIGHTS

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I. INTRODUCTION

A. SEX TRAFFICKING

Sex trafficking violates the fundamental, universal rights to security of person and freedom from violence. It is prohibited by the 13th Amendment and by federal and Minnesota law. These laws obligate the government of the state of Minnesota to protect individuals from sex trafficking by prosecuting perpetrators, providing legal remedies, protection and practical assistance to the victims of sex trafficking, and through educating law enforcement, service providers and the public about sex trafficking.

While anyone can become a potential victim of sex trafficking, immigrant women, young women, and Native American women are particularly vulnerable to certain forms of trafficking, and face unique problems in escaping their bondage and accessing services and adequate protection. The measures taken by the State of Minnesota must provide adequate relief for their particular needs and concerns.

B. THE ADVOCATES FOR HUMAN RIGHTS' NEEDS ASSESSMENT PROJECT

The Women's Human Rights Program at The Advocates has been selected by the Minnesota Department of Public Safety's Office of Justice Programs to conduct a human sex trafficking needs assessment for the state. The assessment, requested by the [Minnesota Trafficking Task Force](#), will identify facilities and services currently available to trafficking victims in Minnesota, assess their effectiveness, and make recommendations on how the community might better coordinate and serve the needs of trafficking victims statewide.

In preparing this assessment, we will apply the documentation and fact-finding techniques we

developed in our overseas work and have adapted through our local work to analyze the services available to trafficked persons when seeking safety and support, as well as the obstacles they face in seeking and receiving services. We will also conduct extensive research of primary and secondary sources. The Advocates will publish its findings in the summer of 2008.

II. DEFINITIONS

International and domestic laws form the foundation of protections afforded to trafficked persons. The most relevant international, federal and state legal definitions of trafficking are included here.

A. INTERNATIONAL LAW

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, defines "trafficking in persons" as

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

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of the victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, art. 3, adopted by UN General Assembly (November 14, 2000) (entered into force December 25, 2003) (ratified by U.S. Dec. 3, 2005).

In this definition, exploitation, rather than coercion, is the operative concept. This definition gives protection to all who are trafficked, drawing no distinctions between those who can prove they were forced and those who cannot. Finally, it offers no loophole for traffickers to use the alleged consent of the victim in their own defense. Donna M. Hughes and Janice G. Raymond, *Sex Trafficking of Women in the United States: International and Domestic Trends*, Coalition Against Trafficking in Women (2001), http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf

B. FEDERAL LAW

Federal law defines “severe forms of trafficking in persons” as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” 22 U.S.C. § 7102(8); *see also* 18 U.S.C. § 1591 (crime of sex trafficking); *see* Appendix I for relevant definitions.

The federal law essentially enhances penalties for many trafficking and slavery-related statutes already on the books. It creates a two-tiered system that provides relief only to victims of aggravated or

“severe” forms of trafficking, while denying relief to victims where no force was used or where force cannot be proven. Donna M. Hughes and Janice G. Raymond, *Sex Trafficking of Women in the United States: International and Domestic Trends*, Coalition Against Trafficking in Women (2001), http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf. Even though the law makes no distinction between trafficking victims based on their national origin, so far the TVPA has not been used to assist U.S. citizen victims of trafficking.

C. STATE LAW

Minnesota law defines “sex trafficking” as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.” MINN. STAT. § 609.321, subd.7a (2007); *see* Appendix II for relevant definitions.

This law mirrors traditional pimping and pandering statutes, as reflected in its placement under the prostitution-related statutes. New York’s anti-trafficking law also takes this approach, although with stronger guarantees for victims.

D. ADDITIONAL PRINCIPLES

In addition, this study will employ the following principles:

- Nationality or citizenship status is irrelevant.
- Age and gender are irrelevant.
- Level of education or sophistication is irrelevant.
- Consent shall be no defense to human trafficking.
- Trafficking does not require the crossing of international or U.S. state borders.
- Trafficking is exploitation-based, not transportation-based. However, we also recognize that many sectors of the sex

industry involve moving people from place to place, so inquiry into an individual's origin, route and destination is appropriate to assess any trends that may exist in sex trafficking.

- Sexual exploitation includes the trading of sex for money, clothing, food, drugs, shelter or favors. Prostitution is an industry of exploitation that can include strip clubs, massage parlors, saunas, pornography, street walking, live sex shows, phone sex, prostitution rings, international and domestic trafficking, internet pornography, escort services, peep shows, ritual abuse, and mail order bride services. Christine Stark and Carol Hodges, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in *PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS* 17, 19 (Melissa Farley ed., 2003).

Due to the specific mandate from the State of Minnesota, this assessment will focus solely on trafficking of persons for the purpose of sexual exploitation. Despite this focus, The Advocates for Human Rights recognizes that trafficking for forced labor, domestic servitude, forced conscription, organ extraction and other forms of exploitation constitutes a widespread human rights violation meriting immediate attention from law enforcement, policy makers and service providers.

III. OBJECTIVES AND STRATEGIES

The goal of this needs assessment is to gather the information necessary to objectively evaluate the government's compliance with its legal obligations to protect all people from trafficking and to provide the victims with necessary legal, medical and social services. This evaluation will take the form of a report that can then be used to raise awareness of the needs of sex trafficking victims in Minnesota, as well as the obstacles they face in meeting those needs.

Research and documentation constitute an important first step in working to eliminate violence and ensure that victims are provided with access to necessary services. Throughout the information gathering and evaluation stages, information will be continually cross-referenced with and verified through information from other sources to ensure the reliability of the data.

Working together with local service providers, the fact-finding team will use these strategies to gather the information necessary to achieve each of the following objectives.

A. DETERMINE THE NATURE AND EXTENT OF SEX TRAFFICKING WITHIN, TO, AND FROM MINNESOTA.

1. Identify the causes and factors that place individuals, including Native Americans, at risk for being trafficked into sexual exploitation in Minnesota.
2. Assess Minnesota's route status in the sex trafficking trade. Determine whether Minnesota serves as a place of origin, transit and/or destination for sex trafficking. Identify places of origin for sex trafficking to and through Minnesota. Identify places of destination for trafficking from Minnesota.
3. Identify primary means used by traffickers to recruit or obtain victims of sex trafficking, including Native Americans.
4. Identify the situations and exploitative environments sex trafficking victims, including Native Americans, are trafficked into in Minnesota. Identify means used to hold sex trafficking victims captive, e.g. debt bondage, coercion, force, drugs, etc.

5. Investigate which sectors of the sex industry sex trafficking victims, including Native Americans, are forced into, e.g., street prostitution, stripping, pornography, interactive on-line acts, ritual abuse, escort services, massage parlors, spas, etc. Investigate other situations in which trafficking victims are abused, e.g., forced medical exams, marriage/fiancée relationships, etc.
6. Investigate the consequences and effects of sex trafficking on victims in Minnesota, including Native Americans.

B. IDENTIFY EXISTING FACILITIES AND SERVICES FOR SEX TRAFFICKING VICTIMS IN MINNESOTA.

1. Determine whether services, including medical and mental health, housing, education and job training, English as a Second Language (ESL), interpreting services, legal and immigration services, and victim compensation, exist for victims, including Native Americans, in Minnesota.
2. Assess the number of victims, including Native Americans, seeking assistance from these sources.
3. Identify reasons why victims, including Native Americans, are not seeking assistance.
4. Identify the sources of assistance that victims, including Native Americans, most often seek.

C. IDENTIFY SERVICE STRENGTHS AND GAPS FOR SEX TRAFFICKING VICTIMS IN MINNESOTA.

1. Evaluate the assistance provided to sex trafficking victims in Minnesota, including Native Americans, in terms of whether they receive the array of services and protection they sought from medical and mental health, housing, education and job

training, ESL, interpreting services, legal and immigration services, and victim compensation services.

2. Determine whether service providers refer victims, including Native Americans, to other needed medical and mental health, housing, education and job training, ESL, interpreting services, legal and immigration services, and victim compensation services, and assist women in obtaining protection from trafficking.
3. Determine whether the actions of these agencies have any unintended consequences for or effects on victims of sex trafficking, including Native Americans.
4. Determine whether the funds that the government allocates to medical and mental health, housing, education and job training, ESL, interpreting services, legal and immigration services, and victim compensation services for the purpose of assisting sex trafficking victims are sufficient and are being used to effectively serve victims, including Native Americans.

D. DETERMINE WHETHER THE STATE, TRIBAL AND FEDERAL GOVERNMENTS ADEQUATELY PROTECT VICTIMS OF SEX TRAFFICKING.

1. Determine the means by which sex trafficking victims, including Native Americans, access protection from the state (e.g. on their own, via police raids, via immigration raids, via NGO outreach and identification)
2. Investigate and evaluate the state, tribal and federal government's prosecution of (potentially) trafficked individuals, including Native Americans.

3. Investigate and evaluate the state, tribal and federal government's prosecution of sex traffickers.
4. Investigate and evaluate the state, tribal and federal government's prosecution of patrons.
5. In cases involving criminalized trafficking networks, investigate state, tribal and federal government's coordination with partners in other tribes, states and countries to protect victims and their families, including Native Americans.

E. BASED ON FINDINGS FROM THE ADVOCATES' RESEARCH, IDENTIFY AND DISSEMINATE APPROPRIATE PROGRAM AND POLICY RECOMMENDATIONS.

1. Draft recommendations to improve service coordination statewide and enhance the accessibility and quality of services for victims of sex trafficking, including Native Americans.

IV. LITERATURE REVIEW

Background research and a literature review will provide a strong understanding of many of the issues in sex trafficking local to Minnesota, nationally, as well as around the world.

A. REVIEW OF INTERNATIONAL, FEDERAL, STATE AND TRIBAL LAW AND REGULATIONS

The Advocates will review international, federal, state and tribal laws and regulations addressing sex trafficking. Review of the existing legal framework will provide an understanding of the relevant legal provisions, their underlying policy goals, issues of overlapping jurisdiction, as well as the organs charged with their enforcement. Review of the legislative

history of Minnesota statute will yield insight into its origins and aims.

B. REVIEW OF SECONDARY LEGAL MATERIALS

The Advocates will review secondary legal materials, including law review articles, non-profit reports and government reports. Review of these materials will yield insight into the implementation of anti-trafficking laws and regulations, critical assessments of their implementation, as well as recommendations for legal and regulatory change.

C. REVIEW OF MEDIA REPORTS

The Advocates will review media reports of actual and possible cases of sex trafficking. Review of news articles will yield insight into the nature of sex trafficking to, from and around Minnesota. Articles will also provide insight into how various systems, including law enforcement and social services, treat possible trafficking victims, traffickers and patrons.

D. REVIEW OF LEGAL AND SOCIAL SERVICE MATERIALS

The Advocates will review the existing literature regarding legal and social services available to victims of sex trafficking at the state, tribal and federal law enforcement levels. Review of this literature will provide insight into how the various legal actors conceive of and address sex trafficking; training available to legal professionals; referral patterns of the legal professionals involved; as well as whether there is any legally-oriented literature designed especially for immigrant, youth or Native American victims of trafficking.

E. REVIEW OF HEALTH EDUCATION MATERIALS

The Advocates will review the existing literature regarding legal, medical and social services available to victims of sex trafficking in emergency rooms and clinics. Review of this literature could provide insight into the referral patterns of the medical professionals involved, as well as whether or not there is any literature designed especially for immigrant, youth or Native American victims of trafficking.

V. FOCUS GROUPS

Focus groups with legal, medical and social service professionals who work with victims of sex trafficking can help to identify the relevant issues and provide information that will be necessary in developing detailed and incisive questions for other interviewees. These focus groups can also provide information regarding all objectives.

The success of a focus group depends on the gathering of a group with a shared interest in sex trafficking and a shared expertise in the issues common to the aspects of this complicated phenomenon. The focus groups will be comprised of: 1) groups which provide shelter for victims; 2) ethnic or community-based gathering centers which provide services to victims; 3) advocates who serve Native Americans; and 4) faith-based providers of services to victims.

Focus groups with these participants might be one to one and a half hours in length, allowing the facilitator to present approximately five to six questions. It is crucial that these questions are both open-ended and clear, in order to allow ample opportunity for informative conversation.

VI. INTERVIEWS

A. LEGAL PROFESSIONALS

1. POLICE OFFICERS AND FEDERAL LAW ENFORCEMENT OFFICERS

Police officers and federal law enforcement officers can give information about whether victims of sex trafficking are seeking police assistance and about how they respond to such requests from victims. They can give information about the protocol that is used in cases of suspected sex trafficking, and about the charges that result from these cases. They can give information about any obstacles to accountability which exist for sex traffickers in the justice system. Police and federal law enforcement officers can give information about the places and conditions in which victims are found or from which victims request help. They can give information about the treatment and referral of victims, and about the measures taken to protect these victims. They can give information about their knowledge of state and federal laws regarding sex trafficking, about other issues regarding trafficking, and about the training they have received on these issues. They can provide information about what statutes are used to combat sex trafficking and how effective these statutes are. They can provide information about investigation techniques and resources, such as the FBI database on pimps.

Police and federal law enforcement officers can give information about the connection (if any) between sex trafficking and drug use. They can give information about the percentage of calls they receive which involve immigrant women or youths. They can give information about the data which is kept regarding the place of origin of the victim, the method and route of trafficking that was used, and the place of destination of the victim. Police and federal law enforcement officials can give information about the degree and method of

cooperation, or lack thereof, between city and state police departments and federal law enforcement bodies. They can also provide information about their policy for issuing declarations in support of trafficking victims that allow victims to receive immigration relief. They can provide information about how many requests for such declarations they have received and honored. They can provide information about strategies for prevention of human sex trafficking. They can provide information about the protective measures they take for victim safety, and the protocol and provision for the treatment and safety of minor victims, including policies on interacting with the media. Law enforcement officers can also provide information on how often they seize assets of traffickers and whether victims ever see any of the proceeds.

Law enforcement officers can provide information about their investigation of trafficking crimes committed by non-Native and indigenous men on tribal land in Minnesota. They can also provide information about the investigation of trafficking crimes involving Native Americans that occur on state land. They can provide information about the jurisdiction, cultural, logistical and other obstacles to investigating crimes on tribal land. They can provide information about any specialized training they receive to address crimes and trafficking among Native Americans.

2. TRIBAL LAW ENFORCEMENT

Tribal law enforcement will be able to share information similar to local and federal police with emphasis on the Native American community in Minnesota, particularly in rural areas. They can share how Public Law (PL) 280 affects their ability to identify and combat trafficking in persons, particularly regarding jurisdictional obstacles and reduced federal funding. They can share information about how limited tribal sentencing authority impacts their ability to effectively police. Officers can share information about their cooperation with local, state and federal

police on trafficking, including whether they have been cross-deputized by state authorities. They can also share information about how much support they receive from the Bureau of Indian Affairs (BIA). Tribal law enforcement officers can share information about how casinos have impacted trafficking in Native Americans. Officers can provide information about how apparent gaps in jurisdiction encourage non-Indian individuals to pursue criminal activities on tribal land. They can share information about what influence the Tribal Councils have on law enforcement. They can provide information about variations in capacity and priorities of law enforcement agencies in different tribes.

3. ATTORNEYS

Immigration attorneys, criminal defense attorneys and civil litigators representing sex trafficking victims should be interviewed by the fact-finding team. Attorneys can be identified through local organizations such as Civil Society and Centro Legal, as well as the National Immigration Project and the American Immigration Lawyers' Association. Legal aid and public defender attorneys should be interviewed.

Attorneys who represent victims or perpetrators of sex trafficking can provide information about the kinds of legal relief sought by victims, the barriers faced by victims of sex trafficking as they seek legal relief, and the outcomes experienced by victims of sex trafficking. They can provide information about what statutes are used to combat sex trafficking and how effective these statutes are. Attorneys can provide insight into underutilized legal strategies to advocate for victims. Attorneys can give information about whether these victims are successful in obtaining the outcome they seek, as well as referral to comprehensive legal, medical and social services. Attorneys can give information about the existence, degree of and method of cooperation, or lack thereof, between state and federal attorneys.

4. STATE, FEDERAL AND TRIBAL PROSECUTORS

Prosecutors may provide information regarding whether victims of sex trafficking are seeking legal protection, whether these cases are being prosecuted and the reasons why cases may not be prosecuted. They can provide information about what statutes are used to combat sex trafficking and how effective these statutes are. Prosecutors can provide data on the number of cases of sex trafficking which are prosecuted in Minnesota, and on the number of cases prosecuted that may include facts of sex trafficking, such as drug-related offenses, kidnapping, prostitution, false imprisonment, debt bondage, and blackmail. Prosecutors can provide information on their knowledge about human sex trafficking and about their training on this issue. Prosecutors can provide information on how they identify victims of trafficking and how they protect these victims if they cooperate with prosecutors. Prosecutors can provide information about the services they offer to victims. Prosecutors can share information about how often they seek restitution or other compensation for victims. Interviews with prosecutors may yield information about working with federal officials and police. They may be able to provide information about strategies for prevention of sex trafficking.

State prosecutors can provide information about their investigation of trafficking crimes committed by non-Native and indigenous men on tribal land in Minnesota. They can also provide information about the prosecution of trafficking crimes involving Native Americans that occur on state land. They can provide information about the jurisdictional, cultural, logistical and other obstacles to prosecuting crimes on tribal land. They can provide information about any specialized training they receive to address crimes and trafficking among Native Americans.

Tribal prosecutors can provide information similar to above. They can also share the impact of PL-280 and the Indian Civil Rights Act on the ability to prosecute

serious crimes. Tribal prosecutors can provide information on their cooperation with tribal, state and federal law enforcement and prosecutors. They can share information about how limited resources for adjudication and incarceration influence prosecutorial decisions.

5. STATE, FEDERAL AND TRIBAL JUDGES

Judges can discuss how cases involving sex trafficking or other charges that include facts of sex trafficking, such as drug-related offenses, kidnapping, prostitution, false imprisonment, debt bondage, and blackmail are handled in the courts, and whether the victims received adequate and effective protection from violence and adequate and effective other types of services, such as legal, medical and social services. They can provide information about what statutes are used to combat sex trafficking and how effective these statutes are. They can also provide information about how often they see restitution or other forms of compensation awarded to victims. Judges can provide information about their knowledge of human sex trafficking and about their training on this issue.

Tribal judges can provide information similar to above. They can also provide information on the impact of PL-280 and the Indian Civil Rights Act on their ability to prosecute and punish serious crimes. They can provide information on the quality and level of cooperation they see between tribal, state and federal law enforcement and prosecutors. They can share information about how limited resources for adjudication and incarceration affect adjudication.

6. CITIZENSHIP AND IMMIGRATION SERVICES (CIS) OFFICERS

Citizenship and Immigration Services (CIS) officers, including the Vermont Service Center (VSC) and asylum corps officers, can provide insight into the

number of trafficking cases they see in their adjudication of asylum applications, requests for change or adjustment of status, petitions under the Violence Against Women Act and various visas, including T and U visas. They can provide insight into internal policies for adjudicating claims based on trafficking. Officers can share what steps CIS takes to ensure victim confidentiality during the application process, especially with their contractors. Officers can share information about the approval rates for T visas, as well as what alternative forms of relief non-certified victims may or may not receive. They can share information concerning what distinguishes a successful T visa application. Officers can describe the extent to which they see applications for relief with trafficking-related crimes on them.

7. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) OFFICERS

Interviews with officers in the ICE's local field office and representatives of the Office of Chief Counsel (OCC) can provide insight into the number of cases they investigate each year that involve sex trafficking victims, the fact patterns of these kinds of cases, the countries of origin of the victims and the route of transport of the victims. They can provide information about the kinds of charges that are made on cases involving sex trafficking, the knowledge of the officers about federal and state laws involving sex trafficking, the knowledge of the officers about the human rights of sex trafficking victims and the training they receive on these issues. They can provide information about the kinds of referrals the officers make for sex trafficking victims and insight into any barriers in accessing services faced by sex trafficking victims. They can provide information about the amount and type of coordination between the officers and the local service providers, the federal protocol on treatment of victims in sex trafficking cases and the relation between sex trafficking cases and other federal offenses such as drug trafficking.

ICE officers can provide information about their experience with continued presence for trafficking victims, including their procedures for determining which victims will receive continued presence, how long victims typically remain on continued presence, victims' detention status, and what happens to victims once continued presence ends. ICE officers can provide information about their experience with S visas, T visas, U visas, the types and amounts of assistance they offer victims of sex trafficking who cooperate with them, and their procedure or protocol to identify victims of sex trafficking as they investigate other types of cases such as drug cases or smuggling cases.

ICE officers and attorneys can also explain whether they have a policy on issuing Notices to Appear (NTA) to victims who were not certified for the T visa and, if so, explain the origin and substance of the policy. They can provide information on any training they have received on dealing with possible trafficking victims. They can provide information about the protective measures they take for victim safety, and the protocol and provision for the treatment and safety of minor victims, including policies on apprehension, detention and interacting with the media.

OCC attorneys can explain their relationship with ICE investigations, CBP and CIS in trafficking cases. OCC attorneys can provide information about whether their office has any policies or procedures pertaining specifically to trafficking cases.

8. CUSTOMS AND BORDER PROTECTION (CBP) AND TRAFFIC SAFETY ADMINISTRATION (TSA) OFFICERS

CBP officers can provide information similar to ICE with reference to the U.S. border, particularly at Minneapolis/St. Paul International Airport. They can provide information about how trafficked individuals enter the country, whether on legal or falsified visas

and/or passports. CBP and TSA officers can share information on any trends they have seen at ports of entry into the U.S. regarding trafficking. They can provide information about their training on identifying and dealing with potential trafficking victims, as well as the procedures they employ. They can provide information on the extent of their cooperation with the other DHS agencies and Canadian authorities.

9. U.S. COAST GUARD

Coast Guard officers can provide information about the extent of sex trafficking in the Great Lakes and Duluth Port, particularly regarding trafficking of Native Americans. They can provide information on the extent of their cooperation with CBP officers, other DHS agencies and Canadian authorities. They can provide information on the types of surveillance and interdiction techniques employed to identify and stop traffickers.

10. IMMIGRATION JUDGES

Interviews with immigration judges may provide insight into how immigration courts handle cases of victims and perpetrators of sex trafficking. They can provide information about alternative forms of relief sought by victims, such as asylum, withholding of removal, U visas or cancellation of removal under the Violence Against Women Act (VAWA). They can provide information about whether victims of sex trafficking receive adequate and effective protection from violence, whether they are receiving other types of legal, medical and social services, and what, if any, obstacles sex trafficking victims face when seeking sex-trafficking related immigration relief. They can provide information about the number of cases they receive from individuals not certified as victims of a “severe form of trafficking” who were subsequently placed into removal proceedings by ICE. Immigration judges will also be able to discuss any immigration problems trafficking victims encounter when seeking

an adjustment or change of status as a result of their history of prostitution.

B. THE MEDICAL COMMUNITY

Physicians and other first responders to the injured are often responsible for evaluating, treating and documenting injuries related to sex trafficking. The information gathered in medical reports can be used to legitimize legal claims, obtain health insurance coverage of treatment and care, and provide referrals for victims. Physicians can provide insight into how sex trafficking victims are identified, how their physical condition is documented, how they interact with youth, immigrant, or Native American victims and the type and amount of training they receive in this area. Physicians can provide information about their knowledge of human sex trafficking and the training they receive on this issue.

Physicians can discuss the reporting requirements they must follow in certain situations and the frequency with which they invoke those requirements. They can discuss the protocol they follow in obtaining immediate safety for a victim. Physicians can provide insight into the degree to which they are able to assist the victims of sex trafficking in seeking legal action and the methods of this assistance (documentation, referral, etc.)

There are many other health and medical professionals that may come into contact with victims of sex trafficking, such as nurses, medical translators, clinic personnel, etc. These professionals may have more repeated contact with a victim of sex trafficking, and should be interviewed. In particular, interviews with medical and health care professionals who serve the Native American community should be sought.

C. COMMUNITY ORGANIZATIONS

Community organizations can provide information about services offered to victims of sex trafficking, and also about work done specifically on behalf of youth, Native American or immigrant victims of sex trafficking. They can provide information about numbers served, the types of victims they serve, the number of referrals received, sources of referrals of sex trafficking victims in general, and of youth, Native American and immigrant victims in particular. They can also provide information about their data collection methods and whether they track trafficked individuals.

The insight of those who serve trafficking victims will be very useful in determining the types of abuse experienced by these victims and the types of barriers to service which victims face. They may also be able to provide insight into the factors behind the victims' involvement in sex trafficking. They can provide information about the sources to which they refer victims of sex trafficking, and some information on how the victims are treated as they seek assistance. They may also be able to provide some information about perceptions and attitudes toward victims of sex trafficking in the community. They may be able to provide information about the coordination and collaboration, or the lack thereof, between private community organizations and government organizations, and between state and federal organizations. Social service providers can share what measures they take to ensure victim safety once victims leave the U.S., such as coordinating with a non-profit in the home country to ensure the victim's safe arrival. Contacting community organizations that do not tailor services to trafficking victims, such as chemical dependency facilities or homeless shelters, may also provide information about trafficked individuals who may not necessarily self-identify as a trafficking victim.

D. SOCIAL SERVICE AGENCIES

1. PUBLIC ASSISTANCE AGENCIES

Public assistance or health agencies can provide information about the knowledge they have on human sex trafficking and the training they receive on this issue. These agencies can provide information about the availability of financial and other kinds of assistance to victims of sex trafficking. They can provide information about the length of time that a victim of sex trafficking can receive financial assistance, and what requirements a victim must meet, if any, to receive financial assistance. They can provide information about the other types of referrals made and the effectiveness of the help that these referrals provide. They can provide information about the availability of culturally appropriate service providers for victims of sex trafficking. They may be able to provide information about the possibility that the lack of financial assistance, particularly for housing and employment, may be part of the factors that cause sex trafficking. They may be able to provide information about the coordination and collaboration, or the lack thereof, between private community organizations and government organizations and between state and federal organizations.

2. CHILD PROTECTION AGENCIES

Child protection agencies can provide information about the knowledge they have on human sex trafficking and the training they receive on this issue. They can provide information about the intersection between victims of sex trafficking and the child protection system. They can provide information about how child victims are identified, the services available to child victims of sex trafficking, and the effectiveness of such services. They can provide information on how frequently children are collateral victims of sex trafficking, what the protocol is when a

parent of a child is found to be a victim of sex trafficking, the services available to the children of victims of sex trafficking and the effectiveness of such services. Native American children must be considered separately from other children, and child protection agencies can provide information on the kinds of referrals available to Native American children. Particularly when family members are immigrants, child protection agencies have significant power and authority when they intervene, and their actions may have unintended negative effects on victims of sex trafficking. Interviewing child protection agencies can be an important way of assessing how these agencies respond to situations involving sex trafficking. They may be able to provide information about the coordination and collaboration, or the lack thereof, between private community organizations and government organizations, and between state and federal organizations.

E. INTERPRETERS

Interpreters who work in situations involving victims of sex trafficking who are non-English speakers may be able to provide useful information about the experience of these victims as they access legal, medical and social services. Interpreters can provide information about their knowledge of human sex trafficking and their training on this issue.

F. SURVIVORS OF SEX TRAFFICKING

Individual interviews with survivors of sex trafficking could help to confirm or disprove information gathered from other sources, and may yield better insight into the main reasons women may or may not seek legal, medical or social services. Such interviews could also help to provide important perspectives on the survivors' experience of the legal, medical and social service systems in Minnesota, and the impact these systems have on their safety and autonomy.

The safety and best interests of the survivors of sex trafficking are the paramount considerations in all investigation for this report. The fact-finding team will inform advocates who work with victims of sex trafficking that they are interested in talking to these survivors on a volunteer basis. The fact-finding team will not seek interviews with youth below the age of 18. Before beginning an interview, the interviewers will take great care to explain who they are, what they are doing, and why. Interviewers will ensure that the survivor's participation in the interview is voluntary. Interviewers will take additional steps to respect survivor's wishes, such as scheduling shorter interviews and allowing the survivor to have an advocate or other supportive figure attend the interview with her. Interviewers will also make clear that all personal data will be kept strictly confidential and any information used in the report will be stripped of all revealing characteristics.

VII. EVALUATION

The report will clearly articulate the circumstances of victims of sex trafficking in Minnesota, and will identify the obstacles they face as they seek safety, justice and services. Through this report, legal and medical professionals, social service providers and others who have contact with victims of sex trafficking will be better equipped to serve their needs.

APPENDIX I: FEDERAL STATUTORY DEFINITIONS

Coercion

Coercion is defined as:

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- (C) the abuse or threatened abuse of law or the legal process.

18 U.S.C. § 1591(c)(2), 22 U.S.C. § 7102(2) (2007)

Commercial Sex Act

“Any sex act, on account of which anything of value is given to or received by any person.” 18 U.S.C. § 1591(c)(1), 22 U.S.C. § 7102(3) (2007)

Debt Bondage

The term “debt bondage” means the “status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.” 22 U.S.C. § 7102(4) (2007)

Involuntary Servitude

The term “involuntary servitude” includes a condition of servitude induced by means of:

- (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(B) the abuse or threatened abuse of the legal process.

22 U.S.C. § 7102(5) (2007)

Severe Forms of Trafficking in Persons

This is defined as sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 22 U.S.C. § 7102(8) (2007).

Sex Trafficking

“The recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act.” 22 U.S.C. § 7102(9) (2007).

Venture

“Any group of two or more individuals associated in fact, whether or not a legal entity.” 18 U.S.C. § 1591(c)(3) (2007).

Victim of a Severe Form of Trafficking

The term “victim of a severe form of trafficking” means a person subject to an act or practice described in 22 U.S.C. section 7102(8). 22 U.S.C. § 7102(13) (2007).

Victim of Trafficking

The term “victim of trafficking” means a person subjected to an act or practice described in 22 U.S.C. section 7102(8) or (9). 22 U.S.C. § 7102(14) (2007).

APPENDIX II: MINNESOTA STATUTORY DEFINITIONS

Blackmail

“A threat to expose any fact or alleged fact tending to cause shame or to subject any person to hatred, contempt, or ridicule.” MINN. STAT. § 609.281, subd. 2. (2007).

Business of Prostitution

“Any arrangement between or organization of two or more persons, acting other than as prostitutes or patrons, who commit acts punishable under sections 609.321 to 609.324.”

MINN. STAT. § 609.321, subd. 2.

609.321: Prostitution

609.322: Solicitation, Inducement, and Promotion of Prostitution

609.323: Protective Orders

609.324: Other Prostitution Crimes; Patrons, Prostitutes, and Individuals Housing Individuals Engaged in Prostitution

Debt Bondage

“The status or condition of a debtor arising from a pledge by the debtor of the debtor’s personal services or those of a person under the debtor’s control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.” MINN. STAT. § 609.281, subd. 3.

Forced Labor or Services

“Labor or services that are performed or provided by another person and are obtained or maintained through an actor’s:

- (1) threat, either implicit or explicit, scheme, plan, or pattern, or other action intended to cause a person to believe that, if the person did not perform or provide the labor or services, that person or another person would suffer bodily harm or physical restraint;
- (2) physically restraining or threatening to physically

restrain a person;

- (3) abuse or threatened abuse of the legal process;
- (4) 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; or
- (5) use of blackmail.” MINN. STAT. § 609.281, subd. 4.

Labor Trafficking

“The recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

- (1) debt bondage or forced labor or services;
- (2) slavery or practices similar to slavery; or
- (3) the removal of organs through the use of coercion or intimidation.” MINN. STAT. § 609.281, subd. 5.

Labor Trafficking Victim

“A person subjected to the practices in subdivision 5.” MINN. STAT. § 609.281, subd. 6.

Subd. 5:” the recruitment, transportation, transfer, harboring, enticement, provision, obtaining, or receipt of a person by any means, whether a United States citizen or foreign national, for the purpose of:

- (1) debt bondage or forced labor or services;*
- (2) slavery or practices similar to slavery; or*
- (3) the removal of organs through the use of coercion or intimidation.”*

Patron

“An individual who hires or offers or agrees to hire another individual to engage in sexual penetration or sexual contact.” MINN. STAT. § 609.321, subd. 4.

Place of Prostitution

“A house or other place where prostitution is practiced.” MINN. STAT. § 609.321, subd. 5.

Promotes the Prostitution of an Individual

“Any of the following wherein the person knowingly:

- (1) solicits or procures patrons for a prostitute; or
- (2) provides, leases or otherwise permits premises or facilities owned or controlled by the person to aid the prostitution of an individual; or
- (3) owns, manages, supervises, controls, keeps or operates, either alone or with others, a place of prostitution to aid the prostitution of an individual; or
- (4) owns, manages, supervises, controls, operates, institutes, aids or facilitates, either alone or with others, a business of prostitution to aid the prostitution of an individual; or
- (5) admits a patron to a place of prostitution to aid the prostitution of an individual; or
- (6) transports an individual from one point within this state to another point either within or without this state, or brings an individual into this state to aid the prostitution of the individual; or
- (7) engages in the sex trafficking of an individual.”

MINN. STAT. § 609.321, subd. 7.

Prostitute

“An individual who engages in prostitution.” MINN. STAT. § 609.321, subd. 8.

Prostitution

“Engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.” MINN. STAT. § 609.321, subd. 9.

Public Place

“A public street or sidewalk, a pedestrian skyway system as defined in section 469.125, subdivision 4, a hotel, motel, or other place of public accommodation, a place licensed to sell intoxicating liquor, wine, nonintoxicating malt beverages, or food, or a motor vehicle located on a public street, alley, or parking lot ordinarily used by or available to the public though not used as a matter of right and a driveway connecting such a parking lot with a street or highway.” MINN. STAT. § 609.321, subd. 12.

Sexual Contact

“Any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor's sexual impulses:

- (i) the intentional touching by an individual of a prostitute's intimate parts; or
- (ii) the intentional touching by a prostitute of another individual's intimate parts.”

MINN. STAT. § 609.321, subd. 10.

Sexual Penetration

“Any of the following acts, if for the purpose of satisfying sexual impulses: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual's body by any part of another individual's body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.” MINN. STAT. § 609.321, subd. 11.

Sex Trafficking

“Receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.” MINN. STAT. § 609.321, subd. 7a.

Sex Trafficking Victim

“A person subjected to the practices in subdivision 7a.” MINN. STAT. § 609.321, subd. 7b.

Subd. 7a: “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”

APPENDIX III: NON-STATUTORY DEFINITIONS

Child

Any person under 18 years of age.

Culturally Competent

Services that allow for and have the flexibility to be consistent with different cultural practices and beliefs. For example, a culturally competent medical service would include informing women of the option to request a female doctor and providing women such a doctor on request.

Documented

The term “documented” refers to individuals who are lawfully present in the United States. In many respects, the experiences of documented and undocumented immigrant women will differ, both in terms of the increased vulnerability of undocumented women as well as the increased barriers, both perceived and legally mandated, to accessing services.

John/Date/“Client”/Patron

These terms refer to individuals who solicit others for prostitution.

Refugee Women

The methodology uses the term “refugee women” to indicate non-citizen women who are granted refugee status in another country and are subsequently admitted to the United States. It is anticipated that refugee women and immigrant women will be vulnerable to similar kinds of abuses and face similar barriers in accessing services. It is also important to consider the effect that being a refugee may have on women, including the acute need for medical attention and the effect of resettlement on family dynamics.

Undocumented

“Undocumented” denotes individuals who are not lawfully present in the United States. In many

respects, the experiences of documented and undocumented immigrant women will differ, both in terms of the increased vulnerability of undocumented women as well as the increased barriers, both perceived and legally mandated, to accessing services.

APPENDIX C: STATE SEX TRAFFICKING LAWS

Minnesota

MINN. STAT. § 299A.78 (2007) (statewide human trafficking assessment)

Id. § 299A.785 (annual trafficking study)

Id. § 299A.79 (review of services for trafficking victims)

Id. § 299A.795 (review of services for trafficking victims)

Id. § 299A.7955 (state task force)

Id. § 299A.7957 (trafficking hotline)

Id. §§ 609.281-82 (labor trafficking)

Id. § 609.283 (“unlawful conduct with respect to documents in furtherance of labor or sex trafficking”)

Id. § 609.284 (civil cause of action for victims of labor trafficking, corporate liability)

Id. § 609.321, subd. 7a (definition of sex trafficking)

Id. § 609.321, subd. 7b (definition of sex trafficking victim)

Id. § 609.325 (defenses)

Id. § 609.5315 (forfeiture)

Id. §§ 611.80-88 (civil cause of action for coercion into prostitution)

Alaska

ALASKA STAT. §§ 11.41.360, 11.41.365 (2007) (first and second degree human trafficking)

Id. § 11.66.120 (sex tourism is second degree prostitution)

Id. §§ 36.30.020-.040 (state legislature, courts and government agencies cannot deal with businesses who have headquarters in Tier 3 countries according to U.S. State Department or with businesses conducting business in those countries)

Arizona

ARIZ. REV. STAT. § 13-1307 (2007) (sex trafficking)

Id. § 13-3821 (2007) (convicted sex traffickers must register with sheriff’s department)

Arkansas

ARK. CODE. ANN. § 5-11-108 (2007) (human trafficking)

California

CAL. PENAL CODE § 236.1 (2007) (human trafficking)

Id. § 236.2 (law enforcement officers must fill out federal endorsement within fifteen days of working with trafficking victim)

Id. § 273.7 (malicious disclosure of location of shelter constitutes misdemeanor)

Id. § 1202.4 (mandatory restitution)

Id. § 13,519.14 (law enforcement training and guidelines for responding to trafficking cases)

Id. § 13,990 (task force)

Id. § 14,023 (directs state Attorney General to give priority to human trafficking cases)

CAL. CIV. CODE § 52.5 (2007) (civil cause of action)

CAL. EVID. CODE §§ 1038-1038.2 (2007)
(caseworker-victim privilege)

CAL. GOV. CODE § 13,956 (2007) (state victim compensation for trafficking victims)

CAL. WEL. & INST. CODE § 13,283 (2007) (non-citizen victims receive same benefits as refugees)

Id. § 18,945 (non-citizen victims eligible for public assistance)

A.C.R. 28, 2007-08 Leg., Reg. Sess. (2007)
(recognizing Jan. 11 as Awareness of Human Trafficking Day)

Colorado

COLO. REV. STAT. § 18-13-127 (2007) (trafficking of adults)

Id. § 18-6-402 (trafficking of minors)

Id. § 18-1.8-101 (task force)

Id. § 24-33.5-211 (creation of state patrol division to address smuggling and human trafficking)

Connecticut

CONN. GEN. STAT. § 46a-4b (2007) (optional trafficking training program for police, prosecutors and community organizations)

Id. § 52-571i (2007) (civil cause of action)

Id. § 53a-192-192a (trafficking by coercion and compulsion to commit prostitution)

Delaware

DEL. CODE ANN. tit. 11, § 787 (2008) (comprehensive human trafficking statute)

Florida

FLA. STAT. § 409.9531 (2007) (services and state benefits for trafficking victims, public awareness campaign for organizations working with refugees)

Id. § 772.104 (civil cause of action)

Id. § 787.06 (human trafficking involving forced labor or services)

Id. § 787.06 (mandatory training for law enforcement and prosecutors)

Id. § 796.035 (sex trafficking of minors)

Id. § 796.045 (sex trafficking)

Georgia

GA. CODE ANN. § 16-5-46 (2007) (labor and sex servitude, provision for corporate liability)

Hawaii

HAW. REV. STAT. §§ 489N-1-2 (2007) (regulation of international marriage brokers)

Id. § 712-1208 (felony to promote travel for prostitution)

S.B. 2212, 24th Leg., Reg. Sess (Haw. 2008)
(creates new offense of sexual exploitation of a minor; amends existing kidnapping, extortion, and prostitution offenses; includes sexual exploitation of a minor in definition of racketeering; eliminates distinction between minors under 18 and minors under 16 for purposes of promoting prostitution).

S.R.C. 220, 24th Leg., Reg. Sess. (Haw. 2007)
(authorizes statewide needs assessment of non-citizen victims of human trafficking)

2006 Haw. Sess. Laws 260 (establishes human trafficking task force)

Idaho

IDAHO CODE ANN. § 18-8602 (2007) (human trafficking)

Id. § 18-8604 (restitution for trafficking victims)

Id. § 18-8605 (report on services for trafficking victims)

Illinois

305 ILL. COMP. STAT. 5/1-11 (2007) (certified non-citizen victims eligible for public cash or medical assistance)

720 ILL. COMP. STAT. 5/10A-5 (human trafficking)

Id. 5/10A-10 (restitution, sentence enhancement, victim services)

Id. 5/10A -15 (forfeiture of traffickers' assets)

Id. 5/10A-20 (law enforcement officers must certify trafficking victims with federal government)

740 ILL. COMP. STAT. 128/20 (civil cause of action)

Id. 128/25 (list of defenses for trafficking victims, and non-defenses for traffickers)

Indiana

IND. CODE ANN. § 11-8-8-4.5 (traffickers of minors are sex offenders)

Id. § 35-32-2-3 (venue in any county trafficking victim held or traveled through)

Id. § 35-42-3.5-1 (2007) (human trafficking crime)

Id. § 35-42-3.5-2 (mandatory restitution)

Id. § 35-42-3.5-3 (civil cause of action)

Id. § 35-42-3.5-4 (trafficking victims' rights, including protection and confidentiality, and mandate that law enforcement agencies must provide declaration for T visa application within fifteen days)

Iowa

IOWA CODE § 80B.11 (mandatory law enforcement training)

Id. § 710A.1 (2007) (human trafficking definitions)

Id. § 710A.2 (human trafficking penalties)

Id. § 710A.3 (affirmative defense)

Id. § 710A.4 (restitution)

Id. § 710A.5 (notification by law enforcement to federal law enforcement and Attorney General of victim cooperation and certification for immigration relief and public benefits)

Id. § 915.51 (trafficking victims have same rights as victims of other crimes)

Kansas

KAN. STAT. ANN. §§ 21-3446-3447 (2006) (human trafficking and aggravated trafficking crimes)

Id. § 21-4643 (enhanced life sentencing when victim under 14)

Id. § 22-4901-4910 (convicted traffickers must register with sheriff)

Id. § 38-2361(i) (juveniles convicted of trafficking must not attend same attendance center as trafficking victim)

Id. §§ 75-451-458 (confidential mailing address for trafficking victims)

Kentucky

KY. REV. STAT. ANN. § 422.295 (caseworker privilege)

Id. § 431.063 (victims should not be jailed)

Id. § 439.3401 (traffickers of minors for commercial sexual activity categorized as violent offenders)

Id. §§ 529.100-110 (2007) (human trafficking crimes, promoting trafficking)

Louisiana

LA. REV. STAT. ANN. § 14:46.2 (2008) (human trafficking crimes)

Id. §§ 15:542-542.7 (traffickers must register as sex offender)

Maine

An Act to Implement Regulations of the Human Trafficking Task Force, L.D. 461, 123d Me. St. Leg. (Me. 2008) (enacting human trafficking criminal and civil provisions)

Maryland

MD. CODE ANN., CRIM. LAW § 11-303 (2008) (human trafficking crime for purpose of prostitution)

Michigan

MICH. COMP. LAWS §§ 750.462a-.462i (2008) (human trafficking crimes)

Mississippi

MISS. CODE ANN. § 97-3-54.1 (2007) (human trafficking crimes)

Id. § 97-3-54.2 (destruction of immigration documents)

Id. § 97-3-54.3 (conspiring, aiding or abetting trafficking)

Id. § 97-3-54.4 (definitions)

Missouri

MO. REV. STAT. § 566.206 (2007) (human trafficking for involuntary servitude)

Id. § 566.209 (human trafficking for sexual exploitation)

Id. §§ 566.212-.213 (trafficking of minors)

Id. § 566.215 (contributing to human trafficking through misuse of documents)

Id. § 566.223 (trafficking victims afforded all protections in Trafficking Victims Protection Act)

Id. § 566.221 (regulation of international marriage brokers)

Id. §§ 567.085, 567.087, 566.089 (prohibition on advertising sex for travel and penalties)

Montana

MONT. CODE ANN. § 45-5-305 (2007) (human trafficking crimes)

Id. § 45-5-306 (sentence enhancements)

Nebraska

NEB. REV. STAT. § 28-830 (2007) (human trafficking crimes)

Id. § 28-831 (trafficking for forced labor or services)

Id. § 28-832 (mandated trafficking assessment)

Nevada

NEV. REV. STAT. § 41.690 (civil cause of action)

Id. § 179.121 (forfeiture)

Id. §§ 200.463-.468 (2007) (human trafficking crimes)

Id. § 207.012 (trafficking listed as crime for habitual felon)

New Hampshire

S.B. 194, 2007 Sess. (N.H. 2007) (commission to study human trafficking)

New Jersey

N.J. STAT. ANN. § 2C:13-8 (2007) (human trafficking crimes, restitution, affirmative defense for victims)

Id. § 52:4B-44 (victim witness assistance)

New Mexico

S.B. 71, 2008 Leg., Reg. Sess. (N.M. 2008) (human trafficking crimes, benefits for victims, task force established)

New York

N.Y. PENAL LAW § 135.35 (2007) (labor trafficking)

Id. § 230.34 (2007) (sex trafficking)

Id. §§ 230.04-.06 (first, second and third degree patronizing a prostitute)

N.Y. SOC. SERV. LAW §§ 483aa-ee (victims services, requirement to complete federal endorsement forms, state task force)

A.B. 7014, 2007 Leg. Sess., Reg. Sess. (N.Y. 2007) (to be codified as N.Y. PUB. OFF. § 8) (state law enforcement task force)

Anti-Human Trafficking Act of 2007, S.B. 5902, 2007 Leg. Sess., Reg. Sess. (N.Y. 2007) (comprehensive amendments to trafficking provisions)

North Carolina

N.C. GEN. STAT. § 7A-474.3 (2007) (trafficking victims eligible for legal aid services)

Id. § 14-43.11 (human trafficking crimes, victim eligibility for public benefits)

Id. § 14-43.12 (involuntary servitude)

Id. § 14-43.13 (sexual servitude)

Id. § 15A-832 (crime victim compensation, prosecutors must notify state attorney general and state legal aid about trafficking victims eligible for services)

Id. §§ 15C-1-10 (confidential address program)

2007 N.C. Sess. Laws 547, § 11 (protocols for training law enforcement officers).

Ohio

S.B. 205, 127th Gen. Assem., Reg. Sess. (Ohio 2007) (comprehensive human trafficking legislation establishing human trafficking crimes, non-defenses to crime, police training, police notification to federal authorities about trafficking victims, a public awareness program, civil action for victims, victim/caseworker confidentiality, crime of sex crime tourism, asset forfeiture for traffickers, restitution, task force service provision plan, special procedures for minor witnesses and reuniting minors with parents in home country).

Pennsylvania

18 PA. CONS. STAT. § 3001 (2007) (definitions)

Id. § 3002 (human trafficking crimes)

Id. § 3003 (restitution)

Id. § 3004 (mandatory forfeiture)

Id. § 9720.2 (providing for life sentence for human traffickers who also commit kidnapping, rape or “involuntary, deviate sexual intercourse”)

Rhode Island

R.I. PUB. LAWS §§ 11-67-1 to -5 (2007) (human trafficking crimes, forfeiture of traffickers’ assets, victim restitution)

South Carolina

S.C. CODE ANN. § 16-3-930 (2006) (human trafficking crimes)

Tennessee

TENN. CODE ANN. §§ 39-13-901 to -905 (2007) (human trafficking crimes and victim restitution)

Texas

TEX. ALCO. BEV. CODE § 104.07 (2007) (retailers must post notice that obtaining forced labor or services is a crime and includes the national trafficking hotline number)

TEX. BUS. & COM. CODE ANN. § 35.122 (2007) (regulation of international marriage brokers)

Id. § 101.005 (penalties for violating international marriage broker regulations)

TEX. CODE CRIM. PROC. ANN. § 42.0191 (2007) (finding of fact regarding victim status admissible evidence at trial)

TEX. GOV'T CODE. ANN. §§ 420A.01-.02 (2007)
(human trafficking programs included in sexual
assault program fund)

TEX. PENAL CODE. ANN. §§ 20A.01-.02 (2007)
(human trafficking crimes)

Vermont

VT. STAT. ANN. tit. x, § 2635 (2007) (criminal slave
traffic)

Virginia

VA. CODE. ANN. § 18.2-59 (2007) (crime to use
immigration documents for coercion or extortion)

Id. § 30-290 (establishment of human trafficking
commission)

Washington

WASH. REV. CODE §§ 9A.40.100 (2007) (human
trafficking crimes)

Id. § 9A.88.085 (prohibition of sex tourism)

Id. §§ 7.68.350, 7.68.360 (task force and
interagency work group to develop standards and
protocols)

Id. § 19.220.010 (regulation of international marriage
brokers)

Wisconsin

S.B. 292, 2007-08 Leg., Reg. Sess. (Wis. 2008)
(comprehensive human trafficking legislation
establishing crime of human trafficking, civil cause of
action for trafficking victims, restitution, corporate

liability, emergency funding for victims contingent on
cooperating with law enforcement, affirmative
defenses, exclusion from courtroom of anyone not
supportive of victim or defendant if crime sexually
motivated and other procedural safeguards, post-
conviction terms for offenders).

APPENDIX D: SELECT FEDERAL SEX TRAFFICKING AND PROSTITUTION CASES

United States v. Daniel McNeal, No. 06-406 (D. Minn., filed Dec. 12, 2006)

The defendant was charged with sex trafficking of a minor with the intent to have her engage in criminal sexual activity and four counts of coercion and enticement to travel to engage in prostitution. He pled guilty to sex trafficking of a minor and one count of coercion and enticement to travel. The court sentenced him to 293 months in prison with probation for life upon his release.

United States v. Marisol Ramirez et al, No. 07-166 (D. Minn. , filed May 15, 2007)

Twenty-five defendants were charged with conspiracy, transportation of a person to engage in prostitution and coercion and enticement of another to travel in interstate commerce to engage in prostitution. The leader of the operation, Marisol Ramirez, pleaded guilty to conspiracy, illegal reentry after deportation and money laundering and is awaiting sentencing. The majority of the remaining defendants pleaded guilty to one count of conspiracy.

United States v. Justine Reisdorf, No. 07-276 (D. Minn., filed June 14, 2007)

The defendant operated a prostitution ring out of her house and posted advertisements on the website Craigslist.org to prostitute minor girls. She was charged with one count of sex trafficking of a minor and one count of using an interstate facility to promote prostitution. She pled guilty to the use of an interstate facility to promote prostitution and was sentenced to sixty months in prison with three years probation.

United States v. Darryl Taylor, Tivon Bandy and Kenwanee Tate, No. 07-54 (D. Minn., filed Feb. 20, 2007)

The defendant Taylor was originally charged with one count of sex trafficking of a minor, which was changed in a superseding indictment to conspiracy, four counts of transportation of a minor with intent to engage in criminal sexual activity, five counts of sexual trafficking of a person by force, fraud, or coercion, five counts of possession of documents in furtherance of trafficking, two counts of witness tampering. He pleaded guilty to two counts of sex trafficking of a minor by force and one count of possessing documents in furtherance of trafficking. The judge imposed three sentences of 108 months to be served concurrently with five years probation. Defendant Brandy pleaded guilty to conspiracy and received a sentence of twenty-four months with three years probation. Defendant Tate also pleaded guilty to conspiracy and received a sentence of sixteen months with three years probation.

United States v. Le Guo Wu and Houa Vang, No. 07-388 (D. Minn., filed Oct. 19, 2007)

The defendants were bringing people to the United States by having them marry a U.S. citizen. Each were charged on one count of conspiracy to commit human trafficking and one count each of aiding and abetting human trafficking. Defendant Vang has pleaded guilty to conspiracy to commit human trafficking and waits for sentencing.

APPENDIX E: SELECT STATE PROSTITUTION CASES

State v. Kerschbaum, No. A07-1186 (Minn. Ct. App. June 3, 2008)

The case involved two minor females and five defendants. One defendant brought the girls separately, on the pretense of babysitting for the family. Once there, the girls were kept locked up, often in a closet, with little clothing on and were told that they would have to be prostitutes. Crack Cocaine and sleeping pills were used to subdue the girls, and if they protested they were beaten. The family used internet advertisements to find customers.

The charges against the three adult defendants were: two counts of solicitation of prostitution, two counts of kidnapping, two counts of first degree criminal sexual conduct, and one count of arson. The woman in this case pled guilty to two counts of kidnapping and one count of solicitation, and was then sentenced to eighty-four months imprisonment for the count of solicitation and forty-eight months for each count of kidnapping. The Court of Appeals affirmed the conviction.

In re Welfare of Children of L.K., No. A07-1395 (Minn. Ct. App. Apr. 29, 2008)

The case involved the termination of parental rights of the mother in the Kerschbaum case, after pleading guilty to the charges of kidnapping and solicitation of prostitution.

Graham v. State, No. A06-1862 (Minn. Ct. App. Dec. 4, 2007)

The defendant pleaded guilty to one count of receiving profits from prostitution and was sentenced to eighty-six months in prison. Even though the

sentence was double the sentence provided for by the sentencing guidelines, the Court of Appeals upheld it because the crime was a major economic offense.

Aziz v. State, No. A-06-485 (Minn. Ct. App. Apr. 17, 2007)

The defendant was charged and convicted for soliciting a minor for prostitution under Minnesota Statute section 609.322, subdivision 1a(1), and kidnapping because the victim was not released in a safe place. He was sentenced to 216 months for the kidnapping, a double upward departure from the sentencing guidelines because of the court's findings under the dangerous offender statute. He was sentenced to nineteen months for the solicitation conviction.

In the matter of the Welfare of the Children of M.M.C. and J.J.V. Sr., No. A-06-1499 (Minn. Ct. App. Mar. 13, 2007)

The trial was for a termination of parental rights based on J.J.V.'s criminal sexual conduct with a minor and promotion of prostitution. In 1991, he was convicted of third-degree sexual conduct after being charged with receiving profit from prostitution and inducing a child younger than sixteen years old into prostitution.

State v. Carter, No. A-05-1614 (Minn. Ct. App. Feb. 27, 2007)

The defendant operated a prostitution ring involving some minors. He advertised in local newspapers and drove the women and girls to meet with patrons. He was charged and convicted of soliciting and promoting prostitution and was sentenced to 158 months.

In the Matter of the Civil Commitment of Ronald Edward Conner, No. A06-1134 (Minn. Ct. App. Dec. 12, 2006)

The respondent was civilly committed as a sexually dangerous persona and a sexual psychopathic personality. His criminal sexual behavior included forced prostitution, pimping, and committing sexual assaults and other sexual misconduct in at least 7 states. He has been committed for an indeterminate amount of time.

State v. White, 692 N.W.2d 749 (Minn. Ct. App. 2005)

The defendant entered the car of an undercover police officer and offered to perform oral sex for \$30. She was charged with a gross misdemeanor for prostitution committed in a public space. However, the case was dismissed because the court determined that the interior of a private car on a public street did not qualify as a public place.

State v. Dickerson, No. 02-K1-04-006690 (Anoka Cty. Ct. App. Nov. 21, 2005)

The defendant pleaded guilty to one charge of solicitation, inducement, and promotion of prostitution of a sixteen year-old girl. He was sentenced to ten years probation. He is currently incarcerated for the murder of his girlfriend in 2007 and dangling his child over the Interstate 694 bridge.

State v. Toua Hong Chang, No. A03-1802 (Minn. Ct. App. Feb. 15, 2005)

The victims were four minors who were brought to the defendant's home, given drugs, and then threatened with violence if they did not pay for the drug or agree to prostitute in order to pay for them. The girls, all between the ages of twelve and

fourteen, were forced to have sex with the defendant and his companions. He was charged and convicted with first degree criminal sexual assault and promoting prostitution for the benefit of a gang. For the former charge, the district court sentenced him to 144 months and ten years conditional release on probation, which the Court of Appeals reversed and remanded for imposition of a five-year term of conditional release. For the latter, the court sentenced him to concurrently serve ninety-eight months and five years conditional release on probation, which the Court vacated because the statute for gang-related crimes does not list promotion of prostitution.

Jackson v. State, No. C1-03-91 (Minn. Ct. App. Nov. 4, 2003)

The defendant controlled a hotel room where his seventeen-year-old fiancée engaged in prostitution. The escort ad and the cell phone used to set up the encounters were discovered on the scene. He was charged and found guilty of promoting prostitution of an individual under the age of eighteen. He was sentenced to 132 months in prison.

State v. Conner, No. C1-02-1439 (Minn. Ct. App. Jul. 1, 2003)

The defendant offered to take the victim to Arizona to work as a prostitute in exchange for clothing, housing, and food. The agreement had been made after the defendant had provided the victim with alcohol. He was charged and found guilty of soliciting, inducing, or promotion of prostitution of an adult and sentenced to a forty-three month executed term.

State v. Bloodsaw, No. C8-02-1499 (Minn. Ct. App. Mar, 18, 2003)

The defendant was charged with promotion of prostitution and solicitation of prostitution of an adult, and was found guilty by a jury on the promotion charge. He had driven a woman to a motel in order for her to perform a sexual act for money. Because he had five or more prior felony convictions and those convictions demonstrated a pattern of criminal conduct, the court departed from the sentencing guidelines and the defendant was sentenced under the career offender statute. He was sentenced to 120 months in prison.

APPENDIX F: BACKGROUND ON CRIMINAL PROCEDURE

In order to understand the common challenges and unique barriers prosecutors face, one must understand the criminal procedure process. While federal and state courts use different rules of criminal procedure and interact with different government agencies as the case progresses, in general, a sex trafficking case enters the criminal justice system by a similar route.¹²⁴⁶

First, law enforcement must receive information about suspected sex trafficking and investigate it. Second, law enforcement must document and send complete information about the suspected sex trafficking to the prosecuting authority in the jurisdiction. Third, the prosecuting authority must review the evidence contained in the law enforcement report and decide if sufficient evidence exists to charge an individual with a sex trafficking crime. If sufficient evidence does not exist, the prosecuting authority may send the case back to law enforcement for more investigation. If the prosecuting authority decides to charge a case, a criminal complaint or indictment must be prepared.¹²⁴⁷ If the prosecutor charges a crime under federal law and the offense is punishable by death or more than one year of imprisonment, the case must proceed by indictment unless the defendant waives the indictment.¹²⁴⁸ A prosecutor may charge a misdemeanor crime under federal law either by indictment, information, or complaint.¹²⁴⁹ A prosecutor may charge a misdemeanor under Minnesota law by complaint or tab-charge. A prosecutor must charge a gross misdemeanor or felony under Minnesota law by complaint.

Fourth, once the prosecuting authority charges or indicts an individual for sex trafficking, the individual must appear for a first appearance in the appropriate jurisdiction before a judge with the authority to hear criminal cases.¹²⁵⁰ At the first appearance, a defendant is informed of the rights to counsel and not to make a statement and that any statement made may be used against the defendant in court.¹²⁵¹ In addition, bail or bond may be set and another court appearance will be set.¹²⁵² If the case is a felony or gross misdemeanor, the defendant will not enter a plea at the first appearance. A felony is defined as a crime for which more than one year of imprisonment may be imposed.¹²⁵³ A gross misdemeanor is defined as a crime for which less than one year, but more than ninety days of imprisonment and up to a \$3,000 fine may be imposed.¹²⁵⁴ In misdemeanor cases, the defendant will enter a plea of guilty or not guilty. A misdemeanor is defined as a crime for which up to ninety days of imprisonment or up to a \$1,000 fine or both may be imposed.¹²⁵⁵

Fifth, the defendant appears for a second court appearance at the time specified and within the limits set by the applicable rules of criminal procedure. If the case is a felony or gross misdemeanor, under the Minnesota Rules of Criminal Procedure, the second appearance is called an Omnibus Hearing.¹²⁵⁶ If the case is a misdemeanor, the second appearance is called a Pretrial Hearing.¹²⁵⁷ Under the Federal Rules of Criminal Procedure, the second appearance is called a Preliminary Hearing.¹²⁵⁸ At the second appearance, the defendant may make a motion that there is insufficient evidence showing probable cause to believe the defendant committed the offense charged or waive a probable cause hearing

¹²⁴⁶ See FED. R. CRIM. P. 3, 5, 5.1, 10, 11, 12, 17.1, 23, 32, 35; see also MINN. R. CRIM. P. 2, 5, 7, 8, 11, 12, 13, 14, 15, 17, 26, 27.

¹²⁴⁷ See FED. R. CRIM. P. 3, 7; see also MINN. R. CRIM. P. 2, 17.

¹²⁴⁸ See *id.* at 7.

¹²⁴⁹ See *id.* at 58(b)(1).

¹²⁵⁰ See *id.* at 5; see also MINN. R. CRIM. P. 5.

¹²⁵¹ See FED. R. CRIM. P. 5(d)(1); see also MINN. R. CRIM. P. 5.01.

¹²⁵² See FED. R. CRIM. P. 5; see also MINN. R. CRIM. P. 5.

¹²⁵³ See MINN. STAT. § 609.02, subd. 2 (2007).

¹²⁵⁴ See *id.* at § 609.02, subd. 4.

¹²⁵⁵ See *id.* at § 609.02, subd. 3.

¹²⁵⁶ See MINN. R. CRIM. P. 11.

¹²⁵⁷ See *id.* at 12.

¹²⁵⁸ See FED. R. CRIM. P. 5.1.

whereupon the judge makes a probable cause determination.¹²⁵⁹ The defendant may also make a motion for a hearing on any other constitutional, evidentiary, procedural or other issues at this time.¹²⁶⁰ The prosecution may make a motion for an aggravated sentence in felony cases.¹²⁶¹

Sixth, if a plea agreement has been reached, whether or not motions were made, the defendant may plead guilty subject to the court questioning the defendant about his/her rights.¹²⁶² Once a guilty plea is entered, the matter is set on for sentencing in felony cases and some gross misdemeanor and misdemeanor cases, giving time for the preparation of a pre-sentence investigation and report.¹²⁶³ If the case does not require a pre-sentence investigation, the judge will pronounce a sentence immediately. In cases charged under Minnesota law, the Minnesota Sentencing Guidelines apply.¹²⁶⁴ Sentences are presumptive and are grouped by the severity level of the offense and the criminal history score of the defendant. Thus, a defendant with a criminal history score of zero will not receive as great a sentence as a defendant with a criminal history score of five. Similarly, the offense of intentional murder, a level eleven offense, carries a greater sentence than a level one offense of sale of a simulated controlled substance. In cases charged under federal law, the Federal Advisory Sentencing Guidelines apply.¹²⁶⁵ The federal guidelines set minimum sentences.

If the defendant pleads not guilty at an Omnibus or Pretrial Hearing, the case may be set for Pretrial evidentiary hearings and also for a trial date, trial being either to the court or to a jury. If the trial is to

¹²⁵⁹ See *id.* at 5.1, 12; see also MINN. R. CRIM. P. 11.03.

¹²⁶⁰ See FED. R. CRIM. P. 5.1, 12; see also MINN. R. CRIM. P. 11.03.

¹²⁶¹ See FED. R. CRIM. P. 32(h); see also MINN. R. CRIM. P. 11.04.

¹²⁶² See FED. R. CRIM. P. 11; see also MINN. R. CRIM. P. 11.06, 12.06.

¹²⁶³ See FED. R. CRIM. P. 32(c); see also MINN. R. CRIM. P. 27.02, 27.03.

¹²⁶⁴ See MINNESOTA SENTENCING GUIDELINES COMM'N, *supra* note 1117.

¹²⁶⁵ See U.S. SENTENCING COMM'N, FEDERAL SENTENCING GUIDELINES MANUAL (Nov. 1, 2007), available at http://www.ussc.gov/2007guid/tabcon07_1.htm.

a jury, the jury must be selected by a process known as voir dire. During this process, each potential jury member is questioned by the judge, prosecutor, and defense attorney.¹²⁶⁶ Each attorney may exercise peremptory challenges if the attorney wishes to strike a potential juror.¹²⁶⁷ Once the trial begins, whether it is to the court or to a jury, either the Federal Rules of Evidence or Minnesota Rules of Evidence apply depending upon whether the case is tried in a federal or state court. The Minnesota Rules of Evidence track the federal rules fairly closely, however, there are a few important distinctions. These distinctions may affect federal and state prosecutors' decisions on which evidence to present to a judge or jury.¹²⁶⁸

Whether trial is to a judge or to a jury, if the defendant is found guilty, the defendant will be sentenced in the same way as described above. If the defendant is found not guilty, the defendant will be released and bail or bond may be returned.

A number of additional procedures may apply in certain circumstances, but will not be explored in this

¹²⁶⁶ See FED. R. CRIM. P. 24; see also MINN. R. CRIM. P. 26.02.

¹²⁶⁷ See FED. R. CRIM. P. 24; see also MINN. R. CRIM. P. 26.02.

¹²⁶⁸ E-mail from Peter Knapp, Professor of Law, William Mitchell College of Law (Apr. 7-8, 2008) (on file with author). Minnesota's rules of criminal procedure differ from the federal rules. For example, Minnesota did not amend its Rule 404(a) to conform with the most recent amendments to the federal rule; Minnesota's version of Rule 404(b) codifies Minnesota supreme court decisions on admissibility of prior bad acts and, generally speaking, sets forth a more stringent test for admission. Prior bad acts have to be proved by clear and convincing evidence. In addition, Minnesota's version of Rule 410 is more stringent, precluding admissibility of statements made in the course of plea negotiations period—even admission in a later prosecution for perjury. Minnesota's version of Rule 412 is different from the federal version and Minnesota has no counterparts to federal Rules 413-415. Minnesota Rule 608(c) sets forth procedural requirements for a prosecutor's use of non-conviction misconduct. Minnesota Rule 613 permits introduction of extrinsic evidence of a prior inconsistent statement only if the impeached witness has had a prior opportunity to explain the inconsistency. Minnesota adheres to Frye-Mack for the admission of expert testimony and has not adopted Daubert. Additionally, Minnesota Rule 703(b) sets forth a more stringent test for the admission of data on which an expert has relied. Under the state version of Rule 801(d)(1)(B), Minnesota permits a broader range of a witness's prior consistent statements to be introduced. Present sense impressions are, however, admissible only if the declarant testifies at trial.

section of the report unless relevant to specific sex trafficking cases described in this report. This overview of criminal procedure should be understood to be necessarily broad and by no means a complete description of every nuance of federal or state criminal procedure. That said, sex trafficking cases do raise challenges and pose particular barriers related to witness testimony, hearings on probable cause, hearings on constitutional, evidentiary, procedural and other issues, and trials, particularly jury trials. Understanding the criminal procedure process will assist the reader in grasping these challenges and barriers more fully.

APPENDIX G: LIST OF RESOURCES FOR SEX TRAFFICKING VICTIMS

Sex trafficking victims have a variety of short-term, intermediate and long-term needs. This list provides an overview of services that address needs commonly faced by trafficked women and girls, but it is not exhaustive. Many of these resources include services available throughout Minnesota.

Resources for specific American Indian tribes in Minnesota are listed under the heading “Tribal Resources.” More general resources for American Indians are listed by discipline in their respective categories.

Chemical Dependency

Minnesota Department of Human Services, MHCP Provider Directory

<http://mhcpproviderdirectory.dhs.state.mn.us/>

Domestic Violence

Day One, Local Resources

<http://www.dayoneservices.org/links.htm>

Day One, Safe Locations

<http://www.dayoneservices.org/locations.htm>

Minnesota Coalition for Battered Women, Minnesota Services <http://www.mcbw.org/mnservices>

Minnesota Indian Women's Resource Center, MIWRC Resources

<http://www.miwrc.org/resources.html>

Minnesota Office of Justice Programs, Minnesota's Designated Domestic Violence Programs

<http://www.ojp.state.mn.us/dvprograms.htm>

Office for Victims of Crime, Victim Assistance for Indian Nations, Minnesota,

<http://www.ovc.gov/help/nat/mn.htm>

Healthcare

Minnesota Department of Health, 2008 Health Resources Serving Diverse Communities

<http://www.health.state.mn.us/divs/idepc/refugee/resourceguide.pdf>

Housing

Minnesota Department of Human Services, Housing Resources Toolbox

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_006182

Housing (Temporary Shelter)

Day One, Safe Locations

<http://www.dayoneservices.org/locations.htm>

Immigration (Legal Services)

U.S. Department of Justice, Executive Office for Immigration Review, List of Free Legal Service Providers

<http://www.usdoj.gov/eoir/probono/freelglchtMN.htm>

Interpretation

Minnesota Judicial Branch, Court Interpreter Search

<http://www.mncourts.gov/FindInterpreters/>

Job Services and Training

Minnesota Department of Employment and Economic Development, Minnesota WorkForce Center System, Job-Seeking Resources
<http://www.mnwfc.org/jobseeking.htm>

Minnesota Department of Employment and Economic Development, Minnesota WorkForce Centers
<http://www.mnwfc.org/>

Minnesota Department of Employment and Economic Development, Training Resources
<http://www.mnwfc.org/trainingresources.htm>

Law Enforcement

Federal Bureau of Investigation, Minneapolis Division
<http://minneapolis.fbi.gov/mnjurisdiction.htm>

Minnesota Bureau of Criminal Apprehension
<http://www.bca.state.mn.us/bca.asp>

Minnesota State Patrol
<http://www.dps.state.mn.us/patrol/distindex/index.htm>

Minnesota Sheriff's Association, Directory of Sheriffs
<http://data.memberclicks.com/site/mcpa/MSA%20SHERIFF%20DIRECTORY%20JULY%202008.pdf>

U.S. Immigration and Customs Enforcement, Office of Investigations
<http://www.ice.gov/about/investigations/contact.htm>

Legal Services

Anishinabe Legal Services
<http://www.alslegal.org/index2.htm>

LawHelpMN.org
<http://www.lawhelpmn.org/MN/index.cfm>

Minnesota Legal Services Coalition, Civil Legal Services Directory
<http://www.mnlegalservices.org/documents/146951January%202008.rtf>

ProJusticeMN.org <http://www.projusticemn.org/>

Mental Health

U.S. Department of Health and Human Services, National Mental Health Information Center
<http://mentalhealth.samhsa.gov/databases/facility-search.aspx?state=MN&fullname=Minnesota>

Reparations (Victim Compensation)

Minnesota Crime Victims Reparations Board, Minnesota Crime Victims Reparations Claim Form
http://www.ojp.state.mn.us/publications/Forms_Reparations/Reparations_claim_form_EN.pdf

Minnesota Office of Justice Programs, Financial Help for Crime Victims
<http://www.ojp.state.mn.us/MCCVS/FinancialHelp/>

Restitution

Minnesota Department of Corrections, Victim Assistance Program, Restitution, Reparations and Financial Assistance
<http://www.doc.state.mn.us/crimevictim/restitution.htm>

Minnesota Office of Justice Programs, Restitution
<http://www.dps.state.mn.us/OJP/publications/Restitution.pdf>

Sexual Assault

Aardvarc.org, Minnesota: Sexual Assault Information, Resources and Support
<http://www.aardvarc.org/rape/states/minnnp.shtml>

Minnesota Coalition against Sexual Assault
http://www.mncasa.org/results.cfm?search_by=Sho+w+All

Minnesota Indian Women's Sexual Assault Coalition
<http://www.miwsac.org/pages/contact-us.php>

Sexually Exploited Youth

Safe Harbors Youth Intervention Program, Participating Agencies and Contact Information
http://partnersforviolenceprevention.org/documents/CNA11_1_final.pdf

Trafficking Victim Resources

Civil Society, Crisis and Tip Line for Human Trafficking Victims
<http://civilsocietyhelps.org/test/html/index.php>
 (887) SAFE-24 [(888) 772-3324] or (651) 291-8810

Civil Society, Resources
<http://www.civilsocietyhelps.org/test/html/modules.php?name=Content&pa=showpage&pid=4>

LawHelpMN.org, Walk-In Clinics for Victims of Trafficking
<http://www.lawhelpmn.org/documents/clusters/MN/288/English/clinicschedule.shtml>

Polaris Project, National Human Trafficking Hotline,
http://www.polarisproject.org/index.php?option=com_content&task=view&id=90&Itemid=95
 (888) 373-7888

Tribal Resources

Bois Forte
<http://www.boisforte.com/divisions/index.htm>
 (800) 221-8129

Fond du Lac
<http://www.fldrez.com/HumanServices/main.htm>
 (218) 879-4593

Grand Portage
<http://www.grandportage.com/programs.html>
 (218) 475-2277

Leech Lake Band of Ojibwe
<http://www.llojibwe.com/llojibwe/Directory.html>
 (800) 422-3909

Lower Sioux
http://www.lowerSioux.com/tribal_contacts.html
 (507) 697-6185

Mille Lacs Band of Ojibwe
<http://www.millelacsOjibwe.org/programs.asp>
 (320) 532- 4181

Prairie Island Indian Community
<http://www.prairieisland.org/Departments.htm>
 (800) 554-5473

Red Lake Band of Chippewa Indians¹²⁶⁹
<http://www.ovc.gov/help/nat/mn.htm>
 (218) 679-3361

Shakopee Mdewakanton Sioux Community
http://www.shakopeedakota.org/pdf/na_programs.pdf
 (952) 445-8900

¹²⁶⁹ At the time of publication of this report, the Red Lake Band of Chippewa Indians' website was under construction. When updated, it will be available at <http://www.redlakenation.org/>.

Upper Sioux Community

http://www.upper_sioux_community_nsn.gov/pages/information.htm

(320) 564-2360

White Earth

<http://www.whiteearth.com/home.html>

(218) 983-3285

APPENDIX H: ANNOTATED BIBLIOGRAPHY

Trafficking Reports: General

Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World, Global Alliance Against Traffic in Women (GAATW) (2007), [http://www.gaatw.net/Collateral%20Damage Final/singlefile_CollateralDamagefinal.pdf](http://www.gaatw.net/Collateral%20Damage%20Final/singlefile_CollateralDamagefinal.pdf).

Through an assessment of the experiences in eight countries — Australia, Bosnia and Herzegovina, Brazil, India, Nigeria, Thailand, the UK, and the USA — the GAATW report examines the extent to which anti-trafficking efforts are centered on upholding the human rights of trafficked persons. This report argues from the evidence available that “especially marginalized categories of people such as migrants, internally displaced persons, and asylum seekers, have suffered unacceptably negative consequences and that anti-trafficking measures have been counterproductive for some of the very people they are supposed to benefit most directly.”

Trafficking in Persons: Global Patterns, United Nations Office on Drugs and Crime (Apr. 2006) <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>.

This report draws on accounts of human trafficking in 127 countries to assess global patterns in trafficking. Using global accounts of trafficking, the report makes a series of recommendations on prevention of trafficking, prosecution, protection of trafficked persons and data collection.

Trafficking Reports: United States

Attorney General’s Annual Report to Congress and Assessment of the U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2007, U.S. Department of Justice (May 2008), <http://www.usdoj.gov/ag/annualreports/tr2007/agreporthumantrafficking2007.pdf>.

This is the fifth annual report required by the Trafficking Victims Protection Reauthorization Act of 2003. It provides a comprehensive overview of the U.S. government’s activities to combat trafficking in persons, including: benefits and services given to victims by various federal government agencies and grant recipients; investigations and prosecutions undertaken by federal agencies and resulting sentences; examples of international anti-trafficking efforts funded by the government; numerous training and outreach programs, both domestic and international; and a description of the efforts of the President’s Interagency Trafficking Task Force and Senior Policy Operating Group. The report evaluates the effectiveness of these activities and makes recommendations for the next fiscal year.

Sex Trafficking of Women in the United States: International and Domestic Trends, Janice G. Raymond and Donna M. Hughes, Coalition Against Trafficking in Women (Mar. 2001), <http://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>.

Raymond and Hughes’ report aims to investigate international and domestic trafficking in the United States and to describe connections between the supply and demand aspects of the sex industry in relation to trafficking. The report uses regional comparisons between San Francisco, New York, the Northern Midwest (Minneapolis), the Northeast, and the Southeast to assess the operation of local sex industries; the backgrounds of trafficked women,

traffickers and patrons; methods of recruitment/movement/initiation/control; the health of women; methods of coping and resistance; and women's individual perspectives on trafficking. The report recommends that the definition of human trafficking be broadened, not narrowed, to more accurately encompass the human rights violations involved in this crime.

Trafficking in Persons in the United States: A Report to the National Institute of Justice, Kevin Bales and Steven Lize, Croft Institute for International Studies, University of Mississippi (Mar. 2005), <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>.

Bales and Lize employ the case study method to identify points of intervention that arise at various stages of the trafficking process, in order to develop comprehensive strategies to combat human trafficking in the United States. The report recommends intervention (and improvement in process) at the points of recruitment, transportation, exploitation, escape, perpetrator arrests, victim stabilization, victim-witness protection, investigation, prosecution, survivor reintegration, relation to other criminal activities, inter-agency collaboration, and social service provision.

Trafficking Reports: Minnesota

Human Trafficking in Minnesota: A Report to the Minnesota Legislature, Minnesota Office of Justice Programs and Minnesota Statistical Analysis Center (Sept. 2007), http://www.ojp.state.mn.us/cj/publications/Reports/2007_Human_Trafficking.pdf.

This report examines both labor and sex trafficking from the perspectives of service providers, law enforcement agents, and nurses. Members of each

group were questioned regarding their beliefs about the size of the problem, their knowledge about trafficking, and whether they had worked with trafficking victims. Group-specific questions were also asked; for instance, service providers were asked about barriers organizations face in providing services, while law enforcement respondents were asked about the numbers of cases they had investigated and arrests they had made. Finally, the report includes a short section highlighting respondents' experiences with Native American victims of sex trafficking.

Human Trafficking in Minnesota: A Report to the Minnesota Legislature, Minnesota Office of Justice Programs Minnesota Statistical Analysis Center (Sept. 2006), http://www.ojp.state.mn.us/cj/publications/Reports/2006_Human_Trafficking.pdf.

This first annual report on sex trafficking in Minnesota is a preliminary study on the nature and extent of trafficking in the state. Minnesota-based victim service providers, sexual and domestic assault service providers, and organizations serving immigrants completed an online survey that asked for information about trafficking victims they may have served. Forty-three percent indicated that they had served at least one victim of trafficking, and 80% of those respondents reported having served at least one victim of sex trafficking. Many respondents stated that they did not know what trafficking was and would not know how to respond if they saw it. The report defines victims of trafficking as victims of labor trafficking, debt bondage, involuntary servitude, and sex trafficking. It sets forth three categories of trafficking in Minnesota: trafficking within the state, national trafficking among other states, and international trafficking. The report cautions that current data may under-represent the extent of the problem because of the marginalized, vulnerable nature of victims.

Trafficking Reports: Other States and Cities

Final Report of the Interagency Task Force on Trafficking in Persons, State of Connecticut General Assembly, Permanent Commission on the Status of Women (Jan. 2007),
<http://www.cga.ct.gov/pcsw/Trafficking/07%20final%20trafficking%20report.pdf>.

This report is part of a continuing process of evaluation of Connecticut's response to human trafficking. The first report was issued in 2004. The next, more detailed report, issued in 2006, recommended taking legislative and service steps to combat trafficking. The 2007 report cited here describes Connecticut's progress in meeting the recommendations from the 2006 report by enacting a law that categorized trafficking as a felony, improved civil remedies, and increased funding for victim assistance. The report recommends that the state take further steps, including: establishing contractual relationships with other state agencies; establishing protocols and coordination between government and non-government agencies assisting trafficking victims; increasing public awareness; increasing funding for services; and establishing a Trafficking in Persons Council. In 2008, the state released another report providing a brief update on Connecticut's progress in combating trafficking.

Florida Responds to Human Trafficking, Florida State University Center for the Advancement of Human Rights (2003),
<http://www.cahr.fsu.edu/the%20report.pdf>.

This report offers a preliminary overview of the problem of human trafficking in Florida. It cites Florida as one of the top three "destination states" for trafficking in the United States. The report provides background on the problem of human trafficking, as well as the Trafficking Victims Protection Act of 2000 and its implementation. It also looks at actual and hypothetical cases of

trafficking to examine the greatest needs of victims and the best ways to help them. Specific guidelines are offered for training social service providers to help victims of trafficking, and for training law enforcement officials to recognize and assist victims. Finally, the report recommends a multi-disciplinary community response to human trafficking, and prescribes specific steps for the state to take in addressing the issue.

Hidden in Plain View: The Commercial Sexual Exploitation of Girls in Atlanta, Alexandra Priebe and Cristen Suhr, Atlanta Women's Agenda (Sept. 2005),
http://www.womensagenda.com/Child_Prostitution.pdf.

This report uses juvenile court case file reviews, interviews of law enforcement and human service agencies, case studies, field observations, surveys of service providers, and spatial mapping of crime data to assess several aspects of the commercial sexual exploitation of girls in Atlanta, Georgia. The report identifies risk factors for girls, documents their paths into and out of child sexual exploitation (and the obstacles that may block their exit), describes the severe consequences of this problem, and recommends ways to improve prevention and victim assistance in Atlanta.

Human Trafficking in California, California Alliance to Combat Trafficking and Slavery Task Force (Oct. 2007),
http://safestate.org/documents/HT_Final_Report_ADA.pdf.

This report examines the causes and extent of trafficking in California and states that more comprehensive data on trafficking is needed in order to effectively combat the problem. The report also cites several shortcomings of California's assistance to victims of trafficking and suggests ways to

address them. These deficiencies are in the areas of provision of funding to organizations working to help victims of trafficking, identification of victims by service providers, and the ability to furnish victims with access to and information about T visas, civil representation, healthcare, and shelter. Finally, the report offers recommendations for the prosecution of traffickers and the prevention of trafficking in the state.

Human Trafficking in Ohio: Markets, Responses, and Considerations, RAND Corporation (2007), http://www.rand.org/pubs/monographs/2007/RAND_MG689.pdf.

This report focuses on human trafficking in Columbus and Toledo to establish a baseline estimate of the extent of the problem in Ohio. It finds two types of human trafficking in these cities: juvenile prostitution, predominantly in Toledo; and labor trafficking, only in Columbus. The study describes the characteristics of victims and traffickers and the responses to trafficking by the criminal justice system and service providers. It finds two similarities in responses to trafficking in each of the cities: lack of collaboration between the justice and child welfare systems, and insufficient shelter for victims. The report's recommendations include providing a drop-in center and crisis line for victims and involving trafficking survivors in criminal justice.

The Realities of Human Trafficking in Cook County: Strategies for Ending the Exploitation of Women and Girls, The Cook County Commission on Women's Issues (Oct. 2007), <http://www.sapromise.org/pdfs/human%20trafficking%20report.pdf>.

This report on human trafficking focuses on the experiences of trafficked women and girls in Chicago, which it identifies as a national hub for

human trafficking, especially in women and girls. It describes the scope of human trafficking in Chicago as well as the types of persons involved both as victims and traffickers. The report examines how federal and state law may be used to prosecute traffickers. It describes eight coalitions and their methods of involvement in addressing the problem of human trafficking and treating victims. Finally, the report offers recommendations regarding the county's policy on trafficking.

The Report of the Washington State Work Group on Human Trafficking, State of Washington Department of Community, Trade and Economic Development, Office of Crime Victims Advocacy (Dec. 2006), http://www.cted.wa.gov/CTED/documents/ID_2700_Publications.pdf.

This report provides written protocols for government agencies in Washington providing service to victims of trafficking. It requires that services be client-centered, culturally competent and available to all eligible victims. It stipulates that agencies should meet standards for providing confidentiality to victims, employing staff trained in identification of victims, delivering services proactively, and coordinating communication among and within agencies. Specific requirements are also included for each agency considered in the report. Finally, gaps in the current provision of service to trafficking victims are identified and remedies are suggested.

Reports on Commercial Sexual Exploitation of Children

The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico, Richard J. Estes and Neil Alan Weiner, University of Pennsylvania (Sept. 2001, revised Feb. 2002), http://www.sp2.upenn.edu/~restes/CSEC_Files/Complete_CSEC_020220.pdf.

Estes and Weiner's study documents the nature, extent, and causes of child sexual exploitation in the United States, Canada, and Mexico; identifies numerous problems with current responses to child sexual exploitation by law enforcement and both governmental and nongovernmental human services agencies; and recommends ways to improve these responses, with prevention as the first priority and harm reduction second. The report focuses heavily on child sexual exploitation within the United States, but includes some findings from Canada and Mexico that have connections to the United States.

The Hofstede Committee Report: Juvenile Prostitution in Minnesota (1999), <http://www.heart-intl.net/HEART/080105/JuvenileProstitutionMinn.pdf>.

According to this report, there are about 1,000 juvenile prostitutes in Minnesota, and the average age of entry into prostitution is fourteen. The report discusses the dangers of youth prostitution, noting that youth from every socioeconomic background are at risk, but those at most risk are runaways and homeless youth. At least half of juvenile prostitutes have experienced some sort of violence, many on a regular basis. Next, the report gives an overview of the sex industry, both locally in Minnesota and internationally. It discusses the growth of the sex industry and the role of gangs and the internet in facilitating juvenile prostitution. The report discusses barriers to addressing the problem, such as the lack of housing and gaps in the law. Finally, the report

makes recommendations including legal, systemic, and funding changes.

Protection of Children Involved in Prostitution: Protective Safe House Review, Alberta Children's Services (Oct. 2004), http://www.child.gov.ab.ca/whatwedo/pcse/pdf/psh_report_Nov_7.pdf.

This review analyzes the implementation of the 2001 amendment to Alberta's Protection of Children Involved in Prostitution Act. The amendment allowed children in prostitution or at risk of becoming involved to be involuntarily kept for five days in a protective safe house; their stays could be extended for up to forty-two more days. The information was gathered through focus groups in Edmonton, Calgary, and Lethbridge, primarily with service providers, as only nine clients were willing to participate. The report compares the three sites and considers problems with service delivery and unintended effects. It also provides valuable recommendations, references and focus group guides.

Sacred Lives: Canadian Aboriginal Children and Youth Speak out about Sexual Exploitation, C. Kingsley, M. Mark, and Save the Children Canada (2000), <http://dsp-psd.pwgsc.gc.ca/Collection/RH34-12-2000E.pdf>.

This report is the result of focus groups that met in twenty-two communities throughout Canada over the course of five months. The focus groups were led by two young aboriginal women and gathered input from over 150 commercially sexually exploited Aboriginal youth. The report focuses on the views expressed by Aboriginal youth during the discussions, rather than quantitative data, on such themes as abuse and exploitation, prevention, crisis intervention/harm reduction, exiting and healing, public attitudes/advocacy, and youth participation.

The report also contains useful appendices of resources in Canada, a framework for ending commercial sexual exploitation of youth, and further selected readings.

Safe Harbors Youth Intervention Project Community Needs Assessment Report, Safe Harbors Youth Intervention Project (Nov. 2007),
http://partnersforviolenceprevention.org/documents/CNA11_1_final.pdf.

The Safe Harbors Youth Intervention Project was implemented by the Minnesota Legislature in 2006 with the goal of ensuring that homeless and runaway youth who have been sexually exploited receive good services from police, attorneys, probation officers, healthcare providers, school social workers and other professionals in Ramsey County. For this needs assessment, homeless, runaway, and at-risk youth completed surveys about their experiences with various agencies. In addition, focus groups composed of individuals who work in many of those agencies discussed their experiences with the target youth population, identified concerns about services currently being provided, and suggested ways to improve agency engagement with this population. The report also includes an inventory of existing services available to runaway, homeless, or truant youth who are sexually exploited.

Prosecution

Federal Prosecution of Human Trafficking, 2001-2005, Mark Motivans and Tracey Kyckelhahn, U.S. Department of Justice, Bureau of Justice Statistics (Oct. 2006),
<http://ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf>.

This brief provides statistical information on suspects investigated by the U.S. Attorney's Office. There were 555 suspects investigated for federal human trafficking violations by U.S. attorneys between 2001

and 2005. Over half of the investigated offenses violated new laws created under the Trafficking in Victims Protection Act (TVPA) of 2000, and almost half of the cases were from the states of California, Florida, Texas, and New York. The brief also addresses the number of cases closed by attorneys, the offenses, percent of convictions, and the sentences.

Legal

Anti-Trafficking Training Material for Judges and Prosecutors: Handbook, International Centre for Migration Policy Development (2006),
http://www.icmpd.org/fileadmin/IIMS-documents/ICMPD/AGIS_JUD/AGIS_JUD_Handbook.pdf.

This handbook is one component of a three-part training package for practicing judges and prosecutors in European Union Member States and Accession and Candidate Countries. Because there is enormous diversity within the region, the handbook focuses on broad principals and general good practices. Each chapter begins with a succinct abstract and a list of learning objectives. The handbook emphasizes the placement of trafficking victims' human rights at the center of all anti-trafficking efforts, and the most extensive chapter is devoted to explaining how good judicial practices can help protect victims' rights before and during criminal proceedings.

Victim Services

Evaluation of Comprehensive Services for Victims of Human Trafficking: Key Findings and Lessons Learned, Caliber (an ICF International Company) (Apr. 2007), <http://www.ncjrs.gov/pdffiles1/nij/grants/218777.pdf>.

This report analyzes the U.S. Office for Victims of Crime and U.S. Department of Justice’s “Services for Trafficking Victims Discretionary Grant Program — Comprehensive Service Sites” in order to examine the effectiveness of the sites in helping trafficked persons gain access to appropriate and adequate services. It is meant to serve as a guide to coordinated service delivery.

Handbook for Practitioners on Minimum Standards of Care and Support for the Victims of Trafficking and Other Forms of Violence in South Asia, USAID South Asia Regional Initiative/Equity Support Program.

This handbook is based on the Protocol on Minimum Standards of Care and Support for the Victims of Trafficking and Other Forms of Violence in South Asia, and is meant to serve as an explanatory guide for those who run shelters and for the government. It addresses such issues as rescue, transitional care, and repatriation and reintegration. Each section provides a short guideline, and then explains the rationale for the guideline and what to do and what not to do as a practitioner.

Domestic & Sexual Violence Advocate Handbook on Human Trafficking, Florida Coalition against Domestic Violence (2004),

http://www.childtrafficking.com/Docs/fcadv_trafficking_handbook_2nd_edition_10.pdf.

The handbook, which is designed for domestic and sexual violence advocates, provides definitions, explains relevant laws, and discusses benefits and services available to victims of trafficking, as well as additional benefits for victims who achieve certification. It also gives tips on working with law enforcement, identifying victims, interviewing them to determine if they qualify and providing help. Finally, the handbook provides a list of resources, particularly those available in Florida.

Leaving the Past Behind? When Victims of Trafficking Decline Assistance, Anette Brunovskis and Rebecca Surtees, Fafo (2007), <http://www.fafo.no/pub/rapp/20040/20040.pdf>.

This report analyzes why many trafficked persons decline protection and assistance after exiting a trafficking situation. It outlines a number of the personal circumstances, social contexts, and problems of service provision that lead to trafficked persons declining assistance, including: the need to migrate again, interaction with family support systems, confusing or insufficient information on victim services, services that do not meet victims’ needs, stigmatization of being labeled “trafficked,” and service provision that resembles the trafficking experience. The report also suggests that trafficked persons’ declining of services has broad implications on current trafficking policy and research.

Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations, International Organization for Migration, *Psychosocial Notebook*, Vol. 4 (Feb. 2004), http://www.forcedmigration.org/psychosocial/papers/WiderPapers/iom_notebook4.pdf.

The Psychosocial Notebook is composed of a report from the organization “For a Happy Childhood” and reports on each of four one-week workshops conducted with victims of trafficking staying at the Transit Centre in Skopje, Macedonia. Each workshop took a different approach: the first took a systemic and family-oriented approach; the second used drama therapy, play therapy, and creative theatre; the third used a three-stage recovery process developed by Judith Harman; and the fourth was a project entitled “Self-portrait” that sought to recognize the negative and positive aspects of all experiences. Each report discusses the activities that were conducted during the workshop and contains a self-evaluation of the work and its results.

Stolen Smiles: A Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe, Cathy Zimmerman, Mazed Hossain, Kate Yun, Brenda Roche, Linda Morison, and Charlotte Watts, The London School of Hygiene & Tropical Medicine (2006), <http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>.

This study catalogues the wide variety of health problems suffered by trafficked women immediately after intervention and in subsequent months. Research proceeded through interviews of women and adolescent girls who were receiving support services after having been trafficked into sex work or sexually abused while working as domestic laborers. The study contains a long list of recommendations for states, donors, healthcare providers, and organizations providing other services to trafficked

women, all aimed at improving assistance to trafficking survivors in rebuilding their physical and mental health and well-being.

Transitional Housing Toolkit for Anti-Trafficking Service Providers, Anjali Alimchandani and Solome Lemma, John F. Kennedy School of Government, Harvard University (Apr. 2006), <http://prevenhumantrafficking.org/reading/2007/6/17/transitional-housing-toolkit.html>.

Project Hope International (“PHI”) initiated the development of this toolkit, which is intended to help anti-trafficking groups meet the need for transitional housing units for trafficked persons, particularly in the Washington, D.C. area. The toolkit explains the importance of shelter for the effective provision of services and facilitation of progress toward self-sufficiency of trafficked persons. It identifies key considerations for organizations choosing among different housing options, including both client-centered concerns and managerial concerns. It also offers a step-by-step process for developing housing solutions, as well as a discussion of lessons learned from PHI’s experiences.

Turning Pain into Power: Trafficking Survivors’ Perspectives on Early Intervention Strategies, Family Violence Prevention Fund (Oct. 2005), <http://www.endabuse.org/programs/immigrant/files/PaintoPower.pdf>.

The researchers who produced this report interviewed twenty-one survivors of human trafficking, with the primary aim of determining whether and how healthcare providers might be able to intervene on behalf of trafficked individuals. They found that 28% of the interviewees had come into contact with the healthcare system at some point during their captivity, but each time, the opportunity to intervene was missed. The report includes recommendations on how to improve the capacity of

healthcare providers to identify and assist trafficking victims, as well as many other ways to combat the problem of trafficking, including some suggestions from survivors on how to reach trafficked persons and help them.

Law Enforcement Agencies

***The Exploitation of Trafficked Women*, Graeme R. Newman, U.S. Department of Justice, Community Oriented Policing Services, Problem-Oriented Guides for Police, Problem Specific Guides Series, No. 38 (Feb. 2006),**
<http://www.cops.usdoj.gov/files/ric/Publications/e02061007.pdf>.

This guide was created to improve police responses, focusing on helping women trafficked internationally. The report stresses the need to couple general information about the problem of trafficking in women with an understanding of specific local issues. According to the report, this can be accomplished by asking the right questions about police and community awareness of the issue, marketing, locations, incidents of violence against trafficked women, and the effectiveness of current responses. The report explains that prostitution and trafficking are closely linked, so the responses to each should be as well. It discusses locating, identifying, and protecting trafficked women and points out ways to prevent exploitation of trafficked women by enforcing laws, reducing demand, and deterring the sex trade locally.

***Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned*, Heather J. Clawson, Nicole Dutch and Megan Cummings, Caliber, an ICF International Company (Oct. 2006),**
<http://www.ncjrs.gov/pdffiles1/nij/grants/216547.pdf>.

This federally-funded study assesses the understanding of human trafficking by state and local law enforcement agencies currently addressing the problem, describes the actions they are taking, and makes recommendations for improvement of law enforcement efforts to address human trafficking. The investigators conducted telephone surveys of law enforcement agents, interviews of key federal stakeholders, case reviews, and discussion forums. They found that most agents working on the issue adequately understand the crime, know what to look for when investigating a case, and have a sense of both the needs of victims and the challenges faced by law enforcement. Nonetheless, the report identifies a need for greater understanding of the issue, particularly of the respective roles of local, state, and federal agencies, as well as increased collaboration among the many responders to the problem.

***Understanding and Improving Law Enforcement Responses to Human Trafficking*, Amy Farrell, Jack McDevitt, and Stephanie Fahy, The Institute on Race and Justice at Northeastern University (June 2008),**
http://www.humantrafficking.neu.edu/news_reports/reports/documents/Understanding%20and%20Responding_Full%20Report.pdf.

This report analyzes law enforcement perceptions of, preparation for, and responses to human trafficking crimes. The researchers sent surveys to a random sample of law enforcement agencies across the country. Then, they supplemented that

sample by adding all agencies serving populations over 75,000 and all agencies belonging to federally funded anti-trafficking task forces. Agencies serving smaller populations and not involved in task forces perceived trafficking as almost nonexistent in their communities, and as a result they were largely unprepared to identify and investigate it. Agencies involved in task forces were far more likely to find and prosecute trafficking cases and provide needed services to victims. The report's recommendations include improved training, provision of model protocols to agencies, and continued use of task forces.

The U.S. Response to Human Trafficking: An Unbalanced Approach, Women's Commission for Refugee Women and Children (May 2007), http://www.womenscommission.org/pdf/us_trfk.pdf.

The report expresses concern that U.S. anti-trafficking efforts are unbalanced, overemphasizing the law enforcement aspect of this issue. Instead, the Women's Commission report advocates for the U.S. to adopt a rights-based approach to combating human trafficking, with a focus on victim protection. According to the report, a rights-based approach would not only assist victims, but would also help accomplish the goal of the law enforcement approach: prosecuting traffickers. The report's recommendations include better data collection, addressing all forms of trafficking, raising public awareness, increasing funding, and reforming continued presence, certification, and T visa requirements and procedures.

Good Practices: Victim Services

Good Practices on (Re)integration of Victims of Trafficking in Human Beings in Six European Countries, Cristina Talens and Cecile Landman, Bonded Labour in the Netherlands,

Novib/Humanitas, Change — Anti Trafficking Program, OXFAM Great Britain (Nov. 2003), [http://blinn.nl/docs/Good%20practices%20on%20\(re\)integration%20of%20victims%20of%20trafficking%20in%20human%20beings%20in%20six%20European%20countries.pdf](http://blinn.nl/docs/Good%20practices%20on%20(re)integration%20of%20victims%20of%20trafficking%20in%20human%20beings%20in%20six%20European%20countries.pdf)

This report analyzes programs and services designed to promote the integration of trafficking victims into the destination countries where they were trafficked, as well as activities intended to facilitate reintegration into victims' countries of origin. Through surveys and interviews of service providers, the researchers identified good practices for integration in the areas of health, housing, education, vocational training and employment. Due to funding constraints, the researchers could not perform field research in the countries of origin in order to thoroughly evaluate reintegration practices, but they were able to gather and present information on existing efforts and difficulties in repatriation, reception, and rebuilding of trafficking victims' relationships with their original communities.

Identification and Legal Advocacy for Trafficking Victims, NYC Anti-Trafficking Network Legal Subcommittee (Mar. 2005), <http://www.urbanjustice.org/pdf/publications/IDLegalAdvocacy.pdf>.

This guide was created to assist legal advocates in identifying clients who are victims of trafficking and helping them obtain T visas. The report covers initial considerations such as how the client entered the United States, immigration status, and criminal behavior. It also notes potential pitfalls, such as eligibility, liability and confidentiality issues, and suggests ways to avoid them. The guide then discusses how to ensure that the client remains in the country and receives necessary services by obtaining either continued presence and certification or a T visa. It lists the requirements that must be met to obtain a T visa, and explains how to

determine if a client qualifies. It includes information on representing children and family members, as well as what to expect once a T visa is issued. Finally, the guide provides a step-by-step list of all the requirements and forms needed to complete the application package.

***WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*, World Health Organization (2003),**
<http://www.who.int/gender/documents/en/final%20recommendations%2023%20oct.pdf>.

These ten recommendations were designed for use by researchers, media, and service providers with little experience interviewing trafficked persons. Although they are not tailored specifically for minors, many of the tips apply to them as well. The ten recommendations are: do no harm; know your subject and assess the risks; prepare referral information and do not make promises you cannot keep; adequately select and prepare interpreters and co-workers; ensure anonymity and confidentiality; get informed consent; listen to and respect each woman's assessment of her situation and risks to her safety; do not re-traumatize a woman; be prepared for emergency intervention; and, finally, put information collected to good use. Each tip is discussed in detail and accompanied by examples of its application.

Good Practices: Law Enforcement Agencies

***Compendium on Best Practices: On Anti Human Trafficking by Law Enforcement Agencies*, United Nations Office on Drugs and Crime Regional Office for South Asia (2007),**
http://www.ungift.org/docs/ungift/pdf/knowledge/compendium_practices.pdf.

Initiated by the United Nations and the Government of India and compiled by a team at the Institute of

Social Sciences in New Delhi, this report documents actions taken by state police officials, often with the assistance of organizations, in three areas. First, the report details case studies in which state police, in conjunction with other stakeholders, successfully investigated and prosecuted human trafficking perpetrators. Second, the report describes best practices by Indian state police in the protection of victims and survivors of trafficking, focusing on successful rescue operations and cooperation between governmental and nongovernmental entities. Finally, the report examines education initiatives, help lines, and other preventive measures.

***Good Practices in Response to Trafficking in Human Beings: Cooperation between Civil Society and Law Enforcement in Europe*, Claudia Aradau, Danish Red Cross (2005),**
http://www1.drk.dk/graphics/English/Trafficking/reference_rc/1088_drk_human_manual_web%20%282%29.pdf.

This manual examines the “institutional arrangements” that structure anti-trafficking efforts, with the goal of providing a good practices manual that integrates non-governmental organizations’ responses to human trafficking with those of law enforcement and other state efforts. As noted in the manual, trafficking in human beings has, on the one hand, been “invisible;” on the other hand, it is important to note “how it has become visible and to whom it has become so.” This manual therefore focuses on current and good practices of identification and referral of trafficked persons, victim assistance and protection, and law enforcement training.

APPENDIX I: INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS OF THE UNITED STATES

Various conventions and customary international law impose obligations on the United States to protect trafficked persons, to prevent trafficking and prosecute traffickers. Whether acting on its own or by and through state and local governments,¹²⁷⁰ the United States must guarantee freedom from slavery and institutions and practices similar to slavery; the individual human rights to life, security of person and freedom from torture; freedom from discrimination; equal protection of the laws; and the right to an effective remedy.

Certain obligations flow generally from general human rights conventions. Specifically, the United States has ratified the International Covenant on Civil and Political Rights (“ICCPR”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), and the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), and is thus bound by the provisions of those treaties.¹²⁷¹

¹²⁷⁰ While the federalist structure of the United States may have an effect on the way in which the federal government works to comply with its obligations under international law, domestic legal systems cannot be used as an excuse for non-compliance with international obligations. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 321 cmt. b (1987) (“A state is responsible for carrying out the obligations of an international agreement. A federal state may leave implementation to its constituent units but the state remains responsible for failures of compliance.”) [hereinafter RESTATEMENT]; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 50, 999 U.N.T.S. 171, TIAS (the Covenant’s provisions “shall extend to all parts of federal states without any limitations or exceptions”) [hereinafter ICCPR]; *Nature of the General Legal Obligation on States Parties to the Covenant*, Human Rights Committee, General Comment 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (government “may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility”); Vienna Convention on the Law of Treaties, May 23, 1969, art. 27, 1155 U.N.T.S. 331, reprinted in 25 I.L.M. 543 (a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”) [hereinafter Vienna Convention].

¹²⁷¹ RESTATEMENT, *supra* note 1270 (“Every international agreement in force is binding upon the parties to it and must be performed by them in good faith.”).

An Executive Order issued in 1998 reiterates the commitment of the Government of the United States to “the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.”¹²⁷²

The United States has also signed, although not ratified, the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”).¹²⁷³ Pursuant to Article 18 of the Vienna Convention on the Law of Treaties, the United States is therefore prohibited from taking any action that would violate CEDAW’s “object and purpose.”¹²⁷⁴

Other obligations stem from instruments that specifically delineate the United States’ obligation to eradicate and prevent slavery and slavery-like practices and, more recently, human trafficking with the *United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (“U.N. Trafficking Protocol”).¹²⁷⁵ *The Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* also mandates that the United States take action against the

¹²⁷² Exec. Order No. 13,107, 61 Fed. Reg. 68,991 (1998).

¹²⁷³ Convention on the Elimination of All Forms of Discrimination against Women, Dec. 18, 1979, Supp. No. 46 at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 14 [hereinafter CEDAW]; see also Division for the Advancement of Women, Department of Economic and Social Affairs, <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Aug. 26, 2008).

¹²⁷⁴ Vienna Convention, *supra* note 1270, art. 18.

¹²⁷⁵ Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, Mar. 9, 1927, 60 L.N.T.S. 253 (ratified by United States Mar. 21, 1929), amended by The Protocol of December 7, 1953 (ratified by United States Mar. 7, 1956) [hereinafter Slavery Convention]; The Supplemental Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 18 U.S.T. 3201, 226 U.N.T.S. 3 (ratified by United States Dec. 6, 1967) [hereinafter Supplemental Convention on Slavery]; U.N. Trafficking Protocol, *supra* note 7, Annex II (ratified by United States Nov. 3, 2005)

trafficking and sexual exploitation of children.¹²⁷⁶ Rather than introducing new categories of rights, the instruments specifically addressing human trafficking represent specific applications of existing international human rights norms in the context of this problem.¹²⁷⁷

To the extent the United States and, by extension, the State of Minnesota have not taken steps to prosecute traffickers, protect trafficked persons and prevent trafficking, they are not in compliance with international human rights standards.¹²⁷⁸

a. SEX TRAFFICKING UNDER INTERNATIONAL LAW

International law has recognized sex trafficking a human rights issue since the early twentieth century.¹²⁷⁹ Early efforts to tackle the issue arose

¹²⁷⁶ U.N. Children's Protocol, *supra* note 140; *see also* Convention Concerning the Prohibition and Immediate Actions for the Elimination of the Worst Forms of Child Labour, June 17, 1999, 38 I.L.M. 1207, Art. 3(b), available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> (ratified by United States Dec. 2, 1999) [hereinafter Convention Concerning the Worst Forms of Child Labour]; *see also* CEDAW, *supra* note 1273, Art. 6; *General Recommendation No. 19, Violence against Women*, Committee on the Elimination of Discrimination against Women, 11th Sess., U.N. Doc. CEDAW/C/1992/L.1/Add.15 (1992).

¹²⁷⁷ Anna Gekht, Shared but Differentiated Responsibility: Integration of International Obligations in Fight against Trafficking in Human Beings 15 (Dec. 17, 2007) (unpublished manuscript), available at http://works.bepress.com/anna_gekht/1/.

¹²⁷⁸ *See* U.N. Trafficking Protocol, *supra* note 7, pmbi., art. 2.
¹²⁷⁹ *See, e.g.*, International Agreement for the Suppression of the White Slave Traffic, May 18, 1904, 35 Stat. 1979, 1 L.N.T.S. 83 [hereinafter 1904 agreement]; International Convention for the Suppression of the White Slave Traffic, May 4, 1910, 30 U.N.T.S. 23, 211 Consol. T.S. 45, 1912 GR. Brit. T.S. No. 20; International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 54; International Convention for the Suppression of the Traffic in Women of Full Age, Oct. 11, 1933, 150 L.N.T.S. 431; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271; The United States has only ratified the 1904 Agreement and a 1949 United Nations protocol incorporating the 1904 Agreement into the body of United Nations' instruments. International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904, amended by the Protocol signed at Lake Success, New York, 4 May 1949, May 4, 1949, 2 U.S.T. 1997, 92 U.N.T.S. 19; *see* U.S. STATE DEP'T, TREATIES IN FORCE: SECTION TWO MULTILATERAL TREATIES AND AGREEMENTS 185 (2007), <http://www.state.gov/documents/organization/89668.pdf> (list of

from concerns about the "white slave traffic," and excluded non-white women, all men, and children, as well as other forms of exploitation besides prostitution. International law also contains numerous prohibitions on conduct that arises in sex trafficking situations, such as torture¹²⁸⁰ or debt bondage.¹²⁸¹ Despite these existing mechanisms, the U.N. Trafficking Protocol represents the first universal instrument to address "all aspects of trafficking in persons."¹²⁸²

The U.N. Trafficking Protocol requires states to criminalize trafficking in persons, which it defines as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹²⁸³

Exploitation includes "at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs."¹²⁸⁴ Individual consent is irrelevant when those conditions are present,¹²⁸⁵ and the "recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation" is considered trafficking where a person is under eighteen years old.¹²⁸⁶

international agreements on human trafficking to which United States is party).

¹²⁸⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 113 [hereinafter CAT].

¹²⁸¹ Supplemental Convention on Slavery, *supra* note 1275, art. 3(a).

¹²⁸² U.N. Trafficking Protocol, *supra* note 7, pmbi.

¹²⁸³ *Id.* art. 3(a).

¹²⁸⁴ *Id.*

¹²⁸⁵ *Id.* art. 3(b).

¹²⁸⁶ *Id.* art. 3(c), (d).

The U.N. Trafficking Protocol represents a step forward towards international recognition of the gravity of all forms of trafficking. It criminalizes any of the myriad acts from recruitment to obtaining trafficking persons. It is limited in scope. The protocol requires the prevention, investigation and prosecution only of transnational offenses involving organized criminal groups, even though the definition of trafficking in Article 1 does not list them as elements of the crime of trafficking.¹²⁸⁷ As such, trafficking occurring within a country's borders or involving one or two traffickers does not come within the Trafficking Protocol's scope.

The U.N. Children's Protocol does not specifically prohibit the sex trafficking of children. While it expresses concern about the "increasing international traffic of children,"¹²⁸⁸ the Children's Protocol prohibits the sale of children for any consideration, the prostitution of children and child pornography.¹²⁸⁹ In contrast to the Trafficking Protocol, the Children's Protocol also applies to all offenses whether they "are committed domestically or transnationally or on an individual or organized

¹²⁸⁷ *Id.* arts. 1, 4. An "organized criminal group" is defined as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit." United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, annex I, U.N. GAOR, 55th Sess., Supp. No. 49, at 44, U.N. Doc. A/45/49 (Vol. I) (2001) (art. 2(a)), *not in force, available at* <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCbook-e.pdf>.

¹²⁸⁸ U.N. Children's Protocol, *supra* note 140, pmb1.

¹²⁸⁹ U.N. Children's Protocol defines these prohibitions in the following terms:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

U.N. Children's Protocol, *supra* note 140, art. 2.

basis."¹²⁹⁰ As such, the Children's Protocol offers broader protection for sexually exploited children.

b. OBLIGATION TO INVESTIGATE AND PROSECUTE TRAFFICKERS

The responsibility to investigate human rights violators and hold them accountable is an essential feature of human rights law that also invokes a law enforcement strategy typically favored by states.¹²⁹¹ This obligation extends beyond violations committed by government agents to the crimes of private actors.¹²⁹² Recognizing the complex, transnational nature of international human trafficking, the Trafficking Protocol specifically requires the passage of legislation criminalizing human trafficking, training of law enforcement agents, strengthening of border controls and increased cooperation among law enforcement.¹²⁹³

The Children's Protocol obliges states parties to take more stringent measures regarding children trafficked for the purposes of sexual exploitation. It requires the passage of legislation making the acts of selling, prostituting or making pornography of children extraditable offenses.¹²⁹⁴ It also requires states parties in certain circumstances to establish

¹²⁹⁰ U.N. Children's Protocol, *supra* note 140, art. 3(1).

¹²⁹¹ Jonathan Todres, *The Importance of Realizing 'Other Rights' to Prevent Sex Trafficking*, 12 CARDOZO J. OF L. AND GENDER 885, 886 (Jul 2006), *available at* <http://ssm.com/abstract=912250>; Gekht, *supra* note 1277, at 24. The U.N. Trafficking Protocol was also an optional protocol to the United Nations Convention against Transnational Organized Crime, which also suggests a law enforcement approach to the problem of human trafficking.

¹²⁹² See CAT, *supra* note 1280, arts. 2, 4 (requiring governments to "take effective legislative, administrative, judicial or other measures" to prevent acts of torture within its jurisdiction and criminalize the act of torture); *Nature of the General Legal Obligation on States Parties*, *supra* note 1270 (stating that in some instances a state may violate its obligations under the ICCPR by "permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities"); see also CEDAW, *supra* note 1273, Gen. Rec. 19 (requiring states parties to "take measures to suppress all forms of traffic in women and exploitation of the prostitution of women").

¹²⁹³ U.N. Trafficking Protocol, *supra* note 7, arts. 5, 10, 11.

¹²⁹⁴ U.N. Children's Protocol, *supra* note 140, art. 4(3).

penalties for legal persons.¹²⁹⁵ The need for corporate liability stems from the role of travel agencies and businesses that serve as fronts for sex tourism and other exploitative practices.

C. OBLIGATION TO PROTECT TRAFFICKED PERSONS

The duty to protect trafficked individuals arises specifically from the Trafficking and Children's Protocols, as well as from fundamental human rights conventions, rules of *opinion juris* and customary international law.¹²⁹⁶ The failure to protect trafficked individuals violates numerous individual human rights: the right to life, liberty and security of person; the right to be free from slavery and slavery-like practices; the right to be free from torture; the right to equal protection under the law; and the right to an effective remedy.

Sex trafficking violates women's right to life, liberty and security of person. The fundamental individual right to life, liberty and security of person is reflected in Article 3 of the UDHR¹²⁹⁷ and Article 6 of the ICCPR.¹²⁹⁸ These individual rights are also protected under U.S. domestic law.¹²⁹⁹

Sex trafficking is often referred to as "modern-day slavery."¹³⁰⁰ The United States has ratified various international conventions that create obligations to prohibit slavery and slavery-like practices.¹³⁰¹ While

sex trafficking situations may not involve the permanent ownership historically associated with slavery, they can involve exploitation and deprivations of liberty that render the situation tantamount to slavery.¹³⁰² Slavery-like practices that can manifest in sex trafficking situations, including servitude, forced labor,¹³⁰³ debt bondage,¹³⁰⁴ and forced marriages¹³⁰⁵ are also prohibited.

Some acts of sex trafficking involve conduct that can be understood as a form of torture, inhuman or degrading treatment,¹³⁰⁶ which is prohibited under the CAT,¹³⁰⁷ Article 5 of the UDHR and Article 7 of the ICCPR, and has attained the status of a *jus cogens* norm.¹³⁰⁸

¹³⁰² Gekht, *supra* note 1277, at 8.

¹³⁰³ ICCPR, *supra* note 1270, art. 8; UDHR, *supra* note 449, art. 4.

¹³⁰⁴ Debt bondage is defined as "the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined." Supplemental Convention on Slavery, *supra* note 1275, art. 1(a).

¹³⁰⁵ Specifically, the Supplemental Convention on Slavery prohibits marriages where "[a] woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group." See *supra* note 1275, art. 1(c)(i). It also bans the practices of transferring a woman by her husband, his family or clan, as well as the inheritance of a woman by another upon the death of her husband. *Id.*, art. 1(c)(ii-iii).

¹³⁰⁶ See, e.g., Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 398 (2003) (discussing works that have "highlighted the similarities between frequent forms of extreme domestic violence and the acts contemplated by the drafters of the Convention against Torture and other international instruments" and offering a framework for reconceptualizing extreme forms of domestic violence as private torture under the CAT); RHONDA COPELON, INTIMATE TERROR: UNDERSTANDING DOMESTIC VIOLENCE AS TORTURE, IN HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 116, 117 (Rebecca J. Cook, ed. 1994) (comparing the physical and psychological elements of domestic violence with the definition of torture and concluding that "the process, purposes, and consequences [of the two] are startlingly similar").

¹³⁰⁷ CAT, *supra* note 1280. These rights are also protected under both federal and state law, including the Eighth Amendment of the U.S. Constitution.

¹³⁰⁸ See, e.g., COPELON, *supra* note 1306, at 116, 117. A *jus cogens* or preemptory norm of international law "is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention, *supra* note 1270, art. 53.

¹²⁹⁵ *Id.* art. 3(4).

¹²⁹⁶ Gekht, *supra* note 1277, at 25.

¹²⁹⁷ UDHR, *supra* note 449.

¹²⁹⁸ ICCPR, *supra* note 1270.

¹²⁹⁹ These rights are protected under federal and state law through the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 7 of the Minnesota Constitution.
¹³⁰⁰ See, e.g., U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, Fact Sheet, Rescuing Victims of Modern-Day Slavery, Sept. 22, 2005, <http://www.state.gov/g/tip/rls/fs/2005/55233.htm>; Heron Marquez Estrada, *The Fight Against Modern Day Slavery: Twin Cities Labeled as One of Worst Areas in Nation for Human Trafficking*, MINNEAPOLIS STAR TRIBUNE, Mar. 4, 2006.

¹³⁰¹ Slavery Convention, *supra* note 1275; Supplemental Convention on Slavery, *supra* note 1275; ICCPR, *supra* note 1270, art. 8; UDHR, *supra* note 449, art. 4.

The failure to protect women from sex trafficking also represents a failure to ensure women's right to equal protection under the law. This is a well-enshrined principle of international law.¹³⁰⁹ The principal of non-discrimination and equal protection is equally well-established in federal and Minnesota state law.¹³¹⁰ Trafficked persons can be denied equal protection due to discrimination based on their gender, race, ethnicity or nationality, whether U.S. citizen or foreign national. Persons trafficked for the purposes of sexual exploitation may also experience discrimination based on their history of being sexually exploited currently or in the past.¹³¹¹ These and other characteristics can manifest in institutional obstacles to trafficked women seeking to leave their situation, such as prosecuting trafficked women as prostitutes instead of treating them in accordance with their status as trafficking victims.

International law also imposes obligations to provide effective remedies to trafficked women.¹³¹² As such, the United States must establish means to provide trafficked persons with information on relevant court proceedings, the opportunity to present their

¹³⁰⁹ UDHR, *supra* note 449, art. 7; ICCPR, *supra* note 1270, art. 26; International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 12, 1969, T.I.A.S., 660 U.N.T.S 195, arts. 5, 6; CEDAW, *supra* note 1273, art. 3.

¹³¹⁰ These rights are protected under federal and state law through the Fourteenth Amendment to the U.S. Constitution, Article I, Section 2 of the Minnesota Constitution, Title VI of the Civil Rights Act of 1964, and the Minnesota Human Rights Act ("MHRA"). Specifically, the MHRA states that it is the "public policy of the state to secure for persons in the state, freedom from discrimination" in employment, housing, public accommodation, public services and education, that such discrimination "threatens the rights and privileges of the inhabitants of this state," and that the opportunity to obtain government services, education, public accommodations, employment and housing without discrimination is "recognized and declared to be a civil right." MINN. STAT. § 363A.02 (2007).

¹³¹¹ In recognition of this principle, the U.N. Trafficking Protocol provides that its measures "shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons." U.N. Trafficking Protocol, *supra* note 7, art. 14(2); *see also* CEDAW, *supra* note 1273, gen. rec. 19 (requiring "equal protection of laws against rape and other forms of violence" for women in prostitution).

¹³¹² UDHR, *supra* note 449. These rights are also protected under both federal and state law, including the Fifth Amendment of the U.S. Constitution, article I, section 7 of the Minnesota Constitution (due process), and article I, section 8 of the Minnesota Constitution (entitlement to a remedy).

concerns during criminal proceedings against offenders and representation.¹³¹³ This includes the possibility to obtain some form of compensation for the harm they have suffered.¹³¹⁴ In addition, the U.N. Trafficking Protocol requires that trafficked women receive appropriate housing, counseling, medical assistance, psychological assistance, and educational and employment opportunities.¹³¹⁵ These services are to be provided taking into account the special needs of certain trafficked persons based on their age, gender or other special needs.¹³¹⁶ The U.N. Trafficking Protocol also requires the United States to consider making provisions for trafficked foreign nationals to remain temporarily or permanently in the United States.¹³¹⁷

d. OBLIGATION TO PREVENT TRAFFICKING

The United States also has a positive obligation to undertake measures to prevent trafficking in persons.¹³¹⁸ These measures include research, public awareness campaigns and social and economic initiatives done in cooperation with non-profit organizations and civil society.¹³¹⁹ Preventing trafficking also necessitates a broader understanding of prevention that addresses the "core issues underlying sex trafficking": "(1) the right to be free from gender-based violence and discrimination; (2) the right to be free from other forms of discrimination; (3) the right to birth registration; (4) health rights; and (5) the right to education."¹³²⁰

¹³¹³ U.N. Trafficking Protocol, *supra* note 7, art. 6(2)(a)-(b).

¹³¹⁴ *Id.* art. 6(6).

¹³¹⁵ *Id.* art. 6(3).

¹³¹⁶ *Id.* art. 6(4).

¹³¹⁷ *Id.* art. 7. These provisions do not affect the rights of individuals to apply for asylum of refugee status. *Id.* art. 14(1); *see also* U.N. HIGH COMMISSIONER FOR REFUGEES, GUIDELINES ON INTERNATIONAL PROTECTION NO. 7: THE APPLICATION OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES TO VICTIMS OF TRAFFICKING AND PERSONS AT RISK OF BEING TRAFFICKED at ¶ 15, HCR/GIP/06/07 (2006), <http://www.unhcr.org/publ/PUBL/443b626b2.pdf>.

¹³¹⁸ U.N. Trafficking Protocol, *supra* note 7, art. 9.

¹³¹⁹ *Id.*

¹³²⁰ *Todres, supra* note 1291, at 888.

The United States also has an affirmative obligation to take steps to “discourage the demand that fosters all forms of exploitation of persons...that leads to sex trafficking,” although criminal sanctions are not required.¹³²¹

¹³²¹ U.N. Trafficking Protocol, *supra* note 7, art. 9(5); *see* U.N. Children’s Protocol, *supra* note 140, pmbi, art. 9 (discussing need for prevention and public awareness campaigns in part to reduce demand for sale of children, child prostitution and child pornography).