

NYSBA

Special Committee on Human Trafficking Report

Approved by the New York State Bar Association
House of Delegates on November 2, 2013





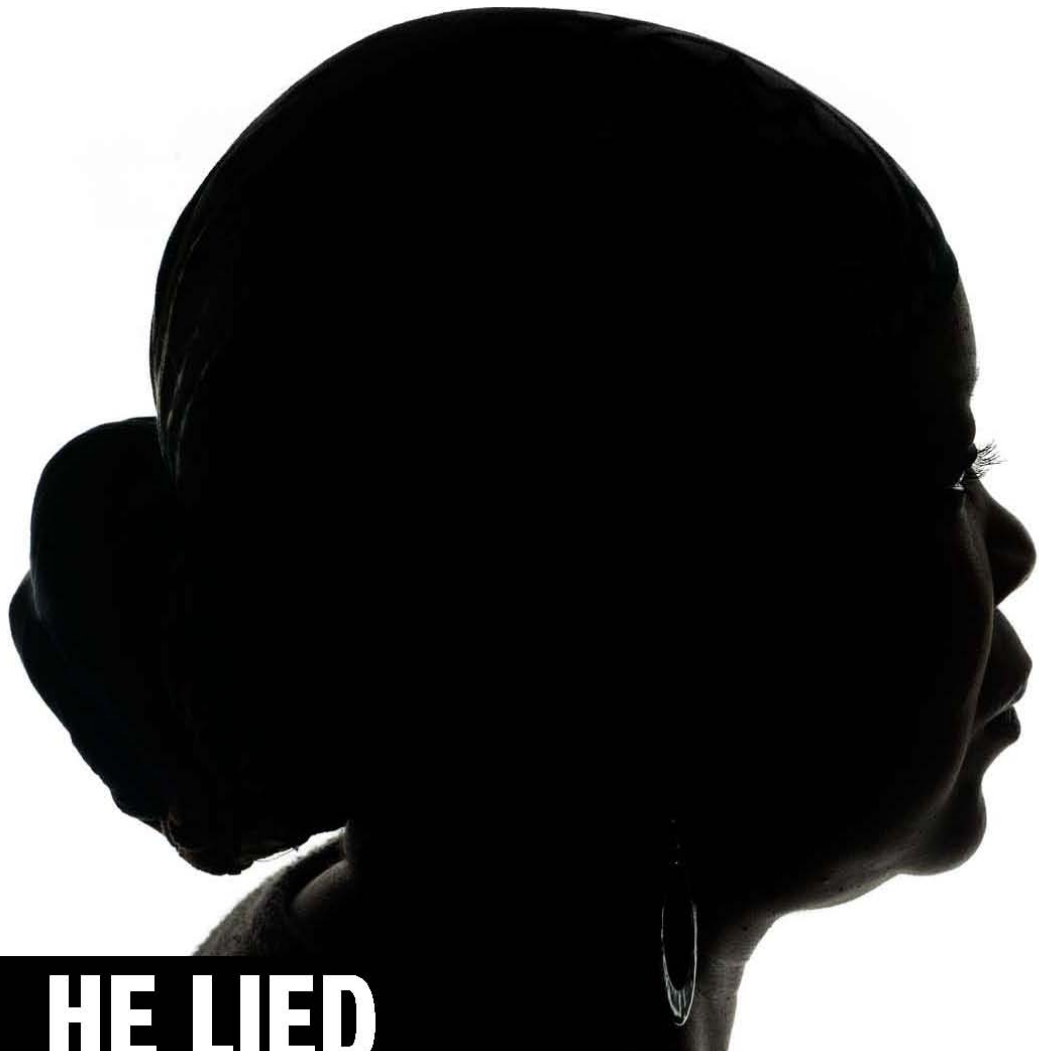
**FACT:
INNOCENT PEOPLE
ARE DECEIVED, THEN
BOUGHT AND SOLD
LIKE PROPERTY.**

LET'S CALL AN END TO HUMAN TRAFFICKING CALL 311

go to www.nyc.gov/humantrafficking if you see something, know something, or if you are a victim of human trafficking.

with generous support from  **Somaly Mam**  **GREY**

NYC
Department of Social Services




**HE LIED
ABOUT THE JOB,
AND NOW
HE WON'T
LET ME LEAVE.**

LET'S CALL AN END TO HUMAN TRAFFICKING CALL 311

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with generous support from  **Somaly Mam**  **GREY**

NYC
Department of Social Services




**HE PROMISED WORK,
THEN FORCED ME
TO GIVE UP
MY PASSPORT,
MY WAGES,
MY FREEDOM.**

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with generous support from  **Somaly Mam**  **GREY**

NYC
Michael R. Bloomberg



**HE LIED
ABOUT THE JOB,
AND THEN HE TOOK
MY PASSPORT
AND MY WAGES.**

LET'S CALL AN END TO HUMAN TRAFFICKING CALL 311

go to www.nyc.gov/humantrafficking if you see something, know something, or if you are a victim of human trafficking.

with generous support from  **Somaly Mam** 

NYC
Michael R. Bloomberg
Mayor



**HE PROMISED ME
A PLACE TO STAY,
THEN HE FORCED ME
TO WORK AS
A PROSTITUTE.**

LET'S CALL AN END TO HUMAN TRAFFICKING CALL 311

go to www.nyc.gov/humantrafficking if you see something, know something, or if you are a victim of human trafficking.

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NYC
Department of Social Services

EXECUTIVE SUMMARY

A Review of the Special Committee's Work

Work of Paramount Importance

When Seymour James assumed the presidency of the New York State Bar Association on June 1, 2012, he recognized the need to review the state of the laws on Human Trafficking in New York and to promulgate any changes necessary to ensure that the victims – men, women and children – were treated fairly and that their physical well-being, psychological needs and other forms of support were adequately met. At the same time, he asked lawyers to review the law and, where necessary and reasonable, to propose reforms in order to ensure that those who engage in the business of trafficking were convicted in greater numbers. As he noted in the Mission Statement establishing the Special Committee of the State Bar, “Human trafficking is frequently referred to as ‘modern-day slavery.’ Thousands of people – often women and children – are taken from their families and forced into hard labor or prostitution by human traffickers. They are often threatened and physically abused, and issues such as immigration status can render some victims especially vulnerable to intimidation. Many people are not aware of the magnitude of the problem in the United States, and even here in New York State.”

Over the past three years alone, publicized arrests and prosecutions in Utica, New York City, White Plains, Yonkers, Newburgh, Massena, Rexford, Henrietta, Pound Ridge, Syracuse, Stony Brook, Montebello, Amherst, Lancaster and Orchard Park show that the human trafficking occurs in large and small cities, across state lines and between New York and Canada – all over the State of New York.¹ Extant national statistics support the trend in New York. Shockingly, children are thought to comprise roughly one-half of the victims of this \$32 billion “industry.”² In one hearing held before Congress this year, testimony from an official from one well-respected non-governmental organization, the Polaris Project, confirmed not only that trafficking is on the rise but also that many victims enter prostitution in their teens³ with victims having nowhere to go for safety. Thus, while some 9,000 hotline calls from victims nationwide were received in 2012, only 1,644 beds are available throughout the U.S. to provide a safe haven for them to live.⁴

¹ See Compendium of Recent News Articles on Human Trafficking, Appendix C.

² See ABA National Conference Of Commissioners on Uniform State Laws Report To The House Of Delegates (*citing* the National Human Trafficking Resource Center), *available at* www.abanow.org/.../1373488112_31_1_1_9_resolution_summary.docx. (last visited August 12, 2013).

³ While one report states that “anecdotal evidence and experience suggest 13 or 14 as the typical age of girls entering the life,” (<http://ecpatusa.org/wp-content/uploads/2010/11/Who-Is-There-to-Help-Us.3.pdf>), research also generally shows that minors make up a minority of the commercial sex trade. See e.g. Covenant House, Homelessness, *Survival Sex and Human Trafficking: As Experienced by the Youth of Covenant House New York* (May 2013), *available at* <http://www.covenanthouse.org/sites/default/files/attachments/Covenant-Housetrafficking-study.pdf>. The Special Committee's recommendations, especially those that deal with children, *supra* p. 30, take seriously the issue of minors engaged in commercial sex regardless of how prevalent trafficking of teenagers has become.

⁴ E. Meinecke, “Crime in Your Own Backyard: Shocking Human Trafficking Statistics,” *available at* www.townhall.com (last visited Aug. 8, 2013).

In 2012, global law enforcement data reported 7,705 global prosecutions for trafficking under the federal law, Trafficking Victims Protections Act (TVPA).⁵ Of those 7,705 prosecutions, 1,153 were for labor trafficking and the rest for sex trafficking. Of the 138 cases which the Department of Justice obtained convictions, 105 were predominately convictions for sex trafficking⁶ and 33 were predominately labor trafficking.⁷ The magnitude of trafficking cases is stunning: some 8 years ago, the United States Attorney General reported estimates of somewhere between 14,500 to 17,500 people trafficked into the United States each year.⁸ With the financial crisis, the trend towards a shrinking global demand for labor and growing supply of workers willing to take greater risks for economic opportunities or freedom, has resulted in increased prevalence of cases of forced labor of migrant workers and prostitution.⁹ Given the “underground” nature of the

⁵ United States Department of State, *Trafficking in Persons Report* 2013, at 61 (June 2013) (“2013 TIP Report”), available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> (last visited Aug. 16, 2013), see Appendix F, Compilation of Relevant Secondary Sources. Another report issued on June 1, 2012, by the International Labour Organization (ILO) released a new global estimate of forced labor. In 2005 the ILO estimated a minimum of 12.3 million persons were forced into labor at any point in time from 1995-2004. The current report estimates that from the period of 2002-2011 there were 20.9 million victims in forced labor at any time. *ILO Global Estimate of Forced Labour, Results and methodology*, at 11 (2012), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf. (last visited Feb. 19, 2013).

⁶ 2013 TIP Report at 383, The Uniform Act on the Prevention of and Remedies for Human Trafficking (the “Uniform Act”) was recently approved by the Uniform Law Commission (ULC) at its 122nd Annual Meeting in Boston. See Appendix D, Compilation of Relevant Statutes. Among other things, the Uniform Act provides clear and comprehensive definitions of the two primary forms of human trafficking: sexual servitude and forced labor. Under the Uniform Act, Section 5, “sexual servitude” is defined as follows:

A person commits sexual servitude if the person knowingly maintains or makes available a minor for the purpose of engaging the minor in commercial sexual services; or uses coercion, deception, or fraud to compel an adult to engage in commercial sexual services.

Id. at 5(a). Currently under both the TVPA and New York’s statute a person commits sex trafficking when he or she intentionally advances or profits from prostitution by: (1) providing the victim with certain drugs; (2) making material false statements; (3) withholding or destroying government identification documents; (4) requiring repayment of a debt; (5) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in prostitution by making that person fearful of one of eight actions or consequences against him or her. See N.Y. Penal Law § 230.34. See also TVPA, *supra*, p. 14, - “sex trafficking” is defined as “the recruitment, harboring, transportation, provision or obtaining of a person by the use of force, fraud, or coercion for the purpose of a commercial sex act” 22 U.S.C. § 7102(9) and for “severe sex trafficking” defined as sex trafficking her in a commercial sex act induced by force, fraud or coercion, or in which the person is induced to perform such act has not attained 18 years of age . . . 22 U.S.C. §7102 (8). See Appendix D.

⁷ See 2013 TIP Report at 383. The Uniform Act, Section 4 defines “Forced Labor,” as follows:

A person commits forced labor if the person knowingly uses coercion, deception, or fraud to compel an individual to provide labor or services.

Id. at 4. N.Y. Penal Law § 135.35 creates a crime of “Labor Trafficking”. A person commits this crime when he or she compels or induces another person to engage in labor, or recruits, entices, harbors, or transports such other person by means of intentionally: (1) providing the victim with certain drugs; (2) requiring servicing of a debt that is caused by a course of conduct, with intent to defraud such person; (3) withholding or destroying government identification documents; (4) using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in labor activity by making that person fearful of one of seven actions or consequences against him or her. See Appendix D.

⁸ United States Attorney General, *Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005*, at 3 (June 2006), available at <http://www.justice.gov/archive/ag/annualreports/tr2005/agreporhumantrafficking2005.pdf> (last visited Feb. 21, 2013).

⁹ United States Department of State, *Trafficking in Persons Report 2009*, at 9 (June 2009), available at <http://www.state.gov/j/tip/rls/tiprpt/2009/index.htm>. (last visited Feb. 21, 2013).

activity, numerical precision is plainly difficult to track. Many victims, especially children who run away from home or arrive here without status, are afraid to come forward for fear of being deported or prosecuted as adults, fear of their trafficker, or revelation of the horrific acts to others is too traumatic for them.

New York

Aside from arrests reported in the press in New York State, Metropolitan New York City Area service providers reported an estimated 11,268 cases of human trafficking victims in a recently published empirical survey for the decade beginning 2000 to 2010.¹⁰ In a single three month period in 2012, the Polaris Project received 204 hotline calls from trafficked persons in New York.¹¹ The New York State Division of Criminal Justice Services (DCJS) similarly confirmed that in one month, December 2012, there were ten total arrests and arraignments under one labor statute, the New York Criminal Labor Trafficking statute.¹² States with the most prevalent labor trafficking cases are New York, California, Texas and Florida, the traditional gateways for immigrants; and data for human trafficking based upon federal assistance cite New York, California, Oklahoma and Texas as the leading states with this problem.¹³

New York's Initial Legislative Response

New York human trafficking legislation is relatively new, enacted in 2007 (“NYS Anti-Trafficking Law”), and further augmented by the passage of both the 2008 New York Safe Harbour for Exploited Children Act (“Safe Harbour Act”) and the 2010 Vacating Convictions for Trafficked Persons Law (“Vacating Convictions Law”). As we describe in this Report in detail, the human trafficking statutes suffer from a lack of congruence with the federal statutes. Even so, the New York statute drew a number of significant comments from legislators forewarning some of the problems concerning the law in New York which this Report identifies. From the Senate Debate held on June 22, 2007, with respect to the bill (5902), New York Senator Liz Krueger:

Some people are confused why we needed a state law. They said we had a federal law against trafficking and therefore it was duplicative for us to have a state law. But I think it's so critical for people to understand this wasn't the kind of issue that the federal law enforcement officials were going after. This is a question of enforcement.

So we have accomplished a goal passing this bill today and knowing that it's agreed upon and that the Governor will sign it. But the challenge awaiting us is ensuring

¹⁰ Hofstra University in partnership with Lifeway Network, *Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area: Assessment and Recommendations*, at 4 (2011), available at <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf> (last visited Feb. 19, 2013) (“Hofstra Study”). See Appendix F.

¹¹ Polaris received 204 calls from New York in one 3 month period alone, between July 1, 2012 to September 30, 2012. Polaris Project, *National Human Trafficking Resource Center (NHTRC) Data Breakdown New York State Report, July 1st, 2012 to September 30th*, 201 available at https://na4.salesforce.com/sfc/p/3000000006E4Sboh90yernvmXXwUN7T_.vriJGU=. (last visited Feb. 19, 2013).

¹² New York State Division of Criminal Justice Services (Dec. 2012).

¹³ See e.g., United States Department of State, *Trafficking in Persons Report 2011*, at 372 (June 2011), available at <http://www.state.gov/j/tip/rls/tiprpt/2011/index.htm>. (last visited Feb. 21, 2013).

that this new law gets enforced. Because many of my colleagues have described some of the horrendous things that have been going throughout the state of New York – exploitation, slavery, forced prostitution, forced drug addiction, murder growing out of this activity (emphasis added).¹⁴

From Code Committee hearings concerning the bill held prior to the Senate debate, chaired by New York Senator Dale M. Volker:

I've been Chairman of Codes now since 1988, * * *

I'm a former police officer. I have to admit to you we've done a lot of work on this issue and we really didn't realize how much of a problem this was until we really got into some of the information. That's one of the reasons why we were holding this hearing today.¹⁵

As this Report shows, the Special Committee on Human Trafficking has now reviewed the treatment of human trafficking victims under current New York State criminal and civil laws, the trafficking laws of other states,¹⁶ and the prosecution of traffickers with a view toward providing greater clarity for government enforcement, needed reforms for victims under our justice system and further insight into concrete steps which the Legislature and the Courts can and should take to stem human trafficking while recognizing the profound needs of victims, whether they be women, children or men.

The Formation of the Special Committee

Bernice K. Leber, past president of the New York State Bar Association (2008-2009) and a member of Arent Fox LLP, and Sandra Rivera, Esq., a member of Manatt, Phelps & Phillips, LLP, and a highly respected governmental relations lawyer, were asked to serve as Co-Chairs of the Special Committee and some of the state's top judges, prosecutors, defense counsel, legal scholars and experts in the field of criminal justice agreed to serve as its Members. A complete roster of the Special Committee appears as Appendix A.

¹⁴ *N.Y. Senate Debate on Senate Bill S5902*, June 22, 2007, at 3266-3285 (statement of New York Senator Liz Krueger).

¹⁵ *Human Trafficking in New York State: Hearing on A.1898-a Before the Senate Subcomm. on Codes*, 2006 Leg. Sess. 6 (N.Y. 2006) (statement of Senator Dale M. Volker, Committee Chairman).

¹⁶ *See* 50 State Survey on Human Trafficking Law, Appendix B.

MISSION STATEMENT

The 2007 Human Trafficking Law established the crimes of sex trafficking and labor trafficking in New York State, and strengthened other areas of the penal law in an attempt to stem trafficking. The Special Committee on Human Trafficking will consider additional initiatives related to education, training, provision of legal services and coordination of resources for victims, as well as effective prosecution of traffickers. The committee will consider both international and domestic trafficking issues, and produce a report and recommendations to address human trafficking in New York State.

The First Meeting

The first meeting was convened on December 3, 2012 and the Special Committee quickly adopted its mission statement (see box at left). Ms. Leber and Ms. Rivera assigned Members to study three types of human trafficking: sex trafficking, labor trafficking and child trafficking. They asked the Members to carefully review the federal, state and local laws and the prosecutions and social services functionalities implicated in human trafficking. The Special Committee agreed to adopt a holistic approach, aimed at targeting specific issues and problems from the moment the victim seeks aid or is arrested, through the conviction of traffickers, family law issues, as well as post-conviction questions such as vacatur including considerations as to immigrant status, which often prevents victims from overcoming the trauma they experienced.

Following further discussions and debate, the Special Committee met on January 11, January 18, 2013. At these meetings of the full Committee, proposals were considered, shaped and formulated for further study. It should be noted that during the many discussions and communications to and from individual members of the Committee that occurred since December 2012 about the recommendations made in this Report as they were refined, there were many differing views expressed about the preferred approach on such issues. In an attempt to assure the members of the House of Delegates and our Committee members that such opinions are recognized, we have referenced where such diverging opinions exist in this Report.

Problems with Human Trafficking Laws

Even with a spate of cases reported in the news, the Special Committee found there are several factors which contribute to the relatively low rate of prosecuting human traffickers and criminal enterprises in relation to the known data on the number of victims, and the concomitant lack of effective prosecutorial tools for prosecutors, including appropriate evidentiary burdens of proof in order to combat it effectively. In addition, the current method whereby children are criminally prosecuted as adults for prostitution overlooks and largely discredits their legal status as underage minors so that combined with the lack of appropriate social services and medical needs, victims (not just children) remain on the streets or even trapped in inappropriate shelters which have been also known to harbor traffickers. Listed below are some of the root causes for the failures:

- Failure to treat Sex Trafficking as a violent felony;
- Requiring proof of coercion under certain circumstances;
- Prosecuting children for prostitution;

- Barring use of Eavesdropping/Video Surveillance statute in certain circumstances to assist prosecutors in locating criminal trafficking enterprises;
- Limiting the referral process whereby victims of trafficking do not currently receive appropriate services;
- Failing to recognize child protective provisions for human trafficking in civil statutes such as the Family Court Act and Social Services Laws;
- Failing to address the needs of Family Court Judges for authorization to investigate cases involving immigrants who are victims of trafficking;
- Failing to train Family Court professionals;
- Leaving victims remediless (no civil private cause of action to provide damage awards to victims);
- Failing to provide incentives to the public for notifying law enforcement concerning suspected trafficking and further, to give whistleblower immunity for those enterprises found to be engaged in human trafficking activities.

Formation of Subcommittees

The following three subcommittees were formed on December 3, 2012: (a) Sex Trafficking; (b) Child Trafficking; (c) Labor Trafficking. Excluding editing meetings, 10 additional meetings of three Subcommittees on Sex Trafficking, Chaired by Kate Mogulescu, Esq., Child Trafficking, Chaired by Deputy Mayor of the City of New York Carol Robles-Roman and Labor Trafficking, Chaired by John Gross, Esq. took place to reach the conclusions presented in this Report.

Each subcommittee was tasked with carefully reviewing any current laws, protocols, training procedures, court practices, or rules that were linked to the cause they were assigned to review. Following that, the subcommittees were requested to make specific recommendations of changes they thought appropriate and necessary to reduce their specific cause of problems with the laws on human trafficking.

The Recommendations of the Subcommittees

The Special Committee met on August 16, 2013, and carefully reviewed and discussed each proposal submitted by the three subcommittees. At the end of each discussion, a final vote was taken of those present, and the following specific proposals were passed by a majority for the consideration of the House of Delegates at its meeting on November 2, 2013:

Labor Trafficking

- Establish a civil private right of action.
- Enact an enterprise disclosure law similar to California law requiring businesses with annual revenues exceeding \$ 100,000,000 to file with the State Department of Labor an oath that they do not engage in trafficking under penalty of perjury as well as labor laws.
- Provide monetary rewards and whistleblower immunity to employees of entities engaged in human trafficking activities and citizens who report suspected trafficking which results in the prosecution of those responsible for it.

Child Trafficking

1. Eliminate the requirement to show coercion in the charging of sex trafficking when a person who is nineteen years of age or older intentionally advances or profits from the prostitution of a person under the age of eighteen.
2. Eliminate the criminal prosecution of minor victims of sex trafficking by raising the age of criminal responsibility to age 18.
3. Amend the child protective provisions of the Family Court Act and New York Social Services Law to explicitly include child victims of human trafficking.
4. Improve training for Family Court professionals.
5. Amend mandated reporter requirements under Social Services Law to include Human Trafficking.

Sex Trafficking

1. Reclassify Sex Trafficking as a B Violent Felony Offense by amending §70.02 (1)(a) of the NY Penal Law.
2. Expand Eavesdropping/Video Surveillance Authority by including Prostitution in the Third Degree (Penal Law §230.25) as a “designated offense(s)” in Criminal Procedure Law §700.05(8) (h).
3. Create an affirmative defense for trafficking victims.
4. Amend the Vacating Convictions Law by: (a) including non-prostitution offenses; (b) eliminating the due diligence requirements; and (c) developing uniform court rules to protect the identities of trafficking survivors.
5. Expand the victim referral process to the New York State Office of Temporary and Disability Assistance (OTDA) for services to include providers of social or legal services who are well positioned to identify victims of sex trafficking.

Special Thanks from the Special Committee

The Special Committee is truly indebted to the many individuals who generously assisted it in completing its work. Specifically, the Special Committee would like to thank:

- Adrienne Hollander, of Arent Fox LLP who served as Secretary to the Special Committee, without whose help and continuing guidance this Report could not have been completed;
- Arent Fox LLP – Mohammed Farooqui, Ross Karlik, Philip Lauer;
- Manatt, Phelps & Phillips, LLP – Kinda Serafi;
- Ingerman Smith LLP – Kristi DiPaolo, Kerrin Bowers;
- The New York City Office of the Mayor– Patrick Bryant;
- Hon. Pamela K. Chen; and
- Kevin Getnick and Ron Kennedy, of the New York State Bar Association, the former of whom served as liaison to the Association and the latter of whom provided legislative history, information and guidance.

Conclusion

As stated in the Special Committee's Mission Statement, any human trafficking which continues unabated fails our society, erodes confidence in our criminal and civil justice system and destroys the lives of victims. It is equally clear that innocent people, often youngsters, have seen their lives destroyed from those who exploit them for profit. We have the ability to learn from the existing laws and correct the flaws in our current system. For these and the reasons set forth in this Report, we urge the House of Delegates to act and approve as its policies the specific proposals presented herein at its meeting on November 2, 2013.

Respectfully submitted,

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Background and General Statutory Framework

A. The TVPRA

The TVPA,¹⁷ subsequently reauthorized as the Trafficking Victims Protection Reauthorization Act (TVPRA),¹⁸ includes “sex trafficking,” or the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”¹⁹ where such 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.²⁰ The TVPRA provides that trafficking includes “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.”²¹

The TVPRA criminalizes trafficking: for forced labor or services, a fine and up to 20 years imprisonment can be imposed (18 U.S.C. § 1589); for sex trafficking of children or by force, fraud or coercion, a fine and imprisonment of not less than 15 years or for life if the child is under 14, a fine and imprisonment for not less than 10 years or for life if the child is less than 18 (18 U.S.C. §1591 (b)). The TVPRA imposes penalties not only for physical harm resulting from trafficking, but also non-physical harm such as coercion or threats made to family members.²² Penalties for trafficking also increase if certain crimes are committed. For example, a trafficker can face a life sentence if a trafficking crime results in death, attempted killing, kidnapping, attempted kidnapping, aggravated sexual abuse, or attempted sexual abuse.²³ Trafficking victims have statutory protections through the TVPRA by use of (1) social service benefits such as education, mental and physical health training, and job training, and (2) immigration benefits such as short-term T-Visas, which provide up to 4 years of non-immigrant status or visas which covers a wider range of crimes, related to domestic violence, sexual assault, prostitution or trafficking.²⁴ The TVPRA also established a private right of action for trafficked persons to the United States.²⁵

¹⁷ Trafficking Victims Protection Act of 2000, Pub. L. No. 106–386, 114 Stat. 1464 (2000).

¹⁸ See 22 U.S.C. § 7102(9) (2013); TVPRA of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003); TVPRA of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005); TVPRA of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008); TVPRA of 2013, Pub. L. No. 113-3, 127 Stat. 54 (2013). “With each reauthorization and amendment of the TVPA . . . , Congress has strengthened and fine-tuned its provisions, as well as extended the reach of its criminal statutes.” Pamela Chen & Monica Ryan, *Federal Prosecution of Human Traffickers*, in, *Lawyer’s Manual on Human Trafficking: Pursuing Justice for Victims* 271, 271 [Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011].

¹⁹ 22 U.S.C § 7102(9)(A)(2013).

²⁰ *Id.*

²¹ *Id.*

²² See Jennifer A.L. Sheldon-Sherman, *The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 Penn St. L. Rev. 443, 453 (2012) (citing 18 U.S.C. § 1589 (2006 & Supp. II 2008)).

²³ See Sheldon-Sherman, *The Missing “P,”* at 455 (citing 18 U.S.C. § 1591).

²⁴ See *Id.* at 455-56 (citing 22 U.S.C. § 7105(b) (1) (2006 & Supp. II 2008); and TVPA §101(a) (15) (U) (iii)).

²⁵ 18 U.S.C. §1595 (2005); Kathleen Kim, *The Trafficked Worker as Private Attorney General: A Model for Enforcing the Civil Rights of Undocumented Workers*, 2009 U. Chi. Legal F. 247 2009; Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN’S L.J. 1 (2004).

B. New York's 2007 Anti-Human Trafficking Legislation

In 2007 the New York Legislature passed an extensive anti-trafficking law designed to prevent trafficking, punish perpetrators of trafficking, and protect those at risk of victimization.²⁶ The law created the crime of sex trafficking, increased penalties for buyers of sex, made provisions for services to help trafficking victims, and provided training for law enforcement officials.²⁷ The Legislature, thus, recognized the need for specialized social services, and therefore entrusted the OTDA and DCJS (law enforcement arm of the State), in consultation with local Departments of Social Services, with coordinating the provision of such services.²⁸

Indeed, New York's anti-trafficking statutory scheme reinforces many of the concerns demonstrated in federal law, but diverges in several key respects, explored below in the subcommittee's recommendations. The need for stronger state laws is plain: Federal authorities often use their resources to target large scale trafficking operations, leaving cases involving only one or two victims completely unaddressed. State laws can and should fill this gap and ensure that all trafficking victims are given the same attention and relief.²⁹ Additionally, local law enforcement agencies are often more likely than the federal authorities to encounter trafficking situations, and having robust state legislation better ensures that those who traffic in and patronize victims will be prosecuted and that victims will be assisted rather than arrested.³⁰

C. 2008 Safe Harbour Act

New York attempted to address the specific issue of the commercial sexual exploitation of minors with the Safe Harbour Act in 2008.³¹ The Act, which amended several sections of New York law, including Family Court Act Articles 3 and 7, and Social Services Law, was enacted to help combat the sex trafficking of minors in New York. As stated above, Federal and international law as well as the Uniform Law Commission, recognize that sexually exploited youth are the victims of

²⁶ Human Trafficking—Patronizing a Prostitute in the Fourth Degree, 2007 Sess. Law News of N.Y. Ch. 74 (S. 5902).

²⁷ *Id.* For a description of provisions of the law, see N.Y. State Interagency Task Force on Human Trafficking, A Report by the Interagency Task Force: Implementation of the 2007 Law 7-15 (2008), available at http://criminaljustice.state.ny.us/pio/humantrafficking/human_trafficking_rpt_aug08.pdf (see Appendix F); see also Jill Laurie Goodman, *The Idea of Violence Against Women: Lessons from United States v. Jessica Lenahan, the Federal Civil Rights Remedy, and the New York State Anti-Trafficking Campaign*, 36 N.Y.U. Rev. L. & Soc. Change 593, 624-5 (2012).

²⁸ N.Y. Soc. Serv. Law § 483-cc.

²⁹ Kathleen Hogan, *Slavery in the 21st Century and in New York: What Has the State's Legislature Done?* 71 Alb. L. Rev. 647, 655 (2008). "Federal law enforcement has focused mostly on the largest criminal trafficking rings, rather than smaller operations like sweatshops and brothels, advocacy groups say. Moreover, although local law enforcement officials are most likely to stumble across victims of trafficking, the advocacy groups say, the absence of a state trafficking law has provided little incentive for local prosecutors to tackle such cases." N.Y. Penal Law § 230.34 (Practice Commentary) (citing *Albany Agrees on Law Against Sexual and Labor Trafficking*, N.Y. Times, May 17, 2007).

³⁰ Human Trafficking in New York State: Hearing on A.1898-a Before the A. Subcomms. on Codes, Children and Families, and Labor, 2005 Leg. (N.Y. 2005) (statement of Barbara Kryszko, Dir. NYS Chapter Coalition Against Trafficking in Women).

³¹ N.Y. SOC. SERV. LAW § 447-a (McKinney 2011).

crime, and should be treated as such.³² The Safe Harbour Act was a step towards that goal, and called for residential services, crisis intervention, and law enforcement training.

The Safe Harbour Act is applicable to juveniles who are arrested for an act of prostitution, which creates “a presumption that the respondent meets the criteria as a victim of a severe form of trafficking” and allows a petition alleging that the respondent is a person in need of supervision to be substituted for a juvenile delinquency petition, allowing a juvenile respondent to receive specialized services.³³ If a child refuses to cooperate with services, delinquency proceedings may proceed and the child may be detained.³⁴ The legislation also amended the Family Court Act’s person in need of supervision definition to include “a victim of sexual exploitation.”³⁵ In addition, local social services districts are charged with addressing the needs of sexually exploited children in their multi-year consolidated services child welfare services plans, and to establish preventive services such as safe houses and other short-term placement, crisis programs, respite services or other community based programs to the extent financially possible.³⁶

D. 2010 Vacating Convictions Law

In 2010, New York became the first state in the United States to allow survivors of trafficking to vacate criminal records imposed as a result of having been trafficked. The 2010 amendment to Criminal Procedure Law Article 440 creates a specific mechanism for survivors of trafficking to vacate prior prostitution convictions if the acts were committed as a result of having been trafficked.³⁷ This law was the first of its kind, although several other jurisdictions have now drafted and implemented similar provisions to benefit survivors of trafficking.³⁸ In enacting the amendment, the New York Legislature specifically sought to “remove a blot on the character of such victims so as to help those presumably not criminally responsible for the offense to gain useful employment and rebuild their lives.”³⁹

³² For example, under the TVPRA, sex trafficking by force, fraud or coercion is punishable by a minimum of 15 years, and sex trafficking of a minor between the ages of 14-18 is punishable by a minimum of 10 years, both with a maximum term of life imprisonment; *see also* Uniform Act.

³³ N.Y. Fam. Ct. Act § 812(1) (McKinney 2013).

³⁴ *Id.*; Protected Innocence Challenge, “New York Report Card 2012,” at 2, available at http://sharedhope.org/PICframe2/reportcards/PIC_RC_2012_NY.pdf; N.Y. Fam. Ct. Act § 311.4(3).

³⁵ N.Y. Fam. Ct. Act § 712(a) (McKinney 2013).

³⁶ N.Y. SOC. SERV. LAW § 447-b(1) (McKinney 2013).

³⁷ N.Y. Crim. Proc. Law § 440.10(1)(I) (The law now provides, in relevant part, that a motion to vacate a judgment of conviction may be granted where:

“The arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or section 230.00 (prostitution) of the penal law, and the defendant’s participation in the offense was a result of having been a victim of sex trafficking under section § 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act.”).

³⁸ *See, e.g.*, Nev. Rev. Stat. § 176.515; 725 Ill. Comp. Stat. 5/116-2.1; Md. Code Ann., Crim. Proc. §8-302; Vt. Stat. Ann. tit. 13, § 2658; Haw. Rev. Stat. § 712-1209.6; Wash. Rev. Code Ann. § 9.96.060; Okla. Stat. Ann. tit. 21, § 748.2; Andrew Keshner, *Prostitution Conviction is Vacated Under New Law*, N.Y.L.J., May 9, 2011, at 245.

³⁹ Preiser, Practice Commentary, Crim. Proc. Law § 440.10. “Due to the scarcity of affordable housing and its extremely high demand, individuals charged with crimes and their families often encounter great difficulty in securing and maintaining stable housing, especially as New York State and City human rights laws provide no protection against discrimination by landlords based on criminal record.” NYSBA Report and Recommendation of the Special Committee

Report of the Labor Subcommittee on Human Trafficking

The Labor Subcommittee on Human Trafficking has investigated New York law as it pertains to labor trafficking and makes recommendations on how the current law can be modified and new laws can be implemented, to combat this intractable problem. The Labor Subcommittee's objective is to offer recommendations that will aid in the privatization of anti-trafficking efforts. Labor trafficking, at its core, is motivated by profit. Offering avenues that would assist private anti-trafficking efforts, including suits for damages brought under a private right of action by a labor organization or advocacy groups, corporate self-disclosure of supply-chain facts and protection of corporate whistleblowers and members of the public who report suspected trafficking activities, directly targets the profit motive underlying labor trafficking and other forms of trafficking.

Summary of Labor Subcommittee Recommendations:

- *Establish a civil private right of action.*
- *Enact an enterprise disclosure law similar to California law requiring businesses with annual revenues exceeding \$100,000,000 to file with the State Department of Labor an oath that they do not engage in trafficking under penalty of perjury as well as labor laws.*
- *Provide monetary rewards and whistleblower immunity to employees of entities engaged in human trafficking activities and citizens who report suspected trafficking which results in the prosecution of those responsible for it.*

I. BACKGROUND AND STATUTORY FRAMEWORK

A. Scope of the Labor Trafficking Problem

Individuals trafficked for labor include farmworkers, domestic workers and those in the restaurant and hospitality industries. Others can be trafficked to work in large factories or “sweatshops.” For example, in a 2001 case, workers from India were trafficked to Oklahoma to work in a factory that manufactured pressurized valves. The workers were stripped of their travel

on Collateral Consequences of Criminal Proceedings, *Re-Entry and Reintegration: The Road to Public Safety* (May 2006) (citing N.Y. EXEC. LAW § 296(5) (2004); N.Y.C. ADMIN. CODE § 8-107(5)(a)). Further, “[a]lthough it is permissible to inquire into criminal convictions, an employer may not refuse to hire an applicant based on the prior conviction, absent a “direct relationship” between the offense and the employment, or unless employment would involve an “unreasonable risk” to property or safety. *Id.* at 60 (citing N.Y. CORRECT. LAW § 752). There have been several instances where this statute has been utilized since its enactment. *See, e.g., People v. S.S.*, 948 N.Y.S.2d 520 (Crim. Ct. 2012) (vacating prostitution conviction of a woman determined to be a sex trafficking victim with at least 15 prior prostitution related arrests pursuant to N.Y. Crim. Proc. Law § 440.10); *People v. G.M.*, 922 N.Y.S.2d 761, 762 (Crim. Ct. 2011) (the People consented to defendant’s entire motion, resulting in her prostitution related offenses being vacated pursuant to N.Y. Crim. Proc. Law § 440.10, as well as convictions for criminal trespass and drug possession due to defendant’s sympathetic history); *People v. Gonzalez*, 927 N.Y.S.2d 567, 569 (Crim. Ct. 2011) (vacating 86 prostitution-related convictions of woman determined to be a sex trafficking victim pursuant to N.Y. Crim. Proc. Law § 440.10, but not a conviction for Resisting Arrest).

documents upon arrival to the United States and were forced to live at the factory.⁴⁰ In another instance, women from China and Vietnam were recruited to work in American Samoa in a garment factory. Using contract fees and penalties to trap the workers into debt bondage, the workers were locked in a compound and controlled by means of violence and withholding of food.⁴¹ Forced labor, also referred to as “labor trafficking,” “encompasses the range of activities—recruiting, harboring, transporting, providing, or obtaining—involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel victims to work.”⁴² Trafficked victims are often lured by promises of work and a better life.

B. New York Laws That Have Targeted Labor Trafficking

As part of New York State’s anti-trafficking law, the New York Legislature enacted provisions to the New York Penal Law criminalizing labor trafficking.⁴³ Specifically, Penal Law Section 135.35 provides that a “person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of,” among other things, drug inducement,⁴⁴ debt bondage,⁴⁵ immigration related penalties,⁴⁶ “force” and “fear” of injury and damage to personal property.⁴⁷ Under the Penal Law, labor trafficking is a class D felony.

II. SUBCOMMITTEE RECOMMENDATIONS

A. Private Civil Right of Action In New York State

New York is one of thirty-two states that have passed significant laws to combat human trafficking.⁴⁸ However, New York’s anti-trafficking laws still fall short in achieving the necessary objectives of reducing, if not eradicating labor trafficking. Specifically, New York’s anti-trafficking laws are silent in providing civil remedies for victims of human trafficking.

Currently, twenty-nine states and the District of Columbia allow for a private right of action remedy. These states are: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oklahoma, South

⁴⁰ Shashi Irani Kara, *Decentralizing the Fight Against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations*, 13 CARDOZO J. L. & GENDER 657, 663 (2007).

⁴¹ *Id.* at 664.

⁴² See 2013 TIP Report at 31.

⁴³ N.Y. Penal Law §135.35 (West 2013), see Appendix D.

⁴⁴ *Id.* at §135.35(1).

⁴⁵ *Id.* at §135.35(2).

⁴⁶ *Id.* at §135.35(3).

⁴⁷ *Id.* at §135.35(3).

⁴⁸ Polaris Project, *2013 State Ratings on Human Trafficking Law* (August 2013), available at <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws/2013-state-ratings-on-human-trafficking-laws> (last visited Sept. 5, 2013).

Carolina, Tennessee, Texas, Vermont, Washington, West Virginia, and Wisconsin.⁴⁹ In particular, the California statute should be a guide in formulating updated laws in the State of New York.

1. Other State and Federal Laws

a. California Law

California was the first state to provide for a state level trafficking-specific civil remedy.⁵⁰ California's private right of action for trafficking victims is distinctive in that it includes many elements to increase protection of a victim's civil rights. Governor Arnold Schwarzenegger signed Assembly Bill 22, the California Trafficking Victims Protection Act into law on September 21, 2005,⁵¹ section 52.5 of the California Civil Code.⁵² Through the California trafficking private right of action, California enables the individual victim of the trafficking to bring a cause of action directly against his or her trafficker and potentially recover direct compensation from the trafficker.⁵³ Pursuant to California Civil Code section 52.5, a trafficking victim may bring a civil action for actual, compensatory and punitive damages, and injunctive relief. Among other things, section 52.5 also provides for treble damages, as well as attorney's fees, costs and expert witness fees to the prevailing plaintiff.⁵⁴ Section 52.5 provides that a "plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater"⁵⁵ as opposed to some other states which provide that treble damages may be awarded on proof of actual damages where the trafficker's acts were *willful and malicious*.⁵⁶ Accordingly, the California Civil Code section 52.5 provides for recovery of a more defined amount of damages and does not impose the requirement that the trafficker's acts be willful or malicious. In addition, attorney's fees and costs may be awarded to the prevailing plaintiff.⁵⁷

b. Federal Law

The United States also created a private right of action for those victims of human trafficking through, as noted above, *supra*, p. 14, the TVPA.⁵⁸ The TVPA allows those victims to recover actual and punitive damages and reasonable attorneys' fees.

⁴⁹ Polaris Project, *Human Trafficking Legislative Issue Brief: Access to Civil Damages* (Aug. 2013), available at http://www.polarisproject.org/storage/documents/2013-Analysis-Category-9-Access-to-Civil_Damages.pdf (last visited Sept. 9, 2013).

⁵⁰ See Kathleen Kim & Daniel Werner, *CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING*, p. 38 (Immigrant Justice Project 2008).

⁵¹ Governor of California Signs Human Trafficking Bill Into Law, <http://www.humantrafficking.org/updates/291> (last visited Feb. 18, 2013).

⁵² Kim & Werner, *supra* note 50, at 39.

⁵³ Cal. Civ. Code § 52.5 (West 2013). See Appendix D.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Al. Code § 13A-6-157 (West 2013), Ma. Code § 4D (West 2013), S.C. Code § 16-3-2060 (West 2013).

⁵⁷ Cal. Civ. Code § 52.5 (West 2013).

⁵⁸ 18 U.S.C. § 1595 (West 2013).

2. Benefits of a Civil Right of Action

Currently, New York State has a prosecution-based approach to recovery in human trafficking cases. However, a prosecution-based approach does not necessarily implicate a trafficker's primary motive -- profit -- as a private right of action would. Creating a private right of action would operate as a deterrent for traffickers while providing necessary compensation for victims.

Civil relief provides a victim with many advantages over criminal prosecution. If criminal prosecutors do not seek restitution from the traffickers, "litigation may provide the only means by which victims of trafficking may be 'made whole,' and litigation can provide forms of relief that may not be available through a restitution order."⁵⁹ Civil litigation "empowers trafficked persons individually to pursue greater individual damage awards in the form of compensatory, punitive, and/or pecuniary damages."⁶⁰ These damage awards "should compensate victims for the physical and psychological injuries they have suffered, unlike limited restitution damages"⁶¹ which are restricted by criminal statute to include proceeds of crimes and assets acquired by the proceeds of the crime. Also, bringing a civil right of action would result in damage awards being paid directly by the traffickers which in turn would provide an effective deterrent to "would-be-traffickers and employers hiring trafficked persons" from participating in trafficking.⁶² Along these lines, on June 22, 2012, New York Mayor Michael Bloomberg signed Intro 725-A into law, which established penalties against taxi drivers who misuse Taxi and Limousine Commission (TLC) licenses "by requiring those who hold or are obtaining TLC licenses to become informed about the laws governing sex trafficking and promoting prostitution."⁶³

Furthermore, "in civil litigation, third parties may sometimes be held liable and may be potential sources of payment for [contributing to] the damage awards, which can be particularly useful when the trafficker's assets are difficult to locate."⁶⁴ Lastly, bringing a civil action provides the victim of human trafficking with an opportunity to confront the trafficker.⁶⁵ "This process can be important in the healing and empowerment of the victim."⁶⁶ As such, civil litigation also holds the traffickers directly accountable to their victims as opposed to being accountable for crimes to the state in a criminal prosecution.⁶⁷ Moreover, a private right of action gives the victim the power to sue regardless of whether the trafficker has been found guilty in criminal proceedings, or even whether the state chooses to move forward with criminally prosecuting the trafficker at all.⁶⁸

⁵⁹ Kim & Werner, *supra* note 50.

⁶⁰ Kim & Hreshchyshyn, *supra* note 25, at 16.

⁶¹ *Id.*, The National Crime Victims Bar Association, *Civil Justice for Victims of Crime* 3 (2001).

⁶² Kim & Werner, *supra* note 50, at 1.

⁶³ N.Y. City Council Law, Int. 725-A (Enacted) (June 22, 2012). Appendix D.

⁶⁴ Kim & Hreshchyshyn, *supra* note, 25 at 16-17.

⁶⁵ Kim & Werner, *supra* note 50, at 1.

⁶⁶ *Id.*

⁶⁷ Kim & Hreshchyshyn, *supra* note 25, at 17.

⁶⁸ *Id.* at 17-18, The National Crime Victims Bar Association, *Civil Justice for Victims of Crime*, *supra* note 61, at 7.

In addition, it is more likely that civil litigation will bring positive results for trafficking victims. The burden of proof in a civil action is a preponderance-of-the-evidence standard as opposed to the higher standard in criminal proceedings of beyond-a-reasonable-doubt.⁶⁹ A lower burden of proof in civil cases provides trafficked plaintiffs with forms of relief even where the criminal case is weakened by an absence of “hard” evidence.⁷⁰ This happens in the domestic servitude context where a victim is kept in a private home and there are few, if any, corroborating witnesses.⁷¹ In a civil action, the testimony of a credible and sympathetic trafficked plaintiff can weigh greatly against the word of the trafficking defendant.⁷² Furthermore, a civil action provides for broader admissibility, thereby allowing plaintiffs to rely successfully on “evidence of psychological conditions such as post-traumatic stress disorder, rape trauma syndrome, and battered women’s syndrome, which is inadmissible in criminal forums.”

Of particular importance, a civil suit would help victims recover damages directly from traffickers while at the same time globally deter trafficking by disabling traffickers financially, thereby reducing the incentives of the industry.⁷³ Both the California human trafficking statute and the TVPRA allow victims to sue traffickers for the act of trafficking itself instead of, or in addition to, asserting a “traditional tort action.”⁷⁴ However, California, as opposed to the federal law, also allows victims of trafficking to seek treble damages.⁷⁵ Allowing for recovery of treble damages increases potential financial compensation for victims and further deters traffickers through increased economic deterrence.⁷⁶

Further, the recently adopted Uniform Act encourages states to adopt laws which include the following: (1) restitution to human trafficking victims from convicted persons;⁷⁷ (2) victim recourse to civil action against perpetrators inclusive of attorneys fees and costs;⁷⁸ and (3) forfeiture provisions for victims providing for real or personal property used or intended to be used in commission of the offense and proceeds arising from the offense.⁷⁹ The subcommittee recommends that, in accordance with the Uniform Act, the restitution provided to the trafficking victims include “the gross income to the defendant for, or the value to the defendant of, the victim’s labor or services or sexual activity.”⁸⁰

⁶⁹ Kelly E. Hyland, *Protecting Human Victims of Trafficking: An American Frame Work*, 16 BERKELEY WOMEN’S L.J. 29, 51 (2001).

⁷⁰ Kim & Hreshchyshyn, *supra* note 25, at 17.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 16

⁷⁴ Marc S. Wiesner, *Efficacy and United States Trafficking Victims Protection Act: the Need for Treble Damages in the Private Right of Action* (August 22, 2012), available at SSRN: <http://ssrn.com/abstract=2134327> or <http://dx.doi.org/10.2139/ssrn.2134327> (last visited Feb. 17, 2013).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ Uniform Act, §10. See Appendix D.

⁷⁸ *Id.* at § 18. See Appendix D.

⁷⁹ *Id.* at § 11. See Appendix D.

⁸⁰ *Id.* at § 10. See Appendix D.

3. Proposed Remedy Not Available In Current Law

a. RICO

Federal Racketeer Influenced and Corrupt Organizations Act (RICO) prohibits individuals from using or investing income received because of racketeering in interstate or foreign commerce.⁸¹ To establish a civil cause of action under RICO, it is necessary for a plaintiff to prove that an “enterprise”⁸² “has engaged in a “pattern of racketeering activity” which results in injury to the plaintiff’s business or property.⁸³ A “pattern of racketeering activity” requires that the defendant has engaged in at least two predicate acts of racketeering committed within a ten year period.⁸⁴ The TVPRA amended RICO’s definition of “racketeering activity” to include trafficking-related offenses, including but not limited to peonage, slavery, and trafficking in persons.⁸⁵ Similarly, Article 460 of the New York Penal Law criminalizes the offense known as “enterprise corruption” which includes trafficking-related offenses.⁸⁶

Arguably, a civil suit under RICO for a violation of trafficking in persons would not be as effective as the subcommittee’s proposed private right of action. Under RICO, the burden of proving predicate acts as well as a criminal enterprise is high. Under section 1962(c) of RICO, it is unlawful for “any person employed by or associated with any enterprise... to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18 U.S.C. §1962(c) (2010). The elements required to state a claim under this statute are “(1) conduct (2) of an enterprise (3) through a pattern, (4) of racketeering activity.” *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985). Moreover, RICO does not provide a direct remedy for an individual who suffers by a single trafficker. Under the state private right of action, victims would be eligible to pursue and recover actual, compensatory, punitive and even treble damages, upon showing they are victims of human trafficking. Thus, their compensation would be directly linked to their status as human trafficking victims. On the contrary, under a RICO claim, a person may only recover treble damages for “injuries to his or her business or property.”⁸⁷ As stated, victims are not entitled to compensation for personal (i.e., emotional and physical) injuries.⁸⁸

It may be difficult for victims to recover treble damages in a RICO civil suit given the fact that most trafficking victims are poor, do not have a propriety or business interest, and injuries suffered by victims are predominantly personal injuries.⁸⁹ On the other hand, those victims who

⁸¹ See 18 U.S.C. §1962(a) (2013).

⁸² 18 U.S.C. §1961(4) (2013) (defining “enterprise” as any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity).

⁸³ See 18 U.S.C. §1962(a) (2013).

⁸⁴ 18 U.S.C. §1961(5).

⁸⁵ *Id.* §1961(1).

⁸⁶ N.Y. Penal Law § 460.20 (2013).

⁸⁷ 18 U.S.C. §1964(c) (2013).

⁸⁸ Shannon Lack, Note, *Civil Rights for Trafficked Persons: Recommendations for a More Effective Federal Civil Remedy*, 26 J.L. & COM. 168 (2008).

⁸⁹ *Id.*

have been victims of an isolated incident of trafficking may be unable to show the required predicate acts of racketeering.⁹⁰

Under RICO, victims of certain trafficking offenses may allege violations and seek treble damages. A civil suit under RICO is not, however, an adequate substitute for the subcommittee's proposed private right of action. In addition, given the fact that the enterprise corruption statute is New York's version of the federal RICO Act, amending the state's RICO statute would not be entirely effective in addressing our proposed recommendations. The private right of action enables trafficking victims to enforce a civil remedy against their traffickers which leads to promising recoveries for victims of trafficking.

b. New York State and Federal Forfeiture Laws

The New York State forfeiture statute (CPLR §1311) allows for the forfeiture of proceeds of state crimes. It states in part:

“1. A civil action may be commenced **by the appropriate claiming authority**⁹¹ against a criminal defendant to recover the property which constitutes the **proceeds of a crime**, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime.”⁹²

The Federal forfeiture statute (18 USC §981) allows forfeiture of proceeds of federal and state crimes. It states in relevant part that the United States may subject to forfeiture

[a]ny property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense if the offense . . . involves trafficking in nuclear, chemical, biological, or radiological weapons

⁹⁰ *Id.*

⁹¹ “‘Claiming authority’ means the district attorney having jurisdiction over the offense or the attorney general for purpose of those crimes for which the attorney general has criminal jurisdiction in a case where the underlying criminal charge has been, is being or is about to be brought by the attorney general, or the appropriate corporation counsel or county attorney, provided that the corporation counsel or county attorney may act as a claiming authority only with the consent of the district attorney or the attorney general, as appropriate CPLR §1310.”

⁹² CPLR §1311.

technology or material, or the manufacture, importation, sale, or distribution of a controlled substance . . . or **any other conduct described in section 1956(c)(7)(B).**⁹³

Accordingly, the state and federal forfeiture statutes do not allow human trafficking victims to recover forfeiture of proceeds that their traffickers obtain from their trafficking offense. In New York, the district attorney and in some cases, the attorney general is permitted to do so and under federal law, in most cases, the Attorney General is permitted to do so. Also, under federal law, the Attorney General is authorized to retain property forfeited or to transfer such property on such terms and conditions as he may determine which *may* include as restoration to any victim of the offense giving rise to the forfeiture. As both forfeiture statutes do not allow for trafficking victims to bring forfeiture claims or even allow for absolute restoration for trafficking victims, the federal and state forfeiture statutes do not include the goals of the subcommittee's recommended civil private right of action in New York.

New York State's anti-trafficking legislation is deficient in that it does not address a private right of action for sex and human trafficking victims to pursue justice against their traffickers. Given the numerous and varied benefits that civil litigation can provide to a trafficked victim and California's comprehensive private right of action statute, we recommend that New York mirror California's private right of action statute and provide the victims an opportunity to pursue actual, compensatory, punitive and even treble damages from traffickers irrespective of whether the traffickers were criminally prosecuted.

The private right of action should additionally make predatory labor recruiters and employment agencies accountable for fraud in recruiting practices. Furthermore, as an extension of the private right of action, labor recruiters and employment agencies should be subject to criminal sanctions related to their fraudulent practices to the extent that such liability is not already provided for in New York Penal Law.

In addition, we propose that New York's private right of action statute allow certain other individuals and/or groups to bring civil suit against the defendant traffickers for a damage award on behalf of the victim. Specifically, the victim's legal guardian, family member or representative should be enabled to sue the traffickers for damages on behalf of the trafficked victim. Also, a recognized advocacy group or a certified labor organization should be enabled to petition the court to obtain approved status to sue the traffickers for damages on behalf of the trafficked victim. We further propose that the New York State Department of Labor be empowered to enforce the right of action to bring damages on behalf of trafficked victims and, as such, would be tasked with enforcing the damages award to the victims in the civil litigation. This would be similar to the New York Labor Law prevailing wage rate model.⁹⁴ The amount allocated in damages in a suit brought by any individual and/or group on behalf of the trafficked victim must go directly to the trafficked victim. The advocacy groups and labor organizations would be entitled to counsel fees only. Therefore, we are not recommending that any proceeds or damages be invaded by these groups and that they only be limited to counsel fees. Allowing advocacy groups and labor organizations to

⁹³ 18 USC §981(a)(1)(B); 18 USC §1956(c)(7)(B) includes "trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts." (see Appendix D).

⁹⁴ N.Y. Labor Law § 220-b (West 2013).

collect counsel fees will provide incentive to the aforementioned organizations to bring these actions on behalf of the trafficked victims.

Furthermore, the purpose of this statute is not to expose undocumented workers who bring forward a civil claim. Therefore, we propose that the New York private right of action statute include that a defendant in the civil action may not be permitted to assert as an affirmative defense that the plaintiff victim is an undocumented worker. Finally, the proposed New York statute should detach the law enforcement requirements to visa benefits. Law enforcement and judges under the proposed private right of action statute should be permitted to certify the victims of trafficking bringing the action who are undocumented workers.

B. Enact Enterprise Disclosure Law

Currently, there is no accountability for retailers and manufacturers doing business in New York State with regard to the use of slavery and human trafficking in their supply chains. However, New York General Business Law does prohibit the sale of goods produced with child labor.⁹⁵ Violations of this prohibition constitute a misdemeanor.⁹⁶ However, both the Federal Government⁹⁷ and California, have enacted enterprise laws to eradicate human trafficking. Further, the Uniform Act provides for business liability arising from knowing engagement in activities that constitute the offense of human trafficking and/or the failure to stop the activity that the business entity knew was occurring and failed to take effective action to stop the activity.⁹⁸

1. California Transparency in Supply Chains Act of 2010

On September 30, 2010, California enacted the “California Transparency in Supply Chains Act of 2010.”⁹⁹ The law allows for consumers to make informed decisions when they do business with companies. As part of its declaration for creation of the law, the Legislature found that “[a]bsent publicly available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from taint of slavery and trafficking by way of their purchasing decisions.”¹⁰⁰ Effective January 1, 2012, the law requires retailers and manufacturers, with annual worldwide gross receipts in excess of \$100,000,000, doing business in California to disclose “efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.”¹⁰¹ The retailers and manufacturers must post the

⁹⁵ N.Y. Gen. Bus. Law § 69-a (West 2013).

⁹⁶ N.Y. Gen. Bus. Law § 69-c (West 2013).

⁹⁷ See, e.g., 48 C.F.R. §§ 22.1703, 22.1704 (West 2013) (as part of the Federal Acquisition Regulations, the United States Government has adopted a zero tolerance policy regarding trafficking in persons in Government acquisitions); Exec. Order No. 13627, 77 Fed. Reg. 60029 (Oct. 2, 2012) (strengthens protections against trafficking in persons in federal contracts by requiring the Federal Acquisition Regulatory (FAR) Council, in consultation with other executive departments and agencies, to amend the Federal Acquisition Regulations to “strengthen the efficacy of the Government’s zero-tolerance policy on trafficking in persons by Federal contractors and subcontractors for supplies or services (including construction and commercial items)” by expressly prohibiting Federal contractors, contractor employees, subcontractor employees from engaging in certain trafficking related activities).

⁹⁸ Uniform Act, § 8. See Appendix D.

⁹⁹ Cal. Civ. Code §1714.43 (West 2013). See Appendix D.

¹⁰⁰ S.B. 657, 2009-2010 Reg. Sess. (Ca. 2010).

¹⁰¹ Cal. Civ. Code §1714.43(a)(1), (c).

information on their websites.¹⁰² Noting that small businesses “may not have the same type of ability or resources to exert economic influence on their suppliers as some of their larger counterparts,” when presented at a Senate Judiciary Committee Hearing in April of 2009, it was proposed that the bill exempt retail sellers or manufactureres having less than \$2,000,000 in annual sales.¹⁰³ At a later hearing the amount was increased to in excess of \$100,000,000. At that later hearing the Assembly Committee on Judiciary stated that the bill appropriately targeted the state’s largest retailers. The evidence presented by the author of the bill set forth that although the bill’s disclosure requirements will only impact 3.2% of California businesses, this 3.2% of the state’s retail sellers and manufacturers will “capture” an overwhelming majority of the economic activity in California.”¹⁰⁴ According to the materials provided to Committee, this small percent of retailers accounted for over 87% of the total receipts for total income and costs of goods in California.¹⁰⁵ Specifically, the Committee stated “[s]ince these businesses have such a disproportionate economic influence, this bill appears to appropriately target only the state’s largest retailers and manufacturers in an effort to effect the most significant impact on efforts to fight human trafficking and slavery.”¹⁰⁶

(c) The disclosure described in subdivision (a) shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:

- (1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.
- (2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.
- (3) Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.
- (4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.
- (5) Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

Id.

¹⁰² Cal. Civ. Code §1714.43(b).

¹⁰³ Bill Analysis, Senate Judiciary Committee, S.B. 657, 2009-2010 Reg. Sess. (Ca. Apr. 21, 2009).

¹⁰⁴ Bill Analysis, Assembly Committee on Judiciary, S.B. 657, 2009-2010 Reg. Sess. (Ca. June 23, 2010).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

The California Supply Chains Act of 2010 also modifies a portion of the California Revenue and Taxation Code requiring the Franchise Tax Board to make a list of those businesses required to disclose efforts to eradicate slavery and human trafficking based on tax returns filed for taxable years beginning on or after January 1, 2011.¹⁰⁷

As a step in the fight against human trafficking, it is our recommendation that New York State enact a law similar to the California Supply Chains Act of 2010. It is recommended the New York statute mirror the California law and incorporate some of the provisions of the proposed and current federal laws and regulations, such as remedies and disclosure requirements where a business has annual worldwide revenues exceeding \$100,000,000. It is also recommended that a provision be included which holds companies liable for instances where labor trafficking is found in the supply chain. Penalties for these violations should be similar to the penalties outlined in the Federal Acquisition Regulations and the New York State Department of Labor should be empowered to enforce the penalties. This effort will allow consumers to obtain information about the efforts of retailers and manufacturers to prevent these heinous acts and allow them to make informed decisions about the companies they choose to do business with. In addition, it will provide for accountability on the part of the retailers and manufacturers.

Subsequent to the House of Delegates' consideration of the report, the Special Committee proposes to undertake the difficult issue of considering the applicability of disclosure laws as it relates to those businesses that contract with the State. Different factors are involved in making the determination. As this issue is too big to undertake at this time, the Committee recommends continuing to study, as a separate recommendation, the feasibility of applying such laws to these relationships in the future.

C. Whistleblowing

To encourage the reporting of human trafficking within the state, it is recommended that New York provide whistleblower immunity to corporate employees and members of the public who report suspected trafficking activities. This protection would extend to whistleblowers of all incidents of human trafficking in New York state, including sex and labor trafficking. The creation of such a statute will ensure that individuals who report such incidents, are protected from retaliation from their employers. In order to further incentivize people to report suspicious activity regarding human trafficking, it is recommended that the statute provide for financial rewards and counsel fees to whistleblowers upon successful prosecution of the offender under one of the New York criminal statutes on trafficking. Funds for these financial incentives could come from either fines paid by the offender or a fund created by the State.

Currently, New York law provides protections for whistleblowers under Civil Service Law and Labor Law. Under the Civil Service Law public employers are prohibited from dismissing or taking other disciplinary or other adverse personnel action against a public employee regarding the employee's employment because the employee discloses to a governmental body information:

- (i) regarding a violation of a law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety; or (ii) which

¹⁰⁷ Cal. Rev. & T. Code § 19547.5(a)(1) (West 2013).

the employee reasonably believes to be true and reasonably believes constitutes an improper governmental action. “Improper governmental action” shall mean any action by a public employer or employee, or an agent of such employer or employee, which is undertaken in the performance of such agent’s official duties, whether or not such action is within the scope of his employment, and which is in violation of any federal, state or local law, rule or regulation.¹⁰⁸

Prior to disclosing information pursuant to the paragraph above, “an employee shall have made a good faith effort to provide the appointing authority or his or her designee the information to be disclosed and shall provide the appointing authority or designee a reasonable time to take appropriate action unless there is imminent and serious danger to public health or safety.”¹⁰⁹

New York Labor Law prohibits retaliatory action by private employers. Under the statute, private employers are prohibited from taking retaliatory action against an employee because the employee does any of the following:

- (a) discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer that is in violation of law, rule or regulation which violation creates and presents a substantial and specific danger to the public health or safety, or which constitutes health care fraud;
- (b) provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any such violation of a law, rule or regulation by such employer; or
- (c) objects to, or refuses to participate in any such activity, policy or practice in violation of a law, rule or regulation.¹¹⁰

The creation of whistleblowing statutes for reports of human trafficking will incentivize individuals to report such incidents and will ensure protection from retaliation for such reports. The current New York statutes may be used as guidelines for the creation of the whistleblower protections for reporters of human trafficking violations.

D. Farmworkers’ Right To Organize Unions

Seasonal and migrant farmworkers are among those individuals found to be victims of labor trafficking.¹¹¹ As agricultural work is often isolated and transient, farmworkers are easy targets for exploitation and may be forced into situations of involuntary servitude or human trafficking.¹¹²

As an essential part of New York’s workforce, additional safeguards must be provided to ensure labor trafficking of farmworkers does not occur in the state. To that end, providing

¹⁰⁸ N.Y. Civil Service Law § 75-b(2) (West 2013).

¹⁰⁹ *Id.*

¹¹⁰ N.Y. Labor Law § 740(2) (West 2013).

¹¹¹ Polaris Project, *Labor Trafficking in Agriculture*, available at <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us/agriculture-a-farms> (last visited Feb. 19, 2013).

¹¹² *Id.*

farmworkers the protections of the New York Labor Relations Act may act as a way to protect this class of workers from human trafficking. Nevertheless, while the Labor Subcommittee recognizes that change should be made to address this group of individuals, it is not currently prepared to make a recommendation at this time. The Subcommittee intends to revisit whether providing farmworkers the right to organize labor unions and collectively bargain would be a viable effort in preventing labor trafficking.

Report of the Subcommittee on Child Trafficking

Over the last five years, since enactment of NYS Anti-Trafficking Law and the subsequent Safe Harbour Act, New York State has established a legal and administrative response to assist children who are victims of trafficking. Specifically, with regard to the Safe Harbour Act, more attention has been focused on identifying and protecting children who are trafficked and sexually exploited. New York has made considerable progress, however, additional changes should be made to better protect trafficked children.

The Child Trafficking Subcommittee of the Special Committee on Human Trafficking was charged with assessing the current state of the law, identifying the challenges that remain in adequately serving children who are victims of child trafficking and sexual exploitation and proposing recommendations for long-term reform to best serve this most vulnerable population. The following section outlines actionable recommendations that will help to improve the identification, protection and service provision of child trafficking victims.¹¹³

Summary of Child Trafficking Subcommittee Recommendations:

- *Eliminate the requirement to show coercion when a person who is nineteen years of age or older intentionally advances or profits from the prostitution of a person under the age of eighteen.*
- *Eliminate the criminal prosecution of minor victims of sex trafficking by raising the age of criminal responsibility to age 18 for prostitution-related offenses.*
- *Amend the Child Protective Provisions of the Family Court Act and New York Social Services Law to explicitly include child victims of Human Trafficking.*
- *Improve training for Family Court professionals.*
- *Amend mandated reporter requirements under Social Services Law to include Human Trafficking.*

I. BACKGROUND AND STATUTORY FRAMEWORK

A. Data and Causes of Failure in Current Law

In 2006, the New York State Legislature charged the New York State Office of Children and Family Services (OCFS)¹¹⁴ with conducting a study of the prevalence of commercially sexually exploited children (CSEC) in New York State and providing recommendations about how to best

¹¹³ The Subcommittee on Sex Trafficking developed and prepared the criminal justice recommendations of this report.

¹¹⁴ OCFS is the agency that oversees the child welfare responsibilities of the state as well as all elements of the state's juvenile justice programs. The agency operates and oversees facilities for youth placed in the custody of OCFS by family and criminal courts. See <http://ocfs.ny.gov/main/about/default.asp>.

meet their needs.¹¹⁵ Counties chosen for the study were a purposively selected sample “drawn to represent variations in population under 18 and geography, high rates of prostitution arrests and high rates of child sexual abuse reports, and the presence of agencies likely to serve as sentinels of CSEC.”¹¹⁶ Based on the data collected from these counties, the OCFS report estimated there were 2,253 such children in New York City and 399 in seven upstate counties.¹¹⁷ Fifty-nine percent of commercially exploited children in New York City were 16 to 17 years old, and four percent were age 13 or under. Eighty-five percent of commercially sexually exploited children, statewide, had prior child welfare involvement.¹¹⁸ This involvement was “typically in the form of child abuse and neglect allegations/investigations (69 percent of the NYC CSEC and 54 percent of those Upstate) and/or a foster care placement (75 percent of the NYC CSEC and 49 percent Upstate).”¹¹⁹ These results clearly revealed that New York State needed to address how to better protect these children.¹²⁰ Two years later, the legislature passed and then Governor Paterson signed into law the Safe Harbour Act.¹²¹

From 2007 to date, the OTDA¹²² recorded 224 confirmed cases of human trafficking.¹²³ Of the 224 confirmed cases, more than half took place in New York City and were cases involving sex trafficking. Notably, fourteen percent of all cases involved minors.¹²⁴ The Hofstra Study recorded 11,268 unique survivors of human trafficking between 2000 and 2010, an estimated 58.4 percent which involved children or youth under the age of 18.¹²⁵

B. Shortcomings in the New York State Law

The challenges in responding to child trafficking and commercially sexually exploited children are complex. Generally, the law attempts to protect children, for their own acts (e.g. inability to enter into a contract) as well as acts by adults (e.g. child abuse); and although the Safe Harbour Act echoes the understanding that children are minors, unable to care for themselves, there are instances in the current statutes related to child trafficking wherein the law does not seem to

¹¹⁵ Frances Gragg et al., *New York Prevalence Study of Commercially Sexually Exploited Children*, OFFICE OF CHILDREN AND FAMILY SERVICES (2007), <http://www.ocfs.state.ny.us/main/reports/csec-2007.pdf>. See Appendix F.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Letter of Assembly Member Linda Rosenthal, dated September 15, 2008, Bill Jacket, L. 2008, ch. 569, at 9-10.

¹²¹ A. 5258-C, Reg. Sess. (N.Y. 2007).

¹²² The OTDA plays a central role in identifying and providing services to children who have been victims of sex trafficking. Pursuant to the New York human trafficking law, OTDA is empowered to “coordinate with and assist law enforcement agencies and district attorney’s offices to access appropriate services for human trafficking victims” by entering into contracts with non-governmental organizations for services such as case management, emergency housing, healthcare, counseling, drug addiction treatment, translation services, English language instruction, job training and placement assistance, and services to help the victim and members of his or her family to establish a permanent residence. N.Y. SOC. SERV. LAW § 483-bb(a)-(b) (McKinney 2013).

¹²³ *NYS Response to Human Trafficking*, NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE (2012), <http://otda.ny.gov/programs/bria/documents/2012-07-19-minutes-1.pdf>.

¹²⁴ *Id.*

¹²⁵ *Id.*

adequately protect children. In fact, especially with regard to 16 and 17 year old victims of trafficking, children are not only inadequately protected, but are treated as adults. Criminal Courts make no distinction between an adult and a minor victim when prosecuting an adult for trafficking a minor for prostitution. In addition, 16 and 17 year old trafficking victims can still be prosecuted in criminal court for any criminal action, including prostitution.

In other instances, such as in Family Court, the current legal framework did not anticipate and therefore did not address, the needs of children who are trafficked and sexually exploited. Therefore, issues can and do arise when applying the laws that were not necessarily intended for their circumstances. Some examples include the inability of a young person less than 18 years of age to petition for a Family Court order of protection, the lack of the designation of trafficked children as abused, neglected or maltreated children in Family Court matters, and the need for appropriate training and reporting requirements for individuals who may be able to identify suspected cases of sexual exploitation and child trafficking and provide needed services.

C. Current State of the Law for Children: 2007 NYS Anti-Trafficking Law

The 2007 NYS Anti-Trafficking Law established the crimes of sex trafficking¹²⁶ and, as noted above, labor trafficking¹²⁷ and set a framework for the provision of social services to victims who would not otherwise be eligible.¹²⁸

Besides the OTDA's jurisdiction and purpose noted above, law enforcement agencies and district attorneys' offices are required to notify OTDA and DCJS that an apparent human trafficking victim may be eligible for services.¹²⁹ DCJS and OTDA then assess whether a possible victim meets certain criteria for certification as a "victim of a severe form of trafficking" or is otherwise eligible for federal, state or local benefits or services.¹³⁰ OTDA is charged with informing the victim and referring agency of an affirmative finding, and may assist in the provision of appropriate services. In addition, in cases where the victim is under the age of 18, OTDA must notify the local department of social services in the county where the child was found.¹³¹ In order to carry out its new role in keeping with the human trafficking act, OTDA developed the New York state response to human trafficking program to "provide for a coordinated community based approach and comprehensive case management to eligible trafficking victims as they are identified throughout eight specified regions within New York state, with contract provider agencies serving specific regions of the state."¹³² Additionally, while district attorneys were noted as potential, many attorneys come into contact with these children, including defense attorneys and attorneys for the child, thus suggesting the necessity for expanding the attorneys identified as potential referral sources.

¹²⁶ N.Y. PENAL § 230.34 (McKinney 2013).

¹²⁷ N.Y. PENAL § 135.35 (McKinney 2013).

¹²⁸ N.Y. SOC. SERV. LAW § 483-cc (McKinney 2013).

¹²⁹ N.Y. SOC. SERV. LAW § 483-cc(a) (McKinney 2013).

¹³⁰ N.Y. SOC. SERV. LAW § 483-cc(b) (McKinney 2013).

¹³¹ N.Y. SOC. SERV. LAW § 483-cc(b) (McKinney 2013).

¹³² *Increasing Awareness and Engagement: Strengthening the National Response to Human Trafficking*, NATIONAL HUMAN TRAFFICKING RESOURCE CENTER (2011), available at

https://na4.salesforce.com/sfc/p/300000006E4S11Sv6mFa.D_CB10UueofejFjNL0= (last visited August 13, 2013).

D. 2008: Safe Harbour Act

At the time the Safe Harbour Act, discussed *supra* p.15-16, was enacted into law, many acknowledged the changes included in it were necessary but at the same time cautioned that while such a response is worthy, funding and administrative issues may temper the intended outcome.¹³³ Since its implementation, this law has been seen as a model around the country. However, as noted in more detail below, additional steps can be taken to improve the law.

II. RECOMMENDATIONS -- CRIMINAL JUSTICE ISSUES

Two provisions currently in the Penal Law are inconsistent with both the purpose and intent of the Safe Harbour Act. First, children are still treated the same as adults and a prosecutor must show coercion in order to prosecute an adult trafficker of a child under the state's sex trafficking law. Second, 16 and 17 year olds arrested for prostitution related offenses are regularly prosecuted as adults in Criminal Court. In this section we propose amending the current statutory framework to align the State's salutary Safe Harbour Act with the Penal Statutes for this population so that children who are trafficked are treated as victims deserving of protection and entitled to receive the services they require.

A. Eliminate the Requirement to Show Coercion in the Prostitution of Minors

The definition of trafficking in the Penal Law should be amended to remove the requirement of proving coercion or other means when a person who is nineteen years of age or older intentionally advances or profits from the prostitution of a person under the age of eighteen. This change would bring New York's law more closely in alignment with the federal law against trafficking, the laws in three-quarters of the other states, and New York's Safe Harbour Act.

1. Federal Law

The TVPA was the first comprehensive U.S. law to address trafficking in persons. Under federal law, "severe forms of trafficking in persons" include, as mentioned above, both sex trafficking and labor trafficking. Sex trafficking of children is specifically distinguished from trafficking of adults.

18 U.S.C. §1591 - Sex Trafficking of Children or by Force, Fraud or Coercion

(a) Whoever knowingly –

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or in reckless disregard of the fact, that means of force, threats

¹³³ See, e.g., Letter of the Division of Criminal Justice Services, dated August 27, 2008, Bill Jacket, L. 2008, ch. 569, at 27-28.

of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of eighteen years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b). (emphasis added).

Thus, under federal law, inducing anyone under the age of 18 to perform a commercial sex act is considered to be trafficking per se **without** prosecutors having to prove the use of force, fraud or coercion or other such means required for adult victims.

2. State Anti-Trafficking Laws

The trend among states shows that a majority has eliminated the requirement of showing force, fraud, or coercion for minor victims of sex trafficking.¹³⁴ To date, 42 states and the District of Columbia have eliminated – or never included – the requirement to show these means to prove sex trafficking of a minor.¹³⁵ In those states, it is enough to show that a trafficker simply induced a minor into commercial sexual exploitation to support a conviction for sex trafficking.¹³⁶ Additionally, several states amended their laws in 2012 to remove the force, fraud, or coercion requirement when the victim is a minor, leading to elimination of a substantial barrier to successfully prosecuting traffickers of minors.¹³⁷

3. Other State Laws Involving Minors

Elimination of the requirement of showing coercion to place a minor in prostitution is based on the well-regarded and well-established expert views in both psychology and law that minors are emotionally, psychologically, and legally unable to consent to engaging in commercial sex.¹³⁸ Similar legal protections for minors based on their immaturity appear throughout New York State’s legal system. They cannot vote,¹³⁹ purchase liquor,¹⁴⁰ or tobacco,¹⁴¹ and cannot legally consent to sex.¹⁴² Notably, the crime of statutory rape, which sets a serious penalty for an adult who has sex with a minor, applies even if sex appeared to be consensual.¹⁴³ Many other laws strictly limit a minor’s capacity to act, take on legal obligations or be subject to penalties based on this

¹³⁴ Polaris Project, *2013 Analysis of State Human Trafficking Laws* 37-38, available at http://www.polarisproject.org/storage/2013_State_Ratings_Analysis_Full_Report.pdf.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ Shared Hope International, *Protected Innocence Challenge: State Report Cards on the Legal Framework of Protection for the Nation’s Children* (2012), available at http://sharedhope.org/wpcontent/uploads/2012/09/ProtectedInnocenceChallenge_FINAL_2012_web.pdf/.

¹³⁸ Joan A. Reid and Shayne Jones, “Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims, Victims and Offenders: An International Journal of Evidence-based Research, Policy and Practice, 6:207-231 pp 212-215, University of South Florida, Tampa, USA (2011).

¹³⁹ NY Election Law §5-102 – must be 18 to vote.

¹⁴⁰ NY Alcohol Beverage Control Law §65-b – must be 21 to purchase liquor.

¹⁴¹ NY Public Health Law §1399-c – must be 18 to purchase tobacco products.

¹⁴² NY Penal Law §130.05(3).

¹⁴³ New York recently reduced the age of consent to sex from 18 to 17. See NY Penal Law Art. 130.

understanding of their youth. Thus, the law aims to protect minors from various forms of personal harm or exploitation due to their psychological immaturity, which makes them especially vulnerable to inducement to engage in actions that may be harmful.

There are many other special legal rules for minors in New York. For example, under New York's General Obligations Law, minors (those under the age of 18)¹⁴⁴ lack the capacity to make a contract. When it comes to legally binding agreements, minors (defined as "infants") are deemed to lack the legal ability (or "capacity") to contract and they have the right to disaffirm a contract if they are under the age of 18.¹⁴⁵ As a legal matter, they are presumed not to understand the significance or consequences of what they are doing. There are even some special rules in New York State requiring parental and court approval to bind a minor to certain kinds of contracts. For example, New York law provides for judicial approval of certain contracts for services of minors or "infants" under the age of 18. The provisions of the statute specifically relate to performing artists (such as actors, musicians and dancers) and professional athletes.¹⁴⁶

CPLR §105 defines an infant as "a person who has not attained the age of eighteen years." For a minor or "infant" to appear in court, a guardian ad litem is required where the minor's parent or legal guardian has a conflict of interest (e.g., in a child neglect or abuse proceeding).¹⁴⁷ To annul the marriage of a minor, the parent or guardian of the minor must bring the action,¹⁴⁸ and in divorce cases, the parties' pleadings must assert that both parties are over the age of 18 at the commencement of the action for divorce.¹⁴⁹ Otherwise, a parent or an appointed guardian ad litem must sign off on any divorce documents on behalf of the minor litigant.¹⁵⁰

Minors induced into prostitution should have even stronger protections when it comes to commercial sex. In addition to the known risks of sexually transmitted diseases including HIV, of multiple sex partners, studies show that people in prostitution, as a group, are raped, assaulted and murdered at much higher rates than any other people.¹⁵¹ People who engage in prostitution also face enormous stigma, discrimination, and a high risk of police harassment and brutality.¹⁵² Given these particular dangers, protecting young people from inducement to engage in prostitution is an urgent public safety and health matter.

¹⁴⁴ General Obligations Law §1-202. Definition. As used in this chapter, the term "infant" or "minor" means a person who has not attained the age of eighteen years.

¹⁴⁵ General Obligations Law §13-101.

¹⁴⁶ NY Arts and Cultural Affairs Law §35.03.

¹⁴⁷ Family Court Act §1016.

¹⁴⁸ Domestic Relations Law §140(b).

¹⁴⁹ Supreme Court Clerk procedures implementing CPLR §105.

¹⁵⁰ *Id.*

¹⁵¹ Jill Laurie Goodman and Dorchen Leidholdt, ed., *Lawyers Manual on Human Trafficking*, Dorchen A. Leidholdt and Katherine P. Scully, Defining and Identifying Human Trafficking, fn. 31, Supreme Court of the State of New York, Appellate Division, First Department, and New York State Judicial Committee on Women in the Courts (2011).

¹⁵² Juhu Thukral and Melissa Ditmore, *Revolving Door: An Analysis of Street-Based Prostitution in New York City*. New York: Urban Justice Center, Sex Workers Project (2003); Juhu Thukral and Melissa Ditmore, *Behind Closed Doors: An Analysis of Indoor Sex Work in New York City*, New York: Urban Justice Center, Sex Workers Project (2005)

Current State laws on prostitution, enacted before sex trafficking was recognized as a particularly vicious kind of compelled prostitution, recognized the vulnerability of children and teens in prostitution by setting special penalties for those who profit from the activity of those under certain designated ages, and in some cases by eliminating the requirement of showing force or intimidation.¹⁵³

For example, Penal Law §230.30 Promoting prostitution in the second degree states:

A person is guilty of promoting prostitution in the second degree when he knowingly:

- *1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or
- *2. Advances or profits from prostitution of a person less than sixteen years old. Promoting prostitution in the second degree is a class C felony.

This provision of the Penal Law was enacted in its current form in 1978; long before the issue of sex trafficking was recognized or understood the way it is today. Even then, it was clear to the New York State legislature that one should not have to prove force, intimidation, or coercion when the person being prostituted is a child. In that provision of the Penal Law, it is the same level of crime to sell a child in prostitution without any use of force as to use force on an adult.

All of these laws pre-dated New York's 2007 Anti-Trafficking Law, which marked a shift in our State's understanding and recognition of this human rights violation. The earlier laws made a distinction between promoting prostitution of an adult and promoting prostitution of a minor, but set the penalties much lower than the penalties now in place under sex trafficking of adults in Penal Law §230.34.

Penal Law §230.34 defining and criminalizing sex trafficking led the following year, 2008, to the passage of the Safe Harbour Act, which defines a person under the age of 18 who is engaged in prostitution as a sexually exploited child who should be treated as a victim rather than a criminal.¹⁵⁴ The Safe Harbour Act expressly recognized the special vulnerability of children in prostitution (those under 18) and strongly urges that they be adjudicated through a PINS proceeding (Persons in Need of Supervision) rather than as criminals.¹⁵⁵

The next logical step in this process is to consolidate all of these laws concerning youth who have been placed in prostitution under one rubric, that of sex trafficking, without the necessity of proving coercion.

¹⁵³ See NY Penal Law §230.30(2) (Promoting prostitution in the Second degree - no force or intimidation required if promoting prostitution of a person under sixteen); Penal Code §230.32 (B felony for promoting prostitution of a person under the age of 11); Penal Code §230.25(2) (promoting prostitution in the 3rd degree -- D felony for promoting prostitution of a person under the age of 19, without regard to the running of a business or enterprise), and penal law §230.33 (compelling prostitution of a person under 16 by force or intimidation is a D felony).

¹⁵⁴ NY Social Services Law (SSL) §447-a(1).

¹⁵⁵ *Id.*

4. Policy Reasons for Removing Coercion and Other Means From Trafficking of Minors

There are also compelling policy reasons for federal and state laws that recognize that minors in prostitution are in a position of extraordinary vulnerability. Minors who engage in prostitution are often victims of sexual abuse, homeless, and/or abandoned by their families.¹⁵⁶ In recruiting, controlling and selling minors, traffickers usually need not use overt threats or force to get their victims to comply with their demands. Offering fast food or a warm bed to a starving, freezing, frightened runaway child who has just fled a history of neglect, physical and/or sexual abuse may be enough to induce that child to comply with whatever commercial sex act the trafficker requires.¹⁵⁷ This action would be sufficient to sustain a conviction for sex trafficking under the federal trafficking statute. However, it would not support a trafficking charge under New York State law as currently written.

Under current law, pimps and traffickers who promote young people in prostitution escape the higher level penalty associated with sex trafficking if the prosecutor cannot establish that one of the means listed in the statute was used to compel the minor into prostitution. Minor victims of sex trafficking are particularly vulnerable to a phenomenon known as “traumatic bonding” – akin to the Stockholm Syndrome where captives/victims become dependent and attached to their kidnapper. When the victim is a minor and the trafficker has held himself or herself out to be a surrogate family member or parent and the minor is dependent upon that trafficker for food, clothing, and shelter – an attachment known as traumatic bonding occurs. It becomes extremely difficult for these prostituted youth to see their trafficker/pimp as a dangerous, abusive person they should be trying to resist and flee.¹⁵⁸

Traumatic bonding in various forms is one of the reasons prosecutors find it difficult to persuade a trafficked minor to separate from, and testify against, the pimp/trafficker.¹⁵⁹ While forms of coercion and abuse may have been applied to the young person to get him or her to engage in commercial sex, the young person may be too dependant on, or afraid of, the trafficker to reveal these facts to law enforcement. The most disturbing result is a situation where the prosecutor tries to pressure the teenager to turn against the person who is housing and feeding him or her.

In order to hold traffickers of children accountable, the fact that an individual subjected a child to commercial sexual exploitation should be sufficient evidence for a conviction for sex trafficking. Requiring prosecutors to show the specific coercion a trafficker used to gain the consent of a minor adds an unnecessary and problematic barrier to successful prosecutions.

However, there is some concern that removing the element of coercion from the sex trafficking statute will negatively affect young people who are engaged in commercial sex in peer

¹⁵⁶ Estes, J.R. & Weiner, N.A., *The Commercial Sexual Exploitation of Children in the United States*, in S.W.Cooper, R.J. Estes et al, *Medical, legal and social science aspects of child sexual exploitation: A comprehensive review of child pornography, child prostitution, and Internet crimes against children* (pp. 95-128), St. Louis, Mo: GW Medical Publishing, cited in Reid and Jones, *supra*, “Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims, Victims and Offenders, 6:207-231, (2011).

¹⁵⁷ Reid & Jones, *supra* at 218-220, section on *The Superglue of Sexual Exploitation: Traumatic Bonding*.

¹⁵⁸ *Id.*; and Reid at 220.

¹⁵⁹ Reid, *supra*, 218-220.

networks, or with other youth also so-engaged who help to introduce first customers, teach safety strategies or share space. These youth do not necessarily benefit financially from their peer interaction, but could foreseeably face liability as sex traffickers under the revision to the section, which would categorize and punish promoting prostitution” where the person promoted is a minor as “sex trafficking.”¹⁶⁰ This would be an unintended – and undesirable – result. Therefore, in revising the sex trafficking statute, great care must be taken to ensure that these minors are not held liable for “sex trafficking” if the definition changed to exclude the need to prove coercion. As a result, Penal Law Section 230.34 should be amended to add a provision that defines sex trafficking as “knowingly advancing or profiting from the prostitution of a person under the age of 18,” with the proviso that the person engaging in the trafficking is nineteen years or older.¹⁶¹

For all of the above reasons, New York’s Sex Trafficking penal statute should be brought in closer alignment with federal anti-trafficking law, the Safe Harbour Act, and New York’s Anti-Trafficking Laws.

B. Eliminate the Criminal Prosecution of Minor Victims of Sex Trafficking¹⁶²

The ongoing prosecution of minor victims of sex trafficking as adults in our criminal courts is one of the most striking examples of an unjust inconsistency in New York State law.¹⁶³ The lack of explicit statutory protection for minors stands in direct contradiction to the legislative recognition that minors engaged in commercial sex should be considered victims of trafficking deserving governmental assistance, as established by the TVPRA,¹⁶⁴ the Safe Harbour Act¹⁶⁵ and the New York Criminal Procedure Law.¹⁶⁶ Indeed, this precise paradox sets New York apart in its particular treatment of 16 and 17 year-olds¹⁶⁷ arrested for engaging in prostitution-related offenses¹⁶⁸ -- a subject of national and international concern and scrutiny.¹⁶⁹

¹⁶⁰ “Promoting prostitution,” pursuant to P.L. § 230.15, includes

1. “Advance prostitution.” A person “advances prostitution” when, acting other than as a prostitute or as a patron thereof, he knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise, or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

2. “Profit from prostitution.” A person “profits from prostitution” when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of prostitution activity.

¹⁶¹ We recommend age 19 as the threshold for liability for trafficking in order to protect street and homeless youth from being prosecuted for trafficking when they are engaged with each other in mutual referrals for prostitution as a survival technique, not a business endeavor.

¹⁶² On June 21, 2013, the New York State Legislature passed S5839A, which addresses this concern, but the Governor has not yet signed the legislation.

¹⁶³ See, e.g., Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 37 N.Y.U. Rev. L. & Soc. Change, 648-652 (2013). See Appendix F.

¹⁶⁴ Trafficking Victims Protection Reauthorization Act of 2013. Pub. L. No. 113-4 (2013).

¹⁶⁵ N.Y. Soc. Serv. L. § 447-a.

¹⁶⁶ N.Y. C.P.L. § 440.10(1)(i).

¹⁶⁷ New York prosecutes 16- and 17-year-olds as adults for all criminal offenses. Penal Law § 30.00. New York is one of only two states to continue to prosecute those as young as 16 as adults, see N.C. Gen. Stat. § 7B-1501(7), and one of

Young people under eighteen years old who engage in prostitution or prostitution-related offenses are given specific protection under New York and Federal law. The TVPRA defines a severe form of trafficking to include “sex trafficking,” or the “recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act”¹⁷⁰ where such 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.¹⁷¹ The TVPRA draws a “clear distinction” between those under the age of 18 and those considered adults.¹⁷² With purposeful clarity, the plain language of the TVPRA holds that “[a]n adult is a victim of sex trafficking if he or she is subjected to commercial sex acts by force, fraud, or coercion. A child under the age of eighteen is a victim simply if he or she is subjected to commercial sex acts.”¹⁷³ Thus, the statute recognizes that a minor who has been induced to engage in commercial sex acts is to be deemed a victim of human trafficking based solely on her or his age.

Additionally, under the Safe Harbour Act, New York now recognizes an individual under the age of eighteen arrested for prostitution-related offenses as a “sexually exploited child.”¹⁷⁴ The Act also incorporates the federal definition of these minors as victims of a severe form of trafficking and directs every local social services district to address the child welfare services needs of sexually exploited children.¹⁷⁵ While the Act addresses the need to refer trafficked minors to appropriate social services, it is relevant only to family court matters and does not alter criminal court practice

eleven states that treat 17-year-olds as adults for purposes of arrest and prosecution. *See, e.g.*, Schuyler Center for Analysis and Advocacy Policy Brief, Raising the Juvenile Justice Jurisdictional Age: Treating Kids as Kids in New York State’s Justice System (March 2012), *available at* https://www.scaany.org/documents/scaabrief_raiseage_march2012_000.pdf; Mosi Secret, States Prosecute Fewer Teenagers in Adult Courts, N.Y. Times, March 6, 2011, at A1. *See also* Juvenile Justice Policy from the Perspective of International Human Rights, 2012 Cardozo L. Rev. de novo 304 (2012).

¹⁶⁸ Penal Law § 230.00 (Prostitution) and § 240.37 (Loitering for the Purpose of Engaging in a Prostitution Offense).

¹⁶⁹ *See, e.g.*, Susan Crile, A Minor Conflict: Why the Objectives Of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors, 61 Am. U. L. Rev. 1783 (2012); Megan Anitto, Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors, 30 Yale L. & Pol’y Rev. (2011); Debra Brown Steinberg, Protection and Justice for All Child Victims of Human Trafficking, VS: Confronting Modern Slavery in America, *available at* <http://vsconfronts.org/about-us/protection-and-justice-for-all-child-victims-of-human-trafficking>. In fact, the United Nations (UN) Human Rights Committee (HRC), responsible for conducting reviews of human rights compliance by each of the UN member states, has taken up this precise issue in its forthcoming review of the United States. Specifically, HRC has requested information from the U.S. regarding steps taken to “protect children under 18 years of age living in the State party from being sexually exploited through prostitution, as well as the steps taken to ensure that those children are not dealt with through the criminal justice system.” *See* List of Issues, adopted by the 107th Session of the Human Rights Committee, *available at* <http://www2.ohchr.org/english/bodies/hrc/hrcs107.htm>. *See also* Andrew Keshner, Lippman Pushes for Passage of Reworked Juvenile Justice Bill, NYLJ, April 22, 2013 at 1, col 5.

¹⁷⁰ 22 U.S.C. § 7102(9) (2013).

¹⁷¹ 22 U.S.C. § 7101 (2013).

¹⁷² Robert Uy, Blinded by Red Lights: Why Trafficking Discourse Should Shift Away From Sex and the “Perfect Victim” Paradigm, 26 Berkeley J. Gender, L. & Just. 204, 205-6 (2011).

¹⁷³ *Id.*

¹⁷⁴ Soc. Serv. L. § 447-a.

¹⁷⁵ Soc. Serv. L. § 447-b.

with respect to 16 and 17 year-old minors, who are considered adults under the criminal law and whose cases are prosecuted in criminal court when arrested on prostitution-related charges.¹⁷⁶

Accordingly, despite the legislative designations of those under 18 as victims of a severe form of trafficking and sexually exploited children, these designations have no bearing on their continued prosecution as adults for prostitution-related offenses. This oversight is particularly egregious when considered in relation to the fact that a person under the age of 17 is incapable of consenting to a sexual act in New York State.¹⁷⁷ Paradoxically, an individual 16 sixteen years of age cannot legally consent to engage in sexual conduct, yet can be prosecuted for prostitution as an adult if he or she agrees to engage in the sexual conduct for a fee.¹⁷⁸

Ironically, a defendant who was under the age of 18 at the time of his or her arrest and satisfies the federal definition of a victim of a severe form of trafficking, may be entitled to have the resulting conviction(s) dismissed if the requirements of the post-conviction statute, Criminal Procedure Law 440.10(1)(i) are met. Individuals who were induced into commercial sex while minors are now eligible to move a court, post-conviction, for vacatur of prostitution-related charges as victims of a severe form of trafficking. The 2010 amendment to C.P.L § 440.10, which added subsection (1)(i), draws upon either the state or federal crimes of sex trafficking to define who might be considered an eligible victim entitled to post-conviction relief.

Thus, despite the discretion courts possess to remedy the unjust consequences of prosecuting and convicting minor human trafficking victims post-conviction, there remains no mechanism to prevent their prosecution and conviction in the first place.¹⁷⁹ Although “the cumulative effect of New York and Federal law in this area is a strong expression that those engaging in prostitution, or commercial sex, under the age of eighteen are to be viewed as victims of trafficking, rather than perpetrators of crime,”¹⁸⁰ enforcement of New York’s prostitution laws requires their ongoing prosecution.

Recently, the TVPRA was amended as part of the re-authorization of the Violence Against Women Act enacted on March 7, 2013 to include a “Model State Criminal Law Protection for Child Trafficking Victims and Survivors.”¹⁸¹ This amendment specifically recommends that states create

¹⁷⁶ This is so, despite the following commentary in the bill memo:

[A]rresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult. Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are the victims of crime and should be treated as such. Therefore, sexually exploited youth should not be prosecuted under the Penal Law for acts of prostitution.”

Sponsor’s Mem, Bill Jacket, Safe Harbour Act, L 2008, ch. 569 (emphasis added).

¹⁷⁷ N.Y. Penal Law § 130.05(3)(a).

¹⁷⁸ See, e.g., *People v. Samatha R.*, 33 Misc.3d 1235(A), *4 (Kings Co. Crim. Ct. 2011).

¹⁷⁹ A recent Bronx prosecution demonstrates this precise phenomenon. There, the court felt constrained to deny a motion to dismiss the prosecution of a 17 year-old for prostitution because the motion for dismissal “put the cart before the horse.” The court noted, correctly, that no law barred the prosecution of the minor victim, rather relief would only be available post-conviction. Decision & Order, *People v. S.L.*, (Dawson, J.)(Bronx Co. Sup. Ct. July 27, 2012)(sealed case on file with authors).

¹⁸⁰ *People v. Jane Doe*, 34 Misc.3d 237, 240 (Bx. Co. Sup. Ct. 2011).

¹⁸¹ Trafficking Victims Protection Reauthorization Act of 2013. Pub. L. No. 113-4, 127 Stat 54 (2013).

safe harbor provisions that “treat an individual under 18 years of age who has been arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim of a severe form of trafficking in persons” and further recommends that such persons should not be prosecuted for a prostitution offense, but rather referred to appropriate services. The model state law encourages states to address the issue of minor sex trafficking victims without criminalizing exploited youth.¹⁸²

The goals of this model state protection for child trafficking victims are partially met by New York’s existing statutory framework, but there remains a troubling gap which requires reconciliation. Accordingly, New York State law should be specifically amended to end the practice of charging and prosecuting 16 and 17 year-olds for prostitution-related offenses in criminal court. A 8071a/S 5839a, which passed both houses of the New York State Legislature in June, 2013 and awaits action by the Governor, would indeed permit criminal charges of prostitution and loitering for prostitution against 16- and 17-year olds to be reduced to a PINS petition in Criminal Court so that a youth would be able to receive the same specialized services as under the Safe Harbour legislation. This can be done in the form of raising the age of criminal responsibility for such offenses to 18 years of age, which would be consistent with the recognition of minors as sexually trafficked victims. This should also be in the form of legislation, similar to the TVPRA’s model, that protects this vulnerable group while ensuring that it is referred to appropriate services.

III. RECOMMENDATIONS -- FAMILY COURT ISSUES

The passage of the 2008 Safe Harbour legislation made a significant step forward in recognizing that children and youth who have been sexually exploited are not juvenile delinquents, but rather victims of abuse who need the family court’s protection and support. This paradigm shift in how family court treats and serves victims of physical and sexual abuse provides a unique opportunity to re-evaluate the current framework of the Family Court Act and correlative Social Services Law with respect to protecting child victims of sexual exploitation and trafficking from those who subject them to such harm especially when the person is a family member or legal guardian.

¹⁸² See, e.g., Tanya Mir, *Trick or Treat: Why Minors Engaged in Prostitution Should Be Treated As Victims, Not Criminals*, 51 Fam. Ct. Rev. 163 (2013)(discussing various state responses to the complexities of serving minors in the criminal justice system):

Florida provides child sex trafficking victims with safe housing and additional welfare services, but does not authorize any immunity from prosecution at this point (S.B. 202, 114th Reg. Sess. (Fla. 2012)). New Jersey immunizes minors under 18 by providing an affirmative defense to prosecution; however, it ignores the social services component of Safe Harbor legislation (N.J. STAT. ANN. § 2C:34-1 (West 2012)). Tennessee’s law also immunizes minors without any provision pertaining to specialized social services (2011 Tenn. Pub. Acts (377)). Ohio has implemented a process where minors determined to be human trafficking victims may have their records expunged. (OHIO REV. CODE ANN. § 2151.358 (West 2012)). Michigan prohibits prosecution of minors under 16 for prostitution but does not respond to their needs for services (MICH. COMP. LAWS ANN. § 750.448 (West)). Additionally, California does not have any state Safe Harbor legislation, but it has established pilot programs in two counties that divert and provide services to victims (CAL. WELF. & INST. CODE § 18259 (West 2009); CAL. WELF. & INST. CODE § 18259.7 (West 2011)).

A. Amend The Child Protective Provisions Of The New York Family Court Act And Social Services Law To Include Child Victims Of Human Trafficking

While New York's 2008 Safe Harbour Act amended the person in need of supervision (PINS) and juvenile delinquency provisions of family law, it did not address the child protective proceedings under Article 10 of the Family Court Act and New York Social Services Law that provide for the Family Court's jurisdiction over abuse and neglect proceedings. Making explicit the Family Court's jurisdiction over children who are victims of trafficking by their parents or other persons legally responsible provides an important and vital commitment of protection for these vulnerable children and youth. Family Court Act Section 1012(e)(iii) currently allows a judge to make a finding of child abuse against a parent, guardian or person legally responsible for a child if that parent were found to have engaged in the trafficking of his or her child or permitted such trafficking.¹⁸³ Explicitly defining and covering the sex trafficking of children by their parents or other persons legally responsible as child abuse in child protective proceedings under Article 10 of the Family Court Act should be added in order to emphasize the severity of this offense and encourage Family Court judges to take appropriate specific, steps to protect these children. First, a Family Court judge would likely order an investigation in matters where sexual exploitation or trafficking is suspected. Second, the inclusion of child trafficking as an enumerated offense under Article 10 may lead a judge to order the removal of a child from his or her parents and place him or her under the custody of the Commissioner of Social Services. During the course of a child protective proceeding commenced on behalf of a child who is a victim of trafficking or sexual exploitation, that child would remain protected by the Department of Social Services and/or its

¹⁸³ FCA section 1012(e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or (ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or (iii) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law; commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; or allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

Penal Law section 230.25 -A person is guilty of promoting prostitution in the third degree when he knowingly: 1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes, or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction; or 2. Advances or profits from prostitution of a person less than nineteen years old. Promoting prostitution in the third degree is a class D felony.

Penal Law section 230.30 - A person is guilty of promoting prostitution in the second degree when he knowingly: 1. Advances prostitution by compelling a person by force or intimidation to engage in prostitution, or profits from such coercive conduct by another; or 2. Advances or profits from prostitution of a person less than sixteen years old. Promoting prostitution in the second degree is a class C felony.

Penal Law section 230.32 -Compelling prostitution. A person is guilty of compelling prostitution when, being twenty-one years of age or older, he or she knowingly advances prostitution by compelling a person less than sixteen years old, by force or intimidation, to engage in prostitution. Compelling prostitution is a class B felony.

contracted child welfare agency. Such an amendment would thereby encourage Family Court judges not only to make appropriate findings against respondents but also to order that children who have been sexually trafficked be provided with services targeted to meet their very specific physical and psychological needs. This would also thereby lead to the funding for and provisions of additional services offered through child welfare agencies, including mental health and substance abuse treatment, which would be made available to both the child and the respondents where appropriate.

The primary goal of the Subcommittee’s recommendations is the amendment of relevant provisions of the FCA and Social Services Law to create a statutory scheme within the Family Court and Social Services arenas to identify and better assist sexually exploited youth. Toward that end, the definitions of abused child, severely abused child, permanently neglected child, and maltreated child, could be altered within the FCA and SSL statutes, and FCA §§ 1052,¹⁸⁴ 1055¹⁸⁵, and 1089¹⁸⁶ could be amended to allow the Family Court to fashion a specific remedy to provide targeted services for sexually exploited and trafficked children at the disposition, placement and permanency hearing stages of family court proceedings.

1. Definitional Changes

Currently, the relevant provisions within the Family Court Act and New York Social Services Law do not explicitly include human trafficking as a basis of a possible finding of abuse, severe abuse or permanent neglect in child protection proceedings. These provisions, included in the chart below, should be amended to include human trafficking in the respective definitions.¹⁸⁷

Definitions in Family Court Act and Social Services Law that should be amended to include human trafficking:

“Abused Child”	N.Y. Fam. Ct. Act § 1012(e)
	N.Y. SOC. SERV. LAW § 371(4-b)
	N.Y. SOC. SERV. LAW § 412(1)
“Severely Abused Child”	N.Y. SOC. SERV. LAW § 384-b(8)(a)(ii)
“Permanently Neglected Child”	N.Y. SOC. SERV. LAW § 384-b(7)(a)
“Maltreated Child”	N.Y. SOC. SERV. LAW § 412(2)

¹⁸⁴ N.Y. Fam. Ct. Act § 1052, Disposition on Adjudication. *See* Appendix D.

¹⁸⁵ N.Y. Fam. Ct. Act § 1055, Placement. *See* Appendix D.

¹⁸⁶ N.Y. Fam. Ct. Act § 1089, Permanency Hearings. *See* Appendix D.

¹⁸⁷ The relevant sections of law are included in Appendix D.

A child who has been trafficked should be considered abused, severely abused or permanently neglected. Not only will such a designation encourage a judge to make appropriate findings in child protective proceedings and order the necessary special services, housing and counseling,¹⁸⁸ but also these Family Court Act and Social Services Law amendments will re-frame how the presentment agencies and courts identify and treat child victims of sexual exploitation and sex trafficking in the juvenile delinquency and PINS context. Therefore, it is recommended that the Family Court Act and the Social Services Law be amended to specifically include sexual exploitation and trafficking in their statutory definitions and child placement provisions.

2. Expand Placement Proceedings to Account for Trafficked Children

A Family Court judge can issue a placement order for a child if the court finds that the child has been sexually exploited. The court can place the child with the local commissioner of social services for placement in long-term safe housing, a relative or a suitable person who has who wants to be a foster parent. In the order of disposition, the judge must indicate whether or not reasonable efforts were made to keep the child in the home or to return safely to the home if the child was removed before the hearing. These reasonable efforts are not required if the court determines that one of a number of things has happened, such as the parent has subjected the child to aggravated circumstances or the parent has been convicted of certain crimes. Human trafficking should be listed among those crimes.

3. Amend the Permanency Hearings Provisions of the Family Court Act to Include Provision of Services for Trafficked Children

The FCA provides for permanency hearings to ensure that children who have been placed in foster care receive “timely and effective judicial review that promotes permanency, safety and well-being in their lives.” At the conclusion of a permanency hearing, a court can direct the child to be returned to his or her parent or other person legally responsible for the child, or take a number of other steps. In considering whether or not to return the child to his or her home, the court must consider “the best interests and safety of the child, including whether the child would be at risk of abuse or neglect if returned to the parent or other person legally responsible.” This language should be amended to require the court to also consider whether the child would be at risk to be trafficked if returned to the parent or other person legally responsible. This would create a statutory requirement for the judge to consider whether or not a child is being trafficked during permanency hearings.

One of the other steps the judge can take at the conclusion of the hearing is to make “any other findings or orders that the court deems appropriate, which may include...[w]hether the court should issue any orders for services in the manner specified in section one thousand fifteen-a of this act in order to achieve the permanency plan and, if so, what services should be ordered.” In the order, the judge can require “a social services official to provide or arrange for the provision of services or assistance to the child and his or her family to facilitate the protection of the child, the

¹⁸⁸ Heather J. Clawson, Ph.D, Amy Salomon, Ph.D., & Lisa Goldbatt Grace, LICSW, MPH, *Treating the Hidden Wounds: Trauma Treatment and mental Health Recovery for Victims of Human Trafficking*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (2007), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/Treating/ib.pdf> (noting that “victims of human trafficking may suffer from anxiety, panic disorder, major depression, substance abuse and eating disorders as well as a combination of these”).

rehabilitation of the family and, as appropriate, the discharge of the child from foster care.” This part of the FCA should be amended to require family court judges to consider which services should be ordered in a permanency hearing for a child who the court believes has been sexually exploited.

These changes to FCA § 1089 would create statutory mandates governing permanency hearings for family court judges to consider whether or not a child is being trafficked and are consistent with the other recommendations made in this report.

4. Mandated Reporting by Professionals

In addition to the above-mentioned child protective provisions of the Family Court Act and Social Services Law, the mandated reporter requirements, under Social Services Law § 413, should be amended to include human trafficking. The Subcommittee recognizes that the mandatory reporting provisions under Social Services Law 412 and 413 will be automatically triggered if the definition of “abused child” is changed in the FCA. Nevertheless, the Subcommittee feels that aligning this law to include human trafficking as a ground to require a mandated source to report suspected child abuse, neglect or maltreatment would be consistent with the intent of the Safe Harbour Act to reframe how the court system views these children – in need of the assistance of professionals to protect them and assist them in getting necessary services. The Subcommittee also recognizes that an expansion of the mandated reporting requirements could result in social service providers who specialize in offering a safe space to young people being mandated to report them, and could thus be a detriment to young people seeking services. The Subcommittee therefore recommends a narrowing of the mandated reporting requirements in situations where service providers are faced with such dilemmas, providing the leeway to act consistently with the ethical rules of conduct of social service providers.

Currently, mandated reporters, include physicians, chiropractors, dentists, registered nurses, podiatrists, optometrists, psychiatrists, psychologists, licensed master social workers, licensed clinical social workers, licensed creative arts therapists, licensed marriage and family therapists, licensed mental health counselors, licensed psychoanalysts, dental hygienists, school administrators/supervisors, school service personnel, and classroom school teachers.¹⁸⁹ Each is required to file a report when, “they have reasonable cause to suspect that a child is an abused or maltreated child where a person comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child.”¹⁹⁰ Extending the mandated reporter’s purview to include human trafficking will capitalize on a group of trained professionals who already come into contact with those suspected to be victims. They are the persons who are a logical extension of the child welfare system in identifying potential victims of human trafficking.

¹⁸⁹ N.Y. SOC. SERV. LAW § 413(1)(a) (McKinney 2013).

¹⁹⁰ N.Y. SOC. SERV. LAW § 413(1)(d) (McKinney 2013). It should be noted that N.Y. Soc. Serv. Law § 419 provides mandated reporters immunity from liability when acting in good faith.

a. *Other State Laws*

Similar requirements have been established recently in other states such as Tennessee and Washington.

(i) Current Law In Tennessee: Mandatory Reporters

In 2010, Tennessee passed amendments to its mandatory child abuse reports law by adding language that requires the department of children’s services to refer information regarding alleged human trafficking to law enforcement. Tennessee law requires “[a]ny person who has knowledge of or is called upon to render aid to any child” who has suffered harm if the harm “reasonably indicate[s] that it has been caused by brutality abuse or neglect,” to report that harm to the judge having juvenile jurisdiction over the child, the department of children’s services (“department”), the county sheriff, or the chief law enforcement officer of the municipality.¹⁹¹ Judges and law enforcement who receive reports must then report that information to the department. The 2010 amendment mandates that “if the department received information containing references to alleged human trafficking...which does or does not result in an investigation by the department, the department shall notify the appropriate law enforcement agency immediately upon receipt of such information.”¹⁹²

(ii) Current Law In Washington: Required Training for Doctors and Psychologists

In 2009, Washington State amended its business and profession law regarding licensing medical professionals and psychologists to include mandatory human trafficking training as a requirement for renewing a license. For those licensed to practice medicine, “[t]he office of crime victims advocacy shall supply the [Washington state medical quality assurance commission] commission with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The commission shall disseminate this information to licensees by: providing the information on the commission’s web site; including the information in newsletters; holding trainings at meetings attended by organization members; or another distribution method determined by the commission.”¹⁹³ Psychologists applying to renew their licenses are subject to the same requirements and, “[t]he office of crime victims advocacy shall supply the [examining] board [of psychology]” with the same information required by § 18.71.080 to be provided to Washington state medical quality assurance commission regarding human trafficking.¹⁹⁴

B. Improve Training of Court Officials

Current New York State law does not require human trafficking training for Family Court and Criminal Court judges and the professionals who practice in the courts although some training

¹⁹¹ TENN. CODE ANN. § 37-1-403(a)(1) (West 2013).

¹⁹² TENN. CODE ANN. § 37-1-403(c)(3)(A) (West 2013).

¹⁹³ WASH. REV. CODE ANN. § 18.71.080 (West 2013).

¹⁹⁴ WASH. REV. CODE ANN. § 18.83.090(2) (West 2013).

on this issue is provided to judges as well as non-judicial staff and practitioners. Additional training would better equip judges and personnel, as well as the professionals who practice in the courts, including assigned counsel, to recognize and respond to trafficking cases when they come before them. This will help to ensure that the needs of the children who come through the court system as trafficking victims will be best served. The Uniform Rules similarly encourage states to coordinate and provide training for government employees who have recurring contact with human trafficking victims.¹⁹⁵

¹⁹⁵ Uniform Act § 19(5).

Report and Recommendations of the Subcommittee on Sex Trafficking

In order to refine efforts to combat and prevent sex trafficking in New York, one must examine New York State's comprehensive anti-trafficking laws beginning 2007,¹⁹⁶ including the subsequent statute that was adopted in 2010, the Vacating Convictions Law,¹⁹⁷ and the first five years of the law's implementation and impact. From the analysis by the Subcommittee, it is clear that more should be done to not only strengthen the investigation and prosecution of sex trafficking and expand the scope of victim defenses and services, but also, to fashion a multi-dimensional response to this significant issue. The Subcommittee's recommendations fall into the following categories: (A) Strengthening the Investigation & Prosecution of Sex Trafficking; (B) Protecting Victims from Unjust Criminalization; and (C) Further Defining Appropriate Victim Services. The Subcommittee also recognizes the need for modifications in the prosecutorial framework that will provide prosecutors investigating sex trafficking methods of investigation they are presently lacking in the current law. This includes the expansion of designated offenses that allow for an eavesdropping or video surveillance warrant and the reclassification of sex trafficking as a violent felony.

The Subcommittee also examined the ways in which the current trafficking laws in New York State were important first steps, but did not go far enough, to protect victims of trafficking from criminalization and provide appropriate victim services. Thus, further change is appropriate to fully realize the goals of these laws. This includes the reform of the process of victim referrals for services throughout the State, the creation of an affirmative defense to criminal charges for conduct which is a direct result of sex trafficking, and an amendment to the vacatur statute to include a wider range of charges. One area of considerable ongoing concern is the lack of congruity between New York's anti-trafficking law and existing federal law.

Summary of Sex Subcommittee Recommendations

- *Reclassify Sex Trafficking as a B Violent Felony Offense by amending §70.02 (1) (a) of the NY Penal Law.*
- *Expand Eavesdropping/Video Surveillance Authority by including Prostitution in the Third Degree (Penal Law §230.25) as a "designated offense(s)" in Criminal Procedure Law §700.05(8)(h).*
- *Create an affirmative defense for trafficking victims.*
- *Amend the Vacating Convictions Law by: (a) including non-prostitution offenses; (b) eliminating the due diligence requirements; and (c) developing uniform court rules to protect the identities of trafficking survivors.*
- *Expand the victim referral process to the OTDA for services to include providers of social or legal services who are well positioned to identify victims of sex trafficking.*

¹⁹⁶ See general background discussion *infra*, pp. 14-16.

¹⁹⁷ For purposes of this subsection of this report, all references to "sex trafficking" are understood to denote human trafficking into prostitution.

I. SUBCOMMITTEE RECOMMENDATIONS

A. Criminal Justice Issues

1. Investigation & Prosecution

a. *Reclassification of Sex Trafficking as a Violent Felony Offense*

The Sex Trafficking Subcommittee recommends that the offense level for Sex Trafficking under Penal Law 230.34,¹⁹⁸ which is currently classified as a Class B, nonviolent felony, be reclassified as a Class B violent felony.¹⁹⁹ Currently, the minimum sentence for a first offender with a conviction for sex trafficking is a period of incarceration of 1 to 3 years; the maximum sentence for such a conviction is 8 1/3 - 25 years.²⁰⁰

The current classification and sentence scheme falls short in reflecting the magnitude of the crime of human trafficking. Victims are often forced to engage in sex acts or to perform labor or other services through physical violence, including sexual abuse, torture, starvation, and imprisonment, through threats of violence and coercion.²⁰¹ Congress has long recognized that women and children trafficked into the sex industry are also subject to greater exposure to deadly diseases, including HIV and AIDS and are even worked or physically brutalized to death.²⁰²

Under the current classification scheme, an individual convicted of sex trafficking is subject to the same sentencing scheme as an individual who is convicted of criminal possession of stolen property in the first degree. Current sentencing laws equate the penalties for an individual who engages in trafficking a victim into sexual servitude by violent or coercive means with an individual who has been found in possession of stolen property in excess of the statutory dollar amount.²⁰³

The reclassification, therefore, should bring the penalties for sex trafficking in alignment with the penalties for those offenses, which the Penal Law currently classifies as Class B violent felonies, such as kidnapping, assault, sexual abuse, and rape. The minimum sentence for a first offender with a conviction for a Class B violent felony is 5 years in addition to a period of post release supervision; the maximum sentence for such a conviction is 25 years in addition to a period of post release supervision.²⁰⁴

Furthermore, the penalties for the crime of sex trafficking under New York State law should reflect the same zero tolerance and deterrence goals that are reflected in the federal statute. For example, the TVPRA enforces harsher penalties, such as a sentence of life imprisonment, for trafficking if certain crimes occur during the commission of the trafficking offense: Death;

¹⁹⁸ N.Y. Penal Law § 230.34.

¹⁹⁹ This would be done through an amendment to § 70.02 (1)(a) of the NY Penal Law.

²⁰⁰ N.Y. Penal Law §§ 230.34.; 70.00(2)(b).

²⁰¹ H.R. REP. 106-487, 106TH Cong., 2nd Sess. 2000 at 2.

²⁰² *Id.* at 3.

²⁰³ Criminal possession of stolen property in the first degree is a class B felony, which is met when the value of property stolen exceeds *one million dollars*. See N.Y. Penal Law § 165.54 (emphasis added).

²⁰⁴ N.Y. Penal Law §§ 70.02(1)(a), (3)(a).

Attempted Killing; Kidnapping; Attempted Kidnapping; Aggravated Sexual Abuse; or Attempted Sexual Abuse.²⁰⁵ The TVPRA also punishes traffickers who use force, fraud, or coercion to traffic children with potential life sentences.²⁰⁶ The reclassification measure would take a substantial step paralleling state penalties or sex trafficking and the existing federal penalties.²⁰⁷

b. *Expansion of Eavesdropping/Video Surveillance Authority to Promoting Prostitution in the Third Degree*

Prostitution in the Third Degree (Penal Law §230.25) should also be included as a “designated offense(s)” in Criminal Procedure Law §700.05(8)(h) for purposes of eavesdropping and video surveillance warrants where reasonable cause exists that a suspect manages, supervises, controls or owns a house of prostitution, or prostitutes minors or otherwise engages in activities that constitute promoting prostitution in the third degree under Penal Law § 230.25.²⁰⁸

Currently, the only relevant crimes that are “designated offenses” under the Penal Laws are sex and labor trafficking and promoting prostitution in the second and first degrees.²⁰⁹ An investigation may reveal however, outward signs that a prostitution operation involves trafficking - e.g. branding of prostituted individuals, bruising observed by police and service providers, etc. Without probable cause for Sex Trafficking and only the second statutory element promoting prostitution, law enforcement lacks the right to secure eavesdropping authority in order to prove force and coercion without a cooperative witness. Moreover, victims of such crimes are unlikely to disclose their abuse directly to law enforcement for fear of retaliation by their oppressors. Even for the victims who do come forward, the psychological trauma a victim incurs when cooperating with an ongoing investigation can be traumatizing. For this reason, the Subcommittee recognizes that prosecutions that are “victimless” or less reliant on victim testimony should be actively encouraged.

To this end, the use of the eavesdropping warrants and video monitoring falling under N.Y. C.P.L. Art. 700.05 should be permitted and applied to prostitution organizations where there are outward signs of potential trafficking activity. These organizations rely heavily upon the use of telephonic communications to maintain control of trafficking victims and management of the prostitution business - making these organizational targets that are highly likely to yield evidence of Sex Trafficking through eavesdropping and video monitoring.

There is also the proverbial chicken or the egg issue. Without probable cause of Sex Trafficking, law enforcement will not be able to seek eavesdropping authority, which is the very investigative technique that is most likely to produce evidence of force, fraud, or coercion. In other words, without evidence of Sex Trafficking, law enforcement cannot obtain the best evidence of Sex Trafficking. Furthermore, the addition of Promoting Prostitution in the Third Degree (a felony) is certainly consistent with the severity of crimes that are currently “designated offenses.” For example, crimes such as Criminal Possession of a Controlled Substance in the Seventh Degree,

²⁰⁵ 18 U.S.C.A. § 1581.

²⁰⁶ 18 U.S.C.A. § 1591.

²⁰⁷ 22 U.S.C. § 7101.

²⁰⁸ N.Y. Penal Law §230.25.

²⁰⁹ N.Y. Crim. Proc. Law §§ 700.05(8)(b), (h).

which is a Class A misdemeanor and defined as the mere possession of a controlled substance such as cocaine,²¹⁰ are already included in this list.

Wiretapping and video monitoring would allow law enforcement to obtain the statements of traffickers and show their coercive and violent techniques all, potentially, without the need for a cooperative victim to testify at grand jury or trial. It would also allow greater certainty identifying victims and thereby allow for and promote their rescue and connection to support services and counseling.

Despite efforts of law enforcement, service providers, and legal representatives, there are still too few prosecutions of sex traffickers in New York State. The reasons for this phenomenon are complex and require a coordinated response on the part of many interested parties. This suggested change to CPL Art. 700, however, is a relatively direct way to address an issue that will lead to more wide-ranging and comprehensive sex trafficking prosecution in New York. On balance, concerns that such an expansion will violate personal liberties will be tempered by the existing, vigorous safeguards to deter abuse, including cost prohibitive mechanisms²¹¹ and the requirements of District Attorney and Court authorization prior to implementation.²¹²

2. Protecting Victims from Unjust Criminalization

Individuals who are trafficked are often arrested and convicted of prostitution and other offenses that they are forced or coerced to commit – despite their victim status.²¹³ Given the nature of trafficking – which can include physical violence, rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion²¹⁴ – victims of trafficking often are compelled to commit crimes as a direct result of their own victimization. Trafficked persons are, however, rarely recognized as victims by the police and prosecutors, and are, thus, pressured into pleading guilty to crimes which they did not willingly commit (i.e. prostitution) and/or do not understand the consequences of the charges. Multiple arrests, incarceration, police violence, deportation, employment and housing discrimination related to having a criminal record, and social

²¹⁰ N.Y. Penal Law § 220.03; N.Y. Crim. Proc. Law §700.05(8)(c).

²¹¹ ADMINISTRATIVE OFFICE OF THE U.S. COURTS, WIRETAP REPORT 2012 – TABLE 5 AVERAGE COST PER ORDER (2012) (The average cost of a wiretaps in New York State ranged from a low of \$21, 961 in Queens County, to a high of \$402, 361 for the NY Organized Crime Task Force); *see also* OFFICE OF THE INSPECTOR GENERAL, OIG-06-13, THE IMPLEMENTATION OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT (March 2006), (“From a law enforcement perspective, conducting electronic surveillance is expensive and includes wiretap fees charged by carriers, equipment costs, and costs associated with the delivery method. . . . From the 82 responses to our survey from law enforcement officials indicating that their agency conducts electronic surveillance, 31 agencies (38 percent) indicated that the number of intercepts conducted is hindered by the costs charged by carriers.”).

²¹² N.Y. Crim. Proc. Law §§ 700.05, 700.10, Appendix D.

²¹³ *See* Melissa Ditmore, *Kicking Down the Door: The Use of Raids to Fight Trafficking in Persons* Urban Justice Center: Sex Workers Project 48-9 (2009), *available at* <http://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>; *See also* New York City Bar, *Report on Legislation by the Committee on Sex and Law 3* (2010), *available at* <http://www.nycbar.org/pdf/report/uploads/20071848-CommentonLegislationreVictimsofSexTrafficking.pdf>.

²¹⁴ *See* United States Department of State, *Trafficking in Persons Report 2012*, at 17 (June 2012) (“2012 TIP Report”), *available at* <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm> (last visited Aug. 16, 2013). (describing and analyzing the characteristics and methods of control as well as the common reactions to the trauma of human trafficking).

stigma are among the barriers faced by those who have been forced into prostitution and create a vicious cycle of unintended consequences.²¹⁵

While the most common crime with which victims may be charged may be prostitution or loitering for the purpose of prostitution, trafficking victims are often coerced either physically or psychologically to commit other crimes.²¹⁶ When related criminal activity is either directly connected to the trafficking, or indirectly the product of powerlessness, hopelessness and isolation, “[v]ictims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.”²¹⁷

a. *Creating An Affirmative Defense for Trafficking Victims*

The Penal Law should be amended to provide an affirmative defense that allows victims of trafficking to defend against a criminal prosecution when the defendant has engaged in the criminal conduct as a result of being the victim of human trafficking. We note that an affirmative defense is in keeping with the current vacatur laws New York passed in 2010.²¹⁸ Notably, an affirmative defense to prostitution charges has already been adopted in several states, including Washington,²¹⁹ Alabama,²²⁰ New Jersey,²²¹ Massachusetts²²² and New Hampshire.²²³ In Oklahoma, the affirmative

²¹⁵ See discussion *infra*, p. 11, at FN 39.

²¹⁶ Sex Workers Project, *Vacating Criminal Convictions for Trafficked Persons: A Legal Memorandum for Advocates and Legislators*, Urban Justice Center 3 (2012), available at <http://sexworkersproject.org/downloads/2012/20120422-memo-vacating-convictions.pdf> (“In our practice we had clients who were forced into various activities for the financial benefit of their traffickers. These individuals have, in addition to or instead of prostitution convictions on their record, arrests for drug possession, trespassing, unauthorized street vending, and possession of a weapon, due to being a victim of human trafficking.”); New York City Bar, *Report on Legislation by the Committee on Sex and Law* 3 (2010), available at <http://www.nycbar.org/pdf/report/uploads/20071848-CommentonLegislationreVictimsofSexTrafficking.pdf> (“In New York, as elsewhere, in addition to enduring unspoken abuses, victims of sex trafficking are often arrested and convicted of prostitution-related offences.”); Polaris Project, *Human Trafficking Legislative Issue Brief: Vacating Convictions for Sex Trafficking Victims* (Aug. 2013), available at <http://www.polarisproject.org/storage/documents/2013-Analysis-Category-10-Vacating-Convictions.pdf> (“Sex trafficking victims often are compelled to engage in prostitution and other criminal activity, but are not always identified as victims when they are arrested, detained, prosecuted, convicted, and/or plead guilty to these crimes.”).

²¹⁷ 22 U.S.C. § 7101(b)(19).

²¹⁸ N.Y. Crim. Proc. Law § 440.10(1)(i).

²¹⁹ Wash. Rev. Code Ann. § 9A.88.040 (Additionally, this statute provides that “Documentation that the actor is named as a current victim in an information or the investigative records upon which a conviction is obtained for trafficking, promoting prostitution in the first degree, or trafficking in persons shall create a presumption that the person’s participation in prostitution was a result of having been a victim of trafficking, promoting prostitution in the first degree, or trafficking in persons.”).

²²⁰ Ala. Code § 13A-6-159 (also defense to prosecution for sexually explicit performance).

²²¹ 2013 N.J. Sess. Law Serv. Ch. 51 (Assembly 3352) (amending N.J. Stat. Ann. § 2C:34-1 (West 2005) which provided an affirmative defense for victims of trafficking or defendants under the age of 18).

²²² Mass. Gen. Laws Ann. ch. 265, § 57 (providing an affirmative defense for trafficking victims against charges of common night walking or common streetwalking).

²²³ N.H. Rev. Stat. Ann. § 645:2.

defense, moreover, extends to all crimes.²²⁴ Further, the Uniform Act similarly encourages states to adopt immunity provisions, including protecting minor victims from criminal liability for prostitution committed as a direct result of being a human trafficking victim and permitting adult human trafficking victims charged with prostitution and non-violent offenses to assert an affirmative defense of being a victim.²²⁵

Beyond the law and the trend in other states, the motivations compelling the addition of such an affirmative defense to any crime are many.

First, expanding the affirmative defense beyond prostitution-related charges emphasizes that many victims of trafficking are compelled to engage in other types of criminal conduct.²²⁶ Second, while prostitution-related offenses are the most common offenses for which survivors of trafficking are arrested, they are not the only ones. Many trafficked people are forced into various activities for the financial benefit of their traffickers. In New York, sex trafficking victims have faced arrests for drug possession, larcenies, trespassing, unauthorized street vending, and possession of a weapon, due to activities they were forced or coerced to engage in as victims of human trafficking. The affirmative defense should, therefore, not be limited to prostitution-related offenses, but rather, should be available with respect to any Penal Law offense, without restriction to a particular charge, when, at the time of the criminal conduct, the defendant was a victim of trafficking and the conduct was the direct result of being trafficked.²²⁷

Third, although some may argue that duress²²⁸ provides victims sufficient protection in cases where traffickers compel them to engage in criminal conduct,²²⁹ the duress defense clearly does not apply in all cases. It imposes several stringent requirements in proof that may be difficult for people in prolonged and traumatic trafficking situations to meet, such as the “reasonable firmness” in resisting requirement, the “physical force” requirement, and the bar for those who may be seen as having “placed themselves” in a situation which eventually leads to their being subjected to duress.²³⁰

²²⁴ Okla. Stat. Ann. tit. 21, § 748(D) (“It is an affirmative defense to prosecution for a criminal offense that, during the time of the alleged commission of the offense, the defendant was a victim of human trafficking.”).

²²⁵ Uniform Act § 16:

An individual charged with [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim.

²²⁶ *People v. G.M.*, 922 N.Y.S.2d 761, 762 (Crim. Ct. 2011) (defendant convicted for criminal trespass and drug possession in addition to prostitution).

²²⁷ The ABA Resolution also extends the affirmative defense beyond prostitution offenses but limits it to non-violent crimes.

²²⁸ Duress is defined in the New Penal Law as follows: “In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the *use or threatened imminent use* of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.” N.Y. Penal Law § 40.00.

²²⁹ There is also concern that the broad definition of sex trafficking will provide defendants, especially in prosecutions for violent crimes, with a complete defense, allowing potentially violent felons to avoid criminal responsibility. The Special Committee seriously considered this concern before deciding to support the position set forth in the Report.

²³⁰ N.Y. Penal Law § 40.00.

Fourth, victims of trafficking do engage in criminal conduct because of more extensive and complex psychological and emotional coercion and the related and unrelated profit motives of their traffickers (e.g. sex and drugs). As a result, whether the threat or coercion is physical or psychological, the victim often lacks the free will and agency required for criminal responsibility and should have the opportunity to assert and prove such facts. Finally, the temporal and causal limitations on this defense should protect against its overuse since the defendant will have the burden of proving the trafficking and the nexus of the crime to the trafficking.²³¹

b. *Expanding Vacatur for Survivors of Trafficking*

Survivors of human trafficking often confront the dual issues of criminalization and stigmatization long after they escape from their trafficking situations. For this reason, New York State has already recognized the need for a remedy to alleviate the impact of the collateral consequences of criminal convictions for survivors of human trafficking. On August 14, 2010, New York became the first state to adopt crucial legislation allowing survivors of trafficking to vacate their convictions for prostitution offenses.²³² The law aimed to give survivors a real chance of relieving themselves of such a wrongful conviction, unhindered by a criminal record. As the sponsors previously explained that for many survivors, “[e]ven after they escape from sex trafficking, the criminal record victimizes them for life. This bill would give victims of human trafficking a desperately needed second chance they deserve.”²³³

Since passage of New York’s law, numerous other states have passed similar bills,²³⁴ and legislation providing for vacatur for survivors of trafficking is pending in many other jurisdictions.²³⁵ Importantly, New York has remained at the forefront in shaping such innovative and critical remedy, and has seen many survivors begin to benefit from its relief.²³⁶

However, drawing on the experience of the first three years of the law’s implementation and use, there are amendments which the Subcommittee urges in order to complete the Legislature’s express goals of 2010. To bring this relief to as many survivors of trafficking as possible, and to ensure that the process for seeking relief is safe and uniform, the following changes should be made to the Vacating Convictions law.

²³¹ N.Y. Penal Law § 25.00 (“When a defense declared by statute to be an “affirmative defense” is raised at a trial, the defendant has the burden of establishing such defense by a preponderance of the evidence”).

²³² N.Y. Crim. Proc. Law § 440.10.

²³³ Sponsor’s Letter in Support, dated July 20, 2010, Bill Jacket, L 2010, ch. 332; *see also G.M.*, 922 N.Y.S.2d at 765; New York City Bar, 3, *supra* note 71 (“A record of prostitution-related offenses limits employment opportunities. It may limit housing opportunities, both public and private. . . . But victims of sex trafficking need gainful employment [and] stable housing . . . in order to successfully reintegrate into society. Otherwise, the heinous acts that victimized them in the first place also ensure that they are permanently denied a life within mainstream society.”).

²³⁴ Nev. Rev. Stat. Ann. § 176.515; 725 Ill. Comp. Stat. Ann. 5/116-2.1; MD Code Ann. Crim. Proc. § 8-302; Vt. Stat. Ann. tit. 13, § 2658; Haw. Rev. Stat. § 712-1209.6; Wash. Rev. Code Ann. § 9.96.060; Okla. Stat. Ann. tit. 21, § 748.2.

²³⁵ *See, e.g.*, A.B. 3352, Leg., 215th Sess. (N.J. 2012); A.B. 795, Leg., Reg. Sess. (C.A. 2012); S.B. 75, 197th Gen. Assemb., Reg. Sess. (P.A. 2013); H.B. 2814, Leg., 81st Sess. (W.V. 2013); H.B. 1325, Leg., 115th Sess. (F.L. 2013); S.B. 88, Leg., 39th Sess. (L.A. 2013); H.B. 6136, Gen. Assemb., Reg. Sess. (C.T. 2013); S.B. 259, Leg., 63rd Sess. (M.O. 2013).

²³⁶ *See, e.g.*, *G.M.*, 922 N.Y.S.2d 761; *People v. Gonzalez*, 927 N.Y.S.2d 567 (Crim. Ct. 2011); *People v. Doe*, 935 N.Y.S.2d 481 (Sup. Ct. 2011); *People v. Samatha R.*, 2011 WL 6303402 (N.Y. City Crim. Ct. 2011); *People v. S.S.*, 948 N.Y.S.2d 520 (Crim. Ct. 2012); *People v. A.B.*, 953 N.Y.S.2d 552 (Crim. Ct. 2012).

(i) Inclusion of non-prostitution offenses as eligible for vacatur

The New York Vacating Convictions law presently limits relief to cases in which the arrest charge was either New York Penal Law § 230.00 Prostitution or § 240.37 Loitering for the Purpose of Engaging in a Prostitution Offense.²³⁷

However, as discussed in more detail above, victims of trafficking are often arrested for crimes well beyond prostitution-related offenses connected by their traffickers, *supra*, pp. 52-53.²³⁸ The fact that the remedy in New York is confined to two crimes (loitering and prostitution) does not embrace the totality of crimes or reflect the reality of trafficking. If the law is strictly interpreted, it will not achieve the goal of the legislation, which is to allow victims to move forward with their lives with a clean slate.

The recently adopted 2013 Uniform Act similarly urges states to promulgate vacatur provisions that go beyond prostitution offenses.²³⁹ Furthermore, in New York, courts and District Attorneys have agreed that in certain circumstances vacatur should be available for non-prostitution convictions that occurred as a result of trafficking. Judges may exercise their discretion, and grant vacatur. The statute states that “if a Court grants a motion under paragraph (I) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, *and may* take such additional action as is appropriate in the circumstances.”²⁴⁰ In one of the first cases under the New York Law, a trafficking survivor had six convictions vacated, two for Prostitution, two for Disorderly Conduct (where the arresting charge was Drug Possession), and two for Trespass. In that case, the District Attorney consented to vacatur in all of these cases because the survivor had been forced to commit all of these crimes in the course of her victimization.²⁴¹

Notably, a recent decision issued by New York Criminal Court Judge Toko Serita, a member of the Committee, ruled that the Vacating Law permits a court to dismiss non-prostitution

²³⁷ N.Y. Crim. Proc. Law § 440.10.

²³⁸ See, e.g., *People v. G.M.*, 922 N.Y.S.2d 761, 762 (Crim. Ct. 2011) (criminal trespass and drug possession); *People v. Gonzalez*, 927 N.Y.S.2d 567, 569 (Crim. Ct. 2011) (resisting arrest).

²³⁹ Uniform Act, § 17 (2013)

(a) An individual convicted of [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may apply to [insert name of appropriate court] to vacate the applicant’s record of conviction for the offense. A court may grant such motion on a finding that the defendant’s participation in the offense was a direct result of being a victim of human trafficking.

(b) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant’s participation in the offense was a direct result of being a victim.

(c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted, are governed by [insert the appropriate state code section governing post- conviction relief procedures].

²⁴⁰ N.Y. Crim. Proc. Law § 440.10.

²⁴¹ *G.M.*, 922 N.Y.S.2d at 767.

charges related to the trafficking without the consent of the DA.²⁴² In that case, Judge Serita vacated a charge of criminal possession of a weapon in the fourth degree,²⁴³ finding that the “knife at issue which gave rise to the weapons possession charge, was recovered incident to defendant’s prostitution-related activity, and that she was a victim of trafficking at the time of her arrest.” Judge Serita noted the Legislature’s “goal in amending the statute was to avoid punishing the victims of human trafficking by saddling them with criminal record,”²⁴⁴ “[it] fully expected the statute to provide relief to trafficking victims who were not only arrested for prostitution or loitering for the purposes of prostitution, but were also convicted of other charges.”²⁴⁵

The importance of expunging prior convictions also was aptly highlighted in the New York State Bar’s 2006 Report and Recommendation of the Special Committee on Collateral Consequences of Criminal Proceedings, entitled “Re-Entry and Reintegration: The Road to Public Safety.”²⁴⁶ The report succinctly summarizes the hardships and obstacles individuals face when stigmatized with prior convictions when, among other things, attempting to secure employment, and housing.²⁴⁷ To the extent that this Report furthers the goals of eliminating hardship to trafficking victims, it is entirely consistent with already approved State Bar policy.

Some might argue that a person with convictions for offenses other than prostitution or loitering for the purpose of prostitution, based upon conduct in which they were coerced to engage could have asserted a defense of duress during the pendency of the prosecution. However, the defense of duress, as discussed above, is too narrow to be effectively used by most trafficking victims forced to commit criminal acts as a result of having been trafficked. Thus, New York should recognize that victims of trafficking can be forced to engage in a variety of illegal acts beyond prostitution, and the vacatur remedy should include any criminal offense that occurred as a direct result of trafficking.

(ii) Elimination of the Due Diligence Requirement

The New York Vacating Convictions law states in relevant part:

A motion under this paragraph shall be made with *due diligence*, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such a motion, or for other reasons consistent with the purpose of this paragraph.²⁴⁸

²⁴² *People v. L.G.*, 2000QN056893, 2013 WL 4402830 (N.Y. Crim. Ct. July 12, 2013); *see also People v. G.M.*, 922 N.Y.S.2d 761 (vacating criminal trespass and drug possession with consent of prosecutor, leaving open question whether the law could be applied to non-prostitution related offenses where the prosecution has not consented to vacatur).

²⁴³ PL § 265.01[1].

²⁴⁴ *Id.* at *8.

²⁴⁵ *Id.*

²⁴⁶ *See* NYSBA Report and Recommendation of the Special Committee on Collateral Consequences of Criminal Proceedings, *Re-Entry and Reintegration: The Road to Public Safety* (May 2006).

²⁴⁷ *Id.*

²⁴⁸ N.Y. Crim. Proc. Law § 440.10 (emphasis added).

Courts can define “due diligence in a variety of ways: timeliness following prosecution; timeliness following rehabilitation; timeliness after appeals are exhausted. To avoid inconsistent determinations, and provide the courts with guidance, the Legislature should recognize the necessity of individual facts which compel a victim to move for such relief may differ widely.

The due diligence requirement recognizes and provides for the likelihood that survivors may file such motion months, years, or even decades following the original conviction. Although intended to begin after a turning point in a survivor’s life, such as escaping a trafficking situation, or engaging with a service provider, its ambiguity renders survivors ineligible for such relief if they fail to bring the motion *soon enough*, or in the words of the statute, with “due diligence.” Victims of human trafficking suffer profound trauma, as well as very real threats of violence and danger after leaving their coercive situations, which may prevent them from bringing such a motion in a timely manner. For this reason, a number of states outside New York have chosen to remove the statute of limitations for crimes involving sexual abuse.²⁴⁹ Other states allow a suit to be brought several years after the alleged crime occurs.²⁵⁰

Furthermore, victim awareness and use of this remedy is demonstrably not widespread. Nearly three years after the law was passed, very few survivors of trafficking have the ability to file a motion under CPL §440.10(1)(i). Only thirty-eight motions (for 29 survivors) have been granted in the entire state.²⁵¹ By contrast, service providers in the New York City metropolitan area alone interacted with at least an estimated 11,268 survivors of human trafficking between 2000 and 2010.²⁵² The salutary effects of expungement, therefore, should be available to victims whenever they are ready to pursue.

(iii) Development of Uniform Court Rules to Protect Identities of Trafficking Survivors

One purpose for allowing survivors of trafficking to vacate past convictions is to protect them from having to reveal a part of their past that they would rather keep private. Sometimes more than legal discrimination, trafficking survivors face stigma, verbal harassment, and difficulty in their work environments because their employer or co-workers know they have a record of prostitution. Disclosing the past trafficking experiences and identities of survivors to the public could put them at physical risk, especially if the trafficker is still at large, such as during an appeal of the trafficker’s conviction or especially where a criminal enterprise may be ongoing. The fear of this potential danger may stop survivors from coming forward and accessing this remedy.

²⁴⁹ See, e.g., Ala. Code § 15-3-5 (criminal prosecution of a sexual offense where the victim was under 16 years of age can be commenced at any time); Colo. Rev. Stat. Ann. § 16-5-401 (prosecutions for any sex offense where the victim was under 18 years old can be commenced at any time); Idaho Code Ann. § 18-1506 (prosecution for the sexual abuse of child under the age of 16 years old can be commenced at any time).

²⁵⁰ See, e.g., Conn. Gen. Stat. Ann. § 54-193a (prosecution involving the sexual exploitation or sexual abuse of a minor may be commenced within 30 years of the victim reaching the age of 18, or within 5 years of the victim notifying the police of the violation); Mo. Ann. Stat. § 556.037 (prosecutions for sexual offenses involving a victim under the age of 18 must be commenced within 30 years of the victim reaching the age of 18).

²⁵¹ Based on a collaborative statewide data collection effort of the Urban Justice Center and the Trafficking Victims Advocacy Project at The Legal Aid Society (on file with authors).

²⁵² Hofstra Study at 4.

Therefore, a public record that includes the survivor’s name through a vacating motion would be contrary to the goal of allowing them to move forward with their lives.

As a result, to facilitate the filing of vacatur motions throughout New York State, while simultaneously protecting victims seeking the relief from the risk of public disclosure of their identity, the Subcommittee recommends the promulgation of uniform court rules to govern the filing procedure. In New York, the Civil Rights Law prohibits any public disclosure of identifying documents in cases involving some sex offenses.²⁵³ To date, advocates who have been bringing vacatur motions statewide have relied on this provision to allow for the filing of the motion under seal. Again, “sex trafficking” is not one of the specifically designated offenses under this law, which was enacted before the existence of this crime. Survivors of trafficking who bring motions to vacate may qualify by being victims of trafficking under federal alone. Therefore, courts may not universally apply this privacy protection to survivors seeking relief.

Additionally, questions have arisen regarding the publication of court decisions on vacatur motions and how to protect the identity of the survivor of trafficking while allowing the court to maintain files and records in an organized way. A uniform court rule developed to govern this procedure will similarly protect the privacy of survivors of human trafficking.

B. Further Defining Appropriate Victim Services

1. Reform Process for Referring Victims to Services

Since victim interaction with law enforcement often results in less than ideal living conditions for victims, access to services and benefits cannot be conditioned on a victim’s identification by, or cooperation with, law enforcement. Victims of trafficking are in fact often afraid of law enforcement after the experience of having been arrested, and both international law and experts on human trafficking recommend that access to victim services not be conditioned on cooperation with law enforcement.²⁵⁴ Currently, only a law enforcement agency or prosecutor’s office is authorized by statute to initiate a referral for the services made available for non-citizen trafficking victims under New York’s Human Trafficking Law.²⁵⁵ Thus, those victims of trafficking for whom cooperation with law enforcement is not possible, the fear of one’s safety, or about whom law enforcement simply may not be aware, are unfairly denied the opportunity to receive assistance, even when they are actively working with advocates or service providers. This population was intended to be left out of the process.

The Subcommittee therefore urges the Legislature and Executive Branch, as well as relevant state agencies, to adopt rules and procedures to certify victims and/or link victims to state services. Such entry points are referral sources and should include social service advocates, courts, social

²⁵³ N.Y. Civ. Rights Law § 50-b (“The identity of any victim of a sex offense, as defined in article one hundred thirty or section 255.25, 255.26, or 255.27 of the penal law, or of an offense involving the alleged transmission of the human immunodeficiency virus, shall be confidential. No report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection.”).

²⁵⁴ Melissa Ditmore, *The Use of Raids to Fight Trafficking in Persons* New York: Urban Justice Center, Sex Workers Project 61 (2009), available at <http://www.sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf>.

²⁵⁵ N.Y. Soc. Serv. Law § 483-cc.

workers, physicians, teachers, and notably, NGOs who often interact with survivors of trafficking on a daily basis and are in the best position to identify victims and refer for services. Over-reliance on law enforcement in this regard results in too many missed opportunities to identify victims, connect victims to services and assist them in escaping trafficking. Therefore, the New York Social Services Law should be amended to allow for a broader base of referrals to the OTDA, the agency responsible for providing services and assistance to victims of trafficking. This amendment would ensure that victims are more quickly identified and linked to the services of which they are in immediate need.

CONCLUSION

New York laudably enacted the beginning of a promising legal structure to combat the crimes of human trafficking. In their present form, however, these laws do not adequately address or protect victims, provide sufficient clarity for effective government enforcement, lack robust remedies for the victim individually, fail to recognize the child's needs, and suffer from a lack of congruence with the federal statutes.

We believe that New York should continue to lead the Country in the enactment of legislation, which addresses these inadequacies. This Report therefore is aimed at improving the law on specific issues and problems from the moment the victim seeks aid or is arrested, through the conviction of traffickers, family law issues, as well as post-conviction remedies to free women, children or men from a life of stigmatization. The New York State Bar Association – the voice of the legal profession in this state – must be at the forefront and speak to improving the law on human trafficking.

Appendix A

Task Force Members

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- **John Gross, Esq.** - Ingerman Smith
- **Hon. Barry Kamins** - Justice of the Supreme Court of NY Criminal Term, Kings County
- **Kate Mogulescu, Esq.** - Legal Aid Society
- **Susan Katz Richman, Esq.** - Nassau County Court
- **Hon. Carol Robles-Roman** - Deputy Mayor for Legal Affairs -&- Counsel to the Mayor, City Hall
- **Hon. Shira Scheindlin** - United States District Court for the Southern District of New York
- **Hon. Toko Serita** - Supreme Criminal Court of the State of New York, County of Queens
- **John Temple, Esq.** - Attorney-in-Charge, Human Trafficking Program, New York County District Attorney's Office

- **Suzanne Tomatore, Esq.** – Director, Immigrant Women & Children Project, City Bar Justice Center
- **Suzanne Tomkins** - Clinical Professor, SUNY Buffalo Law School, The State University of New York

Appendix B

50 State Survey

Human Trafficking Laws by State

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Alabama

Laws Criminalizing Sex Trafficking	Ala. Code § 13A-6-152 (2010) Ala. Code § 13A-6-153 (2010)
Laws Criminalizing Labor Trafficking	Ala. Code § 13A-6-152 (2010)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Ala. Code § 13A-6-156 (2010)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ala. Code § 13A-6-152 (2010).
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	Ala. Code § 13A-6-157 (2010)
Laws Vacating Convictions for Victims	

Alaska

Laws Criminalizing Sex Trafficking	Alaska Stat. § 11.66.110 (2012) Alaska Stat. § 11.66.120 (2012) Alaska Stat. § 11.66.130 (2012) Alaska Stat. § 11.66.135 (2012)
Laws Criminalizing Labor Trafficking	Alaska Stat. § 11.41.360 (2012) Alaska Stat. § 11.41.365 (2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Alaska Stat. § 11.66.145 (2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Alaska Stat. §11.66.110 (a)(2) (2012)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	S.B. 22, 28th Legis., Reg. Sess. (Alaska 2013) Alaska Stat. § 09.10.065 (2013)
Laws Vacating Convictions for Victims	

Arizona

Laws Criminalizing Sex Trafficking	Ariz. Rev. Stat. § 13-1307 (2010)
Laws Criminalizing Labor Trafficking	Ariz. Rev. Stat. § 13-1306 (2005) Ariz. Rev. Stat. § 13-1308 (2010)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ariz. Rev. Stat. § 13-1307 (B) (2010)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Arkansas

Laws Criminalizing Sex Trafficking	H.B. 1203, 89th Gen. Assemb. (Ark. 2013) Ark. Code. Ann. §5-18-102 (2013) Ark. Code. Ann. §5-18-103 (2013)
Laws Criminalizing Labor Trafficking	Ark. Code. Ann. § 5-18-103 (a)(1) (2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	H.B. 1581, 89th Gen. Assemb. (Ark. 2013) Ark. Code. Ann. §5-5-202 (2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Ark. Code. Ann. §12-19-101 (2013)
Safe Harbor Laws Protecting Trafficked Minors	H.B. 869, 89th Gen. Assemb. (Ark. 2013) Ark. Code. Ann. § 5-18-103 (2013) Ark. Code. Ann. § 5-70-102 (2013) Ark. Code. Ann. § 5-70-103 (2013) Ark. Code. Ann. § 9-27-323 (2013) Ark. Code. Ann. §12-18-1201 (2013) Ark. Code. Ann. §12-18-1202 (2013) Ark. Code. Ann. §19-5-1249 (2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ark. Code. Ann. §5-18-103(a)(4) (2013)
Laws Providing Victim Assistance	Ark. Code. Ann. §16-90-1116
Laws Providing Civil Remedy to Victims	H.B. 1203, 89th Gen. Assemb. (Ark. 2013) Ark. Code. Ann. §16-118-109 (2013)
Laws Vacating Convictions for Victims	

California

Laws Criminalizing Sex Trafficking	Cal. Penal Code § 236.1 (West 2012)
Laws Criminalizing Labor Trafficking	Cal. Penal Code § 236.1 (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Cal. Penal Code § 236.3 (West 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	Cal. Welf. & Inst. Code § 18259 (West 2009) Cal. Welf. & Inst. Code § 18259.7 (West 2009)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Cal. Penal Code § 236.1 (c) (West 2012)
Laws Providing Victim Assistance	Cal. Welf. & Inst. Code § 13283 (West 2007) Cal. Penal Code § 236.5 (West 2009)
Laws Providing Civil Remedy to Victims	Cal. Civ. Code § 52.5 (West 2006)
Laws Vacating Convictions for Victims	

Colorado

Laws Criminalizing Sex Trafficking	
Laws Criminalizing Labor Trafficking	Col. Rev. Stat. Ann. § 18-3-503 (2010)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Col. Rev. Stat. Ann. § 16-13-303 (2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Col. Rev. Stat. Ann. § 18-3-504 (2013)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	Col. Rev. Stat. Ann. §13-21-127 (2012)
Laws Vacating Convictions for Victims	

Connecticut

Laws Criminalizing Sex Trafficking	Conn. Gen. Stat. §53a-192 (West 1992) Conn. Gen. Stat. §53a-192a (West 2013)
Laws Criminalizing Labor Trafficking	Conn. Gen. Stat. §53a-192a (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Conn. Gen. Stat. §54-36p (West 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Conn. Gen. Stat. § 46a-170 (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	Conn. Gen. Stat. § 53a-82 (West 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	Conn. Gen. Stat. §54-234 (West 2007)
Laws Providing Civil Remedy to Victims	Conn. Gen. Stat. § 52-571i (West 2006)
Laws Vacating Convictions for Victims	H.B. 5666, Gen. Assemb., Jan. Sess. (Conn. 2013)

Delaware

Laws Criminalizing Sex Trafficking	Del. Code. Ann. tit. 11 § 787 (West 2013)
Laws Criminalizing Labor Trafficking	Del. Code. Ann. tit. 11 § 787 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Del. Code. Ann. tit. 11 § 787 (b) (2) (West 2013)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

District of Columbia

Laws Criminalizing Sex Trafficking	D.C. Code § 22-1835 (2010) D.C. Code § 22-1833 (2010)
Laws Criminalizing Labor Trafficking	D.C. Code § 22-1832 (2010)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	D.C. Code § 22-1838 (2010)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	D.C. Code § 22-1834 (2010)
Laws Providing Victim Assistance	D.C. Code § 14-311 (2010)
Laws Providing Civil Remedy to Victims	D.C. Code § 4-509 (1997)
Laws Vacating Convictions for Victims	

Florida

Laws Criminalizing Sex Trafficking	Fla. Stat. Ann. §787.06 (West 2012)
Laws Criminalizing Labor Trafficking	Fla. Stat. Ann. §787.06 (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Fla. Stat. Ann. §787.06 (West 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	H.B. 99, 114th Reg. Sess. (Fla. 2012) Fla. Stat. Ann. § 39.01 (West 2013) Fla. Stat. Ann. §39.401(West 2013) Fla. Stat. Ann. § 39.524 (West 2013) Fla. Stat. Ann. § 409.1678 (West 2013) Fla. Stat. Ann. §796.07 (West 2013) Fla. Stat. Ann. § 960.065 (West 2013) Fla. Stat. Ann. §985.115 (West 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Fla. Stat. Ann. §787.06(3)(g) (West 2013)
Laws Providing Victim Assistance	Fla. Stat. Ann. § 402.87 (West 2011)
Laws Providing Civil Remedy to Victims	Fla. Stat. Ann. § 772.104 (West 2006)
Laws Vacating Convictions for Victims	H.B. 1325, 114th Reg. Sess. (Fla. 2012)

Georgia

Laws Criminalizing Sex Trafficking	Ga. Code Ann. § 16-5-46 (West 2011)
Laws Criminalizing Labor Trafficking	Ga. Code Ann. § 16-5-46 (c) (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Ga. Code Ann. § 16-5-46 (g) (West 2011) Ga. Code Ann. § 16-6-13.3. (West 2011)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ga. Code Ann. § 16-5-46 (a) (6) (West 2011)
Laws Providing Victim Assistance	Ga. Code Ann. § 17-17-6 (West 2011)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Hawaii

Laws Criminalizing Sex Trafficking	Haw. Rev. Stat. § 712-1201 (West 2011) Haw. Rev. Stat. § 712-1202 (West 2011)
Laws Criminalizing Labor Trafficking	Haw. Rev. Stat. § 707-781 (West 2011) Haw. Rev. Stat. § 707-782 (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Haw. Rev. Stat. § 712A-4 (West 2011)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Haw. Rev. Stat. § 712-1202 (b) (West 2011)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	Haw. Rev. Stat. §663J-2 (West 1999) Haw. Rev. Stat. §663J-3 (West 1999) Haw. Rev. Stat. §663J-4 (West 1999) Haw. Rev. Stat. §663J-5 (West 1999)
Laws Vacating Convictions for Victims	Haw. Rev. Stat. § 712-1209.6 (West 2012)

Idaho

Laws Criminalizing Sex Trafficking	Idaho Code Ann. § 18-8602 (West 2007)
Laws Criminalizing Labor Trafficking	Idaho Code Ann. § 18-8602 (West 2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	S.B. 1060 62nd Legis., 1st Reg. Sess. (Idaho 2013) Idaho Code Ann. § 18-5612 (West 2007)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Idaho Code Ann. § 18-8602 (West 2007)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Illinois

Laws Criminalizing Sex Trafficking	720 Ill. Comp. Stat. Ann. 5/10-9 (West 2013)
Laws Criminalizing Labor Trafficking	720 Ill. Comp. Stat. Ann. 5/10-9 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	720 Ill. Comp. Stat. Ann. 5/10-9 (j) (West 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	2013 Ill. Legis. Serv. P.A. 98-538 (S.B. 1872) (West) 325 Ill. Comp. Stat. Ann. 5/3 (West 2013) 705 Ill. Comp. Stat. Ann. 405/2-3 (West 2013) 705 Ill. Comp. Stat. Ann. 405/2-18 (West 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	720 Ill. Comp. Stat. Ann. 5/10-9 (c) (West 2013)
Laws Providing Victim Assistance	720 Ill. Comp. Stat. Ann. 5/10-9 (h) (i) (West 2013)
Laws Providing Civil Remedy to Victims	740 Ill. Comp. Stat. Ann. 128/5; 15 (West 2006)
Laws Vacating Convictions for Victims	725 Ill. Comp. Stat. Ann. 5/116-2.1 (West 2013)

Indiana

Laws Criminalizing Sex Trafficking	Ind. Code Ann. 35-42-3.5-1 (West 2013)
Laws Criminalizing Labor Trafficking	Ind. Code Ann. 35-42-3.5-1 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Ind. Code Ann. 34-24-1-1 (West 2014)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ind. Code Ann. 35-42-3.5-1 (West 2013)
Laws Providing Victim Assistance	Ind. Code Ann. 5-2-6-3 (West 2013) Ind. Code Ann. 35-42-3.5-4 (West 2009)
Laws Providing Civil Remedy to Victims	Ind. Code Ann. 35-42-3.5-3 (West 2010)
Laws Vacating Convictions for Victims	

Iowa

Laws Criminalizing Sex Trafficking	Iowa Code Ann. § 710A.1 (West 2012) Iowa Code Ann. § 710A.2 (West 2013) Iowa Code Ann. § 710A.2A (West 2013)
Laws Criminalizing Labor Trafficking	Iowa Code Ann. § 710A.1 (4) (a) (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Iowa Code Ann. § 809A.3 (West 2013) Iowa Code Ann. § 809A.4 (West 1998)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Iowa Code Ann. §710A.1(4) (a) (2) (West 2012)
Laws Providing Victim Assistance	Iowa Code Ann. § 915.51 (West 2006)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Kansas

Laws Criminalizing Sex Trafficking	Kan. Stat. Ann. § 21-5426 (West 2012)
Laws Criminalizing Labor Trafficking	Kan. Stat. Ann. § 21-5426 (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	2013 Kan. Legis. Serv. Ch. 133 (S.B. 246) (West)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	2013 Kansas Legis. Serv. 120 (H.B. 2034) (West)
Safe Harbor Laws Protecting Trafficked Minors	2013 Kansas Legis. Serv. 120 (H.B. 2034) (West)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Kan. Stat. Ann. § 21-5426 (b) (4) (West 2012)
Laws Providing Victim Assistance	Kan. Stat. Ann. § 75-453 (West 2011)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Kentucky

Laws Criminalizing Sex Trafficking	Ky. Rev. Stat. Ann. § 529.010 (West 2013) Ky. Rev. Stat. Ann. § 529.100 (West 2007) Ky. Rev. Stat. Ann. § 529.110 (West 2007)
Laws Criminalizing Labor Trafficking	Ky. Rev. Stat. Ann. § 529.010 (5) (a) (West 2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	H.B. 3, Reg. Sess. (Ky. 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	H.B. 3, Reg. Sess. (Ky. 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Ky. Rev. Stat. Ann. § 529.010 (5) (b) (West 2007)
Laws Providing Victim Assistance	Ky. Rev. Stat. Ann. § 431.063 (West 2007) Ky. Rev. Stat. Ann. § 422.295 (West 2007)
Laws Providing Civil Remedy to Victims	H.B. 3, Reg. Sess. (Ky. 2013) Ky. Rev. Stat. Ann. § 431.082 (West 2013)
Laws Vacating Convictions for Victims	

Louisiana

Laws Criminalizing Sex Trafficking	La. Rev. Stat. Ann. § 46.2 (B) (2) (2012)
Laws Criminalizing Labor Trafficking	La. Rev. Stat. Ann. § 46.2 (2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	2013 La. Sess. Law Serv. Act 429 (S.B. 88) (West)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	2013 La. Sess. Law Serv. Sen. Conc. Res. 27 (West)
Safe Harbor Laws Protecting Trafficked Minors	2013 La. Sess. Law Serv. Act 429 (S.B. 88) (West)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	La. Rev. Stat. Ann. § 46.3 (2012)
Laws Providing Victim Assistance	2013 La. Sess. Law Serv. Act 429 (S.B. 88) (West)
Laws Providing Civil Remedy to Victims	2013 La. Sess. Law Serv. Act 429 (S.B. 88) (West)
Laws Vacating Convictions for Victims	

Maine

Laws Criminalizing Sex Trafficking	2013 Me. Legis. Serv. Ch. 407 (H.P. 824) (L.D. 1159) (West)
Laws Criminalizing Labor Trafficking	Me. Rev. Stat. Ann. § 301 (2009) Me. Rev. Stat. Ann. § 302 (2003)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	2013 Me. Legis. Serv. Ch. 194 (H.P. 1033) (L.D. 1439) (West)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	2013 Me. Legis. Serv. Ch. 407 (H.P. 824) (L.D. 1159) (West)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	2013 Me. Legis. Serv. Ch. 407 (H.P. 824) (L.D. 1159) (West)
Laws Vacating Convictions for Victims	

Maryland

Laws Criminalizing Sex Trafficking	2013 Md. Legis. Serv. Ch. 653 (H.B. 933) (West)
Laws Criminalizing Labor Trafficking	2013 Md. Legis. Serv. Ch. 415 (H.B. 1396) (West)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	H.B. 391, 430th Sess. Gen. Assemb. (Md. 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	2013 Md. Legis. Serv. Ch. 653 (H.B. 933) (West)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	Md. Code Ann. Criminal Procedure § 8-302 (West 2011)

Massachusetts

Laws Criminalizing Sex Trafficking	Mass. Gen. Laws. Ann ch. 265 § 50 (West 2012)
Laws Criminalizing Labor Trafficking	Mass. Gen. Laws. Ann ch. 265 § 51 (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Mass. Gen. Laws. Ann ch. 265 § 56 (West 2012) Mass. Gen. Laws. Ann ch. 265 § 66A (West 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	H.B. 3470, 187th Gen. Court (Mass. 2011)
Safe Harbor Laws Protecting Trafficked Minors	Mass. Gen. Laws. Ann ch. 119 § 39K (West 2012)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Mass. Gen. Laws. Ann ch. 265 § 50 (b) (West 2012) Mass. Gen. Laws. Ann ch. 265 § 51 (b) (West 2012) Mass. Gen. Laws. Ann ch. 265 § 26D (West 2012)
Laws Providing Victim Assistance	Mass. Gen. Laws. Ann ch. 265 § 66A (West 2012)
Laws Providing Civil Remedy to Victims	Mass. Gen. Laws. Ann ch. 260 § 4D (West 2012)
Laws Vacating Convictions for Victims	

Michigan

Laws Criminalizing Sex Trafficking	Mich. Comp. Laws. Ann. §§ 750.462a-j (West 2006)
Laws Criminalizing Labor Trafficking	Mich. Comp. Laws. Ann. § 750.462a (West 2006) Mich. Comp. Laws. Ann. §§ 750.462a-f, -h, -j, (West 2006)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Mich. Comp. Laws. Ann. § 600.4701 (West 2011) Mich. Comp. Laws. Ann. § 600.4702 (West 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	Mich. Comp. Laws. Ann. § 750.448 (West 2002)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Mich. Comp. Laws. Ann. § 750.462g (West 2006)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Minnesota

Laws Criminalizing Sex Trafficking	Minn. Stat. Ann. § 609.321 (West 2011) Minn. Stat. Ann. § 609.322 (West 2009)
Laws Criminalizing Labor Trafficking	Minn. Stat. Ann. § 609.281 (West 2009) Minn. Stat. Ann. § 609.282 (West 2006)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Minn. Stat. Ann. § 609.5315 (West 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	S.F. 1294, 88th Legis. Sess., 1st Reg. Sess. (Minn. 2013) Minn. Stat. Ann. § 260C.007 (West 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Minn. Stat. Ann. § 609.322 (West 2009)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	Minn. Stat. Ann. § 609.284 (West 2005)
Laws Vacating Convictions for Victims	

Mississippi

Laws Criminalizing Sex Trafficking	Miss. Code Ann. § 97-3-54.1 (West 2013) Miss. Code Ann. § 97-3-54.2 (West 2006) Miss. Code Ann. § 97-3-54.3 (West 2013) Miss. Code Ann. § 97-3-54.4 (West 2013)
Laws Criminalizing Labor Trafficking	Miss. Code Ann. § 97-3-54.1 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Miss. Code Ann. § 97-3-54.7 (West 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Miss. Code Ann. § 97-3-54.9 (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Miss. Code Ann. § 97-3-54.1 (1) (C) (West 2013)
Laws Providing Victim Assistance	Miss. Code Ann. § 97-3-54.8 (West 2013)
Laws Providing Civil Remedy to Victims	Miss. Code Ann. § 97-3-54.6 (West 2013)
Laws Vacating Convictions for Victims	Miss. Code Ann. § 97-3-54.6 (West 2013)

Missouri

Laws Criminalizing Sex Trafficking	Mo. Ann. Stat. § 566.200 (West 2011) Mo. Ann. Stat. § 566.209 (West 2011)
Laws Criminalizing Labor Trafficking	Mo. Ann. Stat. § 566.203 (West 2011) Mo. Ann. Stat. § 566.206 (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Mo. Ann. Stat. § 513.607 (West 2001)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Mo. Ann. Stat. § §566.212 (West 2011) Mo. Ann. Stat. § §566.213 (West 2011)
Laws Providing Victim Assistance	Mo. Ann. Stat. § 566.223 (West 2011)
Laws Providing Civil Remedy to Victims	Mo. Ann. Stat. § 566.223 (West 2011)
Laws Vacating Convictions for Victims	

Montana

Laws Criminalizing Sex Trafficking	Mont. Code Ann. § 45-5-305 (2013)
Laws Criminalizing Labor Trafficking	Mont. Code Ann. § 45-5-306 (2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	H.B. 478 63 Legis. (Mont. 2013)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	S.B. 259 63 Legis. (Mont. 2013)

Nebraska

Laws Criminalizing Sex Trafficking	L.B. 1, 103rd Legis., 1st Reg. Sess. (Neb. 2013) L.B. 255, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Laws Criminalizing Labor Trafficking	L.B. 255, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	L.B. 222, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Safe Harbor Laws Protecting Trafficked Minors	L.B. 255, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	L.B. 255, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Laws Providing Victim Assistance	L.B. 222, 103rd Legis., 1st Reg. Sess. (Neb. 2013)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Nevada

Laws Criminalizing Sex Trafficking	A.B. 67, 77th Reg. Sess. (Nev. 2013)
Laws Criminalizing Labor Trafficking	A.B. 146, 77th Reg. Sess. (Nev. 2013) Nev. Rev. Stat. Ann. § 200.465 (West 2005) Nev. Rev. Stat. Ann. § 200.467 (West 2007) Nev. Rev. Stat. Ann. § 613.080 (West 2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	A.B. 146, 77th Reg. Sess. (Nev. 2013) A.B. 67, 77th Reg. Sess. (Nev. 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	A.B. 146, 77th Reg. Sess. (Nev. 2013)
Laws Providing Victim Assistance	A.B. 311, 77th Reg. Sess. (Nev. 2013)
Laws Providing Civil Remedy to Victims	A.B. 67, 77th Reg. Sess. (Nev. 2013)
Laws Vacating Convictions for Victims	A.B. 146, 77th Reg. Sess. (Nev. 2013)

New Hampshire

Laws Criminalizing Sex Trafficking	N.H. Rev. Stat. Ann. § 633:6 (2010) N.H. Rev. Stat. Ann. § 633:7 (2010)
Laws Criminalizing Labor Trafficking	N.H. Rev. Stat. Ann. § 633:5 (2007) N.H. Rev. Stat. Ann. § 633:6 (2010) N.H. Rev. Stat. Ann. § 633:7 (2010)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	N.H. Rev. Stat. Ann. § 633:8 (2010) N.H. Rev. Stat. Ann. § 633:9 (2010)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

New Jersey

Laws Criminalizing Sex Trafficking	N.J. Stat. Ann. § 2C:13-8 (West 2013)
Laws Criminalizing Labor Trafficking	N.J. Stat. Ann. § 2C:13-8 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	N.J. Stat. Ann. § 2C:64-1 (West 2011)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	A.B. 3352, 215th Legis., 2nd Ann. Sess. (N.J. 2013)
Safe Harbor Laws Protecting Trafficked Minors	N.J. Stat. Ann. § 2A:4A-21 (West 2012) N.J. Stat. Ann. § 2A:4A-22 (West 2012) N.J. Stat. Ann. § C.2A:4A-42 (West 2012) N.J. Stat. Ann. § 2A:4A-71.1 (West 2012) N.J. Stat. Ann. § 2A:4A-71.4 (West 2012) N.J. Stat. Ann. § 2C:34-1. (West 2013) N.J. Stat. Ann. § 52:4B-44.1 (West 2012)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	N.J. Stat. Ann. § 2C:13-8 (4) (c) (West 2013)
Laws Providing Victim Assistance	N.J. Stat. Ann. § 52:4B-44 (West 2005) N.J. Stat. Ann. § 52:4B-11 (West 2008)
Laws Providing Civil Remedy to Victims	A.B. 3352, 215th Legis., 2nd Ann. Sess. (N.J. 2013)
Laws Vacating Convictions for Victims	A.B. 3352, 215th Legis., 2nd Ann. Sess. (N.J. 2013)

New Mexico

Laws Criminalizing Sex Trafficking	N.M. Stat. Ann. § 30-52-1 (West 2008)
Laws Criminalizing Labor Trafficking	N.M. Stat. Ann. § 30-52-1 (West 2008)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	N.M. Stat. Ann. § 30-52-3 (West 2008)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	N.M. Stat. Ann. § 30-52-1A (2) (West 2008)
Laws Providing Victim Assistance	N.M. Stat. Ann. § 30-52-2 (West 2013) H.B. 304, 51st Legis. Sess., 1st Sess. (N.M. 2013)
Laws Providing Civil Remedy to Victims	H.B. 304, 51st Legis. Sess., 1st Sess. (N.M. 2013)
Laws Vacating Convictions for Victims	

New York

Laws Criminalizing Sex Trafficking	N.Y. Social Services Law § 483-aa (McKinney 2007) N.Y. Penal Law § 230.34 (McKinney 2007) N.Y. Penal Law § 230.36 (McKinney 2007)
Laws Criminalizing Labor Trafficking	N.Y. Penal Law § 135.35 (McKinney 2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	N.Y. Social Services Law § 483-ee (McKinney 2010)
Safe Harbor Laws Protecting Trafficked Minors	N.Y. Social Services Law § 447-a (McKinney 2010) N.Y. Social Services Law § 447-b (McKinney 2010)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	N.Y. Social Services Law § 483-aa (McKinney 2007) N.Y. Social Services Law § 483-bb (McKinney 2007) N.Y. Social Services Law § 483-cc (McKinney 2007) N.Y. Social Services Law § 483-dd (McKinney 2007)
Laws Providing Civil Remedy to Victims	S.B. 2603, 266th Legis. Sess. (N.Y. 2013)
Laws Vacating Convictions for Victims	N.Y. Crim. Proc. § 440.10 (West 2012)

North Carolina

Laws Criminalizing Sex Trafficking	N.C. Gen. Stat. Ann. § 14-43.10 (West 2006) S.B. 683, Gen. Assemb., 1st Sess. (N.C. 2013)
Laws Criminalizing Labor Trafficking	S.B. 683, Gen. Assemb., 1st Sess. (N.C. 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	N.C. Gen. Stat. Ann. § 14-2.3 (West 2008)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	N.C. Gen. Stat. Ann. § 143A-55.10 (a)-(k) (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	S.B. 683, Gen. Assemb., 1st Sess. (N.C. 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	N.C. Gen. Stat. Ann. § 14-43.10 (5) (West 2006)
Laws Providing Victim Assistance	S.B. 683, Gen. Assemb., 1st Sess. (N.C. 2013) N.C. Gen. Stat. Ann. § 15C-10 (West 2007) N.C. Gen. Stat. Ann. § 15A-831 (West 2008) N.C. Gen. Stat. Ann. § 15A-832 (West 2007)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	S.B. 683, Gen. Assemb., 1st Sess. (N.C. 2013)

North Dakota

Laws Criminalizing Sex Trafficking	N.D. Cent. Code. Ann. §12.1-40-01 (West 2009) N.D. Cent. Code. Ann. §12.1-40-02 (West 2009)
Laws Criminalizing Labor Trafficking	N.D. Cent. Code. Ann. §12.1-40-01 (West 2009)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	N.D. Cent. Code. Ann. §12.1-40-02 (5) (West 2009)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Ohio

Laws Criminalizing Sex Trafficking	Ohio Rev. Code. Ann. § 2905.31 (West 2011) Ohio Rev. Code. Ann. § 2905.32 (West 2012)
Laws Criminalizing Labor Trafficking	Ohio Rev. Code. Ann. § 2905.32 (West 2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Ohio Rev. Code. Ann. § 2981.02 (West 2007) H.B. 22, 130th Gen. Assemb. (Ohio 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	Ohio Rev. Code. Ann. § 2151.358 (West 2012) Ohio Rev. Code. Ann. § 2152.021 (West 2012)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	Ohio Rev. Code. Ann. § 4743.07 (West 2012) Ohio Rev. Code. Ann. § 5101.87(West 2012) H.B. 22, 130th Gen. Assemb. (Ohio 2013)
Laws Providing Civil Remedy to Victims	Ohio Rev. Code. Ann. § 2307.51 (West 2012)
Laws Vacating Convictions for Victims	

Oklahoma

Laws Criminalizing Sex Trafficking	Okla. Stat. tit. 21 § 748 (2012) Okla. Stat. tit. 21 § 866 (2013)
Laws Criminalizing Labor Trafficking	Okla. Stat. tit. 21 § 748 (2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Okla. Stat. tit. 21 § 1738 (2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	H.B. 2298, 53rd Legis., 2nd Sess., (Okla. 2011)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Okla. Stat. tit. 21 § 748 (A) (6) (b) (2012)
Laws Providing Victim Assistance	2013 Okla. Sess. Law Serv. Ch. 59 (H.B. 1067) (West)
Laws Providing Civil Remedy to Victims	2013 Okla. Sess. Law Serv. Ch. 59 (H.B. 1067) (West)
Laws Vacating Convictions for Victims	

Oregon

Laws Criminalizing Sex Trafficking	Or. Rev. Stat. Ann. §167.017 (West 2013)
Laws Criminalizing Labor Trafficking	Or. Rev. Stat. Ann. §163.261 (West 2007) Or. Rev. Stat. Ann. §163.263 (West 2007) Or. Rev. Stat. Ann. §163.264 (West 2007) Or. Rev. Stat. Ann. §163.266 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	H.B. 2384, 77th Legis. Assemb., Reg. Sess. (Or. 2013) Or. Rev. Stat. Ann. §131.550 (West 2010) Or. Rev. Stat. Ann. §131.558 (West 2005) Or. Rev. Stat. Ann. §131A.020 (West 2009)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Or. Rev. Stat. Ann. §167.017 (b) (West 2013)
Laws Providing Victim Assistance	Or. Rev. Stat. Ann. § 192.854 (West 2010)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Pennsylvania

Laws Criminalizing Sex Trafficking	
Laws Criminalizing Labor Trafficking	18 Pa. Cons. Stat. Ann. § 3001 (2007) 18 Pa. Cons. Stat. Ann. § 3002 (2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	18 Pa. Cons. Stat. Ann. § 3004 (2007)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	S.R. 253, 196th Gen. Assemb. (Pa. 2010)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	H.B. 235, 196th Gen. Assemb. (Pa. 2011)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Rhode Island

Laws Criminalizing Sex Trafficking	R.I. Gen. Laws Ann. § 11-67-1 (West 2007) R.I. Gen. Laws Ann. § 11-67-2 (West 2009) R.I. Gen. Laws Ann. § 11-67-3 (West 2007)
Laws Criminalizing Labor Trafficking	R.I. Gen. Laws Ann. § 11-67-2 (West 2009) R.I. Gen. Laws Ann. § 11-67-3 (West 2007)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	R.I. Gen. Laws Ann. § 11-67-5 (West 2007)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	R.I. Gen. Laws Ann. § 11-67-7 (West 2009)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	R.I. Gen. Laws Ann. § 11-67-6 (West 2009)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

South Carolina

Laws Criminalizing Sex Trafficking	S.C. Code Ann. § 16-3-2010 (2013) S.C. Code Ann. § 16-3-2020 (2012)
Laws Criminalizing Labor Trafficking	S.C. Code Ann. § 16-3-2020 (2012)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	S.C. Code Ann. § 16-3-2090 (2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	S.C. Code Ann. § 16-3-2050 (2012)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	S.C. Code Ann. § 16-3-2010 (7) (2013)
Laws Providing Victim Assistance	S.C. Code Ann. § 16-3-2070 (2012) S.C. Code Ann. § 16-3-2080 (2012)
Laws Providing Civil Remedy to Victims	S.C. Code Ann. § 16-3-2060 (2012)
Laws Vacating Convictions for Victims	

South Dakota

Laws Criminalizing Sex Trafficking	S.D. Codified Laws § 22-49-1 (2011) S.D. Codified Laws § 22-49-2 (2011) S.D. Codified Laws § 22-49-3 (2011)
Laws Criminalizing Labor Trafficking	S.D. Codified Laws § 22-49-1 (2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Tennessee

Laws Criminalizing Sex Trafficking	Tenn. Code Ann. § 39-13-309 (West 2013)
Laws Criminalizing Labor Trafficking	Tenn. Code Ann. § 39-13-307 (West 2013) Tenn. Code Ann. § 39-13-308 (West 2008) Tenn. Code Ann. § 39-13-31 (West 2008)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Tenn. Code Ann. § 39-11-703 (West 2011) Tenn. Code Ann. § 39-13-312 (West 2011)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Tenn. Code Ann. § 4-3-3001 (West 2013) Tenn. Code Ann. § 4-3-3002 (West 2013) Tenn. Code Ann. § 4-3-3003 (West 2013) Tenn. Code Ann. § 4-3-3004 (West 2013) Tenn. Code Ann. § 4-3-3005 (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	Tenn. Code Ann. § 39-13-513 (West 2012)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Tenn. Code Ann. § 39-13-309 (West 2013)
Laws Providing Victim Assistance	S.B. 2370, 107th Gen. Assemb., 2nd Reg. Sess. (Tenn. 2012) Tenn. Code Ann. § 39-13-312 (West 2011)
Laws Providing Civil Remedy to Victims	H.B. 2489, 107th Gen. Assemb., 2nd Reg. Sess. (Tenn. 2012)
Laws Vacating Convictions for Victims	

Texas

Laws Criminalizing Sex Trafficking	Tex. Penal Code Ann. §20A.01 (West 2011) Tex. Penal Code Ann. §20A.02 (West 2011)
Laws Criminalizing Labor Trafficking	Tex. Penal Code Ann. §20A.01 (West 2011) Tex. Penal Code Ann. §20A.02 (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	Tex. Code Crim. Proc. Ann. Art. 59.011 (West 2013) Tex. Code Crim. Proc. Ann. Art. 59.02 (West 2009) Tex. Code Crim. Proc. Ann. Art. 59.06 (West 2013)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Tex. Govt. Code Ann. § 402.035. (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	Tex. Fam. Code Ann. § 51.0413 (West 2013) Tex. Fam. Code Ann. § 52.032 (West 2013) Tex. Fam. Code Ann. § 54.0326 (West 2013) Tex. Fam. Code Ann. § 54.04011 (West 2013) Tex. Fam. Code Ann. § 58.003 (West 2013) Tex. Hum. Res. Code § 152.0016 (2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Tex. Penal Code Ann. §20A.02 (a) (7) (West 2011)
Laws Providing Victim Assistance	Tex. Govt. Code Ann. § 531.381 (West 2009) Tex. Govt. Code Ann. § 531.382 (West 2009) Tex. Govt. Code Ann. § 531.384 (West 2009) Tex. Govt. Code Ann. § 420.008 (West 2009)
Laws Providing Civil Remedy to Victims	Tex. Civ. Prac. & Rem. Code Ann. § 98.002 (West 2009) Tex. Civ. Prac. & Rem. Code Ann. § 98.003 (West 2009)
Laws Vacating Convictions for Victims	

Utah

Laws Criminalizing Sex Trafficking	Utah Code Ann. § 76-5-308 (West 2013) Utah Code Ann. § 76-5-309 (West 2013) Utah Code Ann. § 76-5-310 (West 2013)
Laws Criminalizing Labor Trafficking	Utah Code Ann. § 76-5-308 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	Utah Code Ann. § 67-5-22.7 (West 2013)
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Vermont

Laws Criminalizing Sex Trafficking	Vt. Stat. Ann. tit. 13 § 2651 (West 2011) Vt. Stat. Ann. tit. 13 § 2652 (West 2011) Vt. Stat. Ann. tit. 13 § 2653 (West 2011)
Laws Criminalizing Labor Trafficking	Vt. Stat. Ann. tit. 13 § 2652 (a) (5)-(7) (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	Vt. Stat. Ann. tit. 13 § 2652 (West 2011)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Vt. Stat. Ann. tit. 13 § 2652 (a) (1) (West 2011)
Laws Providing Victim Assistance	Vt. Stat. Ann. tit. 13 § 2663 (West 2011)
Laws Providing Civil Remedy to Victims	Vt. Stat. Ann. tit. 13 § 2662 (West 2011)
Laws Vacating Convictions for Victims	Vt. Stat. Ann. tit. 13 § 2658 (West 2012)

Virginia

Laws Criminalizing Sex Trafficking	Va. Code. Ann. § 18.2-48 (West 2011) Va. Code. Ann. § 18.2-356 (West 2011)
Laws Criminalizing Labor Trafficking	Va. Code. Ann. § 18.2-47 (West 2009) Va. Code. Ann. § 18.2-356 (West 2011)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Va. Code. Ann. § 18.2-356 (West 2011)
Laws Providing Victim Assistance	H.B. 2190, Reg. Sess. (Va. 2011)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	

Washington

Laws Criminalizing Sex Trafficking	Wash. Rev. Code Ann. § 9A.40.100. Trafficking (West 2013)
Laws Criminalizing Labor Trafficking	Wash. Rev. Code Ann. § 9A.40.100. Trafficking (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	S.B. 6253, 62nd Legis., 1st Spec. Sess. (Wash. 2012)
Laws Creating Task Forces, State Commissions or Committees on Trafficking	H.B. 1291, 63nd Legis., 1st Spec. Sess. (Wash. 2013)
Safe Harbor Laws Protecting Trafficked Minors	Wash. Rev. Code Ann. § 13.32A.030 (West 2013) Wash. Rev. Code Ann. § 13.40.219 (West 2010) Wash. Rev. Code Ann. § 3.32A.270 (West 2010) Wash. Rev. Code Ann. § 13.40.070 (West 2013)
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Wash. Rev. Code Ann. § 9A.40.100 (1) (a) (i) (A) (West 2013)
Laws Providing Victim Assistance	Wash. Rev. Code Ann. § 7.68.360 (West 2005) Wash. Rev. Code Ann. § 19.320.050 (West 2010) Wash. Rev. Code Ann. § 36.22.179 (West 2012)
Laws Providing Civil Remedy to Victims	Wash. Rev. Code Ann. § 9A.82.100 (West 2012)
Laws Vacating Convictions for Victims	Wash. Rev. Code Ann. § 9.96.060 (West 2012)

West Virginia

Laws Criminalizing Sex Trafficking	2013 West Virginia Laws H.B. 2814 (West's No. 171)
Laws Criminalizing Labor Trafficking	2013 West Virginia Laws H.B. 2814 (West's No. 171)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	2013 West Virginia Laws H.B. 2814 (West's No. 171)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	2013 West Virginia Laws H.B. 2814 (West's No. 171)
Laws Vacating Convictions for Victims	

Wisconsin

Laws Criminalizing Sex Trafficking	Wis. Stat. Ann. § 940.302 (West 2008)
Laws Criminalizing Labor Trafficking	Wis. Stat. Ann. § 940.302 (West 2008)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Wis. Stat. Ann. § 948.051 (West 2008)
Laws Providing Victim Assistance	
Laws Providing Civil Remedy to Victims	Wis. Stat. Ann. § 940.302 (West 2008) Wis. Stat. Ann. § 948.051 (West 2008)
Laws Vacating Convictions for Victims	

Wyoming

Laws Criminalizing Sex Trafficking	Wyo. Stat. Ann. § 6-2-702 (West 2013) Wyo. Stat. Ann. § 6-2-703 (West 2013) Wyo. Stat. Ann. § 6-2-705 (West 2013)
Laws Criminalizing Labor Trafficking	Wyo. Stat. Ann. § 6-2-702 (West 2013) Wyo. Stat. Ann. § 6-2-703 (West 2013) Wyo. Stat. Ann. § 6-2-704 (West 2013)
Laws Providing for the Forfeiture of Assets Related to Human Trafficking	
Laws Creating Task Forces, State Commissions or Committees on Trafficking	
Safe Harbor Laws Protecting Trafficked Minors	
Laws Lowering the Burden of Proof for Sex Trafficking of Minors	Wyo. Stat. Ann. § 6-2-706 (West 2013)
Laws Providing Victim Assistance	Wyo. Stat. Ann. § 6-2-709 (West 2013)
Laws Providing Civil Remedy to Victims	
Laws Vacating Convictions for Victims	Wyo. Stat. Ann. § 6-2-708 (West 2013)

Appendix C

Compendium of recent news articles on Human Trafficking

1. [Advocates seek a federal court dedicated to human trafficking](#)

Buffalo News, The (NY) Author: N/A; Word Count: 533; Loaded Date: 08/08/2013;
8/8/13 BUFFALONWS (No Page) 2013 WLNR 19530224

...No Page) 8/8/13 Buff. News (Pg. Unavail. Online) 2013 WLNR 19530224 Advocates seek a federal court dedicated to **human trafficking** Buffalo News, The (NY) McClatchy-Tribune Information Services McClatchy-Tribune Regional News print feature JAJF 0064084 Newspaper US USA NY New York NorthAmerica 3230 Word Count: 533 Aug. 08--A federal court dedicated to cases of **human trafficking** could become a reality in the Western District of New York, according to advocates who met Wednesday in the Mahoney ...

...Buffalo, N.Y.) Visit The Buffalo News (Buffalo, N.Y.) at www.buffalonews.com Distributed by MCT Information Services...

1 duplicate2. [Fellow candidates: El, no, we don't cheat](#)

New York Post Author: Sally Goldenberg and Yoav Gonen; Word Count: 452; Loaded Date: 08/05/2013;
8/3/13 NYPOST 2 2013 WLNR 19246293

...Goldenberg and Yoav Gonen New York Post The New York Post Sports+Late City Final News 002 English JLGG 0047204 Newspaper US USA NY New York NorthAmerica 2798 Word Count: 452 Eliot Spitzer seems to be the ...

...George McDonald quipped, "Call me old-fashioned. I don't tweet naked pics of myself, have a girlfriend or engage in **human trafficking**," a clear dig at candidate Anthony Weiner, whose campaign is coming undone by further revelations that he sexted and shared ...

...1US07 U.S. President USPRES 1US75 U.S. Presidential Campaigns USPRESEL 1US04 Personal & Family Law FAMLAW 1PE02 Legal LAW 1LE33 New York **USANY** 1NE72 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Americas GEOAMER 1AM92 USA ISOUS 1US73 WEDDINGS G:4...

3. [Legislature dawdles as FBI arrests pimps](#)

Post Standard Author: N/A; Word Count: 480; Loaded Date: 08/02/2013;
8/1/13 SYRACUSE A20 2013 WLNR 18999869

...2013 WLNR 18999869 Legislature dawdles as FBI arrests pimps Post Standard The Post-Standard Final Opinion A20 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 2945 Word Count: 480 The FBI on Monday announced it ...

...New York City territory. That doesn't mean there are no cases; child advocates consider New York City the epicenter of **human trafficking** in the state, a magnet for runaways and illegal im-

migrants preyed upon by the sex trade. It's the reason New York state ranks fourth behind only California, Texas and Florida for incidences of **human trafficking**. And yet, New York's laws combating the sexual slavery of vulnerable women and children remain lax. Earlier this year, the ...

...so at its first opportunity. Disclaimer:...

4. [Commentary: Matrimonial Matters: Human trafficking - What family lawyers need to know](#)
Daily Record (Rochester, NY) Author: Sara Stout Ashcraft; Word Count: 730; Loaded Date: 08/01/2013;
7/25/13 DAILRECN (No Page) 2013 WLNR 18866259

...13 DAILRECN (No Page) 7/25/13 Daily Rec. (Rochester, N.Y.) (Pg. Unavail. Online) 2013 WLNR 18866259 Commentary: Matrimonial Matters: **Human trafficking** - What family lawyers need to know Sara Stout Ashcraft Daily Record (Rochester, NY) The Daily Record (Rochester NY) English KMOV 0002900 Newspaper US USA NY New York NorthAmerica 4583 Word Count: 730 The continued widely publicized escape of ...

...on such crimes. However, similar crimes often go unnoticed by most people. These crimes fall under the general label of "**human trafficking**." Over the past few years, there have been efforts to make the public more aware of the serious ongoing abuse of many by **human traffickers**, but the enormity and extent of these crimes is almost incomprehensible. Human trafficking is a worldwide problem that includes sex ...

...1FA81 Social Issues PTSOCISS ISO05 Americas GEOAMER 1AM92 North America GEO-NAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 New York USANY 1NE72 USA ISOUS 1US73 CTPTWSOC M:A M:I4 G:4 M:F3 M:ES G:6S M:FJ G...

5. [BLOG: Capitol Blog: Ossorio: Spending shows the work we've done](#)
Times Union (Albany, NY) Author: N/A; Word Count: 383; Loaded Date: 07/23/2013;
7/23/13 TIMESUN (No Page) 2013 WLNR 17987921

...2013 WLNR 17987921 BLOG: Capitol Blog: Ossorio: Spending shows the work we've done Times Union (Albany, NY) McClatchy-Tribune Information Services McClatchy-Tribune Regional News print feature FJAA 0063938 Newspaper US USA NY New York NorthAmerica 2726 ...

...by Gov. Andrew Cuomo to change New York's abortion laws, strengthen equal pay provisions and toughen measures against domestic violence, **human trafficking** and gender-based discrimination. The Women's Equality Coalition -- an 850 group behemoth -- spent nearly \$550,000 on television advertisements, most of ...

...Albany, N.Y.) Visit the Times Union (Albany, N.Y.) at www.timesunion.com Distributed by MCT Information Services...

6. [Missionary cycling into town today to talk about human trafficking](#)

Post Standard Author: Meera Jagannathan Contributing writer; Word Count: 392; Loaded Date: 07/23/2013;
7/22/13 SYRACUSE A3 2013 WLNR 17917365

...13 SYRACUSE A3 7/22/13 Syracuse Newspapers A3 2013 WLNR 17917365 Missionary cycling into town today to talk about **human trafficking** Meera Jagannathan Contributing writer Post Standard The Post-Standard Final News A3 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 2346 Word Count: 392 Five months, 12,000 miles, one cyclist ...

...West Lafayette, Ind., just wrapped up his sixth week of pedaling cross country to raise awareness of global and domestic **human trafficking**. He'll zip through Onondaga today to host a 6 to 8 p.m. dialogue at the First Baptist Church of Syracuse ...

...There's really no turning back at this point." Disclaimer:...

7. [All-or-Nothing Strategy on Women's Equality Legislation Ends With Nothing](#)

NYTimes.com Author: THOMAS KAPLAN; Word Count: 914; Loaded Date: 06/23/2013;
6/24/13 NYTIMESCOM 16 2013 WLNR 15337550

...All-or-Nothing Strategy on Women's Equality Legislation Ends With Nothing THOMAS KAPLAN NYTimes.com NewYork nyregion 16 current KJQN 0147063 Newspaper US USA NY New York NorthAmerica 5678 Word Count: 914 An abortion rights provision is being ...

...called on lawmakers to pass a 10-point Women's Equality Act that would strengthen the state's laws against sexual harassment, **human trafficking**, domestic violence and salary discrimination. Much of the legislation had widespread support. But after more than five months of advocacy...

1 duplicate

8. [Assembly OKs women's act; Senate balks on abortion issue](#)

Post Standard Author: Teri Weaver tweaver@syracuse.com; Word Count: 278; Loaded Date: 06/26/2013;
6/21/13 SYRACUSE A1 2013 WLNR 15524360

...Senate balks on abortion issue Teri Weaver tweaver@syracuse.com Post Standard The Post-Standard Final News A1 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 1603 Word Count: 278 The New York State Assembly on ...

...groups and supporters as a victory for women and children. The bill includes workplace reforms for women, harsher laws against **human trafficking** and help for victims of domestic violence. It also codifies the U.S. Supreme Court's Roe v. Wade decision into ...

...called 10th bill, the one dealing with abortion, to the floor. Disclaimer:...

9. [In brief Breakfast discusses human trafficking](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 295; Loaded Date: 06/20/2013;
6/20/13 JOURNALNEWS W3 2013 WLNR 15061877

...6/20/13 JOURNALNEWS W3 6/20/13 Journal News (Westchester, N.Y.) W3 2013 WLNR 15061877 In brief Breakfast discusses **human trafficking** Journal News, The (Westchester, NY) The Journal News 1 W 3 English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 1846 Word Count: 295 June 20, 2013 Westchester Westchester GREENBURGH ...

...his new position, Gorbutt will work from Coldwell's White Plains office. — Submitted by Coldwell Banker...

10. [BILL FORCED LABOR](#)

Newsday (USA) Author: JOAN GRALLA joan.gralla@newsday.com; Word Count: 718; Loaded Date: 06/19/2013;
6/19/13 NWSDAY A34 2013 WLNR 14940580

...BILL FORCED LABOR JOAN GRALLA joan.gralla@newsday.com Newsday (USA) Newsday (Long Island, NY) ALL EDITIONS NEWS A34 English ADGH 0007359 Newspaper US USA NY New York NorthAmerica 4427 Word Count: 718 Gov. Andrew M. Cuomo's plan to crack down on **human trafficking**, submitted to the state Legislature as part of his Women's Equality Act, comes as New York lags behind other states ...

...America GEONAMR 1NO39 USA ISOUS 1US73 Americas GEOAMER 1AM92 Kenya ISOKE 1KE61 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 New York **USANY** 1NE72 Africa GEOAFR 1AF90 East Africa GEOEAFR 1EA80 CTPTWSOC MEASTAFR Smuggling & Illegal Trade SMUGGLE 1SM35 Abortion ABORTION 1AB77 Crime CRIME...

11. [Women's Equality Act split into 10 bills](#)

Times Union (Albany, NY) Author: Jimmy Vielkind Word Count: 340; Loaded Date: 06/19/2013;
6/19/13 TIMESUN (No Page) 2013 WLNR 14952327

...Women's Equality Act split into 10 bills Jimmy Vielkind Times Union, Albany, N.Y. Times Union (Albany, NY) McClatchy-Tribune Regional News print feature English FJAA 0063938 Newspaper US USA NY New York NorthAmerica 2163 Word Count: 340 ...

...parts, essentially unhooking a controversial tweak to the state's abortion laws from measures that ensure pay equity and combat discrimination, **human trafficking** and domestic violence. It's unclear if this maneuver, which came less than 12 hours after Cuomo's office released an updated ...

...www.timesunion.com Distributed by MCT Information Services...

1 duplicate

12. [Abortion amendment plan fails](#)

Times Union (Albany, NY) Author: Jimmy Vielkind Word Count: 536; Loaded Date: 06/14/2013;
6/14/13 TIMESUN (No Page) 2013 WLNR 14603082

...2013 WLNR 14603082 Abortion amendment plan fails Jimmy Vielkind Times Union, Albany, N.Y. Times Union (Albany, NY) McClatchy-Tribune Regional News print feature English FJAA 0063938 Newspaper US USA NY New York NorthAmerica 3250 Word Count: 536 ...

...the abortion provision last week as part of a larger women's equality bill that would address pay inequity, domestic violence, **human trafficking** and gender-based discrimination. The bill creates an affirmative right to abortion "as established by the United States Supreme Court ...

...WMNHLTH 1WO30 North America GEONAMR 1NO39 Americas GEOAMER 1AM92 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 New York **USANY** 1NE72 CT-PTWSOC WHLTHGEN M:1LW G:6J G:4 M:1LG G:6S M:J2 M:P B:148 M...

13. [Focus: Law Enforcement Focus Law Enforcement Eager to find and aid victims who have slipped through the cracks and into the world of human... Eager to find and aid victims who have slipped through the cracks and into the world of human trafficking, local officials launch a new...](#)

Buffalo News (NY) Author: Phil Fairbanks / News Staff Reporter; Word Count: 1008; Loaded Date: 06/13/2013;
6/13/13 BUFFALONWS 1 2013 WLNR 14478980

...world of human... Eager to find and aid victims who have slipped through the cracks and into the world of **human trafficking**, local officials launch a new... Phil Fairbanks / News Staff Reporter Buffalo News (NY) Buffalo News, The (NY) Local News 1 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 5846 Word Count: 1008 The survivors, the ones who are ...

...Smuggling & Illegal Trade SMUGGLE 1SM35 Social Issues PTSOCISS 1SO05 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 New York **USANY** 1NE72 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 CTPTWSOC M:1JV M:A M:FJ G:6S M:14 G...

2 duplicates

14. [Groups Press City Council on Budget for Homeless](#)

NYTimes.com Author: E. C. GOGOLAK; Word Count: 508; Loaded Date: 06/11/2013;
6/12/13 NYTIMESCOM 23 2013 WLNR 14350233

...WLNR 14350233 Groups Press City Council on Budget for Homeless E. C. GOGOLAK NYTimes.com NewYork nyregion 23 current KJQN 0147063 Newspaper US USA NY New

York NorthAmerica 2998 Word Count: 508 There are roughly 3,800 homeless youths ...

...over "the neighborhood, at the deli, the pizza shop and near Port Authority ," said Jayne Bigelsen, the director of anti-**human-trafficking** initiatives at Covenant House New York, an agency serving homeless, runaway and at-risk people 16 to 21. Those pimps...

1 duplicate

15. [Common ground](#)

Democrat and Chronicle (Rochester, NY) Author: N/A;Word Count: 304; Loaded Date: 06/10/2013;
6/9/13 DEMCHR A24 2013 WLNR 14219558

...A24 2013 WLNR 14219558 Common ground Democrat and Chronicle (Rochester, NY) Democrat and Chronicle 1 A 24 English KIQT 0145241 Newspaper US USA NY New York NorthAmerica 1841 Word Count: 304 June 9, 2013 Gov. Andrew Cuomo's 10-point Women's Equality Act includes provisions that enjoy near universal support. Rare are those who oppose, say, strengthening **human trafficking** laws or ending persistent pay inequities. But the bill also includes a measure that touches on one of the most ...

...Healthcare HOTNEWS 1HE06 Healthcare Practice Specialties HCPRAC 1HE49 Contraception PHMXKIDS 1CO66 Women's Health WMNHLTH 1WO30 Bioethics BIOETHIC 1BI56 New York USANY 1NE72 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMID-AT 1MI18 USA ISOUS 1US73 Americas GEOAMER 1AM92 CTPTWSOC WHLTHGEN M...

16. [Man sentenced for human trafficking](#)

Staten Island Advance (Staten Island, NY) Author: FRANK DONNELLYWord Count: 259; Loaded Date: 06/10/2013;
6/8/13 STATENISADV A05 2013 WLNR 14244904

...8/13 STATENISADV A05 6/8/13 Staten Island Advance (Staten Island, NY) A05 2013 WLNR 14244904 Man sentenced for **human trafficking** FRANK DONNELLY STATEN ISLAND ADVANCE Staten Island Advance (Staten Island, NY) Staten Island Advance (NY) News A05 English JLRS 0085553 Newspaper US USA NY New York NorthAmerica 1604 Word Count: 259 Brooklyn man gets 40 years in ...

...reached at fdonnelly@siadvance.com....

17. [Whole Equality Act deserves passage](#)

Journal News, The (Westchester, NY) Author: N/A;Word Count: 831; Loaded Date: 06/07/2013;
6/7/13 JOURNALNEWS A15 2013 WLNR 14010515

...14010515 Whole Equality Act deserves passage Journal News, The (Westchester, NY) The Journal News 1 A 15 English KIRA 0145248 Newspaper US USA NY New York NorthAmerica

5140 Word Count: 831 June 7, 2013 The Women's Equality ...

...victims; bars discrimination against housing-seekers based on the source of their income — an ill that disproportionately impacts women; strengthens **human trafficking** laws, protects girls and women pulled into prostitution and sex slavery; bolsters workplace protections for pregnant employees; and codifies into ...

...Relations GENDER 1GE36 Healthcare Practice Specialties HCPRAC 1HE49 Women's Health WMNHLTH 1WO30 Healthcare HOTNEWS 1HE06 Bioethics BIOETHIC 1BI56 New York **USANY** 1NE72 North America GEONAMR 1NO39 Americas GEOAMER 1AM92 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 CTPTWSOC WHLTHGEN G...

18. [Women's Rights Bill Proposed](#)

Malone Telegram, The (Malone, NY) Author: N/A; Word Count: 636; Loaded Date: 06/05/2013; 6/5/13 MALONETELGNY 5 2013 WLNR 13758923

...13758923 Women's Rights Bill Proposed Malone Telegram, The (Malone, NY) Malone Telegram, The (NY) State 5 English KLTD 0149336 Newspaper US USA NY New York NorthAmerica 4031 Word Count: 636 ALBANY, N.Y. (AP) - Gov. Andrew Cuomo's 10-point proposal calling for women's rights protections from the work place to the shadowy world of **human trafficking** was endorsed by several women's advocates Tuesday, but faces strong opposition in the Senate over its abortion provisions. Cuomo ...

...woman's right to make private health care decisions regarding pregnancy."...

19. [Abortion issue key in bill](#)

Times Union (Albany, NY) Author: Jimmy Vielkind Word Count: 819; Loaded Date: 06/05/2013; 6/5/13 TIMESUN (No Page) 2013 WLNR 13805867

...WLNR 13805867 Abortion issue key in bill Jimmy Vielkind Times Union, Albany, N.Y. Times Union (Albany, NY) McClatchy-Tribune Regional News print feature English FJAA 0063938 Newspaper US USA NY New York NorthAmerica 5087 Word Count: 819 ...

...Flanked by female leaders, Gov. Andrew Cuomo unveiled a sweeping "bill of rights" for women that would toughen laws against **human trafficking**, domestic violence, gender-based discrimination and pay inequity. But the Women's Equality Act also includes language creating an affirmative right ...

...BIOETHIC 1BI56 North America GEONAMR 1NO39 USA ISOUS 1US73 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Americas GEOAMER 1AM92 New York **USANY** 1NE72 CT-PTWSOC G:4 G:6J M:1LG M:N M:J2 M:T G:6S M:1JV M:I4...

20. [Cuomo unveils Women's Equality Act](#)

Times Union (Albany, NY) Author: Jimmy Vielkind Word Count: 617; Loaded Date: 06/05/2013;
6/4/13 TIMESUN (No Page) 2013 WLNR 13803832

...WLNR 13803832 Cuomo unveils Women's Equality Act Jimmy Vielkind Times Union, Albany, N.Y. Times Union (Albany, NY) McClatchy-Tribune Regional News print feature English FJAA 0063938 Newspaper US USA NY New York NorthAmerica 3862 Word Count: 617 ...

...Court decision, Gov. Andrew Cuomo and aides unveiled a sweeping "bill of rights" for women that would toughen laws against **human trafficking**, domestic violence, gender-based discrimination and pay inequity. But the Women's Equality Agenda also includes language creating an affirmative right ...

...Gender Relations GENDER 1GE36 Social Issues PTSOCISS 1SO05 Abortion ABORTION 1AB77 Political Parties PTPOLPRT 1PO73 Bioethics BIOETHIC 1BI56 New York USANY 1NE72 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 USA ISOUS 1US73 CTPTWSOC M:I4...

21. [Corrections](#)

New York Times (NY) Author: N/A; Word Count: 109; Loaded Date: 05/31/2013;
5/31/13 NYT A2 2013 WLNR 13369577

...13 N.Y. Times A2 2013 WLNR 13369577 Corrections New York Times (NY) Late Edition - Final A 2 ADFN 0007297 Newspaper US USA NY New York NorthAmerica 620 Word Count: 109 A television review on Tuesday about "Brooklyn ...

...Vincent M. Del Giudice of State Supreme Court in Brooklyn in the pilot episode. Referring to the outcome of a **human-trafficking** case, he said in reference to the prosecutors, "They did the right thing," not "He did the right thing." The ...

...were women, was a result of the misstating of the word Judge Del Giudice used....

22. [Film, speakers address human trafficking](#)

Democrat and Chronicle (Rochester, NY) Author: N/A; Word Count: 528; Loaded Date: 05/09/2013;

5/9/13 DEMCHR B7 2013 WLNR 11369196

5/9/13 DEMCHR B7 5/9/13 Democrat & Chron. (Rochester, N.Y.) B7 2013 WLNR 11369196

Film, speakers address **human trafficking** Democrat and Chronicle (Rochester, NY) Democrat and Chronicle 1 B 7 English KIQT 0145241 Newspaper US USA NY New York NorthAmerica 3299 Word Count: 528 May 9, 2013 Retired FBI Special Agent Greg Bristol cannot fathom why **human trafficking** remains a low priority for so many police agencies. "I've never seen a crime that so many people make so ...

...victim rescue measures after a 7 p.m. showing. GCRAIG@DemocratandChronicle.com Twit-

ter.com/gcraig1...

23. [U.S.: Alleged sex ring has local ties](#)

Poughkeepsie Journal, The (Poughkeepsie, NY) Author: N/A; Word Count: 268; Loaded Date: 05/02/2013;

5/2/13 POUGHKEEPSIE B2 2013 WLNR 10737800

...Alleged sex ring has local ties Poughkeepsie Journal, The (Poughkeepsie, NY) The Poughkeepsie Journal 1 B 2 English KISC 0145428 Newspaper US USA NY New York NorthAmerica 1778 Word Count: 268 May 2, 2013 The U.S. Attorney's Office is prosecuting 13 residents of the New York City-area in connection with an alleged international **human trafficking** ring operating four brothels, including locations in Poughkeepsie and Newburgh. "With promises of a better life, the members of this ...

...CIVRIGHT 1CI34 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 New York USANY 1NE72 CT-PTWSOC G:6S M:F3 G:6J M:M0 M:1JV M:ES M:A M:FJ G:4...

1 duplicate

24. [Documentary to run at The Little Theatre in Rochester](#)

Daily Record (Rochester, NY) Author: Daily Record Staff; Word Count: 202; Loaded Date: 05/06/2013;

4/29/13 DAILRECN (No Page) 2013 WLNR 11037930

...The Little Theatre in Rochester Daily Record Staff Daily Record (Rochester, NY) The Daily Record (Rochester NY) English KMVY 0002900 Newspaper US USA NY New York NorthAmerica 1263 Word Count: 202 The internationally acclaimed documentary, "Not My ...

...Little Theatre, May 10 to 16 (no showings on May 14), as part of a communitywide effort to increase awareness of **human trafficking** in the tri-county area. Hailed as a "seminal" film by the CNN Freedom Project and others, the movie, filmed on five continents over a period of four years, is the first documentary to focus on **human trafficking** as a global, multi-faceted human rights abuse that exists in virtually every country in the world, including the United ...

...xa9; 2013 Dolan Media Newswires All Rights Reserved....

25. [Another Voice / Reproductive Health Act: Expansion of abortion law counter to state's needs](#)

Buffalo News (NY) Author: the Rev. Thomas F. Maloney; Word Count: 399; Loaded Date: 04/25/2013;

4/24/13 BUFFALONWS 8 2013 WLNR 10086311

...state's needs the Rev. Thomas F. Maloney Buffalo News (NY) Buffalo News, The (NY) Views 8 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 2501

Word Count: 399 In his January State of the ...

...Gov. Andrew M. Cuomo outlined his broad policy goals for women's issues: ending sexual harassment; achieving pay equity; stopping **human trafficking**; eliminating housing discrimination for victims of domestic violence. All of those certainly sound praiseworthy. Who among us wouldn't wish ...

...Healthcare HOTNEWS 1HE06 Women's Health WMNHLTH 1WO30 Healthcare Practice Specialties HCPRAC 1HE49 USA ISOUS 1US73 Americas GEOAMER 1AM92 New York USANY 1NE72 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 North America GEONAMR 1NO39 CT-PTWSOC WHLTHGEN M:1KW M:1LW M:14 M...

26. [Scouting Report](#)

NYTimes.com Author: ALISON S. COHN; Word Count: 394; Loaded Date: 04/17/2013; 4/18/13 NYTIMESCOM 4 2013 WLNR 9410829

...WLNR 9410829 Scouting Report ALISON S. COHN New York Times Real Time Feed NYTimes.com New York fashion 4 The New York Times Company KJQN 0147063 Newspaper US USA NY New York NorthAmerica 2412 Word Count: 394 Brooks Brothers ...

...10 percent of the proceeds on these items will go to Somaly Mam Foundation, an organization that works to end **human trafficking**. It's now one-stop shopping for hipster trims and hipster hats, thanks to the FairEnds pop-up opening on Friday ...

...burgundy-striped regatta blazer (\$798), among other natty items. At 346 Madison Avenue; brooksbrothers.com/thegreatgatsby...

1 duplicate

27. [Fighting human trafficking](#)

Democrat and Chronicle (Rochester, NY) Author: N/A; Word Count: 549; Loaded Date: 04/01/2013;

4/1/13 DEMCHR B1 2013 WLNR 7909844

4/1/13 DEMCHR B1 4/1/13 Democrat & Chron. (Rochester, N.Y.) B1 2013 WLNR 7909844

Fighting **human trafficking** Democrat and Chronicle (Rochester, NY) Democrat and Chronicle 1 B 1 English KIQT 0145241 Newspaper US USA NY New York NorthAmerica 3289 Word Count: 549 April 1, 2013 "One of the ...

...their basic needs met." Kelly Reed commissioner of the Monroe County Department of Human Services...

1 duplicate

28. [Man faces trafficking charge](#)

Poughkeepsie Journal, The (Poughkeepsie, NY) Author: N/A; Word Count: 301; Loaded Date: 03/31/2013;

3/30/13 POUGHKEEPSIE B1 2013 WLNR 7864294

...WLNR 7864294 Man faces trafficking charge Poughkeepsie Journal, The (Poughkeepsie, NY) The Poughkeepsie Journal 1 B 1 English KISC 0145428 Newspaper US USA NY New York NorthAmerica 1954 Word Count: 301 March 30, 2013 NEWBURGH — Police say the man charged with operating a **human trafficking** ring in Orange County could face more charges as the investigation continues. At least three female victims allegedly were subject ...

...Health & Family FAMHLTH 1HE30 Property Crime PTPRCR 1PR85 Drug Addiction GIDRUGS 1DR84 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 New York **USANY** 1NE72 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 USA ISOUS 1US73 CT-PTWSOC M:A M:JH M:FJ M:ES...

1 duplicate

29. [RESPECT WOMEN'S AUTONOMY](#)

Albany Times Union (NY) Author: JON O'BRIEN;Word Count: 630; Loaded Date: 04/10/2013; 3/25/13 TIMESUN D2 2013 WLNR 8685108

...WOMEN'S AUTONOMY JON O'BRIEN Albany Times Union (NY) Times Union, The (Albany, NY) Final Edition Perspective D2 English ACAD 0000302 Newspaper US USA NY New York NorthAmerica 3961 Word Count: 630 Gov. Andrew Cuomo designated women's equality ...

...as one of his top legislative priorities. There should be nothing controversial about promoting equal pay, fighting domestic violence and **human trafficking**, or affirming that a woman should be able to make her own reproductive health decisions. Yet the governor's action has ...

...Health WMNHLTH 1WO30 Healthcare Practice Specialties HCPRAC 1HE49 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 North America GEONAMR 1NO39 New York **USANY** 1NE72 USA ISOUS 1US73 Americas GEOAMER 1AM92 CTPTWSOC WHLTHGEN G:4 M:P M:I9 G:6J M:IA M...

30. [Event sheds light on human trafficking](#)

Daily News, The (Batavia, NY) Author: jbeck@batavianews.com; Author: Joanne Beck;Word Count: 865; Loaded Date: 03/26/2013; 3/19/13 DLYNSBATAVIA 1A 2013 WLNR 7409032

...3/19/13 DLYNSBATAVIA 1A 3/19/13 Daily News (Batavia, N.Y.) 1A 2013 WLNR 7409032 Event sheds light on **human trafficking** jbeck@batavianews.com Joanne Beck Daily News, The (Batavia, NY) Local News 1A English KLSU 0149326 Newspaper US USA NY New York NorthAmerica 5173 Word Count: 865 BATAVIA -- If you think that **human trafficking** is just a racy topic on a TV crime show, think again. Organizers of this year's Criminal Justice Day program ...

...North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Americas

GEOAMER 1AM92 U.S. Midwest Region GEOMIDWT 1MI19 New York USANY 1NE72 USA
ISOUS 1US73 CTPTWSOC M:F3 M:FJ G:6J G:6S M:I3 G:95 G:4 M...

31. [Women's Group Works With Cuomo On Rights, Abortion](#)

Malone Telegram, The (Malone, NY) Author: N/A; Word Count: 518; Loaded Date:
03/05/2013;
3/5/13 MALONETELGNY 4 2013 WLNR 5370778

...Works With Cuomo On Rights , Abortion Malone Telegram, The (Malone, NY) Malone Tele-
gram, The (NY) State 4 English KLTD 0149336 Newspaper US USA NY New York NorthAmer-
ica 3126 Word Count: 518 ALBANY, N.Y. (AP) - A new coalition ...

...Andrew Cuomo's women's rights agenda said it supports his decision to link popular measures
against workplace discrimination and **human trafficking** with a hotly debated abortion measure.
It's a political gamble that faces strong opposition among Senate Republicans. The Senate ...

...will be increasingly important should he run for president in 2016, as some supporters hope....

32. [IVY SLEAZE Students hit Columbia profs in sex-harass suit](#)

New York Daily News Author: BARBARA ROSS NEW YORK DAILY NEWS; Word Count:
327; Loaded Date: 01/24/2013;
1/24/13 NYDLYNWS 3 2013 WLNR 1888031

...sex-harass suit BARBARA ROSS NEW YORK DAILY NEWS New York Daily News
SPORTS FINAL NEWS 3 English KAAJ 0122124 Newspaper US USA NY New York
NorthAmerica 1956 Word Count: 327 TWO SENIOR Columbia University professors
were ...

...two former grad students charged in a sex-harassment suit against the university. "They're hy-
pocrites," Susan Farley, a scholar in **human trafficking**, said as she described how her academic
prospects declined after she reported that law professor Francis Ssekandi pursued her on ...

...GEOAMER 1AM92 Far East GEOFREST 1FA27 Timor-Leste ISOTL 1EA33 North America
GEONAMR 1NO39 Southeast Asia GEOSEASI 1SO64 New York USANY 1NE72 U.S. Mid-
Atlantic Region GEOMIDAT 1MI18 Eastern Asia GEOEASIA 1EA61 CTPTWSOC M:I3 M:F3
G:K M:M0...

33. [Women's rights activists rally for abortion bill](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 602; Loaded Date:
01/16/2013;
1/15/13 JOURNALNEWS (No Page) 2013 WLNR 1061870

...Women's rights activists rally for abortion bill Journal News, The (Westchester, NY) The
Journal News New York English KIRA 0145248 Newspaper US USA NY New York

NorthAmerica 3611 Word Count: 602 January 15, 2013 More than 400 ...

...The package, dubbed the Women's Equality Act, also includes measures to ensure equal pay, as well as strengthen laws against **human trafficking** and employment, housing and lending discrimination. "During the 2012 elections, voters in New York and across the nation were loud ...

...1HE06 Healthcare Practice Specialties HCPRAC 1HE49 Americas GEOAMER 1AM92 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 New York USANY 1NE72 North America GEONAMR 1NO39 CTPTWSOC WHLTHGEN B:148 G:6S G:4 M:13 M:T M:N M...

1 duplicate

34. [ROCBrd_01-09-2013_DandC_1_A007~~2013~01~08~TXT_ROC_0109_LettersEd_1_1_DA34N9L3~TXT_ROC_0109_LettersEd_1_1_DA34N9L3-text.xml Help eradicate human trafficking in Rochester](#)

Democrat and Chronicle (Rochester, NY) Author: N/A; Word Count: 789; Loaded Date: 01/09/2013;
1/9/13 DEMCHR A7 2013 WLN R 598088

...2013~01~08~TXT_ROC_0109_LettersEd_1_1_DA34N9L3~TXT_ROC_0109_LettersEd_1_1_DA34N9L3-text.xml Help eradicate **human trafficking** in Rochester Democrat and Chronicle (Rochester, NY) Democrat and Chronicle 1 A 7 English KIQT 0145241 Newspaper US USA NY New York NorthAmerica 4996 Word Count: 789 January 9, 2013 Rochester Rochester January ...

...their right mind truly wants? JOHN RABISH PITTSFORD...

35. [H.S. ex-dean faces sex, drug charges](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 895; Loaded Date: 12/27/2012;
11/21/12 JOURNALNEWS A1 2012 WLN R 27376089

...ex-dean faces sex, drug charges Journal News, The (Westchester, NY) The Journal News 1 A 1 English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 5547 Word Count: 895 November 21, 2012 Dean: A former ...

...and dean at Scarsdale High School has been arrested in what authorities said was a vast prostitution empire that included **human trafficking**, money laundering and drug sales. Westchester Westchester Federal, state and local authorities announced a 180-count indictment Tuesday charging 19 ...

...13A NYC prostitution sting focused on ad agency, 5A...

2 duplicates

36. [Editorial: Human trafficking reaches us all](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 700; Loaded Date: 12/27/2012;
11/21/12 JOURNALNEWS (No Page) 2012 WLNR 24779596

...11/21/12 JOURNALNEWS (No Page) 11/21/12 Journal News (Westchester, N.Y.) (Pg. Unavail. Online) 2012 WLNR 24779596 Editorial: **Human trafficking** reaches us all Journal News, The (Westchester, NY) The Journal News Opinion English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 4424 Word Count: 700 November 21, 2012 Tania Savayan / The ...

...laundering; ensnared a former Scarsdale High School guidance counselor on drug and prostitution charges; and once again reminded us that **human trafficking** crosses all borders, and hits close to home. File photo/The JOURNAL NEWS According to the authorities, two women involved ...

...to learn more about the issue of human trafficking....

1 duplicate

37. [MESSAGE MAKERS STUDENTS' POSTERS HELP FIGHT HUMAN TRAFFICKING](#)

Post Standard Author: Zach Marschall Contributing writer; Word Count: 334; Loaded Date: 11/03/2012;
11/2/12 SYRACUSE C2 2012 WLNR 23340443

...11/2/12 SYRACUSE C2 11/2/12 Syracuse Newspapers C2 2012 WLNR 23340443 MESSAGE MAKERS STUDENTS' POSTERS HELP FIGHT **HUMAN TRAFFICKING** Zach Marschall Contributing writer Post Standard The Post-Standard Final CNY C2 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 2085 Word Count: 334 Six visual communications students at Cazenovia ...

...poster contest as part of their Protest and Propaganda class. The contest challenged applicants to create images showing opposition to **human trafficking**. Central New York Freedom Makers, a group of individuals that are doing activist work to fight trafficking in the Philippines ...

...IIT61 I.T. Vertical Markets IAS IIT38 I.T. ITOVER IIT96 USA ISOUS IUS73 U.S. Mid-Atlantic Region GEOMIDAT IMI18 New York **USANY** INE72 U.S. New England Region GEONENG INE37 North America GEONAMR 1NO39 Americas GEOAMER 1AM92 Massachusetts USAMA 1MA15 CTPTWSOC G:3K...

38. [Human trafficking expert to visit Africa](#)

Buffalo News, The (NY) Author: Phil Fairbanks Word Count: 700; Loaded Date: 10/15/2012;
10/15/12 BUFFALONWS (No Page) 2012 WLNR 28647393
10/15/12 BUFFALONWS (No Page) 10/15/12 Buff. News (Pg. Unavail. Online) 2012 WLNR 28647393 **Human trafficking** expert to visit Africa Phil Fairbanks The Buffalo News, N.Y. Buffalo News, The (NY) McClatchy-Tribune Regional News print feature English JAJF 0064084 Newspaper US USA NY New York NorthAmerica 4095 Word Count: 700 ...

...N.Y.) at www.buffalonews.com Distributed by MCT Information Services...

39. [Ending the Demand Side of Prostitution](#)

New York Times (NY) Author: N/A; Word Count: 534; Loaded Date: 10/01/2012;
10/1/12 NYT A26 2012 WLNR 20842334

...the Demand Side of Prostitution New York Times (NY) New York Times Late Edition - Final
A 26 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 3396
Word Count: 534 Letter from Rep Carolyn B Maloney ...

...Editor: I found the Sunday Review article by Noy Thrupkaew ("A Misguided Moral Crusade,"
Sept. 23) to be profoundly troubling. **Human** sex **trafficking** is modern-day slavery, and many of
the victims are young. Experts estimate that each year at least 100,000 children ...

...North America GEONAMR 1NO39 U.S. Midwest Region GEOMIDWT 1MI19 Americas
GEOAMER 1AM92 USA ISOUS 1US73 Illinois USAIL 1IL01 New York **USANY** 1NE72 U.S.
Mid-Atlantic Region GEOMIDAT 1MI18 CTPTWSOC Crime CRIME 1CR87 Health & Family
FAMHLTH 1HE30 Human Sexuality SEXNEWS 1HU27 Sex...

1 duplicate

40. [Sister McGeady, gave aid to youth in need](#)

Times Union (Albany, NY) Author: Paul Grondahl; Word Count: 584; Loaded Date: 09/15/2012;
9/15/12 TIMESUN (No Page) 2012 WLNR 19650935

...McGeady, gave aid to youth in need Paul Grondahl Times Union, Albany, N.Y. Times Union
(Albany, NY) McClatchy-Tribune Regional News print feature English FJAA 0063938 Newspa-
per US USA NY New York NorthAmerica 3623 Word Count: 584 ...

...her life to soothing the suffering of the most vulnerable youngsters: the abused, neglected and,
in some cases, victims of **human traffickers**. She was known for taking on the most damaged
and emotionally disturbed children, who had been left to fend for ...

...PTPERSRV 1PE76 USA ISOUS 1US73 Americas GEOAMER 1AM92 U.S. Mid-Atlantic Re-
gion GEOMIDAT 1MI18 North America GEONAMR 1NO39 New York **USANY** 1NE72 CT-
PTWSOC M:IA B:98 BL:54 B:106 B:117 G:4 G:6J G:6S M:I3...

41. [Vets and Physicians Find Research Parallels](#)

NYTimes.com Author: WILLIAM GRIMES; Word Count: 1245; Loaded Date: 09/12/2012;
9/11/12 NYTIMESCOM 1 2012 WLNR 19264794

...and Physicians Find Research Parallels WILLIAM GRIMES NYTimes.com New York Times
Real Time Feed NewYork science 1 English KJQN 0147063 Newspaper US USA NY New York
NorthAmerica 7780 Word Count: 1245 Researchers are turning their attention to ...

...chance to study anomalies of the arteries and veins that are rare in humans but common in dogs. And the **traffic** between **human** and animal hospitals flows in the other direction, too: Late last month, veterinarians from the Animal Medical Center began meeting ...

...ISOUS 1US73 U.S. West Region GEOWEST 1WE46 Americas GEOAMER 1AM92 California USACA 1CA98 U.S. Southwest Region GEOSWEST 1SO89 New York **USANY** 1NE72 Texas USATX 1TE14 DISEASE CANCER Health & Family FAMHLTH 1HE30 Medical Electronics MEDELECT 1ME73 Veterinary Medicines VETMED 1VE65 Medical Imaging...

42. [Four Busted For Human Trafficking Ring](#)

Daily Courier-Observer (Massena, NY) Author: N/A; Word Count: 551; Loaded Date: 09/08/2012;
9/8/12 DLYCROBSMASS 8 2012 WLNR 19187505

...9/8/12 DLYCROBSMASS 8 9/8/12 Daily Courier-Observer (Massena, N.Y.) 8 2012 WLNR 19187505 Four Busted For **Human Trafficking** Ring Daily Courier-Observer (Massena, NY) News 8 English KLTE 0149337 Newspaper US USA NY New York NorthAmerica 3655
Word Count: 551 CORNWALL, Ont. - After a three-month ...

...the Cornwall Regional Task Force have arrested four individuals in connection with their involvement in an alleged human smuggling and **human trafficking** ring. The following law enforcement agencies played an integral role in the investigation's success: Cornwall and greater Toronto area ...

...613-937-2800 or call Crime Stoppers at 1-800-222-8477....

43. [Case calls attention to human trafficking](#)

Daily Gazette, The (Schenectady, NY) Author: STEVEN COOK; Author: Gazette Reporter; Word Count: 1228; Loaded Date: 08/26/2012;
8/26/12 DLYGAZSCHTDY B1 2012 WLNR 18171203

...8/26/12 DLYGAZSCHTDY B1 8/26/12 Daily Gazette (Schenectady, N.Y.) B1 2012 WLNR 18171203 Case calls attention to **human trafficking** STEVEN COOK Gazette Reporter Daily Gazette, The (Schenectady, NY) Schenectady/Albany; Final B B1 English KLTI 0149341 Newspaper US USA NY New York NorthAmerica 7474
Word Count: 1228 The case started with an email ...

...received just over 58,000 calls....

44. [PITTSFORD IN BRIEF](#)

Brighton-Pittsford Post (Brighton/Pittsford, NY) Author: N/A; Word Count: 596; Loaded Date: 08/04/2012;
8/2/12 BRGTNPITPOST A5 2012 WLNR 16360440

...WLNR 16360440 PITTSFORD IN BRIEF Brighton-Pittsford Post (Brighton/Pittsford, NY) Brighton-Pittsford Post (NY) News A5 English KMGR 0149934 Newspaper US USA NY New York NorthAmerica 3940 Word Count: 596 Nazareth College hosts discussion of **human trafficking** "Human Trafficking at Home and Abroad" will be addressed at Nazareth College by international expert Cindy Dyer, director of the human rights ...

...1EN08 Sports SPORTS 1SP75 Americas GEOAMER 1AM92 Middle East GEOME 1MI23 North America GEONAMR 1NO39 Israel ISOIL 1IS16 New York USANY 1NE72 USA ISOUS 1US73 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 CTPTWSOC MEASTAFR G:4 BL:46 E:C M:78...

45. [END HUMAN TRAFFICKING, POL URGES IN NEW CAMPAIGN](#)

New York Daily News Author: CLARE TRAPASSO NEW YORK DAILY NEWS;Word Count: 285; Loaded Date: 08/02/2012; 8/2/12 NYDLYNWS 33 2012 WLNR 16222109 8/2/12 NYDLYNWS 33 8/2/12 N.Y. Daily News 33 2012 WLNR 16222109 **END HUMAN TRAFFICKING, POL URGES IN NEW CAMPAIGN** CLARE TRAPASSO NEW YORK DAILY NEWS New York Daily News SPORTS FINAL QUEENS NEWS 33 English KAAJ 0122124 Newspaper US USA NY New York NorthAmerica 1709 Word Count: 285 A QUEENS OFFICIAL is spearheading a campaign to raise awareness of the plight of **human trafficking** victims in an attempt to curb the problem in western Queens. The office of state Sen. Jose Peralta (D-East ...

...in English and Spanish to small businesses in Corona, Jackson Heights and parts of Elmhurst. The posters encourage victims of **human trafficking** and prostitution to call 311 for help. "So many women from around the world and the country are brought here ...

...the posters] will help somebody." ctrapasso@nydailynews.com ...

46. [Sinae Lee, Eli Mark](#)

NYTimes.com Author: N/A;Word Count: 181; Loaded Date: 06/16/2012; 6/17/12 NYTIMESCOM 17 2012 WLNR 12639782

...2012 WLNR 12639782 Sinae Lee, Eli Mark NYTimes.com New York Times Real Time Feed NewYork fashion 17 English KJQN 0147063 Newspaper US USA NY New York NorthAmerica 1032 Word Count: 181 The bride is a performance artist ...

...From 2007 to 2008, she was a Fulbright scholar at the University of Amsterdam in the Netherlands, where she researched **human trafficking** and the sex industry. She is the daughter of Ana J. Lee and Eok J. Lee of Irving, Tex. Mr ...

...SHOWBIZ 1EN08 Western Europe GEOWEUR 1WE41 Europe GEOEUR 1EU83 Netherlands ISONL 1NE54 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 New York USANY 1NE72 USA ISOUS 1US73 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 Eurozone

Countries EUROZONE 1EU86 G:7K M:GZ BL...

1 duplicate

47. [Trooper's parties test Mann Act](#)

Democrat and Chronicle (Rochester, NY) Author: N/A; Word Count: 391; Loaded Date: 05/03/2012;
5/3/12 DEMCHR (No Page) 2012 WLNR 9297302

...2012 WLNR 9297302 Trooper's parties test Mann Act Democrat and Chronicle (Rochester, NY) Democrat and Chronicle NEWS English KIQT 0145241 Newspaper US USA NY New York NorthAmerica 2508 Word Count: 391 May 3, 2012 The suspended state ...

...which prohibits the transportation of individuals across state or international lines for prostitution. The law is now used to combat **human trafficking**. State Police acknowledged last week that a Buffalo-based trooper, Titus Taggart, had been suspended because of an investigation into ...

...a former Erie County sheriff's deputy and a retired state Supreme Court judge.
GCRAIG@DemocratandChronicle.com <http://twitter.com/gcraig1...>

48. [In Deeds, Nuns Answer Call of Duty](#)

New York Times (NY) Author: JIM DWYER Word Count: 769; Loaded Date: 05/02/2012;
5/2/12 NYT A19 2012 WLNR 9202409

...mail:dwyer@nytimes.com; Twitter: @jimdwyrnyt New York Times (NY) New York Times Late Edition - Final A 19 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 4384 Word Count: 769 Jim Dwyer About New York column ...

...evening with three women who had just moved into the new safe house that she helped build for victims of **human trafficking**. In the Bronx, Lauria Fitzgerald was organizing evening meals that she serves to drug addicts and prostitutes who work under ...

...WMNHLTH 1WO30 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMID-AT 1MI18 Americas GEOAMER 1AM92 USA ISOUS 1US73 New York USANY 1NE72 CT-PTWSOC WHLTHGEN M:13 B:148 M:19 G:4 M:P M:IA G:6J G:6S Frances...

1 duplicate

49. [Bill would strengthen human trafficking law](#)

Ithaca Journal, The (Ithaca, NY) Author: N/A; Word Count: 643; Loaded Date: 04/13/2012;
4/13/12 ITHACAJ (No Page) 2012 WLNR 7803803

...12 ITHACAJ (No Page) 4/13/12 Ithaca Journal (Ithaca, N.Y.) (Pg. Unavail. Online) 2012 WLNR 7803803 Bill would strengthen **human trafficking** law Ithaca Journal, The (Ithaca, NY) The Ithaca Journal NEWS English KISI 0145433 Newspaper US USA NY New York NorthAmerica

4133 Word Count: 643 April 13, 2012 ALBANY -- Lawmakers and prosecutors are pushing for a stronger **human-trafficking** law that would increase protections for victims and strengthen penalties against traffickers. Assemblywoman Amy Paulin, D-Scarsdale, Westchester County, introduced ...

...bill this week to revise the state's 2007 law to hold sex and labor traffickers, sex-tourism operators and other **human traffickers** accountable. The measure would particularly increase protections in cases of commercial sexual exploitation of children. It would also close a ...

...younger than 16 to obtain a warrant. Cara Matthews is a staff writer for the Gannett Albany Bureau....

1 duplicate

50. [Editorial: Human trafficking is a local issue](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 900; Loaded Date: 03/01/2012;
3/1/12 JOURNALNEWS (No Page) 2012 WLNR 4448388

...3/1/12 JOURNALNEWS (No Page) 3/1/12 Journal News (Westchester, N.Y.) (Pg. Unavail. Online) 2012 WLNR 4448388 Editorial: **Human trafficking** is a local issue Journal News, The (Westchester, NY) The Journal News OPINION English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 5580 Word Count: 900 March 1, 2012 Both sex and ...

...involved a U.S. runaway teen, the Bronx pimp who trafficked her and a NFL Hall of Famer. The state's 2007 **human trafficking** law, among the most comprehensive in the country, was envisioned as a tool to fight the exploitation of women and ...

...GOVLIT 1GO18 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Americas GEOAMER 1AM92 USA ISOUS 1US73 New York **USANY** 1NE72 CT-PTWSOC M:I3 G:4 M:A G:6J M:FJ M:F3 G:6S M:ES MY SISTERS...

51. [CHECK IT OUT: FILM EXPLORES HUMAN TRAFFICKING](#)

Post Standard Author: N/A; Word Count: 88; Loaded Date: 02/07/2012;
2/6/12 SYRACUSE C1 2012 WLNR 2615882

2/6/12 SYRACUSE C1 2/6/12 Syracuse Newspapers C1 2012 WLNR 2615882 CHECK IT OUT: FILM EXPLORES **HUMAN TRAFFICKING** Post Standard The Post-Standard Final CNY C1 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 542 Word Count: 88 Filmmaker Robert Bilheimer will be in Syracuse Thursday to screen his documentary on global **human trafficking**, "Not My Life." The film explores the worldwide practice of trafficking and slavery. The screening, free and open to the ...

...co-hosted by Stone Canoe Journal and the Television-Radio-Film Department at SU's Newhouse School . Disclaimer:...

52. [WORK TO FIGHT HUMAN TRAFFICKING](#)

Albany Times Union (NY) Author: N/A; Word Count: 267; Loaded Date: 02/03/2012;
2/2/12 TIMESUN A12 2012 WLNR 2377195
2/2/12 TIMESUN A12 2/2/12 Times Union (Alb.) A12 2012 WLNR 2377195 **WORK TO
FIGHT HUMAN TRAFFICKING** Albany Times Union (NY) Times Union, The (Albany, NY)
Final Edition Opinion A12 English ACAD 0000302 Newspaper US USA NY New York
NorthAmerica 1657 Word Count: 267 As a New Yorker, I am ...

...SPORTS 1SP75 USA ISOUS 1US73 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 Indiana
USAIN 1IN12 North America GEONAMR 1NO39 New York **USANY** 1NE72 Americas
GEOAMER 1AM92 U.S. Midwest Region GEOMIDWT 1MI19 TRAVEL CTPTWSOC
HSPTALTY B:81 G:A8 M:A BL:53...

53. [BLOG: Long Island Now: Feds ask public to report human trafficking](#)

Newsday (NY) Author: Victor Manuel Ramos Word Count: 300; Loaded Date: 02/01/2012;
2/1/12 NWSDAY (No Page) 2012 WLNR 2224497

...Page) 2/1/12 Newsday (Pg. Unavail. Online) 2012 WLNR 2224497 **BLOG: Long Island Now:
Feds ask public to report human trafficking** Victor Manuel Ramos Newsday, Melville, N.Y.
Newsday (NY) Newsday (Melville, NY) McClatchy-Tribune Regional News print feature Eng-
lish CEFH 0063759 Newspaper US USA NY New York NorthAmerica 1942 Word
Count: 300 ...

...New York Field Office of U.S. Immigration and Customs Enforcement on Tuesday called on
the public to report cases of **human trafficking** as the agency sought to emphasize its efforts in
fighting immigrant exploitation. Immigration enforcement officials are part of a national ...

...immigrants, following a Dec. 30 proclamation from President Barack Obama affirming the
country's role in "working to protect victims of **human trafficking** with effective services and
support" while pursuing traffickers "through consistent enforcement." The investigation and pro-
secution of such cases has risen...

54. [Seven by Seven / Seven things you need to know by 7 a.m.](#)

Buffalo News (NY) Author: N/A; Word Count: 497; Loaded Date: 01/11/2012;
1/11/12 BUFFALONWS A2 2012 WLNR 690709

...you need to know by 7 a.m. Buffalo News (NY) Buffalo News, The (NY) Final News A2 Eng-
lish ACEF 0001373 Newspaper US USA NY New York NorthAmerica 3091 Word
Count: 497 1. It's National **Human Trafficking** Awareness Day, and to increase recognition of
this form of slavery, the International Institute of Buffalo , 864 Delaware Ave. , is hosting a free
screening at 7 p.m. of the documentary film "Lives for Sale." A worldwide problem, **human
trafficking** also is a local concern. Since the institute started its Trafficking Victim Services Pro-
gram in 2007, it has assisted more ...

...Racing AUTORACE 1AU97 Entertainment SHOWBIZ 1EN08 Sports SPORTS 1SP75 U.S.

Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 New York **USANY** 1NE72 North America GEONAMR 1NO39 Americas GEOAMER 1AM92 Delaware USADE 1DE13 CT-PTWSOC DISEASE CORONARY G:6J G:4 B:200...

55. ['Sex prof' lawsuit](#)

New York Post Author: Kathianne Boniello; Word Count: 163; Loaded Date: 12/13/2011; 12/11/11 NYPOST 18 2011 WLNR 25689867

...25689867 'Sex prof' lawsuit Kathianne Boniello New York Post The New York Post All Editions News 018 English JLGG 0047204 Newspaper US USA NY New York NorthAmerica 934 Word Count: 163 There was a lot of heavy ...

...her that unless she hit the sack with him, she would fail her independent-study class in - of all things - **human trafficking**. The suit, filed in Manhattan federal court, says that Professor Paul Martin constantly asked Laura Williams whether she had a ...

...Kathianne Boniello ...

56. [BRIEF: \\$41 million in grants to be shared by many](#)

Buffalo News, The (NY) Author: N/A; Word Count: 100; Loaded Date: 10/28/2011; 10/28/11 BUFFALONWS (No Page) 2011 WLNR 27901661

...2011 WLNR 27901661 BRIEF: \$41 million in grants to be shared by many Buffalo News, The (NY) McClatchy-Tribune Regional News print feature English JAJF 0064084 Newspaper US USA NY New York NorthAmerica 612 Word Count: 100 ...

...S. Attorney William J. Hochul Jr. said the money will finance a wide range of law enforcement activities, from fighting **human trafficking** to buying new police equipment to putting more of-ficers on the street. Of the 15 counties that received money, Erie ...

...Services...

57. [Brooklyn man is 1st person in U.S. convicted of human-organ trafficking](#)

amNewYork Author: Tim Herrera Word Count: 303; Loaded Date: 10/28/2011; 10/27/11 AMNEWYORK (No Page) 2011 WLNR 22216874

...Page) 10/27/11 amNewYork (Pg. Unavail. Online) 2011 WLNR 22216874 Brooklyn man is 1st person in U.S. convicted of **human-organ trafficking** Tim Herrera amNewYork, New York am-NewYork McClatchy-Tribune Regional News print feature English KBOQ 0137278 Newspaper US USA NY New York NorthAmerica 1819 Word Count: 303 Oct. 27--A Brooklyn man on Thursday became the first U.S. citizen convicted of **human organ trafficking** Thursday after he admitted to illegally brokering three kidney transplants, the New Jersey U.S. attorney said. Levy Izhak Rosenbaum, 60 ...

...return calls for comment. (c)2011 amNewYork Visit amNewYork at www.amny.com Distributed by MCT Information Services...

58. [She Was Told She'd Be a Model. Of Course.](#)

New York Times (NY) Author: JEANNETTE CATSOULIS;Word Count: 361; Loaded Date: 10/21/2011;
10/21/11 NYT C9 2011 WLNR 21611012

...Model. Of Course. JEANNETTE CATSOULIS New York Times (NY) New York Times Late Edition - Final C 9 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 2263 Word Count: 361 A stripped-down, socially conscious drama set in the slippery world of **human trafficking**, Yan Vizinberg's "Cargo" is commendably free of cheap emotional manipulation. Instead the film leans almost exclusively on the focused performances ...

...Effects Technology SPECFX ISP19 Entertainment Technology SHOWTECH 1EN50 Film Festivals FILMFEST 1FI62 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 New York **USANY** 1NE72 USA ISOUS 1US73 Americas GEOAMER 1AM92 North America GEONAMR 1NO39 CTPTWSOC BL:46 B:95 G:6S B:91...

1 duplicate

59. [Feds grant \\$500K for human trafficking aid](#)

Business First (Buffalo) Author: Tracey Drury;Word Count: 340; Loaded Date: 09/08/2011;
9/8/11 BUSFSTBUFF (No Page) 2011 WLNR 17793759

...11 BUSFSTBUFF (No Page) 9/8/11 Bus. First - Buff. (Pg. Unavail. Online) 2011 WLNR 17793759 Feds grant \$500K for **human trafficking** aid Tracey Drury Business First (Buffalo) buffalo English JLAN 0071960 Newspaper US USA NY New York NorthAmerica 2171

Word Count: 340 The Erie County Sheriff's Office and a collaborative of local groups received a \$500,000 federal grant to better combat **human trafficking**. The grant, from the Department of Justice, supports an initiative by the nonprofit International Institute of Buffalo, the U.S. Attorney's Office and a regional task force to prevent **human trafficking**. The competitive grant comes through the Enhanced Collaborative Model to Combat Human Trafficking, which works with law enforcement and social ...

...in our dogged pursuit of such."...

60. [Human trafficking targeted in campaign \](#)

Buffalo News (NY) Author: Phil Fairbanks - NEWS STAFF REPORTER;Word Count: 584; Loaded Date: 08/16/2011;
8/14/11 BUFFALONWS C5 2011 WLNR 16230372

8/14/11 BUFFALONWS C5 8/14/11 Buff. News C5 2011 WLNR 16230372 **Human trafficking** targeted in campaign \ Phil Fairbanks - NEWS STAFF REPORTER Buffalo News (NY) Buffalo News, The (NY) Final Local C5 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 3321 Word Count: 584 Even now, two years later, Elizabeth ...

...at the Erie County Fair for a discounted price of \$25 a person. email: pfairbanks@buffnews.com...

61. [Gateway to screen human trafficking film](#)

Staten Island Advance (Staten Island, NY) Author: MAURA GRUNLUND; Word Count: 286; Loaded Date: 08/15/2011; 8/13/11 STATENISADV A14 2011 WLNR 16154543

...13/11 STATENISADV A14 8/13/11 Staten Island Advance (Staten Island, NY) A14 2011 WLNR 16154543 Gateway to screen **human trafficking** film MAURA GRUNLUND Staten Island Advance (Staten Island, NY) Staten Island Advance (NY) Religion A14 English JLRS 0085553 Newspaper US USA NY New York NorthAmerica 1640 Word Count: 286 STATEN ISLAND, N.Y. - A screening of a PG-13 rated documentary film on **human trafficking** in the United States, "Sex & Money," will be shown on Aug. 21 at Church at the Gateway in Richmond Valley ...

...SMUGGLE 1SM35 Protestantism PROTEST 1PR28 Christianity CHURCH 1CH94 Entertainment SHOWBIZ 1EN08 Motion Pictures MOVIES 1MO51 Americas GEOAMER 1AM92 New York USANY 1NE72 USA ISOUS 1US73 North America GEONAMR 1NO39 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 CTPTWSOC B:81 G:4 B...

62. [What About American Girls Sold on the Streets?](#)

New York Times (NY) Author: NICHOLAS D. KRISTOF Word Count: 904; Loaded Date: 04/24/2011; 4/24/11 NYT 10 2011 WLNR 7965529

...L. Friedman is off today. New York Times (NY) New York Times Late Edition - Final WK 10 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 5273 Word Count: 904 Nicholas D Kristof Op-Ed column ...

...and girls who are prostitutes and more on their pimps and those who patronize them (M) When we hear about **human trafficking** in India or Cambodia, our hearts melt. The victim has sometimes been kidnapped and imprisoned, even caged, in a way ...

...Asia GEOASIA 1AS61 Cambodia ISOKH 1CA93 Eastern Asia GEOEASIA 1EA61 Far East GEOFREST 1FA27 Indo China GEOINDCH 1IN61 New York USANY 1NE72 North America GEONAMR 1NO39 Southeast Asia GEOSEASI 1SO64 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 USA ISOUS 1US73 CTPTWSOC Crime...

1 duplicate

63. [ANYTHING BUT FAIR STATE FAIR VENDOR ABUSED WORKERS FROM MEXICO HOW TWO WOMEN STUMBLED UPON AN EGREGIOUS CASE OF LONG HOURS, NO PAY, LITTLE FOOD AND BED BUGS](#)

Post Standard Author: Marnie Eisenstadt Staff writer; Word Count: 2287; Loaded Date: 04/19/2011;
4/17/11 SYRACUSE A1 2011 WLNR 7580795

...LITTLE FOOD AND BED BUGS Marnie Eisenstadt Staff writer Post Standard The Post-Standard Final News A1 English DIIF 0008295 Newspaper US USA NY New York NorthAmerica 12977
Word Count: 2287 In three booths at last year ...

...investigations into the men's boss, Peter Karageorgis, of Queens, and a lawsuit against him. Federal authorities charged him with **human trafficking**, and the U.S. Department of Labor recently ordered him to pay 13 men \$115,000 in wages withheld plus a \$50,000 ...

...Eisenstadt at meisenstadt@syracuse.com or 470-2246. Disclaimer:...

64. [Hearing set for man in Lawrence Taylor's sex case](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 144; Loaded Date: 07/16/2011;
3/2/11 JOURNALNEWS 3 2011 WLNR 14136655

...for man in Lawrence Taylor's sex case Journal News, The (Westchester, NY) The Journal News NEWS AR3 English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 813
Word Count: 144 March 2, 2011 NEW YORK — A ...

...girl who had sex with former NFL star Lawrence Taylor at a Ramapo hotel. Rasheed Davis, 36, is charged with **human sex trafficking**, including using violence against the runaway girl. The conferences are usually a step toward reaching a plea deal or going ...

...also is accused of plying her with drugs....

65. [Alleged pimp indicted on charges of sex trafficking](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 325; Loaded Date: 02/26/2011;
2/26/11 JOURNALNEWS 3 2011 WLNR 3808947

...pimp indicted on charges of sex trafficking Journal News, The (Westchester, NY) The Journal News NEWS AWP3 English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 1908
Word Count: 325 February 26, 2011 The reputed Miami pimp accused in a **human trafficking** case has been indicted by a federal grand jury. Nicholas Alvarez, 35, faces a possible life sentence if convicted of ...

...to requests for comment....

66. [WNY titleholder joins effort to aid human trafficking victims](#)

Buffalo News (NY) Author: Phil Fairbanks - NEWS STAFF REPORTER; Word Count: 424;

Loaded Date: 02/22/2011;
2/20/11 BUFFALONWS C8 2011 WLNR 3447814

...2/20/11 BUFFALONWS C8 2/20/11 Buff. News C8 2011 WLNR 3447814 WNY titleholder joins effort to aid **human trafficking** victims Phil Fairbanks - NEWS STAFF REPORTER Buffalo News (NY) Buffalo News, The (NY) Final Local C8 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 2452 Word Count: 424 One of the great tragedies of the federal government's efforts to help victims of **human trafficking** in Western New York is the people who fall through the cracks. Services and programs are available to help people ...

...for years to come. e-mail: pfairbanks@buffnews.com...

1 duplicate

67. [Recent arrests shed light on sex trafficking](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 1149; Loaded Date: 07/16/2011;
2/13/11 JOURNALNEWS (No Page) 2011 WLNR 14137275

...14137275 Recent arrests shed light on sex trafficking Journal News, The (Westchester, NY) The Journal News OPINION English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 7163 Word Count: 1149 February 13, 2011 The misdeeds of ...

...parlors and nail salons, have been uncovered in local communities. A Pound Ridge author, Joseph Yannai, is charged under federal **human-trafficking** and state labor-trafficking laws, accused of luring women from overseas to work in his home, only to abuse them ...

...happens all the time." A Journal News editorial...

68. [Paperback Row](#)

New York Times (NY) Author: IHSAN TAYLOR; Word Count: 509; Loaded Date: 02/13/2011;
2/13/11 NYT 30 2011 WLNR 2841609

...2841609 Paperback Row IHSAN TAYLOR New York Times (NY) New York Times Late Edition - Final BR 30 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 3222 Word Count: 509 THE NEAREST EXIT, by Olen Steinhauer ...

...stab at domesticity is cut short when he's dispatched on a mission and becomes embroiled in the sordid world of **human trafficking**, a blackmail plot involving German intelligence officials and a search for a mole in the agency. BLACK HEARTS: One Platoon's ...

...riches of the New York Public Library PHOTOS ...

69. [Paperback Row](#)

NYTimes.com Author: IHSAN TAYLOR; Word Count: 510; Loaded Date: 02/12/2011;

2/13/11 NYTIMESCOM 30 2011 WLNR 2760129

...2011 WLNR 2760129 Paperback Row IHSAN TAYLOR NYTimes.com New York Times Real Time Feed NewYork books 30 English KJQN 0147063 Newspaper US USA NY New York NorthAmerica 3234 Word Count: 510 Paperback books of particular interest. THE ...

...stab at domesticity is cut short when he's dispatched on a mission and becomes embroiled in the sordid world of **human trafficking**, a blackmail plot involving German intelligence officials and a search for a mole in the agency. BLACK HEARTS: One Platoon's ...

...New York Public Library...

70. [Florida man arrested, accused of human trafficking after van stop in Yonkers](#)
Journal News, The (Westchester, NY) Author: N/A; Word Count: 551; Loaded Date: 02/08/2011;
2/8/11 JOURNALNEWS 1a 2011 WLNR 2484177

...8/11 JOURNALNEWS 1a 2/8/11 Journal News (Westchester, N.Y.) 1a 2011 WLNR 2484177 Florida man arrested, accused of **human trafficking** after van stop in Yonkers Journal News, The (Westchester, NY) The Journal News NEWS 1a wpr English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 3315 Word Count: 551 February 8, 2011 A missing license plate led to a **human trafficking** case and a Florida man being charged with forcing three women into prostitution. Nicholas Alvarez, 35, of Miami was accused ...

...prison if convicted of the most serious charge....

71. [EX-SCIENTOLOGIST'S ENSLAVEMENT CLAIM SPARKS FBI PROBE](#)
New York Daily News Author: Helen Kennedy; Word Count: 221; Loaded Date: 02/08/2011;
2/8/11 NYDLYNWS 22 2011 WLNR 2475858

...EX-SCIENTOLOGIST'S ENSLAVEMENT CLAIM SPARKS FBI PROBE Helen Kennedy New York Daily News SPORTS FINAL NEWS 22 English KAAJ 0122124 Newspaper US USA NY New York NorthAmerica 1371 Word Count: 221 THE FBI IS probing allegations of **human trafficking** and enslavement in the celeb-magnet Church of Scientology , according to The New Yorker. The charges are based on complaints ...

...Haggis told the magazine. ...

72. [-FEDS EYE CHURCH CRUISE LABOR - SCIENTOLOGY 'SLAVE' CLAIM \(M\)-CRUISE'S CHURCH 'LABOR' PROBED - SCIENTOLOGY 'SLAVE' CLAIM\(S, LCF\)](#)
New York Post Author: BOB FREDERICKS; Word Count: 436; Loaded Date: 02/08/2011;
2/8/11 NYPOST 9 2011 WLNR 2493425

...PROBED - SCIENTOLOGY 'SLAVE' CLAIM(S, LCF) BOB FREDERICKS New York Post

The New York Post News 009 English JLGG 0047204 Newspaper US USA NY New York
NorthAmerica 2686 Word Count: 436 Risky is too tame a word for this nasty business.
The FBI is investigating whether the Church of Scientology engages in **human trafficking** and
uses unpaid labor - including allegations that Tom Cruise had work done on his motorcycles and
property by church members ...

...the ongoing FBI probe. With Post Wire Services...

73. [Human trafficking close to home\](#)

Buffalo News (NY) Author: Phil Fairbanks - NEWS STAFF REPORTER; Word Count: 1372;
Loaded Date: 02/02/2011;
1/31/11 BUFFALONWS A1 2011 WLNR 2038132
1/31/11 BUFFALONWS A1 1/31/11 Buff. News A1 2011 WLNR 2038132 **Human trafficking**
close to home\ Phil Fairbanks - NEWS STAFF REPORTER Buffalo News (NY) Buffalo News,
The (NY) Final News A1 English ACEF 0001373 Newspaper US USA NY New York
NorthAmerica 7769 Word Count: 1372 When you hear the words "**human trafficking**,"
chances are good you think of underaged prostitutes in Malaysia or child laborers in Saudi Arabia
or Guatemala. Human trafficking ...

...mail: pfairbanks@buffnews.com...

1 duplicate

74. [New Westchester task force targets human trafficking](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 1315; Loaded Date:
01/27/2011;
1/27/11 JOURNALNEWS 1 2011 WLNR 1663809

...27/11 JOURNALNEWS 1 1/27/11 Journal News (Westchester, N.Y.) 1 2011 WLNR 1663809
New Westchester task force targets **human trafficking** Journal News, The (Westchester, NY)
The Journal News NEWS AWP1 English KIRA 0145248 Newspaper US USA NY New York
NorthAmerica 8466 Word Count: 1315 January 27, 2011 My Sisters' Place has identi-
fied 35 cases of **human trafficking** since 2009. The incidences — which come from throughout
the region, including Westchester and Rockland counties and New York City — involve ...

...men and women, said officials with the White Plains-based agency, which provides support to
victims of domestic violence and **human trafficking**. Twenty of those 35 cases have been identi-
fied since September, when Lauren Pessa began a two-year human-trafficking fellowship ...

...Initiative, but data on those efforts was unavailable."...

75. ['L.T.' just gets slap on the wrist](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 160; Loaded Date:
07/16/2011;
1/18/11 JOURNALNEWS (No Page) 2011 WLNR 14137615

...14137615 'L.T.' just gets slap on the wrist Journal News, The (Westchester, NY) The Journal
News OPINION English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 911
Word Count: 160 January 18, 2011 Re "Taylor pleads ...

...girl, is to receive what amounts to a slap on the wrist. Through My Sisters' Place's work with
survivors of **human trafficking** in Westchester County — right across the river from where
Taylor was arrested in May — we know how important it is ...

...writer is executive director of My Sisters' Place....

76. [Human-Trafficking Suspect Is Arrested While Gambling](#)

New York Times (NY) Author: KIRK SEMPLE;Word Count: 619; Loaded Date: 01/11/2011;
1/11/11 NYT A23 2011 WLNR 581789

1/11/11 NYT A23 1/11/11 N.Y. Times A23 2011 WLNR 581789 **Human-Trafficking** Suspect Is
Arrested While Gambling KIRK SEMPLE New York Times (NY) New York Times Late Edition
- Final A 23 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 3847

Word Count: 619 An Soon Kim, Queens resident who ...

...Connecticut; Kim will be transferred to New York to face charges (M) A Queens woman sus-
pected of involvement in a **human-trafficking** ring that smuggled young Korean women into the
United States and forced them into prostitution in New York and elsewhere ...

...said. ...

1 duplicate

77. [IC film festival forms Thai partnership](#)

Ithaca Journal, The (Ithaca, NY) Author: N/A;Word Count: 445; Loaded Date: 12/24/2010;
12/23/10 ITHACAJ M9 2010 WLNR 25378264

...25378264 IC film festival forms Thai partnership Ithaca Journal, The (Ithaca, NY) The Ithaca
Journal 1 M9 English KISI 0145433 Newspaper US USA NY New York NorthAmerica 2829

Word Count: 445 December 23, 2010 The Global Alliance ...

...interested in discovering the ways in which digital art can visualize and engage viewers in ex-
periencing the complexities of migration, **human trafficking** and labor issues," said Patricia Zi-
mmermann, a co-director of FLEFF. " Embodying how trafficked people's identities and experi-
ences can be ...

...Indo China GEOINDCH 1IN61 U.S. Mid-Atlantic Region GEOMIDAT 1MI18 North America
GEONAMR 1NO39 Far East GEOFREST 1FA27 New York **USANY** 1NE72 Eastern Asia
GEOEASIA 1EA61 USA ISOUS 1US73 Americas GEOAMER 1AM92 Asia GEOASIA 1AS61
Thailand ISOTH 1TH74 Southeast Asia GEOSEASI...

78. [Charity Fixer To the Stars](#)

New York Times (NY) Author: LAURA M. HOLSON;Word Count: 2150; Loaded Date: 12/05/2010;
12/5/10 NYT 1 2010 WLNR 24107614

...the Stars LAURA M. HOLSON New York Times (NY) New York Times Late Edition - Final
ST 1 English ADFN 0007297 Newspaper US USA NY New York NorthAmerica 12695
Word Count: 2150 Profile of Trevor Neilson, philanthropic consultant ...

...husband, Ashton Kutcher, appeared at the United Nations on a panel announcing a United Nations -sponsored fund for victims of **human trafficking**. In January, they had founded the DNA Foundation, a charity to stop the brokering of young girls for sex. ' The ...

...at the United Nations (PHOTOGRAPH BY MICHAEL NAGLE FOR THE NEW YORK TIMES) (ST8) ...

79. [Charity Fixer to the Stars](#)

NYTimes.com Author: LAURA M. HOLSON;Word Count: 2052; Loaded Date: 12/06/2010;
12/5/10 NYTIMESCOM 1 2010 WLNR 24091483

...Fixer to the Stars LAURA M. HOLSON NYTimes.com New York Times Real Time Feed
NewYork fashion 1 English KJQN 0147063 Newspaper US USA NY New York NorthAmerica
12084 Word Count: 2052 Trevor Neilson acts as a buffer ...

...husband, Ashton Kutcher , appeared at the United Nations on a panel announcing a United Nations -sponsored fund for victims of **human trafficking**. In January, they had founded the DNA Foundation, a charity to stop the brokering of young girls for sex. " The ...

...One of the hard parts: Which cause should a star back?...

80. [WORKERS: VENDOR A CHEAT NEW YORK CITY MAN IS ACCUSED OF HUMAN TRAFFICKING AT STATE FAIR.](#)

Post Standard Author: John O'Brien Staff writer;Word Count: 337; Loaded Date: 11/19/2010;
11/18/10 SYRACUSE A6 2010 WLNR 23044398

...11/18/10 Syracuse Newspapers A6 2010 WLNR 23044398 WORKERS: VENDOR A CHEAT
NEW YORK CITY MAN IS ACCUSED OF **HUMAN TRAFFICKING** AT STATE FAIR. John
O'Brien Staff writer Post Standard The Post-Standard Final News A6 English DIIF 0008295
Newspaper US USA NY New York NorthAmerica 2017 Word Count: 337 A restaurant
vendor at the state fair has been accused of **human trafficking** for underpaying and threatening
migrant workers and subjecting them to poor living conditions. Four Mexican workers filed a
class-action ...

...in Syracuse for the fair, Bhatt said. Disclaimer:...

81. [Honor Roll / Recognizing the accomplishments of Western New Yorkers](#)

Buffalo News (NY) Author: N/A; Word Count: 655; Loaded Date: 11/09/2010;
11/7/10 BUFFALONWS C7 2010 WLNR 22336724

...Recognizing the accomplishments of Western New Yorkers Buffalo News (NY) Buffalo News, The (NY) Final Local C7 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 4282 Word Count: 655 Elizabeth Fildes, director of the Western District of New York **Human Trafficking** Task Force and Alliance, is being sent to Guatemala by the U.S. Department of State at the end of this ...

...business and community planners. e-mail: lcontinelli@buffnews.com...

82. [Our recommendation for the 88th District state Assembly seat](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 346; Loaded Date: 07/16/2011;
10/30/10 JOURNALNEWS (No Page) 2010 WLNR 26400615

...recommendation for the 88th District state Assembly seat Journal News, The (Westchester, NY) The Journal News OPINION English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 2142 Word Count: 346 October 30, 2010 In a legislature ...

...Assembly District, she has written 107 bills that have become law, including important measures protecting rape victims and victims of **human trafficking**. It is a batting average most lawmakers would envy. This year alone, she has had success passing New York's new ...

...and Working Families lines. A Journal News editorial...

83. [Speaker at Sacred Heart Academy tries to raise awareness about human trafficking](#)

Buffalo News (NY) Author: MEREDITH McCaffrey - NeXt Correspondent; Word Count: 386; Loaded Date: 10/22/2010;
10/21/10 BUFFALONWS C6 2010 WLNR 21113016

...C6 10/21/10 Buff. News C6 2010 WLNR 21113016 Speaker at Sacred Heart Academy tries to raise awareness about **human trafficking** MEREDITH McCaffrey - NeXt Correspondent Buffalo News (NY) Buffalo News, The (NY) Final NeXt C6 English ACEF 0001373 Newspaper US USA NY New York NorthAmerica 2343 Word Count: 386 When we think of issues facing people in Buffalo today, **human trafficking** is not usually the first thing that comes to mind. In fact, we hear of this problem so rarely that ...

...McCaffrey is a sophomore at Sacred Heart Academy...

84. [Elect Greg Ball to the Senate](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 237; Loaded Date: 07/16/2011;

10/20/10 JOURNALNEWS (No Page) 2010 WLNR 26400760

...WLNR 26400760 Elect Greg Ball to the Senate Journal News, The (Westchester, NY) The Journal News OPINION English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 1327 Word Count: 237 October 20, 2010 Tax Hike Mike ...

...in the Assembly, bills like autism reform, college tuition at SUNY schools for veterans, a closure of loopholes in the **human trafficking** law — not to mention local legislation he's helped pass, like child-safety zones in Putnam County. Greg Ball has successfully ...

...the power brokers in Albany. Barbara Enright Somers...

85. [Feds: Pound Ridge author planned suicide attempt to coincide with arrest](#)

Journal News, The (Westchester, NY) Author: N/A; Word Count: 367; Loaded Date: 08/10/2010; 8/10/10 JOURNALNEWS 5a 2010 WLNR 15916018

...suicide attempt to coincide with arrest Journal News, The (Westchester, NY) The Journal News NEWS 5a WP English KIRA 0145248 Newspaper US USA NY New York NorthAmerica 2153 Word Count: 367 August 10, 2010 NEW YORK — The ...


...immigration agents and Pound Ridge police on a federal indictment that accuses him of enticing women from overseas, engaging in **human trafficking** and other charges. He pleaded not guilty Thursday in federal court in Brooklyn after spending two days in Northern Westchester ...


...He faces a possible life sentence if convicted....


Related Search Criteria


Type	Search (News)
Filters	Region: New York State
Sources	All Sources
Search Term	human N/2 traffic* AND "new york"
Date	Aug 08, 2010 to Aug 09, 2013

Search Results

- 1. Buffalo News: Advocates seek a federal court dedicated to human trafficking** 

Wire: NS1 -- Source: Web Content - US -- Wed Aug 07 23:40:30 EDT 2013
- 2. Syracuse Post: New York Legislature still has the chance to fight human trafficking** 

Wire: NS1 -- Source: Web Content - US -- Thu Aug 01 07:17:20 EDT 2013
- 3. Albany T-U: Ossorio: Spending shows the work we've done** 


Wire: NS1 -- Source: Web Content - US -- Tue Jul 23 11:14:54 EDT 2013
- 4. Weekly Standard: Spitzer: Prostitution Should Remain Illegal, 'Fundamentally Wrong'** 


Wire: NS1 -- Source: Web Content - US -- Mon Jul 08 20:20:28 EDT 2013
- 5. Housekeeper in New Jersey Accuses Peruvian Diplomat of Human Trafficking**


Wire: NYT -- Source: New York Times -- Tue Jun 25 21:16:37 EDT 2013
- 6. All-or-Nothing Strategy on Women's Equality Legislation Ends With Nothing**


Wire: NYT -- Source: New York Times -- Mon Jun 24 16:48:09 EDT 2013
- 7. All-or-Nothing Strategy on Women's Equality Legislation Ends With Nothing**


Wire: NYT -- Source: New York Times -- Sun Jun 23 22:52:39 EDT 2013
- 8. In Albany, All-or-Nothing Strategy on Women's Equality Act Ends With Nothing**

Wire: NYT -- Source: New York Times -- Sun Jun 23 21:10:10 EDT 2013
- 9. WETM 18: NY Assembly OKs Women's Rights, Abortion Bill** 

Wire: NS1 -- Source: Web Content - US -- Fri Jun 21 05:52:10 EDT 2013
- 10. Syracuse Post: NY Assembly passes women's act with abortion law changes** 

Wire: NS1 -- Source: Web Content - US -- Thu Jun 20 17:49:22 EDT 2013
- 11. Fox 23 Albany: Assembly passes women's rights, abortion bill** 

Wire: NS1 -- Source: Web Content - US -- Thu Jun 20 17:16:59 EDT 2013
- 12. Daily Freeman: LETTER: What's Bonacic's beef on Women's Equality Act?** 

Wire: NS1 -- Source: Web Content - US -- Thu Jun 20 03:10:07 EDT 2013
- 13. Our Town: Lawsuit Says Couple Forced Nanny to Work** 

Wire: NS1 -- Source: Web Content - US -- Wed Jun 19 14:25:08 EDT 2013
- 14. Newsday: Cuomo Woman's Equality Act plan includes human trafficking agenda**

Wire: NS1 -- Source: Web Content - US -- Tue Jun 18 20:46:36 EDT 2013

-
15. **WABC-NYC: Nanny files suit, claims abuse by Manhattan couple** 
Wire: NS1 -- Source: Web Content - US -- Mon Jun 17 16:37:16 EDT 2013
-
16. **Cuomo's Abortion Bill Dies in N.Y. Senate as Coalition Balks**
Wire: BN -- Source: Bloomberg News -- Mon Jun 17 13:36:45 EDT 2013
-
17. **WSJ [Reg]: NYC lawsuit says couple forced nanny to work** 
Wire: WSW -- Source: Wall Street Journal -- Sat Jun 15 00:08:48 EDT 2013
-
18. **Buffalo News: New campaign aims to help local victims of human trafficking** 
Wire: NS1 -- Source: Web Content - US -- Thu Jun 13 06:12:00 EDT 2013
-
19. **Groups Press City Council on Budget for Homeless**
Wire: NYT -- Source: New York Times -- Tue Jun 11 23:41:03 EDT 2013
-
20. **Syracuse Post: It's time for New York to empower prosecutors to crack down on human trafficking** 
Wire: NS1 -- Source: Web Content - US -- Tue Jun 11 07:52:16 EDT 2013
-
21. **Gothamist: Despite Assurances, Sex Workers Still Worry Condoms Will Be Used Against Them** 
Wire: BLG -- Source: Blogs Web Content -- Thu Jun 06 13:50:50 EDT 2013
-
22. **Huffington Post: The Fight Is on Against Child Sex Trafficking in New York State** 
Wire: NS1 -- Source: Web Content - US -- Thu Jun 06 13:15:06 EDT 2013
-
23. **Queens Courier: Governor Cuomo introduces women's rights legislation** 
Wire: NS1 -- Source: Web Content - US -- Tue Jun 04 15:53:30 EDT 2013
-
24. **Cuomo Says New York Should Codify Rights to Abortion (Video)**
Wire: BN -- Source: Bloomberg News -- Tue Jun 04 12:57:49 EDT 2013
-
25. **Corrections**
Wire: NYT -- Source: New York Times -- Fri May 31 03:14:58 EDT 2013
-
26. **S.I. Advance: Human sex trafficking bill introduced in Albany by Staten Island's Lanza** 
Wire: NS1 -- Source: Web Content - US -- Tue May 21 14:56:28 EDT 2013
-
27. **WSJ [Reg]: Lhota Apologizes for 'Mall Cops' Remark** 
Wire: WSW -- Source: Wall Street Journal -- Wed May 08 13:29:47 EDT 2013
-
28. **District Attorney Vance And Thomson Reuters Foundation Launch Financial Working Group Against Human Trafficking**
Wire: PRN -- Source: PR Newswire -- Fri Apr 26 03:00:29 EDT 2013
-
29. **District Attorney Vance And Thomson Reuters Foundation Launch Financial Working Group Against Human Trafficking**
Wire: PRN -- Source: PR Newswire -- Thu Apr 25 16:59:35 EDT 2013
-
30. **Sentencing Blog: Guest post: "Victims of Human Trafficking Can Vacate Convictions in NY"** 
Wire: BLG -- Source: Blogs Web Content -- Mon Feb 04 10:53:35 EST 2013

-
31. **Chappaq-Mt Kisco: Prostitution-Money Laundering Bust Has Westchester Ties** 
Wire: BLG -- Source: Blogs Web Content -- Tue Nov 20 16:04:15 EST 2012
-
32. **Times of India: Clinton Global Initiative focus on human trafficking** 
Wire: TOI -- Source: Times of India -- Thu Sep 27 10:03:59 EDT 2012
-
33. **Obama Announces Initiatives to Curb Human Trafficking (Video)**
Wire: BN -- Source: Bloomberg News -- Tue Sep 25 14:15:33 EDT 2012
-
34. **U.S. Newswire: Trade of Innocents makes Clinton Global Initiative 'Commitment**
Wire: RE1 -- Source: Reference Sources - US -- Mon Sep 24 10:38:37 EDT 2012
-
35. **Guardian (GB): Roadkill heads to New York next summer for US premiere** 
Wire: GUA -- Source: Guardian Unlimited -- Wed Sep 19 08:34:34 EDT 2012
-
36. **Albany T-U: Sister McGeady, gave aid to youth in need**
Wire: NS1 -- Source: Web Content - US -- Sat Sep 15 05:39:33 EDT 2012
-
37. **Int Wire: NYC Turns to Cab Drivers to Fight Human Trafficking; Human**
Wire: RE1 -- Source: Reference Sources - US -- Mon Jul 02 23:45:10 EDT 2012
-
38. **New York to fine taxidrivens for transporting prostitutes**
Wire: DPA -- Source: Deutsche Presse-Agentur -- Fri Jun 22 14:04:31 EDT 2012
-
39. **About New York: In Deeds, Nuns Answer Call of Duty**
Wire: NYT -- Source: New York Times -- Wed May 02 14:30:37 EDT 2012
-
40. **In Deeds, Nuns Answer Call of Duty**
Wire: NYT -- Source: New York Times -- Wed May 02 03:55:09 EDT 2012
-
41. **Scranton Times: BRIEF: Father and son wanted in NYC for human sex trafficking picked up on I-81**
Wire: NS1 -- Source: Web Content - US -- Fri Apr 06 05:22:51 EDT 2012
-
42. **Movies: She Was Told She'd Be a Model. Of Course.**
Wire: NYT -- Source: New York Times -- Fri Oct 21 12:43:13 EDT 2011
-
43. **USFedNewsService: SENS. SCHUMER AND GILLIBRAND ANNOUNCE \$500,000 TO ERIE COUNTY**
Wire: RE1 -- Source: Reference Sources - US -- Sat Sep 10 03:27:57 EDT 2011
-
44. **USFedNewsService: REP. MALONEY INTRODUCES BIPARTISAN BILL TO FIGHT HUMAN**
Wire: RE1 -- Source: Reference Sources - US -- Thu Aug 04 04:34:22 EDT 2011
-
45. **Media Decoder: Demi Moore to Host Report for CNN on Human Trafficking**
Wire: NYT -- Source: New York Times -- Mon Jun 06 10:30:10 EDT 2011
-
46. **Nicholas D. Kristof: What About American Girls Sold on the Streets?**
Wire: NYT -- Source: New York Times -- Mon Apr 25 10:43:36 EDT 2011
-
47. **Nicholas D. Kristof: What About American Girls Sold on the Streets?**
Wire: NYT -- Source: New York Times -- Sun Apr 24 03:55:37 EDT 2011
-

48. Nicholas D. Kristof: Human Trafficking in the United States

Wire: NYT -- Source: New York Times -- Sat Apr 23 18:32:09 EDT 2011

49. Human-Trafficking Suspect Is Arrested While Gambling

Wire: NYT -- Source: New York Times -- Tue Jan 11 16:34:17 EST 2011

50. Human-Trafficking Suspect Is Arrested While Gambling

Wire: NYT -- Source: New York Times -- Tue Jan 11 03:57:13 EST 2011

51. Buffalo News: Honor Roll / Recognizing the accomplishments of Western New

Wire: NS1 -- Source: Web Content - US -- Sat Nov 06 20:33:03 EDT 2010

52. Fay Observer: Sanford man faces statutory rape charges

Wire: NS1 -- Source: Web Content - US -- Tue Oct 05 04:34:55 EDT 2010

53. Turkey Charges Bayrock's Arif After Yacht Raid, NTV Reports

Wire: BN -- Source: Bloomberg News -- Sat Oct 02 08:20:59 EDT 2010

APPENDIX D

Compilation of Relevant Statutes

- Pub. L. 106-386, Div. A, Oct. 28, 2000, 114 Stat. 1464
Trafficking Victims Protection Act of 2000
- 18 U.S.C. § 981(a)(1)(B)
- 18 U.S.C. § 1956(c)(7)(B)
- 2007 New York State Anti-Trafficking Law
- 2008 New York State Safe Harbour for Exploited Children Act
- Uniform Act on the Prevention of and Remedies for Human Trafficking
- N.Y. Crim. Proc. Law § 440.10(1)(h) and (i)
- N.Y. Crim. Proc. Law § 700.05
- N.Y. Crim. Proc. Law § 700.10
- N.Y. Fam. Ct. Act § 1012(e)
- N.Y. Fam. Ct. Act § 1052
- N.Y. Fam. Ct. Act § 1055
- N.Y. Fam. Ct. Act § 1089
- N.Y. Penal Law § 230.34
- N.Y. Penal Law § 135.35
- N.Y. Soc. Serv. Law § 371(4-b)
- N.Y. Soc. Serv. Law § 412
- N.Y. Soc. Serv. Law § 384-b(8)(a)(ii)
- N.Y. Soc. Serv. Law § 384-b(7)(a)
- N.Y. City Council Int. 0725-2011 A
- Cal. Civ. Code § 52.5
- Cal. Civ. Code § 1714.43

PL 106-386, October 28, 2000, 114 Stat 1464

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Additions and Deletions are not identified in this database.
Vetoed provisions within tabular material are not displayed

PL 106-386 (HR 3244)
October 28, 2000

VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000

An Act To combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

<< 22 USCA § 7101 NOTE >>

This Act may be cited as the “Victims of Trafficking and Violence Protection Act of 2000”.

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions, as follows:

- (1) DIVISION A.—Trafficking Victims Protection Act of 2000.
- (2) DIVISION B.—Violence Against Women Act of 2000.
- (3) DIVISION C.—Miscellaneous Provisions.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec.1.Short title.

Sec.2.Organization of Act into divisions; table of contents.

DIVISION A—TRAFFICKING VICTIMS PROTECTION ACT OF 2000

Sec.101. Short title.

Sec.102. Purposes and findings.

Sec.103. Definitions.

Sec.104. Annual Country Reports on Human Rights Practices.

Sec.105. Interagency Task Force To Monitor and Combat Trafficking.

Sec.106. Prevention of trafficking.

Sec.107. Protection and assistance for victims of trafficking.

Sec.108. Minimum standards for the elimination of trafficking.

Sec.109. Assistance to foreign countries to meet minimum standards.

Sec.110. Actions against governments failing to meet minimum standards.

Sec.111. Actions against significant traffickers in persons.

Sec.112. Strengthening prosecution and punishment of traffickers.

Sec.113. Authorizations of appropriations.

DIVISION B—VIOLENCE AGAINST WOMEN ACT OF 2000

Sec.1001. Short title.

Sec.1002. Definitions.

Sec.1003. Accountability and oversight.

TITLE I—STRENGTHENING LAW ENFORCEMENT
TO REDUCE VIOLENCE AGAINST WOMEN

Sec.1101. Full faith and credit enforcement of protection orders.

Sec.1102. Role of courts.

Sec.1103. Reauthorization of STOP grants.

Sec.1104. Reauthorization of grants to encourage arrest policies.

Sec.1105. Reauthorization of rural domestic violence and child abuse enforcement grants.

Sec.1106. National stalker and domestic violence reduction.

Sec.1107. Amendments to domestic violence and stalking offenses.

Sec.1108. School and campus security.

Sec.1109. Dating violence.

TITLE II—STRENGTHENING SERVICES TO VICTIMS OF VIOLENCE

Sec.1201. Legal assistance for victims.

Sec.1202. Shelter services for battered women and children.

Sec.1203. Transitional housing assistance for victims of domestic violence.

Sec.1204. National domestic violence hotline.

Sec.1205. Federal victims counselors.

Sec.1206. Study of State laws regarding insurance discrimination against victims of violence against women.

Sec.1207. Study of workplace effects from violence against women.

Sec.1208. Study of unemployment compensation for victims of violence against women.

Sec.1209. Enhancing protections for older and disabled women from domestic violence and sexual assault.

TITLE III—LIMITING THE EFFECTS OF VIOLENCE ON CHILDREN

Sec.1301. Safe havens for children pilot program.

Sec.1302. Reauthorization of victims of child abuse programs.

Sec.1303. Report on effects of parental kidnapping laws in domestic violence cases.

TITLE IV—STRENGTHENING EDUCATION AND TRAINING TO COMBAT VIOLENCE AGAINST WOMEN

Sec.1401. Rape prevention and education.

Sec.1402. Education and training to end violence against and abuse of women with disabilities.

Sec.1403. Community initiatives.

Sec.1404. Development of research agenda identified by the Violence Against Women Act of 1994.

Sec.1405. Standards, practice, and training for sexual assault forensic examinations.

Sec.1406. Education and training for judges and court personnel.

Sec.1407. Domestic Violence Task Force.

TITLE V—BATTERED IMMIGRANT WOMEN

Sec.1501. Short title.

Sec.1502. Findings and purposes.

Sec.1503. Improved access to immigration protections of the Violence Against Women Act of 1994 for battered immigrant women.

Sec.1504. Improved access to cancellation of removal and suspension of deportation under the Violence Against Women Act of 1994.

Sec.1505. Offering equal access to immigration protections of the Violence Against Women Act of 1994 for all qualified battered immigrant self-petitioners.

Sec.1506. Restoring immigration protections under the Violence Against Women Act of 1994.

Sec.1507. Remediating problems with implementation of the immigration provisions of the Violence Against Women Act of 1994.

Sec.1508. Technical correction to qualified alien definition for battered immigrants.

Sec.1509. Access to Cuban Adjustment Act for battered immigrant spouses and children.

Sec.1510. Access to the Nicaraguan Adjustment and Central American Relief Act for battered spouses and children.

Sec.1511. Access to the Haitian Refugee Fairness Act of 1998 for battered spouses and children.

Sec.1512. Access to services and legal representation for battered immigrants.

Sec.1513. Protection for certain crime victims including victims of crimes against women.

TITLE VI—MISCELLANEOUS

Sec.1601. Notice requirements for sexually violent offenders.

Sec.1602. Teen suicide prevention study.

Sec.1603. Decade of pain control and research.

DIVISION C—MISCELLANEOUS PROVISIONS

Sec.2001. Aimee's law.

Sec.2002. Payment of anti-terrorism judgments.

Sec.2003. Aid to victims of terrorism.

Sec.2004. Twenty-first amendment enforcement.

<< 22 USCA prec. § 7101 >>

DIVISION A—TRAFFICKING VICTIMS PROTECTION ACT OF 2000

<< 22 USCA § 7101 NOTE >>

SEC. 101. SHORT TITLE.

This division may be cited as the “Trafficking Victims Protection Act of 2000”.

<< 22 USCA § 7101 >>

SEC. 102. PURPOSES AND FINDINGS.

(a) **PURPOSES.**—The purposes of this division are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.

(b) **FINDINGS.**—Congress finds that:

(1) As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.

(2) Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry.

(3) Trafficking in persons is not limited to the sex industry. This growing transnational crime also includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide.

(4) Traffickers primarily target women and girls, who are disproportionately affected by poverty, the lack of access to education, chronic unemployment, discrimination, and the lack of economic

opportunities in countries of origin. Traffickers lure women and girls into their networks through false promises of decent working conditions at relatively good pay as nannies, maids, dancers, factory workers, restaurant workers, sales clerks, or models. Traffickers also buy children from poor families and sell them into prostitution or into various types of forced or bonded labor.

(5) Traffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable.

(6) Victims are often forced through physical violence to engage in sex acts or perform slavery-like labor. Such force includes rape and other forms of sexual abuse, torture, starvation, imprisonment, threats, psychological abuse, and coercion.

(7) Traffickers often make representations to their victims that physical harm may occur to them or others should the victim escape or attempt to escape. Such representations can have the same coercive effects on victims as direct threats to inflict such harm.

(8) Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide. Profits from the trafficking industry contribute to the expansion of organized crime in the United States and worldwide. Trafficking in persons is often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.

(9) Trafficking includes all the elements of the crime of forcible rape when it involves the involuntary participation of another person in sex acts by means of fraud, force, or coercion.

(10) Trafficking also involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion.

(11) Trafficking exposes victims to serious health risks. Women and children trafficked in the sex industry are exposed to deadly diseases, including HIV and AIDS. Trafficking victims are sometimes worked or physically brutalized to death.

(12) Trafficking in persons substantially affects interstate and foreign commerce. Trafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market. Within the context of slavery, servitude, and labor or services which are obtained or maintained through coercive conduct that amounts to a condition of servitude, victims are subjected to a range of violations.

(13) Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion. In *United States v. Kozminski*, 487 U.S. 931 (1988), the Supreme Court found that section 1584 of title 18, United States Code, should be narrowly interpreted, absent a definition of involuntary servitude by Congress. As a result, that section was interpreted to criminalize only servitude that is brought about through use or threatened use of physical or legal coercion, and to exclude other conduct that can have the same purpose and effect.

(14) Existing 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.

(15) In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

(16) In some countries, enforcement against traffickers is also hindered by official indifference, by corruption, and sometimes even by official participation in trafficking.

(17) Existing 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.

(18) Additionally, adequate services and facilities do not exist to meet victims' needs regarding health care, housing, education, and legal assistance, which safely reintegrate trafficking victims into their home countries.

(19) Victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation.

(20) Because victims of trafficking are frequently unfamiliar with the laws, cultures, and languages of the countries into which they have been trafficked, because they are often subjected to coercion and intimidation including physical detention and debt bondage, and because they often fear retribution and forcible removal to countries in which they will face retribution or other hardship, these victims often find it difficult or impossible to report the crimes committed against them or to assist in the investigation and prosecution of such crimes.

(21) Trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations.

(22) One of the founding documents of the United States, the Declaration of Independence, recognizes the inherent dignity and worth of all people. It states that all men are created equal and that they are endowed by their Creator with certain unalienable rights. The right to be free from slavery and involuntary servitude is among those unalienable rights. Acknowledging this fact, the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished. Current practices of sexual slavery and trafficking of women and children are similarly abhorrent to the principles upon which the United States was founded.

(23) The United States and the international community agree 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, including the Universal Declaration of Human Rights; the 1956

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1948 American Declaration on the Rights and Duties of Man; the 1957 Abolition of Forced Labor Convention; the International Covenant on Civil and Political Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; United Nations General Assembly Resolutions 50/167, 51/66, and 52/98; the Final Report of the World Congress against Sexual Exploitation of Children (Stockholm, 1996); the Fourth World Conference on Women (Beijing, 1995); and the 1991 Moscow Document of the Organization for Security and Cooperation in Europe.

(24) Trafficking in persons is a transnational crime with national implications. To deter international trafficking and bring its perpetrators to justice, nations including the United States must recognize that trafficking is a serious offense. This is done by prescribing appropriate punishment, giving priority to the prosecution of trafficking offenses, and protecting rather than punishing the victims of such offenses. The United States must work bilaterally and multilaterally to abolish the trafficking industry by taking steps to promote cooperation among countries linked together by international trafficking routes. The United States must also urge the international community to take strong action in multilateral for a to engage recalcitrant countries in serious and sustained efforts to eliminate trafficking and protect trafficking victims.

<< 22 USCA § 7102 >>

SEC. 103. DEFINITIONS.

In this division:

(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on the Judiciary of the Senate and the Committee on International Relations and the Committee on the Judiciary of the House of Representatives.

(2) **COERCION.**—The term “coercion” means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of the legal process.

(3) **COMMERCIAL SEX ACT.**—The term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

(4) **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.

(5) **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.

(6) **MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.**—The term “minimum standards for the elimination of trafficking” means the standards set forth in section 108.

(7) **NONHUMANITARIAN, NONTRADE-RELATED FOREIGN ASSISTANCE.**—The term “nonhumanitarian, nontrade-related foreign assistance” means—

(A) any assistance under the Foreign Assistance Act of 1961, other than—

(i) assistance under chapter 4 of part II of that Act that is made available for any program, project, or activity eligible for assistance under chapter 1 of part I of that Act;

(ii) assistance under chapter 8 of part I of that Act;

(iii) any other narcotics-related assistance under part I of that Act or under chapter 4 or 5 part II of that Act, but any such assistance provided under this clause shall be subject to the prior notification procedures applicable to reprogrammings pursuant to section 634A of that Act;

(iv) disaster relief assistance, including any assistance under chapter 9 of part I of that Act;

(v) antiterrorism assistance under chapter 8 of part II of that Act;

(vi) assistance for refugees;

(vii) humanitarian and other development assistance in support of programs of nongovernmental organizations under chapters 1 and 10 of that Act;

(viii) programs under title IV of chapter 2 of part I of that Act, relating to the Overseas Private Investment Corporation; and

(ix) other programs involving trade-related or humanitarian assistance; and

(B) sales, or financing on any terms, under the Arms Export Control Act, other than sales or financing provided for narcotics-related purposes following notification in accordance with the prior notification procedures applicable to reprogrammings pursuant to section 634A of the Foreign Assistance Act of 1961.

(8) **SEVERE FORMS OF TRAFFICKING IN PERSONS.**—The term “severe forms of trafficking in persons” means—

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) **SEX TRAFFICKING.**—The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(10) **STATE.**—The term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands,

Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and territories and possessions of the United States.

(11) **TASK FORCE.**—The term “Task Force” means the Interagency Task Force to Monitor and Combat Trafficking established under section 105.

(12) **UNITED STATES.**—The term “United States” means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States.

(13) **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 paragraph (8).

(14) **VICTIM OF TRAFFICKING.**—The term “victim of trafficking” means a person subjected to an act or practice described in paragraph (8) or (9).

SEC. 104. ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.

<< 22 USCA § 2151n >>

(a) **COUNTRIES RECEIVING ECONOMIC ASSISTANCE.**—Section 116(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151(f)) is amended to read as follows:

“(f)(1) The report required by subsection (d) shall include the following:

“(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

“(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

“(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

“(ii) Which government authorities in that country are involved in activities to combat such trafficking.

“(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

“(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

“(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

“(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

“(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

“(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

“(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

“(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

“(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.”.

<< 22 USCA § 2304 >>

(b) COUNTRIES RECEIVING SECURITY ASSISTANCE.—Section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304) is amended by adding at the end the following new subsection:

“(h)(1) The report required by subsection (b) shall include the following:

“(A) A description of the nature and extent of severe forms of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, in each foreign country.

“(B) With respect to each country that is a country of origin, transit, or destination for victims of severe forms of trafficking in persons, an assessment of the efforts by the government of that country to combat such trafficking. The assessment shall address the following:

“(i) Whether government authorities in that country participate in, facilitate, or condone such trafficking.

“(ii) Which government authorities in that country are involved in activities to combat such trafficking.

“(iii) What steps the government of that country has taken to prohibit government officials from participating in, facilitating, or condoning such trafficking, including the investigation, prosecution, and conviction of such officials.

“(iv) What steps the government of that country has taken to prohibit other individuals from participating in such trafficking, including the investigation, prosecution, and conviction of individuals involved in severe forms of trafficking in persons, the criminal and civil penalties for such trafficking, and the efficacy of those penalties in eliminating or reducing such trafficking.

“(v) What steps the government of that country has taken to assist victims of such trafficking, including efforts to prevent victims from being further victimized by traffickers, government officials, or others, grants of relief from deportation, and provision of humanitarian relief, including provision of mental and physical health care and shelter.

“(vi) Whether the government of that country is cooperating with governments of other countries to extradite traffickers when requested, or, to the extent that such cooperation would be inconsistent with the laws of such country or with extradition treaties to which such country is a party, whether the government of that country is taking all appropriate measures to modify or replace such laws and treaties so as to permit such cooperation.

“(vii) Whether the government of that country is assisting in international investigations of transnational trafficking networks and in other cooperative efforts to combat severe forms of trafficking in persons.

“(viii) Whether the government of that country refrains from prosecuting victims of severe forms of trafficking in persons due to such victims having been trafficked, and refrains from other discriminatory treatment of such victims.

“(ix) Whether the government of that country recognizes the rights of victims of severe forms of trafficking in persons and ensures their access to justice.

“(C) Such other information relating to trafficking in persons as the Secretary of State considers appropriate.

“(2) In compiling data and making assessments for the purposes of paragraph (1), United States diplomatic mission personnel shall consult with human rights organizations and other appropriate nongovernmental organizations.”.

<< 22 USCA § 7103 >>

SEC. 105. INTERAGENCY TASK FORCE TO MONITOR AND COMBAT TRAFFICKING.

(a) ESTABLISHMENT.—The President shall establish an Interagency Task Force to Monitor and Combat Trafficking.

(b) APPOINTMENT.—The President shall appoint the members of the Task Force, which shall include the Secretary of State, the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, and such other officials as may be designated by the President.

(c) CHAIRMAN.—The Task Force shall be chaired by the Secretary of State.

(d) ACTIVITIES OF THE TASK FORCE.—The Task Force shall carry out the following activities:

(1) Coordinate the implementation of this division.

(2) Measure and evaluate progress of the United States and other countries in the areas of trafficking prevention, protection, and assistance to victims of trafficking, and prosecution and enforcement against traffickers, including the role of public corruption in facilitating trafficking.

The Task Force shall have primary responsibility for assisting the Secretary of State in the preparation of the reports described in section 110.

(3) Expand interagency procedures to collect and organize data, including significant research and resource information on domestic and international trafficking. Any data collection procedures established under this subsection shall respect the confidentiality of victims of trafficking.

(4) Engage in efforts to facilitate cooperation among countries of origin, transit, and destination. Such efforts shall aim to strengthen local and regional capacities to prevent trafficking, prosecute traffickers and assist trafficking victims, and shall include initiatives to enhance cooperative efforts between destination countries and countries of origin and assist in the appropriate reintegration of stateless victims of trafficking.

(5) Examine the role of the international "sex tourism" industry in the trafficking of persons and in the sexual exploitation of women and children around the world.

(6) Engage in consultation and advocacy with governmental and nongovernmental organizations, among other entities, to advance the purposes of this division.

(e) **SUPPORT FOR THE TASK FORCE.**—The Secretary of State is authorized to establish within the Department of State an Office to Monitor and Combat Trafficking, which shall provide assistance to the Task Force. Any such Office shall be headed by a Director. The Director shall have the primary responsibility for assisting the Secretary of State in carrying out the purposes of this division and may have additional responsibilities as determined by the Secretary. The Director shall consult with nongovernmental organizations and multilateral organizations, and with trafficking victims or other affected persons. The Director shall have the authority to take evidence in public hearings or by other means. The agencies represented on the Task Force are authorized to provide staff to the Office on a nonreimbursable basis.

<< 22 USCA § 7104 >>

SEC. 106. PREVENTION OF TRAFFICKING.

(a) **ECONOMIC ALTERNATIVES TO PREVENT AND DETER TRAFFICKING.**—The President shall establish and carry out international initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking. Such initiatives may include—

(1) microcredit lending programs, training in business development, skills training, and job counseling;

(2) programs to promote women's participation in economic decisionmaking;

(3) programs to keep children, especially girls, in elementary and secondary schools, and to educate persons who have been victims of trafficking;

(4) development of educational curricula regarding the dangers of trafficking; and

(5) grants to nongovernmental organizations to accelerate and advance the political, economic, social, and educational roles and capacities of women in their countries.

(b) **PUBLIC AWARENESS AND INFORMATION.**—The President, acting through the Secretary of Labor, the Secretary of Health and Human Services, the Attorney General, and the Secretary of State, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.

(c) **CONSULTATION REQUIREMENT.**—The President shall consult with appropriate nongovernmental organizations with respect to the establishment and conduct of initiatives described in subsections (a) and (b).

<< 22 USCA § 7105 >>

SEC. 107. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING.

<< 22 USCA § 7105 >>

(a) **ASSISTANCE FOR VICTIMS IN OTHER COUNTRIES.**—

(1) **IN GENERAL.**—The Secretary of State and the Administrator of the United States Agency for International Development, in consultation with appropriate nongovernmental organizations, shall establish and carry out programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking. Such programs and initiatives shall be designed to meet the appropriate assistance needs of such persons and their children, as identified by the Task Force.

(2) **ADDITIONAL REQUIREMENT.**—In establishing and conducting programs and initiatives described in paragraph (1), the Secretary of State and the Administrator of the United States Agency for International Development shall take all appropriate steps to enhance cooperative efforts among foreign countries, including countries of origin of victims of trafficking, to assist in the integration, reintegration, or resettlement, as appropriate, of victims of trafficking, including stateless victims.

<< 22 USCA § 7105 >>

(b) **VICTIMS IN THE UNITED STATES.**—

(1) **ASSISTANCE.**—

(A) **ELIGIBILITY FOR BENEFITS AND SERVICES.**—Notwithstanding title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an alien who is a victim of a severe form of trafficking in persons shall be eligible for benefits and services under any Federal or State program or activity funded or administered by any official or agency described in subparagraph (B) to the same extent as an alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act.

(B) **REQUIREMENT TO EXPAND BENEFITS AND SERVICES.**—Subject to subparagraph (C) and, in the case of nonentitlement programs, to the availability of appropriations, the Secretary of Health and Human Services, the Secretary of Labor, the Board of Directors of the

Legal Services Corporation, and the heads of other Federal agencies shall expand benefits and services to victims of severe forms of trafficking in persons in the United States, without regard to the immigration status of such victims.

(C) DEFINITION OF VICTIM OF A SEVERE FORM OF TRAFFICKING IN PERSONS.—For the purposes of this paragraph, the term “victim of a severe form of trafficking in persons” means only a person—

(i) who has been subjected to an act or practice described in section 103(8) as in effect on the date of the enactment of this Act; and

(ii)(I) who has not attained 18 years of age; or

(II) who is the subject of a certification under subparagraph (E).

(D) ANNUAL REPORT.—Not later than December 31 of each year, the Secretary of Health and Human Services, in consultation with the Secretary of Labor, the Board of Directors of the Legal Services Corporation, and the heads of other appropriate Federal agencies shall submit a report, which includes information on the number of persons who received benefits or other services under this paragraph in connection with programs or activities funded or administered by such agencies or officials during the preceding fiscal year, to the Committee on Ways and Means, the Committee on International Relations, and the Committee on the Judiciary of the House of Representatives and the Committee on Finance, the Committee on Foreign Relations, and the Committee on the Judiciary of the Senate.

(E) CERTIFICATION.—

(i) IN GENERAL.—Subject to clause (ii), the certification referred to in subparagraph (C) is a certification by the Secretary of Health and Human Services, after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II)—

(I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and

(II)(aa) has made a bona fide application for a visa under section 101(a)(15)(T) of the Immigration and Nationality Act, as added by subsection (e), that has not been denied; or

(bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

(ii) PERIOD OF EFFECTIVENESS.—A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons.

(iii) INVESTIGATION AND PROSECUTION DEFINED.—For the purpose of a certification under this subparagraph, the term “investigation and prosecution” includes—

(I) identification of a person or persons who have committed severe forms of trafficking in persons;

(II) location and apprehension of such persons; and

(III) testimony at proceedings against such persons.

(2) GRANTS.—

(A) **IN GENERAL.**—Subject to the availability of appropriations, the Attorney General may make grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking.

(B) **ALLOCATION OF GRANT FUNDS.**—Of amounts made available for grants under this paragraph, there shall be set aside—

- (i) three percent for research, evaluation, and statistics;
- (ii) two percent for training and technical assistance; and
- (iii) one percent for management and administration.

(C) **LIMITATION ON FEDERAL SHARE.**—The Federal share of a grant made under this paragraph may not exceed 75 percent of the total costs of the projects described in the application submitted.

<< 22 USCA § 7105 >>

(c) **TRAFFICKING VICTIM REGULATIONS.**—Not later than 180 days after the date of the enactment of this Act, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following:

(1) **PROTECTIONS WHILE IN CUSTODY.**—Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall—

- (A) not be detained in facilities inappropriate to their status as crime victims;
- (B) receive necessary medical care and other assistance; and
- (C) be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including—
 - (i) taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and
 - (ii) ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public.

(2) **ACCESS TO INFORMATION.**—Victims of severe forms of trafficking shall have access to information about their rights and translation services.

(3) **AUTHORITY TO PERMIT CONTINUED PRESENCE IN THE UNITED STATES.**—Federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

(4) TRAINING OF GOVERNMENT PERSONNEL.—Appropriate personnel of the Department of State and the Department of Justice shall be trained in identifying victims of severe forms of trafficking and providing for the protection of such victims.

<< 22 USCA § 7105 >>

(d) CONSTRUCTION.—Nothing in subsection (c) shall be construed as creating any private cause of action against the United States or its officers or employees.

<< 22 USCA § 7105 >>

<< 8 USCA § 1101 >>

(e) PROTECTION FROM REMOVAL FOR CERTAIN CRIME VICTIMS.—

(1) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(A) by striking “or” at the end of subparagraph (R);

(B) by striking the period at the end of subparagraph (S) and inserting “; or”; and

(C) by adding at the end the following new subparagraph:

“(T)(i) subject to section 214(n), an alien who the Attorney General determines—

“(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

“(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking,

“(III)(aa) has complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

“(bb) has not attained 15 years of age, and

“(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

“(ii) if the Attorney General considers it necessary to avoid extreme hardship—

“(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, and parents of such alien; and

“(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien,

if accompanying, or following to join, the alien described in clause (i).”.

<< 8 USCA § 1184 >>

(2) CONDITIONS OF NONIMMIGRANT STATUS.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(A) by redesignating the subsection (l) added by section 625(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–1820) as subsection (m); and

(B) by adding at the end the following:

“(n)(1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000).

“(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

“(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.”.

<< 8 USCA § 1182 >>

(3) WAIVER OF GROUNDS FOR INELIGIBILITY FOR ADMISSION.—Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end the following:

“(13)(A) The Attorney General shall determine whether a ground for inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(T).

“(B) In addition to any other waiver that may be available under this section, in the case of a nonimmigrant described in section 101(a)(15)(T), if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General's discretion, may waive the application of—

“(i) paragraphs (1) and (4) of subsection (a); and

“(ii) any other provision of such subsection (excluding paragraphs (3), (10)(C), and (10)(E)) if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).”.

<< 8 USCA § 1101 >>

(4) DUTIES OF THE ATTORNEY GENERAL WITH RESPECT TO “T” VISA NONIMMIGRANTS.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following new subsection:

“(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

“(1) the Attorney General and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

“(2) the Attorney General shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an ‘employment authorized’ endorsement or other appropriate work permit.”.

(5) STATUTORY CONSTRUCTION.—Nothing in this section, or in the amendments made by this section, shall be construed as prohibiting the Attorney General from instituting removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) against an alien admitted as a nonimmigrant under section 101(a)(15)(T)(i) of that Act, as added by subsection (e), for conduct committed after the alien's admission into the United States, or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's admission as a nonimmigrant under such section 101(a)(15)(T)(i).

<< 22 USCA § 7105 >>

<< 8 USCA § 1255 >>

(f) ADJUSTMENT TO PERMANENT RESIDENT STATUS.—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

“(1)(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States under section 101(a)(15)(T)(i)—

“(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 101(a)(15)(T)(i),

“(B) has, throughout such period, been a person of good moral character, and

“(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking, or

“(ii) the alien would suffer extreme hardship involving unusual and severe harm upon removal from the United States,

the Attorney General may adjust the status of the alien (and any person admitted under that section as the spouse, parent, or child of the alien) to that of an alien lawfully admitted for permanent residence.

“(2) Paragraph (1) shall not apply to an alien admitted under section 101(a)(15)(T) who is inadmissible to the United States by reason of a ground that has not been waived under section 212, except that, if the Attorney General considers it to be in the national interest to do so, the Attorney General, in the Attorney General's discretion, may waive the application of—

“(A) paragraphs (1) and (4) of section 212(a); and

“(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10)(E)), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 101(a)(15)(T)(i)(I).

“(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

“(3)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

“(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the spouses, sons, daughters, or parents of such aliens.

“(4) Upon the approval of adjustment of status under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval.”.

<< 22 USCA § 7105 >>

<< 8 USCA § 1101 NOTE >>

(g) ANNUAL REPORTS.—On or before October 31 of each year, the Attorney General shall submit a report to the appropriate congressional committees setting forth, with respect to the preceding fiscal year, the number, if any, of otherwise eligible applicants who did not receive visas under section 101(a)(15)(T) of the Immigration and Nationality Act, as added by subsection (e), or who were unable to adjust their status under section 245(l) of such Act, solely on account of the unavailability of visas due to a limitation imposed by section 214(n)(1) or 245(l)(4)(A) of such Act.

<< 22 USCA § 7106 >>

SEC. 108. MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

(a) MINIMUM STANDARDS.—For purposes of this division, the minimum standards for the elimination of trafficking applicable to the government of a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking are the following:

(1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

(b) CRITERIA.—In determinations under subsection (a)(4), the following factors should be considered as indicia of serious and sustained efforts to eliminate severe forms of trafficking in persons:

(1) Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons that take place wholly or partly within the territory of the country.

(2) Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking,

including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked.

(3) Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons, such as measures to inform and educate the public, including potential victims, about the causes and consequences of severe forms of trafficking in persons.

(4) Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.

(5) Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes (or, to the extent such extradition would be inconsistent with the laws of such country or with international agreements to which the country is a party, whether the government is taking all appropriate measures to modify or replace such laws and treaties so as to permit such extradition).

(6) Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.

(7) Whether the government of the country vigorously investigates and prosecutes public officials who participate in or facilitate severe forms of trafficking in persons, and takes all appropriate measures against officials who condone such trafficking.

<< 22 USCA § 2152d >>

SEC. 109. ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following new section:

“SEC. 134. ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS FOR THE ELIMINATION OF TRAFFICKING.

“(a) AUTHORIZATION.—The President is authorized to provide assistance to foreign countries directly, or through nongovernmental and multilateral organizations, for programs, projects, and activities designed to meet the minimum standards for the elimination of trafficking (as defined in section 103 of the Trafficking Victims Protection Act of 2000), including—

“(1) the drafting of laws to prohibit and punish acts of trafficking;

“(2) the investigation and prosecution of traffickers;

“(3) the creation and maintenance of facilities, programs, projects, and activities for the protection of victims; and

“(4) the expansion of exchange programs and international visitor programs for governmental and nongovernmental personnel to combat trafficking.

“(b) FUNDING.—Amounts made available to carry out the other provisions of this part (including chapter 4 of part II of this Act) and the Support for East European Democracy (SEED) Act of 1989 shall be made available to carry out this section.”.

<< 22 USCA § 7107 >>

SEC. 110. ACTIONS AGAINST GOVERNMENTS FAILING TO MEET MINIMUM STANDARDS.

(a) STATEMENT OF POLICY.—It is the policy of the United States not to provide nonhumanitarian, nontrade-related foreign assistance to any government that—

- (1) does not comply with minimum standards for the elimination of trafficking; and
- (2) is not making significant efforts to bring itself into compliance with such standards.

(b) REPORTS TO CONGRESS.—

(1) ANNUAL REPORT.—Not later than June 1 of each year, the Secretary of State shall submit to the appropriate congressional committees a report with respect to the status of severe forms of trafficking in persons that shall include—

- (A) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments fully comply with such standards;
- (B) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not yet fully comply with such standards but are making significant efforts to bring themselves into compliance; and
- (C) a list of those countries, if any, to which the minimum standards for the elimination of trafficking are applicable and whose governments do not fully comply with such standards and are not making significant efforts to bring themselves into compliance.

(2) INTERIM REPORTS.—In addition to the annual report under paragraph (1), the Secretary of State may submit to the appropriate congressional committees at any time one or more interim reports with respect to the status of severe forms of trafficking in persons, including information about countries whose governments—

- (A) have come into or out of compliance with the minimum standards for the elimination of trafficking; or
- (B) have begun or ceased to make significant efforts to bring themselves into compliance,

since the transmission of the last annual report.

(3) SIGNIFICANT EFFORTS.—In determinations under paragraph (1) or (2) as to whether the government of a country is making significant efforts to bring itself into compliance with the minimum standards for the elimination of trafficking, the Secretary of State shall consider—

- (A) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;

(B) the extent of noncompliance with the minimum standards by the government and, particularly, the extent to which officials or employees of the government have participated in, facilitated, condoned, or are otherwise complicit in severe forms of trafficking; and

(C) what measures are reasonable to bring the government into compliance with the minimum standards in light of the resources and capabilities of the government.

(c) NOTIFICATION.—Not less than 45 days or more than 90 days after the submission, on or after January 1, 2003, of an annual report under subsection (b)(1), or an interim report under subsection (b)(2), the President shall submit to the appropriate congressional committees a notification of one of the determinations listed in subsection (d) with respect to each foreign country whose government, according to such report—

(A) does not comply with the minimum standards for the elimination of trafficking; and

(B) is not making significant efforts to bring itself into compliance, as described in subsection (b)(1)(C).

(d) PRESIDENTIAL DETERMINATIONS.—The determinations referred to in subsection (c) are the following:

(1) WITHHOLDING OF NONHUMANITARIAN, NONTRADE-RELATED ASSISTANCE.

—The President has determined that—

(A)(i) the United States will not provide nonhumanitarian, nontrade-related foreign assistance to the government of the country for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; or

(ii) in the case of a country whose government received no nonhumanitarian, nontrade-related foreign assistance from the United States during the previous fiscal year, the United States will not provide funding for participation by officials or employees of such governments in educational and cultural exchange programs for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance; and

(B) the President will instruct the United States Executive Director of each multilateral development bank and of the International Monetary Fund to vote against, and to use the Executive Director's best efforts to deny, any loan or other utilization of the funds of the respective institution to that country (other than for humanitarian assistance, for trade-related assistance, or for development assistance which directly addresses basic human needs, is not administered by the government of the sanctioned country, and confers no benefit to that government) for the subsequent fiscal year until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

(2) ONGOING, MULTIPLE, BROAD-BASED RESTRICTIONS ON ASSISTANCE IN RESPONSE TO HUMAN RIGHTS VIOLATIONS.—The President has determined that such country is already subject to multiple, broad-based restrictions on assistance imposed in significant part in response to human rights abuses and such restrictions are ongoing and are comparable to the restrictions provided in paragraph (1). Such determination shall be

accompanied by a description of the specific restriction or restrictions that were the basis for making such determination.

(3) **SUBSEQUENT COMPLIANCE.**—The Secretary of State has determined that the government of the country has come into compliance with the minimum standards or is making significant efforts to bring itself into compliance.

(4) **CONTINUATION OF ASSISTANCE IN THE NATIONAL INTEREST.**—Notwithstanding the failure of the government of the country to comply with minimum standards for the elimination of trafficking and to make significant efforts to bring itself into compliance, the President has determined that the provision to the country of nonhumanitarian, nontrade-related foreign assistance, or the multilateral assistance described in paragraph (1)(B), or both, would promote the purposes of this division or is otherwise in the national interest of the United States.

(5) **EXERCISE OF WAIVER AUTHORITY.**—

(A) **IN GENERAL.**—The President may exercise the authority under paragraph (4) with respect to—

- (i) all nonhumanitarian, nontrade-related foreign assistance to a country;
- (ii) all multilateral assistance described in paragraph (1)(B) to a country; or
- (iii) one or more programs, projects, or activities of such assistance.

(B) **AVOIDANCE OF SIGNIFICANT ADVERSE EFFECTS.**—The President shall exercise the authority under paragraph (4) when necessary to avoid significant adverse effects on vulnerable populations, including women and children.

(6) **DEFINITION OF MULTILATERAL DEVELOPMENT BANK.**—In this subsection, the term “multilateral development bank” refers to any of the following institutions: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter–American Development Bank, the Asian Development Bank, the Inter–American Investment Corporation, the African Development Bank, the African Development Fund, the European Bank for Reconstruction and Development, and the Multilateral Investment Guaranty Agency.

(e) **CERTIFICATION.**—Together with any notification under subsection (c), the President shall provide a certification by the Secretary of State that, with respect to any assistance described in clause (ii), (iii), or (v) of section 103(7)(A), or with respect to any assistance described in section 103(7)(B), no assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.

<< 22 USCA § 7108 >>

SEC. 111. ACTIONS AGAINST SIGNIFICANT TRAFFICKERS IN PERSONS.

(a) **AUTHORITY TO SANCTION SIGNIFICANT TRAFFICKERS IN PERSONS.**—

(1) **IN GENERAL.**—The President may exercise the authorities set forth in section 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701) without regard to section 202 of that Act (50 U.S.C. 1701) in the case of any of the following persons:

(A) Any foreign person that plays a significant role in a severe form of trafficking in persons, directly or indirectly in the United States.

(B) Foreign persons that materially assist in, or provide financial or technological support for or to, or provide goods or services in support of, activities of a significant foreign trafficker in persons identified pursuant to subparagraph (A).

(C) Foreign persons that are owned, controlled, or directed by, or acting for or on behalf of, a significant foreign trafficker identified pursuant to subparagraph (A).

(2) PENALTIES.—The penalties set forth in section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) apply to violations of any license, order, or regulation issued under this section.

<< 22 USCA § 7108 >>

(b) REPORT TO CONGRESS ON IDENTIFICATION AND SANCTIONING OF SIGNIFICANT TRAFFICKERS IN PERSONS.—

(1) IN GENERAL.—Upon exercising the authority of subsection (a), the President shall report to the appropriate congressional committees—

(A) identifying publicly the foreign persons that the President determines are appropriate for sanctions pursuant to this section and the basis for such determination; and

(B) detailing publicly the sanctions imposed pursuant to this section.

(2) REMOVAL OF SANCTIONS.—Upon suspending or terminating any action imposed under the authority of subsection (a), the President shall report to the committees described in paragraph (1) on such suspension or termination.

(3) SUBMISSION OF CLASSIFIED INFORMATION.—Reports submitted under this subsection may include an annex with classified information regarding the basis for the determination made by the President under paragraph (1)(A).

<< 22 USCA § 7108 >>

(c) LAW ENFORCEMENT AND INTELLIGENCE ACTIVITIES NOT AFFECTED.—Nothing in this section prohibits or otherwise limits the authorized law enforcement or intelligence activities of the United States, or the law enforcement activities of any State or subdivision thereof.

<< 22 USCA § 7108 >>

<< 8 USCA § 1182 >>

(d) EXCLUSION OF PERSONS WHO HAVE BENEFITED FROM ILLICIT ACTIVITIES OF TRAFFICKERS IN PERSONS.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by inserting at the end the following new subparagraph:

“(H) SIGNIFICANT TRAFFICKERS IN PERSONS.—

“(i) **IN GENERAL.**—Any alien who is listed in a report submitted pursuant to section 111(b) of the Trafficking Victims Protection Act of 2000, or who the consular officer or the Attorney General knows or has reason to believe is or has been a knowing aider, abettor, assister, conspirator, or colluder with such a trafficker in severe forms of trafficking in persons, as defined in the section 103 of such Act, is inadmissible.

“(ii) **BENEFICIARIES OF TRAFFICKING.**—Except as provided in clause (iii), any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from the illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible.

“(iii) **EXCEPTION FOR CERTAIN SONS AND DAUGHTERS.**—Clause (ii) shall not apply to a son or daughter who was a child at the time he or she received the benefit described in such clause.”.

<< 22 USCA § 7108 >>

(e) **IMPLEMENTATION.**—

(1) **DELEGATION OF AUTHORITY.**—The President may delegate any authority granted by this section, including the authority to designate foreign persons under paragraphs (1)(B) and (1)(C) of subsection (a).

(2) **PROMULGATION OF RULES AND REGULATIONS.**—The head of any agency, including the Secretary of Treasury, is authorized to take such actions as may be necessary to carry out any authority delegated by the President pursuant to paragraph (1), including promulgating rules and regulations.

(3) **OPPORTUNITY FOR REVIEW.**—Such rules and regulations shall include procedures affording an opportunity for a person to be heard in an expeditious manner, either in person or through a representative, for the purpose of seeking changes to or termination of any determination, order, designation or other action associated with the exercise of the authority in subsection (a).

<< 22 USCA § 7108 >>

(f) **DEFINITION OF FOREIGN PERSONS.**—In this section, the term “foreign person” means any citizen or national of a foreign state or any entity not organized under the laws of the United States, including a foreign government official, but does not include a foreign state.

<< 22 USCA § 7108 >>

(g) **CONSTRUCTION.**—Nothing in this section shall be construed as precluding judicial review of the exercise of the authority described in subsection (a).

<< 22 USCA § 7109 >>

SEC. 112. STRENGTHENING PROSECUTION AND PUNISHMENT OF TRAFFICKERS.

<< 22 USCA § 7109 >>

(a) TITLE 18 AMENDMENTS.—Chapter 77 of title 18, United States Code, is amended—

<< 18 USCA § 1581a >>

<< 18 USCA § 1583 >>

<< 18 USCA § 1584 >>

(1) in each of sections 1581(a), 1583, and 1584—

(A) by striking “10 years” and inserting “20 years”; and

(B) by adding at the end the following: “If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.”;

(2) by inserting at the end the following:

<< 18 USCA § 1589 >>

“§ 1589. Forced labor

“Whoever knowingly provides or obtains the labor or services of a person—

“(1) by threats of serious harm to, or physical restraint against, that person or another person;

“(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

“(3) by means of the abuse or threatened abuse of law or the legal process, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

<< 18 USCA § 1590 >>

“§ 1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor

“Whoever knowingly recruits, harbors, transports, provides, or obtains by any means, any person for labor or services in violation of this chapter shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes

kidnapping or an attempt to kidnap, aggravated sexual abuse, or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

<< 18 USCA § 1591 >>

“§ 1591. Sex trafficking of children or by force, fraud or coercion

“(a) Whoever knowingly—

“(1) in or affecting interstate commerce, recruits, entices, harbors, transports, provides, or obtains by any means a person; or

“(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing that force, fraud, or coercion described in subsection (c)(2) will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

“(b) The punishment for an offense under subsection (a) is—

“(1) if the offense was effected by force, fraud, or coercion or if the person transported had not attained the age of 14 years at the time of such offense, by a fine under this title or imprisonment for any term of years or for life, or both; or

“(2) if the offense was not so effected, and the person transported had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title or imprisonment for not more than 20 years, or both.

“(c) In this section:

“(1) The term ‘commercial sex act’ means any sex act, on account of which anything of value is given to or received by any person.

“(2) The term ‘coercion’ means—

“(A) threats of serious harm to or physical restraint against any person;

“(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

“(C) the abuse or threatened abuse of law or the legal process.

“(3) The term ‘venture’ means any group of two or more individuals associated in fact, whether or not a legal entity.

<< 18 USCA § 1592 >>

“§ 1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor

“(a) Whoever knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person—

- “(1) in the course of a violation of section 1581, 1583, 1584, 1589, 1590, 1591, or 1594(a);
- “(2) with intent to violate section 1581, 1583, 1584, 1589, 1590, or 1591; or
- “(3) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person, when the person is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000,

shall be fined under this title or imprisoned for not more than 5 years, or both.

“(b) Subsection (a) does not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000, if that conduct is caused by, or incident to, that trafficking.

<< 18 USCA § 1593 >>

“§ 1593. Mandatory restitution

“(a) Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this chapter.

“(b)(1) The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses, as determined by the court under paragraph (3) of this subsection.

“(2) An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.

“(3) As used in this subsection, the term ‘full amount of the victim's losses’ has the same meaning as provided in section 2259(b)(3) and shall in addition include the greater of the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act (29 U.S.C. 201 et seq.).

“(c) As used in this section, the term ‘victim’ means the individual harmed as a result of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or a representative of the victim's estate, or another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named such representative or guardian.

<< 18 USCA § 1594 >>

“§ 1594. General provisions

“(a) Whoever attempts to violate section 1581, 1583, 1584, 1589, 1590, or 1591 shall be punishable in the same manner as a completed violation of that section.

“(b) The court, in imposing sentence on any person convicted of a violation of this chapter, shall order, in addition to any other sentence imposed and irrespective of any provision of State law, that such person shall forfeit to the United States—

“(1) such person's interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of such violation; and

“(2) any property, real or personal, constituting or derived from, any proceeds that such person obtained, directly or indirectly, as a result of such violation.

“(c)(1) The following shall be subject to forfeiture to the United States and no property right shall exist in them:

“(A) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

“(B) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

“(2) The provisions of chapter 46 of this title relating to civil forfeitures shall extend to any seizure or civil forfeiture under this subsection.

“(d) WITNESS PROTECTION.—Any violation of this chapter shall be considered an organized criminal activity or other serious offense for the purposes of application of chapter 224 (relating to witness protection).”; and

<< 18 USCA prec. § 1581 >>

(3) by amending the table of sections at the beginning of chapter 77 by adding at the end the following new items:

“1589. Forced labor.

“1590. Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor.

“1591. Sex trafficking of children or by force, fraud, or coercion.

“1592. Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.

“1593. Mandatory restitution.

“1594. General provisions.”.

<< 22 USCA § 7109 >>

(b) AMENDMENT TO THE SENTENCING GUIDELINES.—

(1) Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration

documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

(2) In carrying out this subsection, the Sentencing Commission shall—

(A) take all appropriate measures to ensure that these sentencing guidelines and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that—

(i) involve a large number of victims;

(ii) involve a pattern of continued and flagrant violations;

(iii) involve the use or threatened use of a dangerous weapon; or

(iv) result in the death or bodily injury of any person.

(3) The Commission may promulgate the guidelines or amendments under this subsection in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.

<< 22 USCA § 7110 >>

SEC. 113. AUTHORIZATIONS OF APPROPRIATIONS.

(a) **AUTHORIZATION OF APPROPRIATIONS IN SUPPORT OF THE TASK FORCE.**—To carry out the purposes of sections 104, 105, and 110, there are authorized to be appropriated to the Secretary of State \$1,500,000 for fiscal year 2001 and \$3,000,000 for fiscal year 2002.

(b) **AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.**—To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Health and Human Services \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(c) **AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF STATE.**—

(1) **ASSISTANCE FOR VICTIMS IN OTHER COUNTRIES.**—To carry out the purposes of section 107(a), there are authorized to be appropriated to the Secretary of State \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(2) **VOLUNTARY CONTRIBUTIONS TO OSCE.**—To carry out the purposes of section 109, there are authorized to be appropriated to the Secretary of State \$300,000 for voluntary contributions to advance projects aimed at preventing trafficking, promoting respect for human rights of trafficking victims, and assisting the Organization for Security and Cooperation in Europe participating states in related legal reform for fiscal year 2001.

(3) **PREPARATION OF ANNUAL COUNTRY REPORTS ON HUMAN RIGHTS.**—To carry out the purposes of section 104, there are authorized to be appropriated to the Secretary of State

such sums as may be necessary to include the additional information required by that section in the annual Country Reports on Human Rights Practices, including the preparation and publication of the list described in subsection (a)(1) of that section.

(d) **AUTHORIZATION OF APPROPRIATIONS TO ATTORNEY GENERAL.**—To carry out the purposes of section 107(b), there are authorized to be appropriated to the Attorney General \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(e) **AUTHORIZATION OF APPROPRIATIONS TO PRESIDENT.**—

(1) **FOREIGN VICTIM ASSISTANCE.**—To carry out the purposes of section 106, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(2) **ASSISTANCE TO FOREIGN COUNTRIES TO MEET MINIMUM STANDARDS.**—To carry out the purposes of section 109, there are authorized to be appropriated to the President \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

(f) **AUTHORIZATION OF APPROPRIATIONS TO THE SECRETARY OF LABOR.**—To carry out the purposes of section 107(b), there are authorized to be appropriated to the Secretary of Labor \$5,000,000 for fiscal year 2001 and \$10,000,000 for fiscal year 2002.

DIVISION B—VIOLENCE AGAINST WOMEN ACT OF 2000

<< 42 USCA § 13701 NOTE >>

SEC. 1001. SHORT TITLE.

This division may be cited as the “Violence Against Women Act of 2000”.

<< 42 USCA § 3796gg-2 NOTE >>

SEC. 1002. DEFINITIONS.

In this division—

(1) the term “domestic violence” has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2); and

(2) the term “sexual assault” has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

<< 42 USCA § 3789p >>

SEC. 1003. ACCOUNTABILITY AND OVERSIGHT.

(a) **REPORT BY GRANT RECIPIENTS.**—The Attorney General or Secretary of Health and Human Services, as applicable, shall require grantees under any program authorized or reauthorized by this division or an amendment made by this division to report on the effectiveness of the activities carried out with amounts made available to carry out that program, including

number of persons served, if applicable, numbers of persons seeking services who could not be served and such other information as the Attorney General or Secretary may prescribe.

(b) **REPORT TO CONGRESS.**—The Attorney General or Secretary of Health and Human Services, as applicable, shall report biennially to the Committees on the Judiciary of the House of Representatives and the Senate on the grant programs described in subsection (a), including the information contained in any report under that subsection.

TITLE I—STRENGTHENING LAW ENFORCEMENT
TO REDUCE VIOLENCE AGAINST WOMEN

SEC. 1101. FULL FAITH AND CREDIT ENFORCEMENT OF PROTECTION ORDERS.

(a) **IN GENERAL.**—Part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh et seq.) is amended—

<< 42 USCA prec. § 3796hh >>

(1) in the heading, by adding “**AND ENFORCEMENT OF PROTECTION ORDERS**” at the end;

<< 42 USCA § 3796hh >>

(2) in section 2101(b)—

(A) in paragraph (6), by inserting “(including juvenile courts)” after “courts”; and

(B) by adding at the end the following:

“(7) To provide technical assistance and computer and other equipment to police departments, prosecutors, courts, and tribal jurisdictions to facilitate the widespread enforcement of protection orders, including interstate enforcement, enforcement between States and tribal jurisdictions, and enforcement between tribal jurisdictions.”; and

<< 42 USCA § 3796hh-1 >>

(3) in section 2102—

(A) in subsection (b)—

(i) in paragraph (1), by striking “and” at the end;

(ii) in paragraph (2), by striking the period at the end and inserting “, including the enforcement of protection orders from other States and jurisdictions (including tribal jurisdictions);”; and

(iii) by adding at the end the following:

“(3) have established cooperative agreements or can demonstrate effective ongoing collaborative arrangements with neighboring jurisdictions to facilitate the enforcement of protection orders from other States and jurisdictions (including tribal jurisdictions); and

“(4) in applications describing plans to further the purposes stated in paragraph (4) or (7) of section 2101(b), will give priority to using the grant to develop and install data collection

and communication systems, including computerized systems, and training on how to use these systems effectively to link police, prosecutors, courts, and tribal jurisdictions for the purpose of identifying and tracking protection orders and violations of protection orders, in those jurisdictions where such systems do not exist or are not fully effective.”; and

(B) by adding at the end the following:

“(c) **DISSEMINATION OF INFORMATION.**—The Attorney General shall annually compile and broadly disseminate (including through electronic publication) information about successful data collection and communication systems that meet the purposes described in this section. Such dissemination shall target States, State and local courts, Indian tribal governments, and units of local government.”.

<< 42 USCA § 3796gg-5 >>

(b) **PROTECTION ORDERS.**—

(1) **FILING COSTS.**—Section 2006 of part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-5) is amended—

(A) in the heading, by striking “**FILING**” and inserting “**AND PROTECTION ORDERS**” after “**CHARGES**”;

(B) in subsection (a)—

(i) by striking paragraph (1) and inserting the following:

“(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or’; and

(ii) in paragraph (2)(B), by striking “2 years” and inserting “2 years after the date of the enactment of the Violence Against Women Act of 2000”; and

(C) by adding at the end the following:

“(c) **DEFINITION.**—In this section, the term ‘protection order’ has the meaning given the term in section 2266 of title 18, United States Code.”.

(2) **ELIGIBILITY FOR GRANTS TO ENCOURAGE ARREST POLICIES.**—Section 2101 of part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh) is amended—

(A) in subsection (c), by striking paragraph (4) and inserting the following:

<< 42 USCA § 3796hh >>

“(4) certify that their laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order, or a petition for a protection order, to protect a victim of domestic violence, stalking, or sexual assault, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction.”; and

(B) by adding at the end the following:

“(d) DEFINITION.—In this section, the term ‘protection order’ has the meaning given the term in section 2266 of title 18, United States Code.”.

<< 42 USCA § 3796hh–1 >>

(3) APPLICATION FOR GRANTS TO ENCOURAGE ARREST POLICIES.—Section 2102(a)(1)(B) of part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh–1(a)(1)(B)) is amended by inserting before the semicolon the following: “or, in the case of the condition set forth in subsection 2101(c)(4), the expiration of the 2–year period beginning on the date the of the enactment of the Violence Against Women Act of 2000”.

<< 18 USCA § 2265 >>

(4) REGISTRATION FOR PROTECTION ORDERS.—Section 2265 of title 18, United States Code, is amended by adding at the end the following:

“(d) NOTIFICATION AND REGISTRATION.—

“(1) NOTIFICATION.—A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

“(2) NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.—Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

“(e) TRIBAL COURT JURISDICTION.—For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.”.

(c) TECHNICAL AMENDMENT.—The table of contents for title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended in the item relating to part U, by adding “AND ENFORCEMENT OF PROTECTION ORDERS” at the end.

SEC. 1102. ROLE OF COURTS.

(a) COURTS AS ELIGIBLE STOP SUBGRANTEES.—Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended—

<< 42 USCA § 3796gg >>

(1) in section 2001—

(A) in subsection (a), by striking “Indian tribal governments,” and inserting “State and local courts (including juvenile courts), Indian tribal governments, tribal courts,”; and

(B) in subsection (b)—

(i) in paragraph (1), by inserting “, judges, other court personnel,” after “law enforcement officers”;

(ii) in paragraph (2), by inserting “, judges, other court personnel,” after “law enforcement officers”; and

(iii) in paragraph (3), by inserting “, court,” after “police”; and

<< 42 USCA § 3796gg-1 >>

(2) in section 2002—

(A) in subsection (a), by inserting “State and local courts (including juvenile courts),” after “States,” the second place it appears;

(B) in subsection (c), by striking paragraph (3) and inserting the following:

“(3) of the amount granted—

“(A) not less than 25 percent shall be allocated to police and not less than 25 percent shall be allocated to prosecutors;

“(B) not less than 30 percent shall be allocated to victim services; and

“(C) not less than 5 percent shall be allocated for State and local courts (including juvenile courts); and”; and

(C) in subsection (d)(1), by inserting “court,” after “law enforcement,”.

<< 42 USCA § 3796hh >>

(b) ELIGIBLE GRANTEEES; USE OF GRANTS FOR EDUCATION.—Section 2101 of part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh) is amended—

(1) in subsection (a), by inserting “State and local courts (including juvenile courts), tribal courts,” after “Indian tribal governments,”;

(2) in subsection (b)—

(A) by inserting “State and local courts (including juvenile courts),” after “Indian tribal governments”;

(B) in paragraph (2), by striking “policies and” and inserting “policies, educational programs, and”;

(C) in paragraph (3), by inserting “parole and probation officers,” after “prosecutors,”; and

(D) in paragraph (4), by inserting “parole and probation officers,” after “prosecutors,”;

(3) in subsection (c), by inserting “State and local courts (including juvenile courts),” after “Indian tribal governments”; and

(4) by adding at the end the following:

“(e) ALLOTMENT FOR INDIAN TRIBES.—Not less than 5 percent of the total amount made available for grants under this section for each fiscal year shall be available for grants to Indian tribal governments.”.

SEC. 1103. REAUTHORIZATION OF STOP GRANTS.

<< 42 USCA § 3793 >>

(a) REAUTHORIZATION.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (18) and inserting the following:

“(18) There is authorized to be appropriated to carry out part T \$185,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 3796gg >>

(b) GRANT PURPOSES.—Part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg et seq.) is amended—

(1) in section 2001—

(A) in subsection (b)—

(i) in paragraph (5), by striking “racial, cultural, ethnic, and language minorities” and inserting “underserved populations”;

(ii) in paragraph (6), by striking “and” at the end;

(iii) in paragraph (7), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

“(8) supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by State funds, to coordinate the response of State law enforcement agencies, prosecutors, courts, victim services agencies, and other State agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, and dating violence;

“(9) training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;”; and

(B) by adding at the end the following:

“(c) STATE COALITION GRANTS.—

“(1) PURPOSE.—The Attorney General shall award grants to each State domestic violence coalition and sexual assault coalition for the purposes of coordinating State victim services activities, and collaborating and coordinating with Federal, State, and local entities engaged in violence against women activities.

“(2) GRANTS TO STATE COALITIONS.—The Attorney General shall award grants to—

“(A) each State domestic violence coalition, as determined by the Secretary of Health and Human Services through the Family Violence Prevention and Services Act (42 U.S.C. 10410 et seq.); and

“(B) each State sexual assault coalition, as determined by the Center for Injury Prevention and Control of the Centers for Disease Control and Prevention under the Public Health Service Act (42 U.S.C. 280b et seq.).

“(3) ELIGIBILITY FOR OTHER GRANTS.—Receipt of an award under this subsection by each State domestic violence and sexual assault coalition shall not preclude the coalition from receiving additional grants under this part to carry out the purposes described in subsection (b).”;

<< 42 USCA § 3796gg-1 >>

(2) in section 2002(b)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (5) and (6), respectively;

(B) in paragraph (1), by striking “4 percent” and inserting “5 percent”;

(C) in paragraph (5), as redesignated, by striking “\$500,000” and inserting “\$600,000”; and

(D) by inserting after paragraph (1) the following:

“(2) 2.5 percent shall be available for grants for State domestic violence coalitions under section 2001(c), with the coalition for each State, the coalition for the District of Columbia, the coalition for the Commonwealth of Puerto Rico, and the coalition for the combined Territories of the United States, each receiving an amount equal to $\frac{1}{54}$ of the total amount made available under this paragraph for each fiscal year;

“(3) 2.5 percent shall be available for grants for State sexual assault coalitions under section 2001(c), with the coalition for each State, the coalition for the District of Columbia, the coalition for the Commonwealth of Puerto Rico, and the coalition for the combined Territories of the United States, each receiving an amount equal to $\frac{1}{54}$ of the total amount made available under this paragraph for each fiscal year;

“(4) $\frac{1}{54}$ shall be available for the development and operation of nonprofit tribal domestic violence and sexual assault coalitions in Indian country.”;

<< 42 USCA § 3796gg-2 >>

(3) in section 2003, by striking paragraph (7) and inserting the following:

“(7) the term ‘underserved populations’ includes populations underserved because of geographic location (such as rural isolation), underserved racial and ethnic populations, populations underserved because of special needs (such as language barriers, disabilities, alienage status, or age), and any other population determined to be underserved by the State planning process in consultation with the Attorney General;” and

<< 42 USCA § 3796gg-3 >>

(4) in section 2004(b)(3), by inserting “, and the membership of persons served in any underserved population” before the semicolon.

<< 42 USCA § 3793 >>

SEC. 1104. REAUTHORIZATION OF GRANTS TO ENCOURAGE ARREST POLICIES.

Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (19) and inserting the following:

“(19) There is authorized to be appropriated to carry out part U \$65,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 13971 >>

SEC. 1105. REAUTHORIZATION OF RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT GRANTS.

Section 40295(c) of the Violence Against Women Act of 1994 (42 U.S.C. 13971(c)) is amended

(1) by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$40,000,000 for each of fiscal years 2001 through 2005.”; and

(2) by adding at the end the following:

“(3) ALLOTMENT FOR INDIAN TRIBES.—Not less than 5 percent of the total amount made available to carry out this section for each fiscal year shall be available for grants to Indian tribal governments.”.

SEC. 1106. NATIONAL STALKER AND DOMESTIC VIOLENCE REDUCTION.

<< 42 USCA § 14032 >>

(a) REAUTHORIZATION.—Section 40603 of the Violence Against Women Act of 1994 (42 U.S.C. 14032) is amended to read as follows:

“SEC. 40603. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to carry out this subtitle \$3,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 14031 >>

(b) TECHNICAL AMENDMENT.—Section 40602(a) of the Violence Against Women Act of 1994 (42 U.S.C. 14031 note) is amended by inserting “and implement” after “improve”.

SEC. 1107. AMENDMENTS TO DOMESTIC VIOLENCE AND STALKING OFFENSES.

<< 18 USCA § 2261 >>

(a) INTERSTATE DOMESTIC VIOLENCE.—Section 2261 of title 18, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) OFFENSES.—

“(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

“(2) CAUSING TRAVEL OF VICTIM.—A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).”.

(b) INTERSTATE STALKING.—

<< 18 USCA § 2261A >>

(1) IN GENERAL.—Section 2261A of title 18, United States Code, is amended to read as follows:

“§ 2261A. Interstate stalking

“Whoever—

“(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

“(2) with the intent—

“(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

“(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—

“(i) that person;

“(ii) a member of the immediate family (as defined in section 115) of that person; or

“(iii) a spouse or intimate partner of that person, uses the mail or any facility of interstate or foreign commerce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii), shall be punished as provided in section 2261(b).”.

<< 28 USCA § 994 NOTE >>

(2) AMENDMENT OF FEDERAL SENTENCING GUIDELINES.—

(A) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to reflect the amendment made by this subsection.

(B) FACTORS FOR CONSIDERATION.—In carrying out subparagraph (A), the Commission shall consider—

(i) whether the Federal Sentencing Guidelines relating to stalking offenses should be modified in light of the amendment made by this subsection; and

(ii) whether any changes the Commission may make to the Federal Sentencing Guidelines pursuant to clause (i) should also be made with respect to offenses under chapter 110A of title 18, United States Code.

<< 18 USCA § 2262 >>

(c) INTERSTATE VIOLATION OF PROTECTION ORDER.—Section 2262 of title 18, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) OFFENSES.—

“(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

“(2) CAUSING TRAVEL OF VICTIM.—A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against

violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).”.

<< 18 USCA § 2266 >>

(d) DEFINITIONS.—Section 2266 of title 18, United States Code, is amended to read as follows:

“§ 2266. Definitions

“In this chapter:

“(1) BODILY INJURY.—The term ‘bodily injury’ means any act, except one done in self-defense, that results in physical injury or sexual abuse.

“(2) COURSE OF CONDUCT.—The term ‘course of conduct’ means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

“(3) ENTER OR LEAVE INDIAN COUNTRY.—The term ‘enter or leave Indian country’ includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

“(4) INDIAN COUNTRY.—The term ‘Indian country’ has the meaning stated in section 1151 of this title.

“(5) PROTECTION ORDER.—The term ‘protection order’ includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

“(6) SERIOUS BODILY INJURY.—The term ‘serious bodily injury’ has the meaning stated in section 2119(2).

“(7) SPOUSE OR INTIMATE PARTNER.—The term ‘spouse or intimate partner’ includes—

“(A) for purposes of—

“(i) sections other than 2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and

“(ii) section 2261A, a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and

“(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

“(8) STATE.—The term ‘State’ includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

“(9) TRAVEL IN INTERSTATE OR FOREIGN COMMERCE.—The term ‘travel in interstate or foreign commerce’ does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.”.

SEC. 1108. SCHOOL AND CAMPUS SECURITY.

<< 20 USCA § 1152 >>

(a) GRANTS TO REDUCE VIOLENT CRIMES AGAINST WOMEN ON CAMPUS.—Section 826 of the Higher Education Amendments of 1998 (20 U.S.C. 1152) is amended—

(1) in paragraphs (2), (6), (7), and (9) of subsection (b), by striking “and domestic violence” and inserting “domestic violence, and dating violence”;

(2) in subsection (c)(2)(B), by striking “and domestic violence” and inserting “, domestic violence and dating violence”;

(3) in subsection (f)—

(A) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(B) by inserting before paragraph (2) (as redesignated by subparagraph (A)) the following:

“(1) the term ‘dating violence’ means violence committed by a person—

“(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

“(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

“(i) the length of the relationship;

“(ii) the type of relationship; and

“(iii) the frequency of interaction between the persons involved in the relationship.”;

(C) in paragraph (2) (as redesignated by subparagraph (A)), by inserting “, dating” after “domestic” each place the term appears; and

(D) in paragraph (4) (as redesignated by subparagraph (A))—

(i) by inserting “or a public, nonprofit organization acting in a nongovernmental capacity” after “organization”;

(ii) by inserting “, dating violence” after “assists domestic violence”;

(iii) by striking “or domestic violence” and inserting “, domestic violence or dating violence”; and

(iv) by inserting “dating violence,” before “stalking.”; and

(4) in subsection (g), by striking “fiscal year 1999 and such sums as may be necessary for each of the 4 succeeding fiscal years” and inserting “each of fiscal years 2001 through 2005”.

(b) MATCHING GRANT PROGRAM FOR SCHOOL SECURITY.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by inserting after part Z the following new part:

<< 42 USCA prec. § 3797a >>

“PART AA—MATCHING GRANT PROGRAM FOR SCHOOL SECURITY

<< 42 USCA § 3797a >>

‘SEC. 2701. PROGRAM AUTHORIZED.

“(a) IN GENERAL.—The Attorney General is authorized to make grants to States, units of local government, and Indian tribes to provide improved security, including the placement and use of metal detectors and other deterrent measures, at schools and on school grounds.

“(b) USES OF FUNDS.—Grants awarded under this section shall be distributed directly to the State, unit of local government, or Indian tribe, and shall be used to improve security at schools and on school grounds in the jurisdiction of the grantee through one or more of the following:

“(1) Placement and use of metal detectors, locks, lighting, and other deterrent measures.

“(2) Security assessments.

“(3) Security training of personnel and students.

“(4) Coordination with local law enforcement.

“(5) Any other measure that, in the determination of the Attorney General, may provide a significant improvement in security.

“(c) PREFERENTIAL CONSIDERATION.—In awarding grants under this part, the Attorney General shall give preferential consideration, if feasible, to an application from a jurisdiction that has a demonstrated need for improved security, has a demonstrated need for financial assistance, and has evidenced the ability to make the improvements for which the grant amounts are sought.

“(d) MATCHING FUNDS.—

“(1) The portion of the costs of a program provided by a grant under subsection (a) may not exceed 50 percent.

“(2) Any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection.

“(3) The Attorney General may provide, in the guidelines implementing this section, for the requirement of paragraph (1) to be waived or altered in the case of a recipient with a financial need for such a waiver or alteration.

“(e) EQUITABLE DISTRIBUTION.—In awarding grants under this part, the Attorney General shall ensure, to the extent practicable, an equitable geographic distribution among the regions of the United States and among urban, suburban, and rural areas.

“(f) ADMINISTRATIVE COSTS.—The Attorney General may reserve not more than 2 percent from amounts appropriated to carry out this part for administrative costs.

<< 42 USCA § 3797b >>

“SEC. 2702. APPLICATIONS.

“(a) IN GENERAL.—To request a grant under this part, the chief executive of a State, unit of local government, or Indian tribe shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may require. Each application shall—

“(1) include a detailed explanation of—

“(A) the intended uses of funds provided under the grant; and

“(B) how the activities funded under the grant will meet the purpose of this part; and

“(2) be accompanied by an assurance that the application was prepared after consultation with individuals not limited to law enforcement officers (such as school violence researchers, child psychologists, social workers, teachers, principals, and other school personnel) to ensure that the improvements to be funded under the grant are—

“(A) consistent with a comprehensive approach to preventing school violence; and

“(B) individualized to the needs of each school at which those improvements are to be made.

“(b) GUIDELINES.—Not later than 90 days after the date of the enactment of this part, the Attorney General shall promulgate guidelines to implement this section (including the information that must be included and the requirements that the States, units of local government, and Indian tribes must meet) in submitting the applications required under this section.

<< 44 USCA § 3797c >>

“SEC. 2703. ANNUAL REPORT TO CONGRESS.

“Not later than November 30th of each year, the Attorney General shall submit a report to the Congress regarding the activities carried out under this part. Each such report shall include, for the preceding fiscal year, the number of grants funded under this part, the amount of funds provided under those grants, and the activities for which those funds were used.

<< 42 USCA § 3797d >>

“SEC. 2704. DEFINITIONS.

“For purposes of this part—

“(1) the term ‘school’ means a public elementary or secondary school;

“(2) the term ‘unit of local government’ means a county, municipality, town, township, village, parish, borough, or other unit of general government below the State level; and

“(3) the term ‘Indian tribe’ has the same meaning as in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

<< 42 USCA § 3797e >>

“SEC. 2705. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this part \$30,000,000 for each of fiscal years 2001 through 2003.”.

SEC. 1109. DATING VIOLENCE.

(a) DEFINITIONS.—

<< 42 USCA § 3796gg-2 >>

(1) SECTION 2003.—Section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3996gg-2) is amended—

(A) in paragraph (8), by striking the period at the end and inserting “; and”; and

(B) by adding at the end the following:

“(9) the term ‘dating violence’ means violence committed by a person—

“(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

“(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

“(i) the length of the relationship;

“(ii) the type of relationship; and

“(iii) the frequency of interaction between the persons involved in the relationship.”.

<< 42 USCA § 3796hh-4 >>

(2) SECTION 2105.—Section 2105 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh-4) is amended—

(A) in paragraph (1), by striking “and” at the end;

(B) in paragraph (2), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(3) the term ‘dating violence’ means violence committed by a person—

“(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

“(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

“(i) the length of the relationship;

“(ii) the type of relationship; and

“(iii) the frequency of interaction between the persons involved in the relationship.”.

<< 42 USCA § 3796gg >>

(b) STOP GRANTS.—Section 2001(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(b)) is amended—

(1) in paragraph (1), by striking “sexual assault and domestic violence” and inserting “sexual assault, domestic violence, and dating violence”; and

(2) in paragraph (5), by striking “sexual assault and domestic violence” and inserting “sexual assault, domestic violence, and dating violence”.

<< 42 USCA § 3796hh >>

(c) GRANTS TO ENCOURAGE ARREST POLICIES.—Section 2101(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh(b)) is amended—

(1) in paragraph (2), by inserting “and dating violence” after “domestic violence”; and

(2) in paragraph (5), by inserting “and dating violence” after “domestic violence”.

<< 42 USCA § 13971 >>

(d) RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT.—Section 40295(a) of the Safe Homes for Women Act of 1994 (42 U.S.C. 13971(a)) is amended—

(1) in paragraph (1), by inserting “and dating violence (as defined in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3996gg-2))” after “domestic violence”; and

(2) in paragraph (2), by inserting “and dating violence (as defined in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3996gg-2))” after “domestic violence”.

TITLE II—STRENGTHENING SERVICES TO VICTIMS OF VIOLENCE

<< 42 USCA § 3796gg-6 >>

SEC. 1201. LEGAL ASSISTANCE FOR VICTIMS.

(a) IN GENERAL.—The purpose of this section is to enable the Attorney General to award grants to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence, at minimal or no cost to the victims.

(b) DEFINITIONS.—In this section:

(1) DOMESTIC VIOLENCE.—The term “domestic violence” has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

(2) **LEGAL ASSISTANCE FOR VICTIMS.**—The term “legal assistance” includes assistance to victims of domestic violence, stalking, and sexual assault in family, immigration, administrative agency, or housing matters, protection or stay away order proceedings, and other similar matters. No funds made available under this section may be used to provide financial assistance in support of any litigation described in paragraph (14) of section 504 of Public Law 104-134.

(3) **SEXUAL ASSAULT.**—The term “sexual assault” has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

(c) **LEGAL ASSISTANCE FOR VICTIMS GRANTS.**—The Attorney General may award grants under this subsection to private nonprofit entities, Indian tribal governments, and publicly funded organizations not acting in a governmental capacity such as law schools, and which shall be used—

(1) to implement, expand, and establish cooperative efforts and projects between domestic violence and sexual assault victim services organizations and legal assistance providers to provide legal assistance for victims of domestic violence, stalking, and sexual assault;

(2) to implement, expand, and establish efforts and projects to provide legal assistance for victims of domestic violence, stalking, and sexual assault by organizations with a demonstrated history of providing direct legal or advocacy services on behalf of these victims; and

(3) to provide training, technical assistance, and data collection to improve the capacity of grantees and other entities to offer legal assistance to victims of domestic violence, stalking, and sexual assault.

(d) **ELIGIBILITY.**—To be eligible for a grant under subsection (c), applicants shall certify in writing that—

(1) any person providing legal assistance through a program funded under subsection (c) has completed or will complete training in connection with domestic violence or sexual assault and related legal issues;

(2) any training program conducted in satisfaction of the requirement of paragraph (1) has been or will be developed with input from and in collaboration with a State, local, or tribal domestic violence or sexual assault program or coalition, as well as appropriate State and local law enforcement officials;

(3) any person or organization providing legal assistance through a program funded under subsection (c) has informed and will continue to inform State, local, or tribal domestic violence or sexual assault programs and coalitions, as well as appropriate State and local law enforcement officials of their work; and

(4) the grantee's organizational policies do not require mediation or counseling involving offenders and victims physically together, in cases where sexual assault, domestic violence, or child sexual abuse is an issue.

(e) **EVALUATION.**—The Attorney General may evaluate the grants funded under this section through contracts or other arrangements with entities expert on domestic violence, stalking, and sexual assault, and on evaluation research.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There is authorized to be appropriated to carry out this section \$40,000,000 for each of fiscal years 2001 through 2005.

(2) **ALLOCATION OF FUNDS.**—

(A) **TRIBAL PROGRAMS.**—Of the amount made available under this subsection in each fiscal year, not less than 5 percent shall be used for grants for programs that assist victims of domestic violence, stalking, and sexual assault on lands within the jurisdiction of an Indian tribe.

(B) **VICTIMS OF SEXUAL ASSAULT.**—Of the amount made available under this subsection in each fiscal year, not less than 25 percent shall be used for direct services, training, and technical assistance to support projects focused solely or primarily on providing legal assistance to victims of sexual assault.

(3) **NONSUPPLANTATION.**—Amounts made available under this section shall be used to supplement and not supplant other Federal, State, and local funds expended to further the purpose of this section.

SEC. 1202. SHELTER SERVICES FOR BATTERED WOMEN AND CHILDREN.

<< 42 USCA § 10409 >>

(a) **REAUTHORIZATION.**—Section 310(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10409(a)) is amended to read as follows:

“(a) **IN GENERAL.**—There are authorized to be appropriated to carry out this title \$175,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 10403 >>

(b) **STATE MINIMUM; REALLOTMENT.**—Section 304 of the Family Violence Prevention and Services Act (42 U.S.C. 10403) is amended—

(1) in subsection (a), by striking “for grants to States for any fiscal year” and all that follows and inserting the following: “and available for grants to States under this subsection for any fiscal year—

“(1) Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands shall each be allotted not less than # of 1 percent of the amounts available for grants under section 303(a) for the fiscal year for which the allotment is made; and

“(2) each State shall be allotted for payment in a grant authorized under section 303(a), \$600,000, with the remaining funds to be allotted to each State in an amount that bears the same ratio to such remaining funds as the population of such State bears to the population of all States.”;

(2) in subsection (c), in the first sentence, by inserting “and available” before “for grants”; and

(3) by adding at the end the following:

“(e) In subsection (a)(2), the term ‘State’ does not include any jurisdiction specified in subsection (a)(1).”.

<< 42 USCA § 10419 >>

SEC. 1203. TRANSITIONAL HOUSING ASSISTANCE FOR VICTIMS OF DOMESTIC VIOLENCE.

Title III of the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) is amended by adding at the end the following:

“SEC. 319. TRANSITIONAL HOUSING ASSISTANCE.

“(a) IN GENERAL.—The Secretary shall award grants under this section to carry out programs to provide assistance to individuals, and their dependents—

“(1) who are homeless or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence; and

“(2) for whom emergency shelter services are unavailable or insufficient.

“(b) ASSISTANCE DESCRIBED.—Assistance provided under this section may include—

“(1) short-term housing assistance, including rental or utilities payments assistance and assistance with related expenses, such as payment of security deposits and other costs incidental to relocation to transitional housing, in cases in which assistance described in this paragraph is necessary to prevent homelessness because an individual or dependent is fleeing a situation of domestic violence; and

“(2) support services designed to enable an individual or dependent who is fleeing a situation of domestic violence to locate and secure permanent housing, and to integrate the individual or dependent into a community, such as transportation, counseling, child care services, case management, employment counseling, and other assistance.

“(c) TERM OF ASSISTANCE.—

“(1) IN GENERAL.—Subject to paragraph (2), an individual or dependent assisted under this section may not receive assistance under this section for a total of more than 12 months.

“(2) WAIVER.—The recipient of a grant under this section may waive the restrictions of paragraph (1) for up to an additional 6-month period with respect to any individual (and dependents of the individual) who has made a good-faith effort to acquire permanent housing and has been unable to acquire the housing.

“(d) REPORTS.—

“(1) REPORT TO SECRETARY.—

“(A) IN GENERAL.—An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report describing the number of individuals and dependents assisted, and the types of housing assistance and support services provided, under this section.

“(B) CONTENTS.—Each report shall include information on—

“(i) the purpose and amount of housing assistance provided to each individual or dependent assisted under this section;

“(ii) the number of months each individual or dependent received the assistance;

“(iii) the number of individuals and dependents who were eligible to receive the assistance, and to whom the entity could not provide the assistance solely due to a lack of available housing; and

“(iv) the type of support services provided to each individual or dependent assisted under this section.

“(2) REPORT TO CONGRESS.—The Secretary shall annually prepare and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that contains a compilation of the information contained in reports submitted under paragraph (1).

“(e) EVALUATION, MONITORING, AND ADMINISTRATION.—Of the amount appropriated under subsection (f) for each fiscal year, not more than 1 percent shall be used by the Secretary for evaluation, monitoring, and administrative costs under this section.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section \$25,000,000 for fiscal year 2001.”.

<< 42 USCA § 10416 >>

SEC. 1204. NATIONAL DOMESTIC VIOLENCE HOTLINE.

Section 316(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10416(f)) is amended by striking paragraph (1) and inserting the following:

“(1) IN GENERAL.—There are authorized to be appropriated to carry out this section \$2,000,000 for each of fiscal years 2001 through 2005.”.

SEC. 1205. FEDERAL VICTIMS COUNSELORS.

Section 40114 of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 1910) is amended by striking “(such as District of Columbia)—” and all that follows and inserting “(such as District of Columbia), \$1,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 14042 NOTE >>

SEC. 1206. STUDY OF STATE LAWS REGARDING INSURANCE DISCRIMINATION AGAINST VICTIMS OF VIOLENCE AGAINST WOMEN.

(a) IN GENERAL.—The Attorney General shall conduct a national study to identify State laws that address discrimination against victims of domestic violence and sexual assault related to issuance or administration of insurance policies.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on the findings and recommendations of the study required by subsection (a).

<< 42 USCA § 14042 NOTE >>

SEC. 1207. STUDY OF WORKPLACE EFFECTS FROM VIOLENCE AGAINST WOMEN.

The Attorney General shall—

(1) conduct a national survey of plans, programs, and practices developed to assist employers and employees on appropriate responses in the workplace related to victims of domestic violence, stalking, or sexual assault; and

(2) not later than 18 months after the date of the enactment of this Act, submit to Congress a report describing the results of that survey, which report shall include the recommendations of the Attorney General to assist employers and employees affected in the workplace by incidents of domestic violence, stalking, and sexual assault.

<< 42 USCA § 14042 NOTE >>

SEC. 1208. STUDY OF UNEMPLOYMENT COMPENSATION FOR VICTIMS OF VIOLENCE AGAINST WOMEN.

The Secretary of Labor, in consultation with the Attorney General, shall—

(1) conduct a national study to identify State laws that address the separation from employment of an employee due to circumstances directly resulting from the experience of domestic violence by the employee and circumstances governing that receipt (or nonreceipt) by the employee of unemployment compensation based on such separation; and

(2) not later than 1 year after the date of the enactment of this Act, submit to Congress a report describing the results of that study, together with any recommendations based on that study.

SEC. 1209. ENHANCING PROTECTIONS FOR OLDER AND DISABLED WOMEN FROM DOMESTIC VIOLENCE AND SEXUAL ASSAULT.

(a) ELDER ABUSE, NEGLECT, AND EXPLOITATION.—The Violence Against Women Act of 1994 (108 Stat. 1902 et seq.) is amended by adding at the end the following:

<< 42 USCA prec. § 14041 >>

“Subtitle H—Elder Abuse, Neglect, and Exploitation, Including Domestic Violence and Sexual Assault Against Older or Disabled Individuals

<< 42 USCA § 14041 >>

‘SEC. 40801. DEFINITIONS.

“In this subtitle:

“(1) IN GENERAL.—The terms ‘elder abuse, neglect, and exploitation’, and ‘older individual’ have the meanings given the terms in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002).

“(2) DOMESTIC VIOLENCE.—The term ‘domestic violence’ has the meaning given such term by section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

“(3) SEXUAL ASSAULT.—The term ‘sexual assault’ has the meaning given the term in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2).

<< 42 USCA § 14041a >>

“SEC. 40802. TRAINING PROGRAMS FOR LAW ENFORCEMENT OFFICERS.

“The Attorney General may make grants for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

<< 42 USCA § 14041b >>

“SEC. 40803. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to carry out this subtitle \$5,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 3796hh >>

(b) PROTECTIONS FOR OLDER AND DISABLED INDIVIDUALS FROM DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN PRO-ARREST GRANTS.—Section 2101(b) of part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh et seq.) is amended by adding at the end the following:

“(8) To develop or strengthen policies and training for police, prosecutors, and the judiciary in recognizing, investigating, and prosecuting instances of domestic violence and sexual assault against older individuals (as defined in section 102 of the Older Americans Act of 1965 (42 U.S.C. 3002)) and individuals with disabilities (as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))).”.

<< 42 USCA § 3796gg >>

(c) PROTECTIONS FOR OLDER AND DISABLED INDIVIDUALS FROM DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN STOP GRANTS.—Section 2001(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(b)) (as amended by section 1103(b) of this division) is amended by adding at the end the following:

“(10) developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence or sexual assault, including recognizing, investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals; and”.

TITLE III—LIMITING THE EFFECTS OF VIOLENCE ON CHILDREN

<< 42 USCA § 10420 >>

SEC. 1301. SAFE HAVENS FOR CHILDREN PILOT PROGRAM.

(a) **IN GENERAL.**—The Attorney General may award grants to States, units of local government, and Indian tribal governments that propose to enter into or expand the scope of existing contracts and cooperative agreements with public or private nonprofit entities to provide supervised visitation and safe visitation exchange of children by and between parents in situations involving domestic violence, child abuse, sexual assault, or stalking.

(b) **CONSIDERATIONS.**—In awarding grants under subsection (a), the Attorney General shall take into account—

(1) the number of families to be served by the proposed visitation programs and services;

(2) the extent to which the proposed supervised visitation programs and services serve underserved populations (as defined in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2));

(3) with respect to an applicant for a contract or cooperative agreement, the extent to which the applicant demonstrates cooperation and collaboration with nonprofit, nongovernmental entities in the local community served, including the State or tribal domestic violence coalition, State or tribal sexual assault coalition, local shelters, and programs for domestic violence and sexual assault victims; and

(4) the extent to which the applicant demonstrates coordination and collaboration with State and local court systems, including mechanisms for communication and referral.

(c) **APPLICANT REQUIREMENTS.**—The Attorney General shall award grants for contracts and cooperative agreements to applicants that—

(1) demonstrate expertise in the area of family violence, including the areas of domestic violence or sexual assault, as appropriate;

(2) ensure that any fees charged to individuals for use of programs and services are based on the income of those individuals, unless otherwise provided by court order;

(3) demonstrate that adequate security measures, including adequate facilities, procedures, and personnel capable of preventing violence, are in place for the operation of supervised visitation programs and services or safe visitation exchange; and

(4) prescribe standards by which the supervised visitation or safe visitation exchange will occur.

(d) **REPORTING.**—

(1) **IN GENERAL.**—Not later than 1 year after the last day of the first fiscal year commencing on or after the date of the enactment of this Act, and not later than 180 days after the last day of each fiscal year thereafter, the Attorney General shall submit to Congress a report that includes information concerning—

(A) the number of—

(i) individuals served and the number of individuals turned away from visitation programs and services and safe visitation exchange (categorized by State);

(ii) the number of individuals from underserved populations served and turned away from services; and

(iii) the type of problems that underlie the need for supervised visitation or safe visitation exchange, such as domestic violence, child abuse, sexual assault, other physical abuse, or a combination of such factors;

(B) the numbers of supervised visitations or safe visitation exchanges ordered under this section during custody determinations under a separation or divorce decree or protection order, through child protection services or other social services agencies, or by any other order of a civil, criminal, juvenile, or family court;

(C) the process by which children or abused partners are protected during visitations, temporary custody transfers, and other activities for which supervised visitation is established under this section;

(D) safety and security problems occurring during the reporting period during supervised visitation under this section, including the number of parental abduction cases; and

(E) the number of parental abduction cases in a judicial district using supervised visitation programs and services under this section, both as identified in criminal prosecution and custody violations.

(2) **GUIDELINES.**—The Attorney General shall establish guidelines for the collection and reporting of data under this subsection.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$15,000,000 for each of fiscal years 2001 and 2002.

(f) **ALLOTMENT FOR INDIAN TRIBES.**—Not less than 5 percent of the total amount made available for each fiscal year to carry out this section shall be available for grants to Indian tribal governments.

SEC. 1302. REAUTHORIZATION OF VICTIMS OF CHILD ABUSE PROGRAMS.

<< 42 USCA § 13014 >>

(a) **COURT-APPOINTED SPECIAL ADVOCATE PROGRAM.**—Section 218 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13014) is amended by striking subsection (a) and inserting the following:

“(a) **AUTHORIZATION.**—There is authorized to be appropriated to carry out this subtitle \$12,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 13024 >>

(b) CHILD ABUSE TRAINING PROGRAMS FOR JUDICIAL PERSONNEL AND PRACTITIONERS.—Section 224 of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13024) is amended by striking subsection (a) and inserting the following:

“(a) AUTHORIZATION.—There is authorized to be appropriated to carry out this subtitle \$2,300,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 3793 >>

(c) GRANTS FOR TELEVISED TESTIMONY.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)) is amended by striking paragraph (7) and inserting the following:

“(7) There is authorized to be appropriated to carry out part N \$1,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 3793 NOTE >>

(d) DISSEMINATION OF INFORMATION.—The Attorney General shall—

- (1) annually compile and disseminate information (including through electronic publication) about the use of amounts expended and the projects funded under section 218(a) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13014(a)), section 224(a) of the Victims of Child Abuse Act of 1990 (42 U.S.C. 13024(a)), and section 1007(a)(7) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(7)), including any evaluations of the projects and information to enable replication and adoption of the strategies identified in the projects; and
- (2) focus dissemination of the information described in paragraph (1) toward community-based programs, including domestic violence and sexual assault programs.

SEC. 1303. REPORT ON EFFECTS OF PARENTAL KIDNAPPING LAWS IN DOMESTIC VIOLENCE CASES.

<< 28 USCA § 1738A NOTE >>

(a) IN GENERAL.—The Attorney General shall—

- (1) conduct a study of Federal and State laws relating to child custody, including custody provisions in protection orders, the Uniform Child Custody Jurisdiction and Enforcement Act adopted by the National Conference of Commissioners on Uniform State Laws in July 1997, the Parental Kidnaping Prevention Act of 1980 and the amendments made by that Act, and the effect of those laws on child custody cases in which domestic violence is a factor; and

(2) submit to Congress a report describing the results of that study, including the effects of implementing or applying model State laws, and the recommendations of the Attorney General to reduce the incidence or pattern of violence against women or of sexual assault of the child.

<< 28 USCA § 1738A NOTE >>

(b) SUFFICIENCY OF DEFENSES.—In carrying out subsection (a) with respect to the Parental Kidnaping Prevention Act of 1980 and the amendments made by that Act, the Attorney General shall examine the sufficiency of defenses to parental abduction charges available in cases involving domestic violence, and the burdens and risks encountered by victims of domestic violence arising from jurisdictional requirements of that Act and the amendments made by that Act.

<< 28 USCA § 1738A NOTE >>

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$200,000 for fiscal year 2001.

<< 28 USCA § 1738A >>

(d) CONDITION FOR CUSTODY DETERMINATION.—Section 1738A(c)(2)(C)(ii) of title 28, United States Code, is amended by striking “he” and inserting “the child, a sibling, or parent of the child”.

TITLE IV—STRENGTHENING EDUCATION AND TRAINING TO COMBAT VIOLENCE AGAINST WOMEN

SEC. 1401. RAPE PREVENTION AND EDUCATION.

(a) IN GENERAL.—Part J of title III of the Public Health Service Act (42 U.S.C. 280b et seq.) is amended by inserting after section 393A the following:

<< 42 USCA § 280b-1c >>

“SEC. 393B. USE OF ALLOTMENTS FOR RAPE PREVENTION EDUCATION.

“(a) PERMITTED USE.—The Secretary, acting through the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, shall award targeted grants to States to be used for rape prevention and education programs conducted by rape crisis centers, State sexual assault coalitions, and other public and private nonprofit entities for—

“(1) educational seminars;

“(2) the operation of hotlines;

“(3) training programs for professionals;

“(4) the preparation of informational material;

“(5) education and training programs for students and campus personnel designed to reduce the incidence of sexual assault at colleges and universities;

“(6) education to increase awareness about drugs used to facilitate rapes or sexual assaults; and
 “(7) other efforts to increase awareness of the facts about, or to help prevent, sexual assault, including efforts to increase awareness in underserved communities and awareness among individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

“(b) COLLECTION AND DISSEMINATION OF INFORMATION ON SEXUAL ASSAULT.—The Secretary shall, through the National Resource Center on Sexual Assault established under the National Center for Injury Prevention and Control at the Centers for Disease Control and Prevention, provide resource information, policy, training, and technical assistance to Federal, State, local, and Indian tribal agencies, as well as to State sexual assault coalitions and local sexual assault programs and to other professionals and interested parties on issues relating to sexual assault, including maintenance of a central resource library in order to collect, prepare, analyze, and disseminate information and statistics and analyses thereof relating to the incidence and prevention of sexual assault.

“(c) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section \$80,000,000 for each of fiscal years 2001 through 2005.

“(2) NATIONAL RESOURCE CENTER ALLOTMENT.—Of the total amount made available under this subsection in each fiscal year, not more than the greater of \$1,000,000 or 2 percent of such amount shall be available for allotment under subsection (b).

“(d) LIMITATIONS.—

“(1) SUPPLEMENT NOT SUPPLANT.—Amounts provided to States under this section shall be used to supplement and not supplant other Federal, State, and local public funds expended to provide services of the type described in subsection (a).

“(2) STUDIES.—A State may not use more than 2 percent of the amount received by the State under this section for each fiscal year for surveillance studies or prevalence studies.

“(3) ADMINISTRATION.—A State may not use more than 5 percent of the amount received by the State under this section for each fiscal year for administrative expenses.”.

<< 42 USCA § 300w-10 >>

(b) REPEAL.—Section 40151 of the Violence Against Women Act of 1994 (108 Stat. 1920), and the amendment made by such section, is repealed.

<< 42 USCA § 3796gg-7 >>

SEC. 1402. EDUCATION AND TRAINING TO END VIOLENCE AGAINST AND ABUSE OF WOMEN WITH DISABILITIES.

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary of Health and Human Services, may award grants to States, units of local government, Indian tribal governments,

and nongovernmental private entities to provide education and technical assistance for the purpose of providing training, consultation, and information on domestic violence, stalking, and sexual assault against women who are individuals with disabilities (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)).

(b) **PRIORITIES.**—In awarding grants under this section, the Attorney General shall give priority to applications designed to provide education and technical assistance on—

(1) the nature, definition, and characteristics of domestic violence, stalking, and sexual assault experienced by women who are individuals with disabilities;

(2) outreach activities to ensure that women who are individuals with disabilities who are victims of domestic violence, stalking, and sexual assault receive appropriate assistance;

(3) the requirements of shelters and victim services organizations under Federal anti-discrimination laws, including the Americans with Disabilities Act of 1990 and section 504 of the Rehabilitation Act of 1973; and

(4) cost-effective ways that shelters and victim services may accommodate the needs of individuals with disabilities in accordance with the Americans with Disabilities Act of 1990.

(c) **USES OF GRANTS.**—Each recipient of a grant under this section shall provide information and training to organizations and programs that provide services to individuals with disabilities, including independent living centers, disability-related service organizations, and domestic violence programs providing shelter or related assistance.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section \$7,500,000 for each of fiscal years 2001 through 2005.

<< 42 USCA § 10418 >>

SEC. 1403. COMMUNITY INITIATIVES.

Section 318 of the Family Violence Prevention and Services Act (42 U.S.C. 10418) is amended by striking subsection (h) and inserting the following:

“(h) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section \$6,000,000 for each of fiscal years 2001 through 2005.”.

<< 42 USCA § 13961 NOTE >>

SEC. 1404. DEVELOPMENT OF RESEARCH AGENDA IDENTIFIED BY THE VIOLENCE AGAINST WOMEN ACT OF 1994.

(a) **IN GENERAL.**—The Attorney General shall—

(1) direct the National Institute of Justice, in consultation and coordination with the Bureau of Justice Statistics and the National Academy of Sciences, through its National Research Council, to develop a research agenda based on the recommendations contained in the report entitled “Understanding Violence Against Women” of the National Academy of Sciences; and

(2) not later than 1 year after the date of the enactment of this Act, in consultation with the Secretary of the Department of Health and Human Services, submit to Congress a report which shall include—

(A) a description of the research agenda developed under paragraph (1) and a plan to implement that agenda; and

(B) recommendations for priorities in carrying out that agenda to most effectively advance knowledge about and means by which to prevent or reduce violence against women.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

<< 42 USCA § 3796gg NOTE >>

SEC. 1405. STANDARDS, PRACTICE, AND TRAINING FOR SEXUAL ASSAULT FORENSIC EXAMINATIONS.

(a) IN GENERAL.—The Attorney General shall—

(1) evaluate existing standards of training and practice for licensed health care professionals performing sexual assault forensic examinations and develop a national recommended standard for training;

(2) recommend sexual assault forensic examination training for all health care students to improve the recognition of injuries suggestive of rape and sexual assault and baseline knowledge of appropriate referrals in victim treatment and evidence collection; and

(3) review existing national, State, tribal, and local protocols on sexual assault forensic examinations, and based on this review, develop a recommended national protocol and establish a mechanism for its nationwide dissemination.

(b) CONSULTATION.—The Attorney General shall consult with national, State, tribal, and local experts in the area of rape and sexual assault, including rape crisis centers, State and tribal sexual assault and domestic violence coalitions and programs, and programs for criminal justice, forensic nursing, forensic science, emergency room medicine, law, social services, and sex crimes in underserved communities (as defined in section 2003(7) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2(7)), as amended by this division).

(c) REPORT.—The Attorney General shall ensure that not later than 1 year after the date of the enactment of this Act, a report of the actions taken pursuant to subsection (a) is submitted to Congress.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$200,000 for fiscal year 2001.

SEC. 1406. EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL.

(a) GRANTS FOR EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS.—

<< 42 USCA § 13992 >>

(1) SECTION 40412.—Section 40412 of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 13992) is amended—

(A) by striking “and” at the end of paragraph (18);

(B) by striking the period at the end of paragraph (19) and inserting a semicolon; and

(C) by inserting after paragraph (19) the following:

“(20) the issues raised by domestic violence in determining custody and visitation, including how to protect the safety of the child and of a parent who is not a predominant aggressor of domestic violence, the legitimate reasons parents may report domestic violence, the ways domestic violence may relate to an abuser's desire to seek custody, and evaluating expert testimony in custody and visitation determinations involving domestic violence;

“(21) the issues raised by child sexual assault in determining custody and visitation, including how to protect the safety of the child, the legitimate reasons parents may report child sexual assault, and evaluating expert testimony in custody and visitation determinations involving child sexual assault, including the current scientifically-accepted and empirically valid research on child sexual assault;

“(22) the extent to which addressing domestic violence and victim safety contributes to the efficient administration of justice;”.

<< 42 USCA § 13994 >>

(2) SECTION 40414.—Section 40414(a) of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 13994(a)) is amended by inserting “and \$1,500,000 for each of the fiscal years 2001 through 2005” after “1996”.

(b) GRANTS FOR EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS.—

<< 42 USCA § 14001 >>

(1) SECTION 40421.—Section 40421(d) of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 14001(d)) is amended to read as follows:

“(d) CONTINUING EDUCATION AND TRAINING PROGRAMS.—The Federal Judicial Center, in carrying out section 620(b)(3) of title 28, United States Code, shall include in the educational programs it prepares, including the training programs for newly appointed judges, information on the aspects of the topics listed in section 40412 that pertain to issues within the jurisdiction of the Federal courts, and shall prepare materials necessary to implement this subsection.”.

<< 42 USCA § 14002 >>

(2) SECTION 40422.—Section 40422(2) of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 14002(2)) is amended by inserting “and \$500,000 for each of the fiscal years 2001 through 2005” after “1996”.

(c) TECHNICAL AMENDMENTS TO THE EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT OF 1994.—

<< 42 USCA § 13993 >>

(1) ENSURING COLLABORATION WITH DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS.—Section 40413 of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 13993) is amended by adding “, including national, State, tribal, and local domestic violence and sexual assault programs and coalitions” after “victim advocates”.

<< 42 USCA § 13991 >>

(2) PARTICIPATION OF TRIBAL COURTS IN STATE TRAINING AND EDUCATION PROGRAMS.—Section 40411 of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 13991) is amended by adding at the end the following: “Nothing shall preclude the attendance of tribal judges and court personnel at programs funded under this section for States to train judges and court personnel on the laws of the States.”.

<< 42 USCA § 13994 >>

(3) USE OF FUNDS FOR DISSEMINATION OF MODEL PROGRAMS.—Section 40414 of the Equal Justice for Women in the Courts Act of 1994 (42 U.S.C. 13994) is amended by adding at the end the following:

“(c) STATE JUSTICE INSTITUTE.—The State Justice Institute may use up to 5 percent of the funds appropriated under this section for annually compiling and broadly disseminating (including through electronic publication) information about the use of funds and about the projects funded under this section, including any evaluations of the projects and information to enable the replication and adoption of the projects.”.

(d) DATING VIOLENCE.—

<< 42 USCA § 13991 >>

(1) SECTION 40411.—Section 40411 of the Equal Justice for Women in Courts Act of 1994 (42 U.S.C 13991) is amended by inserting “dating violence,” after “domestic violence,”.

<< 42 USCA § 13992 >>

(2) SECTION 40412.—Section 40412 of such Act (42 U.S.C 13992) is amended—

(A) in paragraph (10), by inserting “and dating violence (as defined in section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3996gg-2))” before the semicolon;

(B) in paragraph (11), by inserting “and dating violence” after “domestic violence”;

(C) in paragraph (13), by inserting “and dating violence” after “domestic violence” in both places that it appears;

(D) in paragraph (17), by inserting “or dating violence” after “domestic violence” in both places that it appears; and

(E) in paragraph (18), by inserting “and dating violence” after “domestic violence”.

SEC. 1407. DOMESTIC VIOLENCE TASK FORCE

The Violence Against Women Act of 1994 (108 Stat. 1902 et seq.) (as amended by section 1209(a) of this division) is amended by adding at the end the following:

<< 42 USCA prec. § 14042 >>

“Subtitle I—Domestic Violence Task Force

<< 42 USCA § 14042 >>

‘SEC. 40901. TASK FORCE.

“(a) ESTABLISH.—The Attorney General, in consultation with national nonprofit, nongovernmental organizations whose primary expertise is in domestic violence, shall establish a task force to coordinate research on domestic violence and to report to Congress on any overlapping or duplication of efforts on domestic violence issues. The task force shall be comprised of representatives from all Federal agencies that fund such research.

“(b) USES OF FUNDS.—Funds appropriated under this section shall be used to—

“(1) develop a coordinated strategy to strengthen research focused on domestic violence education, prevention, and intervention strategies;

“(2) track and report all Federal research and expenditures on domestic violence; and

“(3) identify gaps and duplication of efforts in domestic violence research and governmental expenditures on domestic violence issues.

“(c) REPORT.—The Task Force shall report to Congress annually on its work under subsection (b).

“(d) DEFINITION.—For purposes of this section, the term ‘domestic violence’ has the meaning given such term by section 2003 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg-2(1)).

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section \$500,000 for each of fiscal years 2001 through 2004.”.

TITLE V—BATTERED IMMIGRANT WOMEN

<< 8 USCA § 1101 NOTE >>

SEC. 1501. SHORT TITLE.

This title may be cited as the “Battered Immigrant Women Protection Act of 2000”.

<< 8 USCA § 1101 NOTE >>

SEC. 1502. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the goal of the immigration protections for battered immigrants included in the Violence Against Women Act of 1994 was to remove immigration laws as a barrier that kept battered immigrant women and children locked in abusive relationships;

(2) providing battered immigrant women and children who were experiencing domestic violence at home with protection against deportation allows them to obtain protection orders against their abusers and frees them to cooperate with law enforcement and prosecutors in criminal cases brought against their abusers and the abusers of their children without fearing that the abuser will retaliate by withdrawing or threatening withdrawal of access to an immigration benefit under the abuser's control; and

(3) there are several groups of battered immigrant women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of action by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.

(b) PURPOSES.—The purposes of this title are—

(1) to remove barriers to criminal prosecutions of persons who commit acts of battery or extreme cruelty against immigrant women and children; and

(2) to offer protection against domestic violence occurring in family and intimate relationships that are covered in State and tribal protection orders, domestic violence, and family law statutes.

SEC. 1503. IMPROVED ACCESS TO IMMIGRATION PROTECTIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994 FOR BATTERED IMMIGRANT WOMEN.

<< 8 USCA § 1101 >>

(a) INTENDED SPOUSE DEFINED.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(50) The term ‘intended spouse’ means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III).”.

<< 8 USCA § 1154 >>

(b) IMMEDIATE RELATIVE STATUS FOR SELF-PETITIONERS MARRIED TO U.S. CITIZENS.—

(1) SELF-PETITIONING SPOUSES.—

(A) BATTERY OR CRUELTY TO ALIEN OR ALIEN'S CHILD.—Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(iii)) is amended to read as follows:

“(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

“(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

“(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

“(II) For purposes of subclause (I), an alien described in this subclause is an alien—

“(aa)(AA) who is the spouse of a citizen of the United States;

“(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

“(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

“(aaa) whose spouse died within the past 2 years;

“(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

“(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

“(bb) who is a person of good moral character;

“(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

“(dd) who has resided with the alien's spouse or intended spouse.”.

(2) SELF-PETITIONING CHILDREN.—Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(iv)) is amended to read as follows:

“(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under

this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.”.

(3) FILING OF PETITIONS.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)) is amended by adding at the end the following:

“(v) An alien who—

“(I) is the spouse, intended spouse, or child living abroad of a citizen who—

“(aa) is an employee of the United States Government;

“(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

“(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

“(II) is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.”.

<< 8 USCA § 1154 >>

(c) SECOND PREFERENCE IMMIGRATION STATUS FOR SELF-PETITIONERS MARRIED TO LAWFUL PERMANENT RESIDENTS.—

(1) SELF-PETITIONING SPOUSES.—Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)(ii)) is amended to read as follows:

“(ii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 203(a)(2)(A) and if the alien demonstrates to the Attorney General that—

“(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

“(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

“(II) For purposes of subclause (I), an alien described in this paragraph is an alien—

“(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

“(BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

“(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

“(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

“(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

“(bb) who is a person of good moral character;

“(cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

“(dd) who has resided with the alien's spouse or intended spouse.”.

(2) SELF-PETITIONING CHILDREN.—Section 204(a)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)(iii)) is amended to read as follows:

“(iii) An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.”.

(3) FILING OF PETITIONS.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)) is amended by adding at the end the following:

“(iv) An alien who—

“(I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who—

“(aa) is an employee of the United States Government;

“(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

“(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

“(II) is eligible to file a petition under clause (ii) or (iii), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (ii) or (iii), as applicable.”.

<< 8 USCA § 1154 >>

(d) GOOD MORAL CHARACTER DETERMINATIONS FOR SELF-PETITIONERS AND TREATMENT OF CHILD SELF-PETITIONERS AND PETITIONS INCLUDING DERIVATIVE CHILDREN ATTAINING 21 YEARS OF AGE.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)) is amended—

(1) by redesignating subparagraphs (C) through (H) as subparagraphs (E) through (J), respectively;

(2) by inserting after subparagraph (B) the following:

“(C) Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to

be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

“(D)(i)(I) Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A). No new petition shall be required to be filed.

“(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

“(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

“(IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

“(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.’; and (3) in subparagraph (J) (as so redesignated), by inserting “or in making determinations under subparagraphs (C) and (D),” after “subparagraph (B),”.

<< 8 USCA § 1430 >>

(e) ACCESS TO NATURALIZATION FOR DIVORCED VICTIMS OF ABUSE.—Section 319(a) of the Immigration and Nationality Act (8 U.S.C. 1430(a)) is amended—

(1) by inserting “, or any person who obtained status as a lawful permanent resident by reason of his or her status as a spouse or child of a United States citizen who battered him or her or subjected him or her to extreme cruelty,” after “United States” the first place such term appears; and

(2) by inserting “(except in the case of a person who has been battered or subjected to extreme cruelty by a United States citizen spouse or parent)” after “has been living in marital union with the citizen spouse”.

SEC. 1504. IMPROVED ACCESS TO CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994.

<< 8 USCA § 1229b >>

(a) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.—Section 240A(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(2)) is amended to read as follows:

“(2) SPECIAL RULE FOR BATTERED SPOUSE OR CHILD.—

“(A) AUTHORITY.—The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

“(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

“(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

“(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not legitimate because of that United States citizen's or lawful permanent resident's bigamy;

“(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

“(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

“(iv) the alien is not inadmissible under paragraph (2) or (3) of section 212(a), is not deportable under paragraphs (1)(G) or (2) through (4) of section 237(a) (except in a case described in section 237(a)(7) where the Attorney General exercises discretion to grant a waiver), and has not been convicted of an aggravated felony; and

“(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

“(B) PHYSICAL PRESENCE.—Notwithstanding subsection (d)(2), for purposes of subparagraph (A)(i)(II) or for purposes of section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2). If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of

continuous presence. Any such period of time excluded from the 180–day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3–year requirement set forth in section 240A(b)(2)(B) and section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

“(C) GOOD MORAL CHARACTER.—Notwithstanding section 101(f), an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(i)(III) or section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

“(D) CREDIBLE EVIDENCE CONSIDERED.—In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.”.

<< 8 USCA § 1229b >>

(b) CHILDREN OF BATTERED ALIENS AND PARENTS OF BATTERED ALIEN CHILDREN.—Section 240A(b) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)) is amended by adding at the end the following:

“(4) CHILDREN OF BATTERED ALIENS AND PARENTS OF BATTERED ALIEN CHILDREN.—

“(A) IN GENERAL.—The Attorney General shall grant parole under section 212(d)(5) to any alien who is a—

“(i) child of an alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

“(ii) parent of a child alien granted relief under section 240A(b)(2) or 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

“(B) DURATION OF PAROLE.—The grant of parole shall extend from the time of the grant of relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if they were applications filed under section 204(a)(1) (A)(iii), (A)(iv), (B)(ii), or (B)(iii) for purposes of section 245 (a) and (c). Failure by the alien granted relief under section 240A(b)(2) or section 244(a)(3) (as in effect before the title III–A effective

date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.”.

<< 8 USCA § 1229b NOTE >>

(c) **EFFECTIVE DATE.**—Any individual who becomes eligible for relief by reason of the enactment of the amendments made by subsections (a) and (b), shall be eligible to file a motion to reopen pursuant to section 240(c)(6)(C)(iv). The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 587). Such portions of the amendments made by subsection (b) that relate to section 244(a)(3) (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) shall take effect as if included in subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.).

SEC. 1505. OFFERING EQUAL ACCESS TO IMMIGRATION PROTECTIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994 FOR ALL QUALIFIED BATTERED IMMIGRANT SELF–PETITIONERS.

<< 8 USCA § 1182 >>

(a) **BATTERED IMMIGRANT WAIVER.**—Section 212(a)(9)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(C)(ii)) is amended by adding at the end the following: “The Attorney General in the Attorney General's discretion may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Attorney General has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—

“(1) the alien's having been battered or subjected to extreme cruelty; and

“(2) the alien's—

“(A) removal;

“(B) departure from the United States;

“(C) reentry or reentries into the United States; or

“(D) attempted reentry into the United States.”.

(b) **DOMESTIC VIOLENCE VICTIM WAIVER.**—

<< 8 USCA § 1227 >>

(1) **WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.**—Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended by inserting at the end the following:

“(7) **WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.**—

“(A) IN GENERAL.—The Attorney General is not limited by the criminal court record and may waive the application of paragraph (2)(E)(i) (with respect to crimes of domestic violence and crimes of stalking) and (ii) in the case of an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship—

“(i) upon a determination that—

“(I) the alien was acting in self-defense;

“(II) the alien was found to have violated a protection order intended to protect the alien; or

“(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime—

“(aa) that did not result in serious bodily injury; and

“(bb) where there was a connection between the crime and the alien's having been battered or subjected to extreme cruelty.

“(B) CREDIBLE EVIDENCE CONSIDERED.—In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.”.

<< 8 USCA § 1229b >>

(2) CONFORMING AMENDMENT.—Section 240A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(1)(C)) is amended by inserting “(except in a case described in section 237(a)(7) where the Attorney General exercises discretion to grant a waiver)” after “237(a)(3)”.

(c) MISREPRESENTATION WAIVERS FOR BATTERED SPOUSES OF UNITED STATES CITIZENS AND LAWFUL PERMANENT RESIDENTS.—

<< 8 USCA § 1182 >>

(1) WAIVER OF INADMISSIBILITY.—Section 212(i)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(i)(1)) is amended by inserting before the period at the end the following: “or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child”.

<< 8 USCA § 1227 >>

(2) WAIVER OF DEPORTABILITY.—Section 237(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(H)) is amended—

(A) in clause (i), by inserting “(I)” after “(i)”;

(B) by redesignating clause (ii) as subclause (II); and

(C) by adding after clause (i) the following:

“(ii) is an alien who qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B).”.

<< 8 USCA § 1182 >>

(d) **BATTERED IMMIGRANT WAIVER.**—Section 212(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(g)(1)) is amended—

- (1) in subparagraph (A), by striking “or” at the end;
- (2) in subparagraph (B), by adding “or” at the end; and
- (3) by inserting after subparagraph (B) the following:

“(C) qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B);”.

<< 8 USCA § 1182 >>

(e) **WAIVERS FOR VAWA ELIGIBLE BATTERED IMMIGRANTS.**—Section 212(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(h)(1)) is amended—

- (1) in subparagraph (B), by striking “and” and inserting “or”; and
- (2) by adding at the end the following:

“(C) the alien qualifies for classification under clause (iii) or (iv) of section 204(a)(1)(A) or classification under clause (ii) or (iii) of section 204(a)(1)(B); and”.

<< 8 USCA § 1182 >>

(f) **PUBLIC CHARGE.**—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following:

“(p) In determining whether an alien described in subsection (a)(4)(C)(i) is inadmissible under subsection (a)(4) or ineligible to receive an immigrant visa or otherwise to adjust to the status of permanent resident by reason of subsection (a)(4), the consular officer or the Attorney General shall not consider any benefits the alien may have received that were authorized under section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1641(c)).”.

(g) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives covering, with respect to fiscal year 1997 and each fiscal year thereafter—

- (1) the policy and procedures of the Immigration and Naturalization Service under which an alien who has been battered or subjected to extreme cruelty who is eligible for suspension of deportation or cancellation of removal can request to be placed, and be placed, in deportation or removal proceedings so that such alien may apply for suspension of deportation or cancellation of removal;

- (2) the number of requests filed at each district office under this policy;
- (3) the number of these requests granted reported separately for each district; and

(4) the average length of time at each Immigration and Naturalization office between the date that an alien who has been subject to battering or extreme cruelty eligible for suspension of deportation or cancellation of removal requests to be placed in deportation or removal proceedings and the date that the immigrant appears before an immigration judge to file an application for suspension of deportation or cancellation of removal.

SEC. 1506. RESTORING IMMIGRATION PROTECTIONS UNDER THE VIOLENCE AGAINST WOMEN ACT OF 1994.

<< 8 USCA § 1255 >>

(a) REMOVING BARRIERS TO ADJUSTMENT OF STATUS FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) IMMIGRATION AMENDMENTS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended—

(A) in subsection (a), by inserting “or the status of any other alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1) or” after “into the United States.”; and

(B) in subsection (c), by striking “Subsection (a) shall not be applicable to” and inserting the following: “Other than an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (A)(v), (A)(vi), (B)(ii), (B)(iii), or (B)(iv) of section 204(a)(1), subsection (a) shall not be applicable to”.

<< 8 USCA § 1255 NOTE >>

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to applications for adjustment of status pending on or made on or after January 14, 1998.

<< 8 USCA § 1101 NOTE >>

(b) REMOVING BARRIERS TO CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) NOT TREATING SERVICE OF NOTICE AS TERMINATING CONTINUOUS PERIOD.—Section 240A(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)(1)) is amended by striking “when the alien is served a notice to appear under section 239(a) or” and inserting “(A) except in the case of an alien who applies for cancellation of removal under subsection (b) (2), when the alien is served a notice to appear under section 239(a), or (B)”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208; 110 Stat. 587).

(3) MODIFICATION OF CERTAIN TRANSITION RULES FOR BATTERED SPOUSE OR CHILD.—Section 309(c)(5)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note) is amended—

(A) by striking the subparagraph heading and inserting the following:

“(C) SPECIAL RULE FOR CERTAIN ALIENS GRANTED TEMPORARY PROTECTION FROM DEPORTATION AND FOR BATTERED SPOUSES AND CHILDREN.—”; and

(B) in clause (i)—

(i) in subclause (IV), by striking “or” at the end;

(ii) in subclause (V), by striking the period at the end and inserting “; or”; and

(iii) by adding at the end the following:

“(VI) is an alien who was issued an order to show cause or was in deportation proceedings before April 1, 1997, and who applied for suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the date of the enactment of this Act).”.

(4) EFFECTIVE DATE.—The amendments made by paragraph (3) shall take effect as if included in the enactment of section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note).

(c) ELIMINATING TIME LIMITATIONS ON MOTIONS TO REOPEN REMOVAL AND DEPORTATION PROCEEDINGS FOR VICTIMS OF DOMESTIC VIOLENCE.—

(1) REMOVAL PROCEEDINGS.—

<< 8 USCA § 1229a >>

(A) IN GENERAL.—Section 240(c)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(6)(C)) is amended by adding at the end the following:

“(iv) SPECIAL RULE FOR BATTERED SPOUSES AND CHILDREN.—The deadline specified in subsection (b)(5)(C) for filing a motion to reopen does not apply—

“(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), or section 240A(b)(2);

“(II) if the motion is accompanied by a cancellation of removal application to be filed with the Attorney General or by a copy of the self-petition that has been or will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen; and

“(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in the Attorney General's discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child.”.

<< 8 USCA § 1229a NOTE >>

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect as if included in the enactment of section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1229–1229c).

(2) DEPORTATION PROCEEDINGS.—**<< 8 USCA § 1229a NOTE >>**

(A) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen or rescind deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)), there is no time limit on the filing of a motion to reopen such proceedings, and the deadline specified in section 242B(c)(3) of the Immigration and Nationality Act (as so in effect) (8 U.S.C. 1252b(c)(3)) does not apply—

(i) if the basis of the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as so in effect) (8 U.S.C. 1254(a)(3)); and

(ii) if the motion is accompanied by a suspension of deportation application to be filed with the Attorney General or by a copy of the self-petition that will be filed with the Immigration and Naturalization Service upon the granting of the motion to reopen.

(B) APPLICABILITY.—Subparagraph (A) shall apply to motions filed by aliens who—

(i) are, or were, in deportation proceedings under the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)); and

(ii) have become eligible to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)), clause (ii) or (iii) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)), or section 244(a)(3) of such Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1101 note)) as a result of the amendments made by—

(I) subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.); or

(II) this title.

<< 8 USCA § 1154 >>**SEC. 1507. REMEDYING PROBLEMS WITH IMPLEMENTATION OF THE IMMIGRATION PROVISIONS OF THE VIOLENCE AGAINST WOMEN ACT OF 1994.**

(a) EFFECT OF CHANGES IN ABUSERS' CITIZENSHIP STATUS ON SELF–PETITION.—

(1) RECLASSIFICATION.—Section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)) (as amended by section 1503(b)(3) of this title) is amended by adding at the end the following:

“(vi) For the purposes of any petition filed under clause (iii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser's citizenship status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.”.

(2) LOSS OF STATUS.—Section 204(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(B)) (as amended by section 1503(c)(3) of this title) is amended by adding at the end the following:

“(v)(I) For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on an approved self-petition under clause (ii) or (iii).

“(II) Upon the lawful permanent resident spouse or parent becoming or establishing the existence of United States citizenship through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii) or (iii) on behalf of an alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.”.

(3) DEFINITION OF IMMEDIATE RELATIVES.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1154(b)(2)(A)(i)) is amended by adding at the end the following: “For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.”.

<< 8 USCA § 1154 >>

(b) ALLOWING REMARRIAGE OF BATTERED IMMIGRANTS.—Section 204(h) of the Immigration and Nationality Act (8 U.S.C. 1154(h)) is amended by adding at the end the following: “Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205.”.

<< 8 USCA § 1641 >>

SEC. 1508. TECHNICAL CORRECTION TO QUALIFIED ALIEN DEFINITION FOR BATTERED IMMIGRANTS.

Section 431(c)(1)(B)(iii) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B)(iii)) is amended to read as follows:

“(iii) suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (as in effect before the title III–A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).”.

<< 8 USCA § 1255 NOTE >>

SEC. 1509. ACCESS TO CUBAN ADJUSTMENT ACT FOR BATTERED IMMIGRANT SPOUSES AND CHILDREN.

(a) **IN GENERAL.**—The last sentence of the first section of Public Law 89–732 (November 2, 1966; 8 U.S.C. 1255 note) is amended by striking the period at the end and inserting the following: “, except that such spouse or child who has been battered or subjected to extreme cruelty may adjust to permanent resident status under this Act without demonstrating that he or she is residing with the Cuban spouse or parent in the United States. In acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(H).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as if included in subtitle G of title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322; 108 Stat. 1953 et seq.).

SEC. 1510. ACCESS TO THE NICARAGUAN ADJUSTMENT AND CENTRAL AMERICAN RELIEF ACT FOR BATTERED SPOUSES AND CHILDREN.

<< 8 USCA § 1255 NOTE >>

(a) **ADJUSTMENT OF STATUS OF CERTAIN NICARAGUAN AND CUBAN BATTERED SPOUSES.**—Section 202(d) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1255 note; Public Law 105–100, as amended) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

“(B) the alien—

“(i) is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for adjustment under this subsection is filed; or

“(ii) was, at the time at which an alien filed for adjustment under subsection (a), the spouse or child of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien that filed for adjustment under subsection (a);”;

(2) by adding at the end the following:

“(3) PROCEDURE.—In acting on an application under this section with respect to a spouse or child who has been battered or subjected to extreme cruelty, the Attorney General shall apply section 204(a)(1)(H).”.

<< 8 USCA § 1101 NOTE >>

(b) CANCELLATION OF REMOVAL AND SUSPENSION OF DEPORTATION TRANSITION RULES FOR CERTAIN BATTERED SPOUSES.—Section 309(c)(5)(C) of the Illegal Immigration and Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104-208; 8 U.S.C. 1101 note) (as amended by section 1506(b)(3) of this title) is amended—

(1) in clause (i)—

(A) by striking the period at the end of subclause (VI) (as added by section 1506(b)(3) of this title) and inserting “; or”; and

(B) by adding at the end the following:

“(VII)(aa) was the spouse or child of an alien described in subclause (I), (II), or (V)—

“(AA) at the time at which a decision is rendered to suspend the deportation or cancel the removal of the alien;

“(BB) at the time at which the alien filed an application for suspension of deportation or cancellation of removal; or

“(CC) at the time at which the alien registered for benefits under the settlement agreement in *American Baptist Churches, et. al. v. Thornburgh (ABC)*, applied for temporary protected status, or applied for asylum; and

“(bb) the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the alien described in subclause (I), (II), or (V).”; and

(2) by adding at the end the following:

“(iii) CONSIDERATION OF PETITIONS.—In acting on a petition filed under subclause (VII) of clause (i) the provisions set forth in section 204(a)(1)(H) shall apply.

“(iv) RESIDENCE WITH SPOUSE OR PARENT NOT REQUIRED.—For purposes of the application of clause (i)(VII), a spouse or child shall not be required to demonstrate that he or she is residing with the spouse or parent in the United States.”.

<< 8 USCA § 1101 NOTE >>

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall be effective as if included in the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1255 note; Public Law 105-100, as amended).

<< 8 USCA § 1255 NOTE >>

SEC. 1511. ACCESS TO THE HAITIAN REFUGEE FAIRNESS ACT OF 1998 FOR BATTERED SPOUSES AND CHILDREN.

(a) **IN GENERAL.**—Section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (division A of section 101(h) of Public Law 105-277; 112 Stat. 2681-538) is amended to read as follows:

“(B)(i) the alien is the spouse, child, or unmarried son or daughter of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a), except that, in the case of such an unmarried son or daughter, the son or daughter shall be required to establish that the son or daughter has been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date on which the application for such adjustment is filed;

“(ii) at the time of filing of the application for adjustment under subsection (a), the alien is the spouse or child of an alien whose status is adjusted to that of an alien lawfully admitted for permanent residence under subsection (a) and the spouse, child, or child of the spouse has been battered or subjected to extreme cruelty by the individual described in subsection (a); and

“(iii) in acting on applications under this section with respect to spouses or children who have been battered or subjected to extreme cruelty, the Attorney General shall apply the provisions of section 204(a)(1)(H).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall be effective as if included in the Haitian Refugee Immigration Fairness Act of 1998 (division A of section 101(h) of Public Law 105-277; 112 Stat. 2681-538).

SEC. 1512. ACCESS TO SERVICES AND LEGAL REPRESENTATION FOR BATTERED IMMIGRANTS.

<< 42 USCA § 3796gg >>

(a) **LAW ENFORCEMENT AND PROSECUTION GRANTS.**—Section 2001(b) of part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg(b)) (as amended by section 1209(c) of this division) is amended by adding at the end the following:

“(11) providing assistance to victims of domestic violence and sexual assault in immigration matters.”.

<< 42 USCA § 3796hh >>

(b) **GRANTS TO ENCOURAGE ARRESTS.**—Section 2101(b)(5) of part U of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796hh(b)(5)) is amended by inserting before the period the following: “, including strengthening assistance to such victims in immigration matters”.

<< 42 USCA § 13971 >>

(c) RURAL DOMESTIC VIOLENCE AND CHILD ABUSE ENFORCEMENT GRANTS.—Section 40295(a)(2) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322; 108 Stat. 1953; 42 U.S.C. 13971(a)(2)) is amended to read as follows:

“(2) to provide treatment, counseling, and assistance to victims of domestic violence and child abuse, including in immigration matters; and”.

<< 20 USCA § 1152 >>

(d) CAMPUS DOMESTIC VIOLENCE GRANTS.—Section 826(b)(5) of the Higher Education Amendments of 1998 (Public Law 105-244; 20 U.S.C. 1152) is amended by inserting before the period at the end the following: “, including assistance to victims in immigration matters”.

SEC. 1513. PROTECTION FOR CERTAIN CRIME VICTIMS INCLUDING VICTIMS OF CRIMES AGAINST WOMEN.

<< 8 USCA § 1101 NOTE >>

(a) FINDINGS AND PURPOSE.—

(1) FINDINGS.—Congress makes the following findings:

(A) Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained.

(B) All women and children who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes.

(2) PURPOSE.—

(A) The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a)(15)(U)(iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. This visa will encourage law enforcement officials to better serve immigrant crime victims and to prosecute crimes committed against aliens.

(B) Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary

legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States.

(C) Finally, this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

<< 8 USCA § 1101 >>

(b) ESTABLISHMENT OF HUMANITARIAN/MATERIAL WITNESS NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) (as amended by section 107 of this Act) is amended—

(1) by striking “or” at the end of subparagraph (S);

(2) by striking the period at the end of subparagraph (T) and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(U)(i) subject to section 214(o), an alien who files a petition for status under this subparagraph, if the Attorney General determines that—

“(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

“(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

“(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

“(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

“(ii) if the Attorney General considers it necessary to avoid extreme hardship to the spouse, the child, or, in the case of an alien child, the parent of the alien described in clause (i), the Attorney General may also grant status under this paragraph based upon certification of a government official listed in clause (i)(III) that an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien; and

“(iii) the criminal activity referred to in this clause is that involving 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.”.

<< 8 USCA § 1184 >>

(c) **CONDITIONS FOR ADMISSION AND DUTIES OF THE ATTORNEY GENERAL.**—Section 214 of such Act (8 U.S.C. 1184) (as amended by section 107 of this Act) is amended by adding at the end the following new subsection:

“(o) **REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS.**—

“(1) **PETITIONING PROCEDURES FOR SECTION 101(a)(15)(U) VISAS.**—The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien ‘has been helpful, is being helpful, or is likely to be helpful’ in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

“(2) **NUMERICAL LIMITATIONS.**—

“(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 101(a)(15)(U) in any fiscal year shall not exceed 10,000.

“(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 101(a)(15)(U)(i), and not to spouses, children, or, in the case of alien children, the alien parents of such children.

“(3) **DUTIES OF THE ATTORNEY GENERAL WITH RESPECT TO ‘U’ VISA NONIMMIGRANTS.**—With respect to nonimmigrant aliens described in subsection (a)(15)(U)

—

“(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

“(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

“(4) **CREDIBLE EVIDENCE CONSIDERED.**—In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

“(5) **NONEXCLUSIVE RELIEF.**—Nothing in this subsection limits the ability of aliens who qualify for status under section 101(a)(15)(U) to seek any other immigration benefit or status for which the alien may be eligible.”.

<< 8 USCA § 1367 >>

(d) **PROHIBITION ON ADVERSE DETERMINATIONS OF ADMISSIBILITY OR DEPORTABILITY.**—Section 384(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended—

- (1) by striking “or” at the end of paragraph (1)(C);
- (2) by striking the comma at the end of paragraph (1)(D) and inserting “, or”; and
- (3) by inserting after paragraph (1)(D) the following new subparagraph:
 “(E) in the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act, the perpetrator of the substantial physical or mental abuse and the criminal activity,; and
- (4) in paragraph (2), by inserting “section 101(a)(15)(U),” after “section 216(c)(4)(C),”.

<< 8 USCA § 1182 >>

(e) **WAIVER OF GROUNDS OF INELIGIBILITY FOR ADMISSION.**—Section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended by adding at the end the following new paragraph:

“(13) The Attorney General shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(U). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) (other than paragraph (3)(E)) in the case of a nonimmigrant described in section 101(a)(15)(U), if the Attorney General considers it to be in the public or national interest to do so.”.

<< 8 USCA § 1255 >>

(f) **ADJUSTMENT TO PERMANENT RESIDENT STATUS.**—Section 245 of such Act (8 U.S.C. 1255) is amended by adding at the end the following new subsection:

“(1)(1) The Attorney General may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E), unless the Attorney General determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if—

“(A) the alien has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 101(a)(15)(U); and

“(B) in the opinion of the Attorney General, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

“(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

“(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 101(a)(15)(U)(i) the Attorney General may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa

under section 101(a)(15)(U)(ii) if the Attorney General considers the grant of such status or visa necessary to avoid extreme hardship.

“(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval.”.

TITLE VI—MISCELLANEOUS

SEC. 1601. NOTICE REQUIREMENTS FOR SEXUALLY VIOLENT OFFENDERS.

<< 20 USCA § 1001 NOTE >>

(a) **SHORT TITLE.**—This section may be cited as the “Campus Sex Crimes Prevention Act”.

(b) **NOTICE WITH RESPECT TO INSTITUTIONS OF HIGHER EDUCATION.**—

<< 42 USCA § 14071 >>

(1) **IN GENERAL.**—Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) is amended by adding at the end the following:

“(j) **NOTICE OF ENROLLMENT AT OR EMPLOYMENT BY INSTITUTIONS OF HIGHER EDUCATION.**—

“(1) **NOTICE BY OFFENDERS.**—

“(A) **IN GENERAL.**—In addition to any other requirements of this section, any person who is required to register in a State shall provide notice as required under State law—

“(i) of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student; and

“(ii) of each change in enrollment or employment status of such person at an institution of higher education in that State.

“(B) **CHANGE IN STATUS.**—A change in status under subparagraph (A)(ii) shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated information is promptly made available to a law enforcement agency having jurisdiction where such institution is located and entered into the appropriate State records or data system.

“(2) **STATE REPORTING.**—State procedures shall ensure that the registration information collected under paragraph (1)—

“(A) is promptly made available to a law enforcement agency having jurisdiction where such institution is located; and

“(B) entered into the appropriate State records or data system.

“(3) **REQUEST.**—Nothing in this subsection shall require an educational institution to request such information from any State.”.

<< 42 USCA § 14071 NOTE >>

(2) **EFFECTIVE DATE.**—The amendment made by this subsection shall take effect 2 years after the date of the enactment of this Act.

<< 20 USCA § 1092 >>

(c) DISCLOSURES BY INSTITUTIONS OF HIGHER EDUCATION.—

(1) IN GENERAL.—Section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) is amended by adding at the end the following:

“(I) A statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.”.

<< 20 USCA § 1092 NOTE >>

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 2 years after the date of the enactment of this Act.

<< 20 USCA § 1232g >>

(d) AMENDMENT TO FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974.—Section 444(b) of the General Education Provisions Act (20 U.S.C. 1232g(b)), also known as the Family Educational Rights and Privacy Act of 1974, is amended by adding at the end the following:

“(7)(A) Nothing in this section may be construed to prohibit an educational institution from disclosing information provided to the institution under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071) concerning registered sex offenders who are required to register under such section.

“(B) The Secretary shall take appropriate steps to notify educational institutions that disclosure of information described in subparagraph (A) is permitted.”.

<< 42 USCA § 290bb–36 NOTE >>

SEC. 1602. TEEN SUICIDE PREVENTION STUDY.

(a) SHORT TITLE.—This section may be cited as the “Teen Suicide Prevention Act of 2000”.

(b) FINDINGS.—Congress finds that—

(1) measures that increase public awareness of suicide as a preventable public health problem, and target parents and youth so that suicide risks and warning signs can be recognized, will help to eliminate the ignorance and stigma of suicide as barriers to youth and families seeking preventive care;

(2) suicide prevention efforts in the year 2000 should—

- (A) target at-risk youth, particularly youth with mental health problems, substance abuse problems, or contact with the juvenile justice system;
- (B) involve—
- (i) the identification of the characteristics of the at-risk youth and other youth who are contemplating suicide, and barriers to treatment of the youth; and
 - (ii) the development of model treatment programs for the youth;
- (C) include a pilot study of the outcomes of treatment for juvenile delinquents with mental health or substance abuse problems;
- (D) include a public education approach to combat the negative effects of the stigma of, and discrimination against individuals with, mental health and substance abuse problems; and
- (E) include a nationwide effort to develop, implement, and evaluate a mental health awareness program for schools, communities, and families;
- (3) although numerous symptoms, diagnoses, traits, characteristics, and psychosocial stressors of suicide have been investigated, no single factor or set of factors has ever come close to predicting suicide with accuracy;
- (4) research of United States youth, such as a 1994 study by Lewinsohn, Rohde, and Seeley, has shown predictors of suicide, such as a history of suicide attempts, current suicidal ideation and depression, a recent attempt or completed suicide by a friend, and low self-esteem; and
- (5) epidemiological data illustrate—
- (A) the trend of suicide at younger ages as well as increases in suicidal ideation among youth in the United States; and
 - (B) distinct differences in approaches to suicide by gender, with—
 - (i) 3 to 5 times as many females as males attempting suicide; and
 - (ii) 3 to 5 times as many males as females completing suicide.
- (c) **PURPOSE.**—The purpose of this section is to provide for a study of predictors of suicide among at-risk and other youth, and barriers that prevent the youth from receiving treatment, to facilitate the development of model treatment programs and public education and awareness efforts.
- (d) **STUDY.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Health and Human Services shall carry out, directly or by grant or contract, a study that is designed to identify—
- (1) the characteristics of at-risk and other youth age 13 through 21 who are contemplating suicide;
 - (2) the characteristics of at-risk and other youth who are younger than age 13 and are contemplating suicide; and
 - (3) the barriers that prevent youth described in paragraphs (1) and (2) from receiving treatment.
- (e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out this section such sums as may be necessary.

SEC. 1603. DECADE OF PAIN CONTROL AND RESEARCH.

The calendar decade beginning January 1, 2001, is designated as the “Decade of Pain Control and Research”.

DIVISION C—MISCELLANEOUS PROVISIONS

<< 42 USCA § 13713 >>

SEC. 2001. AIMEE'S LAW.

(a) **SHORT TITLE.**—This section may be cited as “Aimee's Law”.

(b) **DEFINITIONS.**—In this section:

(1) **DANGEROUS SEXUAL OFFENSE.**—The term “dangerous sexual offense” means any offense under State law for conduct that would constitute an offense under chapter 109A of title 18, United States Code, had the conduct occurred in the special maritime and territorial jurisdiction of the United States or in a Federal prison.

(2) **MURDER.**—The term “murder” has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(3) **RAPE.**—The term “rape” has the meaning given the term in part I of the Uniform Crime Reports of the Federal Bureau of Investigation.

(c) **PENALTY.**—

(1) **SINGLE STATE.**—In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one of those offenses in a State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to the State that convicted the individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(2) **MULTIPLE STATES.**—In any case in which a State convicts an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for any one or more of those offenses in more than one other State described in paragraph (3), the Attorney General shall transfer an amount equal to the costs of incarceration, prosecution, and apprehension of that individual, from Federal law enforcement assistance funds that have been allocated to but not distributed to each State that convicted such individual of the prior offense, to the State account that collects Federal law enforcement assistance funds of the State that convicted that individual of the subsequent offense.

(3) **STATE DESCRIBED.**—A State is described in this paragraph if—

(A) the average term of imprisonment imposed by the State on individuals convicted of the offense for which the individual described in paragraph (1) or (2), as applicable, was convicted by the State is less than the average term of imprisonment imposed for that offense in all States; or

(B) with respect to the individual described in paragraph (1) or (2), as applicable, the individual had served less than 85 percent of the term of imprisonment to which that individual was sentenced for the prior offense.

For purposes of subparagraph (B), in a State that has indeterminate sentencing, the term of imprisonment to which that individual was sentenced for the prior offense shall be based on the lower of the range of sentences.

(d) STATE APPLICATIONS.—In order to receive an amount transferred under subsection (c), the chief executive of a State shall submit to the Attorney General an application, in such form and containing such information as the Attorney General may reasonably require, which shall include a certification that the State has convicted an individual of murder, rape, or a dangerous sexual offense, who has a prior conviction for one of those offenses in another State.

(e) SOURCE OF FUNDS.—

(1) IN GENERAL.—Any amount transferred under subsection (c) shall be derived by reducing the amount of Federal law enforcement assistance funds received by the State that convicted such individual of the prior offense before the distribution of the funds to the State. The Attorney General shall provide the State with an opportunity to select the specific Federal law enforcement assistance funds to be so reduced (other than Federal crime victim assistance funds).

(2) PAYMENT SCHEDULE.—The Attorney General, in consultation with the chief executive of the State that convicted such individual of the prior offense, shall establish a payment schedule.

(f) CONSTRUCTION.—Nothing in this section may be construed to diminish or otherwise affect any court ordered restitution.

(g) EXCEPTION.—This section does not apply if the individual convicted of murder, rape, or a dangerous sexual offense has been released from prison upon the reversal of a conviction for an offense described in subsection (c) and subsequently been convicted for an offense described in subsection (c).

(h) REPORT.—The Attorney General shall—

- (1) conduct a study evaluating the implementation of this section; and
- (2) not later than October 1, 2006, submit to Congress a report on the results of that study.

(i) COLLECTION OF RECIDIVISM DATA.—

(1) IN GENERAL.—Beginning with calendar year 2002, and each calendar year thereafter, the Attorney General shall collect and maintain information relating to, with respect to each State—

(A) the number of convictions during that calendar year for—

- (i) any dangerous sexual offense;
- (ii) rape; and
- (iii) murder; and

(B) the number of convictions described in subparagraph (A) that constitute second or subsequent convictions of the defendant of an offense described in that subparagraph.

(2) REPORT.—Not later than March 1, 2003, and on March 1 of each year thereafter, the Attorney General shall submit to Congress a report, which shall include—

- (A) the information collected under paragraph (1) with respect to each State during the preceding calendar year; and

(B) the percentage of cases in each State in which an individual convicted of an offense described in paragraph (1)(A) was previously convicted of another such offense in another State during the preceding calendar year.

(j) EFFECTIVE DATE.—This section shall take effect on January 1, 2002.

SEC. 2002. PAYMENT OF CERTAIN ANTI-TERRORISM JUDGMENTS.

(a) PAYMENTS.—

(1) IN GENERAL.—Subject to subsections (b) and (c), the Secretary of the Treasury shall pay each person described in paragraph (2), at the person's election—

(A) 110 percent of compensatory damages awarded by judgment of a court on a claim or claims brought by the person under section 1605(a)(7) of title 28, United States Code, plus amounts necessary to pay post-judgment interest under section 1961 of such title, and, in the case of a claim or claims against Cuba, amounts awarded as sanctions by judicial order on April 18, 2000 (as corrected on June 2, 2000), subject to final appellate review of that order; or

(B) 100 percent of the compensatory damages awarded by judgment of a court on a claim or claims brought by the person under section 1605(a)(7) of title 28, United States Code, plus amounts necessary to pay post-judgment interest, as provided in section 1961 of such title, and, in the case of a claim or claims against Cuba, amounts awarded as sanctions by judicial order on April 18, 2000 (as corrected June 2, 2000), subject to final appellate review of that order.

Payments under this subsection shall be made promptly upon request.

(2) PERSONS COVERED.—A person described in this paragraph is a person who—

(A)(i) as of July 20, 2000, held a final judgment for a claim or claims brought under section 1605(a)(7) of title 28, United States Code, against Iran or Cuba, or the right to payment of an amount awarded as a judicial sanction with respect to such claim or claims; or

(ii) filed a suit under such section 1605(a)(7) on February 17, 1999, December 13, 1999, January 28, 2000, March 15, 2000, or July 27, 2000;

(B) relinquishes all claims and rights to compensatory damages and amounts awarded as judicial sanctions under such judgments;

(C) in the case of payment under paragraph (1)(A), relinquishes all rights and claims to punitive damages awarded in connection with such claim or claims; and

(D) in the case of payment under paragraph (1)(B), relinquishes all rights to execute against or attach property that is at issue in claims against the United States before an international tribunal, that is the subject of awards rendered by such tribunal, or that is subject to section 1610(f)(1) (A) of title 28, United States Code.

(b) FUNDING OF AMOUNTS.—

(1) JUDGMENTS AGAINST CUBA.—For purposes of funding the payments under subsection (a) in the case of judgments and sanctions entered against the Government of Cuba or Cuban entities, the President shall vest and liquidate up to and not exceeding the amount of property of the Government of Cuba and sanctioned entities in the United States or any commonwealth,

territory, or possession thereof that has been blocked pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, or regulation issued thereunder. For the purposes of paying amounts for judicial sanctions, payment shall be made from funds or accounts subject to sanctions as of April 18, 2000, or from blocked assets of the Government of Cuba.

(2) JUDGMENTS AGAINST IRAN.—For purposes of funding payments under subsection (a) in the case of judgments against Iran, the Secretary of the Treasury shall make such payments from amounts paid and liquidated from—

(A) rental proceeds accrued on the date of the enactment of this Act from Iranian diplomatic and consular property located in the United States; and

(B) funds not otherwise made available in an amount not to exceed the total of the amount in the Iran Foreign Military Sales Program account within the Foreign Military Sales Fund on the date of the enactment of this Act.

(c) SUBROGATION.—Upon payment under subsection (a) with respect to payments in connection with a Foreign Military Sales Program account, the United States shall be fully subrogated, to the extent of the payments, to all rights of the person paid under that subsection against the debtor foreign state. The President shall pursue these subrogated rights as claims or offsets of the United States in appropriate ways, including any negotiation process which precedes the normalization of relations between the foreign state designated as a state sponsor of terrorism and the United States, except that no funds shall be paid to Iran, or released to Iran, from property blocked under the International Emergency Economic Powers Act or from the Foreign Military Sales Fund, until such subrogated claims have been dealt with to the satisfaction of the United States.

(d) SENSE OF THE CONGRESS.—It is the sense of the Congress that the President should not normalize relations between the United States and Iran until the claims subrogated have been dealt with to the satisfaction of the United States.

(e) REAFFIRMATION OF AUTHORITY.—Congress reaffirms the President's statutory authority to manage and, where appropriate and consistent with the national interest, vest foreign assets located in the United States for the purposes, among other things, of assisting and, where appropriate, making payments to victims of terrorism.

<< 28 USCA § 1610 >>

(f) AMENDMENTS.—(1) Section 1610(f) of title 28, United States Code, is amended—

(A) in paragraphs (2)(A) and (2)(B)(ii), by striking “shall” each place it appears and inserting “should make every effort to”; and

(B) by adding at the end the following new paragraph:

“(3) WAIVER.—The President may waive any provision of paragraph (1) in the interest of national security.”.

<< 28 USCA § 1606 >>

<< 28 USCA § 1610 NOTE >>

(2) Subsections (b) and (d) of section 117 of the Treasury Department Appropriations Act, 1999 (as contained in section 101(h) of Public Law 105-277) are repealed.

SEC. 2003. AID FOR VICTIMS OF TERRORISM.

<< 42 USCA § 10603b >>

(a) MEETING THE NEEDS OF VICTIMS OF TERRORISM OUTSIDE THE UNITED STATES.—

(1) IN GENERAL.—Section 1404B(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(a)) is amended as follows:

“(a) VICTIMS OF ACTS OF TERRORISM OUTSIDE UNITED STATES.—

“(1) IN GENERAL.—The Director may make supplemental grants as provided in 1402(d)(5) to States, victim service organizations, and public agencies (including Federal, State, or local governments) and nongovernmental organizations that provide assistance to victims of crime, which shall be used to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, and ongoing assistance, including during any investigation or prosecution, to victims of terrorist acts or mass violence occurring outside the United States who are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

“(2) VICTIM DEFINED.—In this subsection, the term ‘victim’—

“(A) means a person who is a national of the United States or an officer or employee of the United States Government who is injured or killed as a result of a terrorist act or mass violence occurring outside the United States; and

“(B) in the case of a person described in subparagraph (A) who is less than 18 years of age, incompetent, incapacitated, or deceased, includes a family member or legal guardian of that person.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to allow the Director to make grants to any foreign power (as defined by section 101(a) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(a)) or to any domestic or foreign organization operated for the purpose of engaging in any significant political or lobbying activities.”.

<< 42 USCA § 10603b NOTE >>

(2) **APPLICABILITY.**—The amendment made by this subsection shall apply to any terrorist act or mass violence occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing after April 24, 1996.

<< 42 USCA § 10603b NOTE >>

(3) **ADMINISTRATIVE PROVISION.**—Not later than 90 days after the date of the enactment of this Act, the Director shall establish guidelines under section 1407(a) of the Victims of Crime Act of 1984 (42 U.S.C. 10604(a)) to specify the categories of organizations and agencies to which the Director may make grants under this subsection.

<< 42 USCA § 10603b >>

(4) **TECHNICAL AMENDMENT.**—Section 1404B(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10603b(b)) is amended by striking “1404(d)(4)(B)” and inserting “1402(d)(5)”.

<< 42 USCA § 10601 >>

(b) **AMENDMENTS TO EMERGENCY RESERVE FUND.**—

(1) **CAP INCREASE.**—Section 1402(d)(5)(A) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(5)(A)) is amended by striking “\$50,000,000” and inserting “\$100,000,000”.

(2) **TRANSFER.**—Section 1402(e) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(e)) is amended by striking “in excess of \$500,000” and all that follows through “than \$500,000” and inserting “shall be available for deposit into the emergency reserve fund referred to in subsection (d)(5) at the discretion of the Director. Any remaining unobligated sums”.

<< 42 USCA § 10603c >>

(c) **COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.**—

(1) **IN GENERAL.**—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404B the following:

“SEC. 1404C. COMPENSATION TO VICTIMS OF INTERNATIONAL TERRORISM.

“(a) **DEFINITIONS.**—In this section:

“(1) **INTERNATIONAL TERRORISM.**—The term ‘international terrorism’ has the meaning given the term in section 2331 of title 18, United States Code.

“(2) **NATIONAL OF THE UNITED STATES.**—The term ‘national of the United States’ has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

“(3) **VICTIM.**—

“(A) **IN GENERAL.**—The term ‘victim’ means a person who—

“(i) suffered direct physical or emotional injury or death as a result of international terrorism occurring on or after December 21, 1988 with respect to which an investigation or prosecution was ongoing after April 24, 1996; and

“(ii) as of the date on which the international terrorism occurred, was a national of the United States or an officer or employee of the United States Government.

“(B) INCOMPETENT, INCAPACITATED, OR DECEASED VICTIMS.—In the case of a victim who is less than 18 years of age, incompetent, incapacitated, or deceased, a family member or legal guardian of the victim may receive the compensation under this section on behalf of the victim.

“(C) EXCEPTION.—Notwithstanding any other provision of this section, in no event shall an individual who is criminally culpable for the terrorist act or mass violence receive any compensation under this section, either directly or on behalf of a victim.

“(b) AWARD OF COMPENSATION.—The Director may use the emergency reserve referred to in section 1402(d)(5)(A) to carry out a program to compensate victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization.

“(c) ANNUAL REPORT.—The Director shall annually submit to Congress a report on the status and activities of the program under this section, which report shall include—

“(1) an explanation of the procedures for filing and processing of applications for compensation;

“(2) a description of the procedures and policies instituted to promote public awareness about the program;

“(3) a complete statistical analysis of the victims assisted under the program, including—

“(A) the number of applications for compensation submitted;

“(B) the number of applications approved and the amount of each award;

“(C) the number of applications denied and the reasons for the denial;

“(D) the average length of time to process an application for compensation; and

“(E) the number of applications for compensation pending and the estimated future liability of the program; and

“(4) an analysis of future program needs and suggested program improvements.”

<< 42 USCA § 10601 >>

(2) CONFORMING AMENDMENT.—Section 1402(d)(5)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(5)(B)) is amended by inserting “, to provide compensation to victims of international terrorism under the program under section 1404C,” after “section 1404B”.

<< 42 USCA § 10601 >>

(d) AMENDMENTS TO VICTIMS OF CRIME FUND.—Section 1402(c) of the Victims of Crime Act 1984 (42 U.S.C. 10601(c)) is amended by adding at the end the following: “Notwithstanding section 1402(d)(5), all sums deposited in the Fund in any fiscal year that are not

made available for obligation by Congress in the subsequent fiscal year shall remain in the Fund for obligation in future fiscal years, without fiscal year limitation.”.

SEC. 2004. TWENTY–FIRST AMENDMENT ENFORCEMENT.

(a) SHIPMENT OF INTOXICATING LIQUOR IN VIOLATION OF STATE LAW.—The Act entitled “An Act divesting intoxicating liquors of their interstate character in certain cases”, approved March 1, 1913 (commonly known as the “Webb–Kenyon Act”) (27 U.S.C. 122) is amended by adding at the end the following:

<< 27 USCA § 122a >>

“SEC. 2. INJUNCTIVE RELIEF IN FEDERAL DISTRICT COURT.

“(a) DEFINITIONS.—In this section—

“(1) the term ‘attorney general’ means the attorney general or other chief law enforcement officer of a State or the designee thereof;

“(2) the term ‘intoxicating liquor’ means any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind;

“(3) the term ‘person’ means any individual and any partnership, corporation, company, firm, society, association, joint stock company, trust, or other entity capable of holding a legal or beneficial interest in property, but does not include a State or agency thereof; and

“(4) the term ‘State’ means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

“(b) ACTION BY STATE ATTORNEY GENERAL.—If the attorney general has reasonable cause to believe that a person is engaged in, or has engaged in, any act that would constitute a violation of a State law regulating the importation or transportation of any intoxicating liquor, the attorney general may bring a civil action in accordance with this section for injunctive relief (including a preliminary or permanent injunction) against the person, as the attorney general determines to be necessary to—

“(1) restrain the person from engaging, or continuing to engage, in the violation; and

“(2) enforce compliance with the State law.

“(c) FEDERAL JURISDICTION.—

“(1) IN GENERAL.—The district courts of the United States shall have jurisdiction over any action brought under this section by an attorney general against any person, except one licensed or otherwise authorized to produce, sell, or store intoxicating liquor in such State.

“(2) VENUE.—An action under this section may be brought only in accordance with section 1391 of title 28, United States Code, or in the district in which the recipient of the intoxicating liquor resides or is found.

“(3) FORM OF RELIEF.—An action under this section is limited to actions seeking injunctive relief (a preliminary and/or permanent injunction).

“(4) NO RIGHT TO JURY TRIAL.—An action under this section shall be tried before the court.

“(d) REQUIREMENTS FOR INJUNCTIONS AND ORDERS.—

“(1) IN GENERAL.—In any action brought under this section, upon a proper showing by the attorney general of the State, the court may issue a preliminary or permanent injunction to restrain a violation of this section. A proper showing under this paragraph shall require that a State prove by a preponderance of the evidence that a violation of State law as described in subsection (b) has taken place or is taking place.

“(2) ADDITIONAL SHOWING FOR PRELIMINARY INJUNCTION.—No preliminary injunction may be granted except upon—

“(A) evidence demonstrating the probability of irreparable injury if injunctive relief is not granted; and

“(B) evidence supporting the probability of success on the merits.

“(3) NOTICE.—No preliminary or permanent injunction may be issued under paragraph (1) without notice to the adverse party and an opportunity for a hearing.

“(4) FORM AND SCOPE OF ORDER.—Any preliminary or permanent injunction entered in an action brought under this section shall—

“(A) set forth the reasons for the issuance of the order;

“(B) be specific in terms;

“(C) describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and

“(D) be binding upon—

“(i) the parties to the action and the officers, agents, employees, and attorneys of those parties; and

“(ii) persons in active concert or participation with the parties to the action who receive actual notice of the order by personal service or otherwise.

“(5) ADMISSIBILITY OF EVIDENCE.—In a hearing on an application for a permanent injunction, any evidence previously received on an application for a preliminary injunction in connection with the same civil action and that would otherwise be admissible, may be made a part of the record of the hearing on the permanent injunction.

“(e) RULES OF CONSTRUCTION.—This section shall be construed only to extend the jurisdiction of Federal courts in connection with State law that is a valid exercise of power vested in the States—

“(1) under the twenty-first article of amendment to the Constitution of the United States as such article of amendment is interpreted by the Supreme Court of the United States including interpretations in conjunction with other provisions of the Constitution of the United States; and

“(2) under the first section herein as such section is interpreted by the Supreme Court of the United States; but shall not be construed to grant to States any additional power.

“(f) ADDITIONAL REMEDIES.—

“(1) IN GENERAL.—A remedy under this section is in addition to any other remedies provided by law.

“(2) STATE COURT PROCEEDINGS.—Nothing in this section may be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any State law.

<< 22 USCA § 122b >>

“SEC. 3. GENERAL PROVISIONS.

“(a) EFFECT ON INTERNET TAX FREEDOM ACT.—Nothing in this section may be construed to modify or supersede the operation of the Internet Tax Freedom Act (47 U.S.C. 151 note).

“(b) INAPPLICABILITY TO SERVICE PROVIDERS.—Nothing in this section may be construed to—

“(1) authorize any injunction against an interactive computer service (as defined in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)) used by another person to engage in any activity that is subject to this Act;

“(2) authorize any injunction against an electronic communication service (as defined in section 2510(15) of title 18, United States Code) used by another person to engage in any activity that is subject to this Act; or

“(3) authorize an injunction prohibiting the advertising or marketing of any intoxicating liquor by any person in any case in which such advertising or marketing is lawful in the jurisdiction from which the importation, transportation or other conduct to which this Act applies originates.”.

<< 22 USCA § 122a NOTE >>


(b) EFFECTIVE DATE.—This section and the amendments made by this section shall become effective 90 days after the date of the enactment of this Act.

<< 22 USCA § 122a NOTE >>

(c) STUDY.—The Attorney General shall carry out the study to determine the impact of this section and shall submit the results of such study not later than 180 days after the enactment of this Act.

Approved October 28, 2000.

PL 106–386, 2000 HR 3244

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 46. Forfeiture (Refs & Annos)

18 U.S.C.A. § 981

§ 981. Civil forfeiture

Effective: October 5, 2012

[Currentness](#)

(a)(1) The following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of [section 1956](#), [1957](#) or [1960](#) of this title, or any property traceable to such property.

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such an offense, if the offense--

(i) involves trafficking in nuclear, chemical, biological, or radiological weapons technology or material, or the manufacture, importation, sale, or distribution of a controlled substance (as that term is defined for purposes of the Controlled Substances Act), or any other conduct described in [section 1956\(c\)\(7\)\(B\)](#);

(ii) would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding 1 year; and

(iii) would be punishable under the laws of the United States by imprisonment for a term exceeding 1 year, if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

(C) Any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of [section 215](#), [471](#), [472](#), [473](#), [474](#), [476](#), [477](#), [478](#), [479](#), [480](#), [481](#), [485](#), [486](#), [487](#), [488](#), [501](#), [502](#), [510](#), [542](#), [545](#), [656](#), [657](#), [670](#), [842](#), [844](#), [1005](#), [1006](#), [1007](#), [1014](#), [1028](#), [1029](#), [1030](#), [1032](#), or [1344](#) of this title or any offense constituting “specified unlawful activity” (as defined in [section 1956\(c\)\(7\)](#) of this title), or a conspiracy to commit such offense.

(D) Any property, real or personal, which represents or is traceable to the gross receipts obtained, directly or indirectly, from a violation of--

(i) [section 666\(a\)\(1\)](#) (relating to Federal program fraud);

(ii) [section 1001](#) (relating to fraud and false statements);

(iii) [section 1031](#) (relating to major fraud against the United States);

(iv) [section 1032](#) (relating to concealment of assets from conservator or receiver of insured financial institution);

(v) [section 1341](#) (relating to mail fraud); or

(vi) [section 1343](#) (relating to wire fraud),

if such violation relates to the sale of assets acquired or held by the the¹ Federal Deposit Insurance Corporation, as conservator or receiver for a financial institution, or any other conservator for a financial institution appointed by the Office of the Comptroller of the Currency or the National Credit Union Administration, as conservator or liquidating agent for a financial institution.

(E) With respect to an offense listed in subsection (a)(1)(D) committed for the purpose of executing or attempting to execute any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent statements, pretenses, representations or promises,

the gross receipts of such an offense shall include all property, real or personal, tangible or intangible, which thereby is obtained, directly or indirectly.

(F) Any property, real or personal, which represents or is traceable to the gross proceeds obtained, directly or indirectly, from a violation of--

(i) [section 511](#) (altering or removing motor vehicle identification numbers);

(ii) [section 553](#) (importing or exporting stolen motor vehicles);

(iii) [section 2119](#) (armed robbery of automobiles);

(iv) [section 2312](#) (transporting stolen motor vehicles in interstate commerce); or

(v) [section 2313](#) (possessing or selling a stolen motor vehicle that has moved in interstate commerce).

(G) All assets, foreign or domestic--

(i) of any individual, entity, or organization engaged in planning or perpetrating any any² Federal crime of terrorism (as defined in [section 2332b\(g\)\(5\)](#)) against the United States, citizens or residents of the United States, or their property, and all assets, foreign or domestic, affording any person a source of influence over any such entity or organization;

(ii) acquired or maintained by any person with the intent and for the purpose of supporting, planning, conducting, or concealing any Federal crime of terrorism (as defined in [section 2332b\(g\)\(5\)](#)³ against the United States, citizens or residents of the United States, or their property;

(iii) derived from, involved in, or used or intended to be used to commit any Federal crime of terrorism (as defined in [section 2332b\(g\)\(5\)](#)) against the United States, citizens or residents of the United States, or their property; or

(iv) of any individual, entity, or organization engaged in planning or perpetrating any act of international terrorism (as defined in [section 2331](#)) against any international organization (as defined in section 209 of the State Department Basic Authorities Act of 1956 ([22 U.S.C. 4309\(b\)](#))) or against any foreign Government. Where the property sought for forfeiture is located beyond the territorial boundaries of the United States, an act in furtherance of such planning or perpetration must have occurred within the jurisdiction of the United States.

(H) Any property, real or personal, involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a violation, of [section 2339C](#) of this title.

(2) For purposes of paragraph (1), the term “proceeds” is defined as follows:

(A) In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

(B) In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term “proceeds” means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

(C) In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim.

(b)(1) Except as provided in [section 985](#), any property subject to forfeiture to the United States under subsection (a) may be seized by the Attorney General and, in the case of property involved in a violation investigated by the Secretary of the Treasury or the United States Postal Service, the property may also be seized by the Secretary of the Treasury or the Postal Service, respectively.

(2) Seizures pursuant to this section shall be made pursuant to a warrant obtained in the same manner as provided for a search warrant under the Federal Rules of Criminal Procedure, except that a seizure may be made without a warrant if--

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and--

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

(3) Notwithstanding the provisions of [rule 41\(a\) of the Federal Rules of Criminal Procedure](#), a seizure warrant may be issued pursuant to this subsection by a judicial officer in any district in which a forfeiture action against the property may be filed under [section 1355\(b\) of title 28](#), and may be executed in any district in which the property is found, or transmitted to the central authority of any foreign state for service in accordance with any treaty or other international agreement. Any motion for the return of property seized under this section shall be filed in the district court in which the seizure warrant was issued or in the district court for the district in which the property was seized.

(4)(A) If any person is arrested or charged in a foreign country in connection with an offense that would give rise to the forfeiture of property in the United States under this section or under the Controlled Substances Act, the Attorney General may apply to any Federal judge or magistrate judge in the district in which the property is located for an ex parte order restraining the property subject to forfeiture for not more than 30 days, except that the time may be extended for good cause shown at a hearing conducted in the manner provided in [rule 43\(e\) of the Federal Rules of Civil Procedure](#).

(B) The application for the restraining order shall set forth the nature and circumstances of the foreign charges and the basis for belief that the person arrested or charged has property in the United States that would be subject to forfeiture, and shall contain a statement that the restraining order is needed to preserve the availability of property for such time as is necessary to receive evidence from the foreign country or elsewhere in support of probable cause for the seizure of the property under this subsection.

(c) Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under this subsection, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, may--

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) For purposes of this section, the provisions of the customs laws relating to the seizure, summary and judicial forfeiture, condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale of such property under this section, the remission or mitigation of such forfeitures, and the compromise of claims ([19 U.S.C. 1602 et seq.](#)), insofar as they are applicable and not inconsistent with the provisions of this section, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be. The Attorney General shall have sole responsibility for disposing of petitions for remission or mitigation with respect to property involved in a judicial forfeiture proceeding.

(e) Notwithstanding any other provision of the law, except section 3 of the Anti Drug Abuse Act of 1986, the Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, is authorized to retain property forfeited pursuant to this section, or to transfer such property on such terms and conditions as he may determine--

(1) to any other Federal agency;

(2) to any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property;

(3) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency--

(A) to reimburse the agency for payments to claimants or creditors of the institution; and

(B) to reimburse the insurance fund of the agency for losses suffered by the fund as a result of the receivership or liquidation;

(4) in the case of property referred to in subsection (a)(1)(C), upon the order of the appropriate Federal financial institution regulatory agency, to the financial institution as restitution, with the value of the property so transferred to be set off against any amount later recovered by the financial institution as compensatory damages in any State or Federal proceeding;

(5) in the case of property referred to in subsection (a)(1)(C), to any Federal financial institution regulatory agency, to the extent of the agency's contribution of resources to, or expenses involved in, the seizure and forfeiture, and the investigation leading directly to the seizure and forfeiture, of such property;

(6) as restoration to any victim of the offense giving rise to the forfeiture, including, in the case of a money laundering offense, any offense constituting the underlying specified unlawful activity; or

(7) In⁴ the case of property referred to in subsection (a)(1)(D), to the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, or any other Federal financial institution regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act).

The Attorney General, the Secretary of the Treasury, or the Postal Service, as the case may be, shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General, the Secretary of the Treasury, or the Postal Service pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency. The Attorney General, the Secretary of the Treasury, or the Postal Service may order the discontinuance of any forfeiture proceedings under this section in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this section, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials. Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials. The United States shall not be liable in any action arising out of a transfer under paragraph (3), (4), or (5) of this subsection.

(f) All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(g)(1) Upon the motion of the United States, the court shall stay the civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the Government to conduct a related criminal investigation or the prosecution of a related criminal case.

(2) Upon the motion of a claimant, the court shall stay the civil forfeiture proceeding with respect to that claimant if the court determines that--

(A) the claimant is the subject of a related criminal investigation or case;

(B) the claimant has standing to assert a claim in the civil forfeiture proceeding; and

(C) continuation of the forfeiture proceeding will burden the right of the claimant against self-incrimination in the related investigation or case.

(3) With respect to the impact of civil discovery described in paragraphs (1) and (2), the court may determine that a stay is unnecessary if a protective order limiting discovery would protect the interest of one party without unfairly limiting the ability of the opposing party to pursue the civil case. In no case, however, shall the court impose a protective order as an alternative to a stay if the effect of such protective order would be to allow one party to pursue discovery while the other party is substantially unable to do so.

(4) In this subsection, the terms “related criminal case” and “related criminal investigation” mean an actual prosecution or investigation in progress at the time at which the request for the stay, or any subsequent motion to lift the stay is made. In determining whether a criminal case or investigation is “related” to a civil forfeiture proceeding, the court shall consider the degree of similarity between the parties, witnesses, facts, and circumstances involved in the two proceedings, without requiring an identity with respect to any one or more factors.

(5) In requesting a stay under paragraph (1), the Government may, in appropriate cases, submit evidence ex parte in order to avoid disclosing any matter that may adversely affect an ongoing criminal investigation or pending criminal trial.

(6) Whenever a civil forfeiture proceeding is stayed pursuant to this subsection, the court shall enter any order necessary to preserve the value of the property or to protect the rights of lienholders or other persons with an interest in the property while the stay is in effect.

(7) A determination by the court that the claimant has standing to request a stay pursuant to paragraph (2) shall apply only to this subsection and shall not preclude the Government from objecting to the standing of the claimant by dispositive motion or at the time of trial.

(h) In addition to the venue provided for in [section 1395 of title 28](#) or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(i)(1) Whenever property is civilly or criminally forfeited under this chapter, the Attorney General or the Secretary of the Treasury, as the case may be, may transfer the forfeited personal property or the proceeds of the sale of any forfeited personal or real property to any foreign country which participated directly or indirectly in the seizure or forfeiture of the property, if such a transfer--

(A) has been agreed to by the Secretary of State;

(B) is authorized in an international agreement between the United States and the foreign country; and

(C) is made to a country which, if applicable, has been certified under section 481(h) of the Foreign Assistance Act of 1961.

A decision by the Attorney General or the Secretary of the Treasury pursuant to this paragraph shall not be subject to review. The foreign country shall, in the event of a transfer of property or proceeds of sale of property under this subsection, bear all expenses incurred by the United States in the seizure, maintenance, inventory, storage, forfeiture, and disposition of the property, and all transfer costs. The payment of all such expenses, and the transfer of assets pursuant to this paragraph, shall be upon such terms and conditions as the Attorney General or the Secretary of the Treasury may, in his discretion, set.

(2) The provisions of this section shall not be construed as limiting or superseding any other authority of the United States to provide assistance to a foreign country in obtaining property related to a crime committed in the foreign country, including property which is sought as evidence of a crime committed in the foreign country.

(3) A certified order or judgment of forfeiture by a court of competent jurisdiction of a foreign country concerning property which is the subject of forfeiture under this section and was determined by such court to be the type of property described in subsection (a)(1)(B) of this section,

and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of forfeiture, shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of forfeiture, when admitted into evidence, shall constitute probable cause that the property forfeited by such order or judgment of forfeiture is subject to forfeiture under this section and creates a rebuttable presumption of the forfeitability of such property under this section.

(4) A certified order or judgment of conviction by a court of competent jurisdiction of a foreign country concerning an unlawful drug activity which gives rise to forfeiture under this section and any certified recordings or transcripts of testimony taken in a foreign judicial proceeding concerning such order or judgment of conviction shall be admissible in evidence in a proceeding brought pursuant to this section. Such certified order or judgment of conviction, when admitted into evidence, creates a rebuttable presumption that the unlawful drug activity giving rise to forfeiture under this section has occurred.

(5) The provisions of paragraphs (3) and (4) of this subsection shall not be construed as limiting the admissibility of any evidence otherwise admissible, nor shall they limit the ability of the United States to establish probable cause that property is subject to forfeiture by any evidence otherwise admissible.

(j) For purposes of this section--

(1) the term “Attorney General” means the Attorney General or his delegate; and

(2) the term “Secretary of the Treasury” means the Secretary of the Treasury or his delegate.

(k) Interbank accounts.--

(1) In general.--

(A) In general.--For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title), and that foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) has an interbank account in the

United States with a covered financial institution (as defined in [section 5318\(j\)\(1\) of title 31](#)), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title), may be restrained, seized, or arrested.

(B) Authority to suspend.--The Attorney General, in consultation with the Secretary of the Treasury, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) No requirement for Government to trace funds.--If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), it shall not be necessary for the Government to establish that the funds are directly traceable to the funds that were deposited into the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title), nor shall it be necessary for the Government to rely on the application of [section 984](#).

(3) Claims brought by owner of the funds.--If a forfeiture action is instituted against funds restrained, seized, or arrested under paragraph (1), the owner of the funds deposited into the account at the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) may contest the forfeiture by filing a claim under [section 983](#).

(4) Definitions.--For purposes of this subsection, the following definitions shall apply:

(A) Interbank account.--The term “interbank account” has the same meaning as in [section 984\(c\)\(2\)\(B\)](#).

(B) Owner.--

(i) In general.--Except as provided in clause (ii), the term “owner”--

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) at the time such funds were deposited; and

(II) does not include either the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) Exception.--The foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) may be considered the “owner” of the funds (and no other person shall qualify as the owner of such funds) only if--

(I) the basis for the forfeiture action is wrongdoing committed by the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title); or

(II) the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign financial institution (as defined in [section 984\(c\)\(2\)\(A\)](#) of this title) shall be deemed the owner of the funds to the extent of such discharged obligation.

CREDIT(S)

(Added [Pub.L. 99-570, Title I, § 1366\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-35; amended [Pub.L. 100-690, Title VI, §§ 6463\(a\), \(b\)](#), 6469(b), 6470(b), (e), (f), 6471(c), Nov. 18, 1988, 102 Stat. 4374, 4377, 4378; [Pub.L. 101-73, Title IX, § 963\(a\), \(b\)](#), Aug. 9, 1989, 103 Stat. 504; [Pub.L. 101-647, Title I, § 103, Title XXV, §§ 2508, 2524, 2525\(a\)](#), Title XXXV, § 3531, Nov. 29, 1990, 104 Stat. 4791, 4862, 4873, 4874, 4924; [Pub.L. 102-393, Title VI, § 638\(d\)](#), Oct. 6, 1992, 106 Stat. 1788; [Pub.L. 102-519, Title I, § 104\(a\)](#), Oct. 25, 1992, 106 Stat. 3385; [Pub.L. 102-550, Title XV, §§ 1525\(c\)\(1\)](#), 1533, Oct. 28, 1992, 106 Stat. 4065, 4066; [Pub.L. 103-322, Title XXXIII, § 330011\(s\)\(2\)](#), Sept. 13, 1994, 108 Stat. 2146; [Pub.L. 103-447, Title I, § 102\(b\)](#), Nov. 2, 1994, 108 Stat. 4693; [Pub.L. 106-185, §§ 2\(c\)\(1\), 5\(a\), 6, 8\(a\), 20](#), Apr. 25, 2000, 114 Stat. 210, 213 to 215, 224; [Pub.L. 107-56, Title III, §§ 319\(a\)](#), 320, 372(b)(1), 373(b), Title VIII, § 806, Oct. 26, 2001, 115 Stat. 311, 315, 339, 340, 378; [Pub.L. 107-197, Title III, § 301\(d\)](#), June 25, 2002, 116 Stat. 728; [Pub.L. 107-273, Div. B, Title IV, § 4002\(a\)\(2\)](#), Nov. 2, 2002, 116 Stat. 1806; [Pub.L. 109-177, Title I, §§ 111, 120](#), Title IV, §§ 404, 406(a)(3), Mar. 9, 2006, 120 Stat. 209, 221, 244;

Pub.L. 111-203, Title III, § 377(3), July 21, 2010, 124 Stat. 1569; Pub.L. 112-186, § 3, Oct. 5, 2012, 126 Stat. 1428.)


Notes of Decisions (287)

Footnotes

- 1 So in original.
- 2 So in original. The second “any” probably should not appear.
- 3 So in original. A closing parenthesis probably should appear.
- 4 So in original. Probably should not be capitalized.

18 U.S.C.A. § 981, 18 USCA § 981

Current through P.L. 113-36 approved 9-18-13

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

United States Code Annotated
Title 18. Crimes and Criminal Procedure (Refs & Annos)
Part I. Crimes (Refs & Annos)
Chapter 95. Racketeering (Refs & Annos)

18 U.S.C.A. § 1956

§ 1956. Laundering of monetary instruments

Effective: June 5, 2012

[Currentness](#)

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity--

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of [section 7201](#) or [7206 of the Internal Revenue Code](#) of 1986; or

(B) knowing that the transaction is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions,

any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States--

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part--

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than \$500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent--

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) Penalties.--

(1) In general.--Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or [section 1957](#), or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of--

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) \$10,000.

(2) Jurisdiction over foreign persons.--For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and--

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.

(3) Court authority over assets.--A court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(4) Federal receiver.--

(A) In general.--A court may appoint a Federal Receiver, in accordance with subparagraph (B) of this paragraph, to collect, marshal, and take custody, control, and possession of all assets of the defendant, wherever located, to satisfy a civil judgment under this subsection, a forfeiture judgment under [section 981](#) or [982](#), or a criminal sentence under [section 1957](#) or [subsection \(a\)](#) of this section, including an order of restitution to any victim of a specified unlawful activity.

(B) Appointment and authority.--A Federal Receiver described in subparagraph (A)--

(i) may be appointed upon application of a Federal prosecutor or a Federal or State regulator, by the court having jurisdiction over the defendant in the case;

(ii) shall be an officer of the court, and the powers of the Federal Receiver shall include the powers set out in [section 754 of title 28, United States Code](#); and

(iii) shall have standing equivalent to that of a Federal prosecutor for the purpose of submitting requests to obtain information regarding the assets of the defendant--

(I) from the Financial Crimes Enforcement Network of the Department of the Treasury;
or

(II) from a foreign country pursuant to a mutual legal assistance treaty, multilateral agreement, or other arrangement for international law enforcement assistance, provided that such requests are in accordance with the policies and procedures of the Attorney General.

(c) As used in this section--

(1) the term “knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity” means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under State, Federal, or foreign law, regardless of whether or not such activity is specified in paragraph (7);

(2) the term “conducts” includes initiating, concluding, or participating in initiating, or concluding a transaction;

(3) the term “transaction” includes a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected;

(4) the term “financial transaction” means (A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;

(5) the term “monetary instruments” means (i) coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, and money orders, or (ii) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery;

(6) the term “financial institution” includes--

(A) any financial institution, as defined in [section 5312\(a\)\(2\) of title 31, United States Code](#), or the regulations promulgated thereunder; and

(B) any foreign bank, as defined in [section 1](#)¹ of the International Banking Act of 1978 (12 U.S.C. 3101);

(7) the term “specified unlawful activity” means--

(A) any act or activity constituting an offense listed in [section 1961\(1\)](#) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving--

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in [section 16](#));

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));²

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving--

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act ([22 U.S.C. 2778](#)); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730-774);

(vi) an offense with respect to which the United States would be obligated by a multilateral treaty, either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States; or

(vii) trafficking in persons, selling or buying of children, sexual exploitation of children, or transporting, recruiting or harboring a person, including a child, for commercial sex acts;

(C) any act or acts constituting a continuing criminal enterprise, as that term is defined in section 408 of the Controlled Substances Act (21 U.S.C. 848);

(D) an offense under [section 32](#) (relating to the destruction of aircraft), [section 37](#) (relating to violence at international airports), [section 115](#) (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), [section 152](#) (relating to concealment of assets; false oaths and claims; bribery), [section 175c](#) (relating to the variola virus), [section 215](#) (relating to commissions or gifts for procuring loans), [section 351](#) (relating to congressional or Cabinet officer assassination), any of [sections 500](#) through [503](#) (relating to certain counterfeiting offenses), [section 513](#) (relating to securities of States and private entities), [section 541](#) (relating to goods falsely classified), [section 542](#) (relating to entry of goods by means of false statements), [section 545](#) (relating to smuggling goods into the United States), [section 549](#) (relating to removing goods from Customs custody), [section 554](#) (relating to smuggling goods from the United States), [section 555](#) (relating to border tunnels), [section 641](#) (relating to public money, property, or records), [section 656](#) (relating to theft, embezzlement, or misapplication by bank officer or employee), [section 657](#) (relating to lending, credit, and insurance institutions), [section 658](#) (relating to property mortgaged or pledged to farm credit agencies), [section 666](#) (relating to theft or bribery concerning programs receiving Federal funds), [section 793](#), [794](#), or [798](#) (relating to espionage), [section 831](#) (relating to prohibited transactions involving nuclear materials), [section 844\(f\)](#) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), [section 875](#) (relating to interstate communications), [section 922\(1\)](#) (relating to the unlawful importation of firearms), [section 924\(n\)](#) (relating to firearms trafficking), [section 956](#) (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country), [section 1005](#) (relating to fraudulent bank entries), 1006³ (relating to fraudulent Federal credit institution entries), 1007³ (relating to fraudulent Federal Deposit Insurance transactions), 1014³ (relating to fraudulent loan or credit applications), [section 1030](#) (relating to computer fraud and abuse), 1032³ (relating to concealment of assets

from conservator, receiver, or liquidating agent of financial institution), [section 1111](#) (relating to murder), [section 1114](#) (relating to murder of United States law enforcement officials), [section 1116](#) (relating to murder of foreign officials, official guests, or internationally protected persons), [section 1201](#) (relating to kidnaping), [section 1203](#) (relating to hostage taking), [section 1361](#) (relating to willful injury of Government property), [section 1363](#) (relating to destruction of property within the special maritime and territorial jurisdiction), [section 1708](#) (theft from the mail), [section 1751](#) (relating to Presidential assassination), [section 2113](#) or [2114](#) (relating to bank and postal robbery and theft), [section 2252A](#) (relating to child pornography) where the child pornography contains a visual depiction of an actual minor engaging in sexually explicit conduct, [section 2260](#) (production of certain child pornography for importation into the United States), [section 2280](#) (relating to violence against maritime navigation), [section 2281](#) (relating to violence against maritime fixed platforms), [section 2319](#) (relating to copyright infringement), [section 2320](#) (relating to trafficking in counterfeit goods and services), [section 2332](#) (relating to terrorist acts abroad against United States nationals), [section 2332a](#) (relating to use of weapons of mass destruction), [section 2332b](#) (relating to international terrorist acts transcending national boundaries), [section 2332g](#) (relating to missile systems designed to destroy aircraft), [section 2332h](#) (relating to radiological dispersal devices), [section 2339A](#) or [2339B](#) (relating to providing material support to terrorists), [section 2339C](#) (relating to financing of terrorism), or [section 2339D](#) (relating to receiving military-type training from a foreign terrorist organization) of this title, [section 46502 of title 49, United States Code](#), a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 ([19 U.S.C. 1590](#)) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), [section 38\(c\)](#) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food and Nutrition Act of 2008 [[7 U.S.C.A. § 2024](#)] (relating to supplemental nutrition assistance program benefits fraud) involving a quantity of benefits having a value of not less than \$5,000, any violation of section 543(a)(1) of the Housing Act of 1949 [[42 U.S.C.A. § 1490s\(a\)\(1\)](#)] (relating to equity skimming), any felony violation of the Foreign Agents Registration Act of 1938, any felony violation of the Foreign Corrupt Practices Act, or section 92 of the Atomic Energy Act of 1954 ([42 U.S.C. 2122](#)) (relating to prohibitions governing atomic weapons)⁴

ENVIRONMENTAL CRIMES

(E) a felony violation of the Federal Water Pollution Control Act ([33 U.S.C. 1251 et seq.](#)), the Ocean Dumping Act ([33 U.S.C. 1401 et seq.](#)), the Act to Prevent Pollution from Ships ([33](#)

U.S.C. 1901 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or the Resources Conservation and Recovery Act (42 U.S.C. 6901 et seq.); or

(F) any act or activity constituting an offense involving a Federal health care offense;

(8) the term “State” includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(9) the term “proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

(d) Nothing in this section shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this section.

(e) Violations of this section may be investigated by such components of the Department of Justice as the Attorney General may direct, and by such components of the Department of the Treasury as the Secretary of the Treasury may direct, as appropriate, and, with respect to offenses over which the Department of Homeland Security has jurisdiction, by such components of the Department of Homeland Security as the Secretary of Homeland Security may direct, and, with respect to offenses over which the United States Postal Service has jurisdiction, by the Postal Service. Such authority of the Secretary of the Treasury, the Secretary of Homeland Security, and the Postal Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury, the Secretary of Homeland Security, the Postal Service, and the Attorney General. Violations of this section involving offenses described in paragraph (c)(7)(E) may be investigated by such components of the Department of Justice as the Attorney General may direct, and the National Enforcement Investigations Center of the Environmental Protection Agency.

(f) There is extraterritorial jurisdiction over the conduct prohibited by this section if--

(1) the conduct is by a United States citizen or, in the case of a non-United States citizen, the conduct occurs in part in the United States; and

(2) the transaction or series of related transactions involves funds or monetary instruments of a value exceeding \$10,000.

(g) Notice of conviction of financial institutions.--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, [section 1957](#) or [1960](#) of this title, or [section 5322](#) or [5324 of title 31](#), the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

(h) Any person who conspires to commit any offense defined in this section or [section 1957](#) shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

(i) Venue.--**(1)** Except as provided in paragraph (2), a prosecution for an offense under this section or [section 1957](#) may be brought in--

(A) any district in which the financial or monetary transaction is conducted; or

(B) any district where a prosecution for the underlying specified unlawful activity could be brought, if the defendant participated in the transfer of the proceeds of the specified unlawful activity from that district to the district where the financial or monetary transaction is conducted.

(2) A prosecution for an attempt or conspiracy offense under this section or [section 1957](#) may be brought in the district where venue would lie for the completed offense under paragraph (1), or in any other district where an act in furtherance of the attempt or conspiracy took place.

(3) For purposes of this section, a transfer of funds from 1 place to another, by wire or any other means, shall constitute a single, continuing transaction. Any person who conducts (as that term is defined in subsection (c)(2)) any portion of the transaction may be charged in any district in which the transaction takes place.

CREDIT(S)

(Added [Pub.L. 99-570, Title XIII, § 1352\(a\)](#), Oct. 27, 1986, 100 Stat. 3207-18; amended [Pub.L. 100-690, Title VI, §§ 6183](#), 6465, 6466, 6469(a)(1), 6471(a), (b), Title VII, § 7031, Nov. 18, 1988, 102 Stat. 4354, 4375, 4377, 4378, 4398; [Pub.L. 101-647, Title I, §§ 105](#) to 108, Title XII, § 1205(j), Title XIV, §§ 1402, 1404, Title XXV, § 2506, Title XXXV, § 3557, Nov. 29, 1990, 104 Stat. 4791, 4792, 4831, 4835, 4862, 4927; [Pub.L. 102-550, Title XV, §§ 1504\(c\)](#), 1524, 1526(a),

1527(a), 1530, 1531, 1534, 1536, Oct. 28, 1992, 106 Stat. 4055, 4064 to 4067; [Pub.L. 103-322, Title XXXII, § 320104\(b\)](#), [Title XXXIII, §§ 330008\(2\)](#), 330011(l), 330012, 330019, 330021(1), Sept. 13, 1994, 108 Stat. 2111, 2142, 2145, 2146, 2149, 2150; [Pub.L. 103-325, Title IV, §§ 411\(c\)\(2\)\(E\)](#), 413(c)(1), (d), Sept. 23, 1994, 108 Stat. 2253, 2254, 2255; [Pub.L. 104-132, Title VII, § 726](#), Apr. 24, 1996, 110 Stat. 1301; [Pub.L. 104-191, Title II, § 246](#), Aug. 21, 1996, 110 Stat. 2018; [Pub.L. 104-294, Title VI, §§ 601\(f\)\(6\)](#), 604(b)(38), Oct. 11, 1996, 110 Stat. 3499, 3509; [Pub.L. 106-569, Title VII, § 709\(a\)](#), Dec. 27, 2000, 114 Stat. 3018; [Pub.L. 107-56, Title III, §§ 315](#), 317, 318, 376, Title VIII, § 805(b), Title X, § 1004, Oct. 26, 2001, 115 Stat. 308, 310, 311, 342, 378, 392; [Pub.L. 107-273, Div. B, Title IV, § 4002\(a\)\(11\)](#), (b)(5), (c)(2), 4005(d)(1), (e), Nov. 2, 2002, 116 Stat. 1807, 1809, 1812, 1813; [Pub.L. 108-458, Title VI, § 6909](#), Dec. 17, 2004, 118 Stat. 3774; [Pub.L. 109-164, Title I, § 103\(b\)](#), Jan. 10, 2006, 119 Stat. 3563; [Pub.L. 109-177, Title III, § 311\(c\)](#), Title IV, §§ 403(b), (c)(1), 405, 406(a)(2), 409, Mar. 9, 2006, 120 Stat. 242, 243, 244, 246; [Pub.L. 110-234, Title IV, §§ 4002\(b\)\(1\)\(B\)](#), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), May 22, 2008, 122 Stat. 1096, 1097, 1109; [Pub.L. 110-246, § 4\(a\)](#), Title IV, §§ 4002(b)(1)(B), (D), (2)(M), 4115(c)(1)(A)(i), (B)(ii), June 18, 2008, 122 Stat. 1664, 1857, 1858, 1870; [Pub.L. 110-358, Title II, § 202](#), Oct. 8, 2008, 122 Stat. 4003; [Pub.L. 111-21, § 2\(f\)\(1\)](#), May 20, 2009, 123 Stat. 1618; [Pub.L. 112-127, § 6](#), June 5, 2012, 126 Stat. 371.)

[Notes of Decisions \(656\)](#)

Footnotes

- 1 So in original. Probably should read “[section 1\(b\)](#)”.
- 2 So in original. The second closing parenthesis probably should not appear.
- 3 So in original. Probably should be preceded by “section”.
- 4 So in original. Probably should have a semicolon at the end.

18 U.S.C.A. § 1956, 18 USCA § 1956

Current through P.L. 113-36 approved 9-18-13

- This bill is not active in this session.

S T A T E O F N E W Y O R K

2771

2007-2008 Regular Sessions

I N A S S E M B L Y

January 19, 2007

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AN ACT to amend the penal law, the civil practice law and rules, the criminal procedure law, the executive law and the social services law, in relation to criminalizing the trafficking of persons for labor servitude and sexual servitude and providing services for trafficked persons

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known and may be cited as the "anti-human
2 trafficking act of 2007".

3 S 1-a. The penal law is amended by adding a new article 136 to read as
4 follows:

5 ARTICLE 136

6 TRAFFICKING OF PERSONS FOR LABOR SERVITUDE AND SEXUAL SERVITUDE

7 SECTION 136.00 DEFINITIONS.

8 136.05 TRAFFICKING A PERSON FOR LABOR SERVITUDE.

9 136.10 TRAFFICKING A PERSON FOR SEXUAL SERVITUDE.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 136.12 TRAFFICKING A MINOR FOR SEXUAL SERVITUDE.

2 136.13 AGGRAVATED TRAFFICKING.

3 136.15 BENEFITING FROM TRAFFICKING.

4 136.20 PROMOTING SEX TOURISM.

- 5 136.25 ACCOMPLICE LIABILITY.
- 6 136.30 VICTIM PROSECUTION; DEFENSE.
- 7 136.35 RESTITUTION.
- 8 136.40 VICTIM ASSISTANCE.
- 9 136.45 ASSESSMENT OF VICTIM PROTECTION NEEDS.

10 S 136.00 DEFINITIONS.

11 FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE
12 FOLLOWING MEANINGS:

13 1. "ACTOR" MEANS A PERSON WHO VIOLATES ANY OF THE PROVISIONS OF THIS
14 ARTICLE.

15 2. "BLACKMAIL" MEANS THE EXTORTION OF MONEY, LABOR, COMMERCIAL SEXUAL
16 ACTIVITY, OR SOMETHING ELSE OF VALUE FROM A PERSON BY A THREAT TO EXPOSE
17 A SECRET OR PUBLICIZE AN ASSERTED FACT, WHETHER TRUE OR FALSE, THAT
18 WOULD TEND TO SUBJECT A PERSON TO HATRED, CONTEMPT, OR RIDICULE.

19 3. "FINANCIAL HARM" MEANS EXERTING FINANCIAL CONTROL OVER ANOTHER
20 PERSON BY MEANS OF CREDIT EXTORTION, IN VIOLATION OF ANY STATE LAWS
21 RELATING TO USURY, OR EMPLOYMENT CONTRACTS WHICH VIOLATE THE LABOR LAW
22 OR SECTION 2-201 OF THE UNIFORM COMMERCIAL CODE.

23 4. "DEBT BONDAGE" MEANS A CONDITION OR ARRANGEMENT IN WHICH A DEBTOR,
24 OR A PERSON UNDER THE DEBTOR'S CONTROL, IS REQUIRED TO PERFORM SERVICES
25 OR COMMERCIAL SEXUAL ACTIVITY AS A SECURITY FOR DEBT, IF THE VALUE OF
26 THOSE SERVICES AS REASONABLY ASSESSED IS NOT APPLIED TOWARD THE LIQUI-
27 DATION OF THE DEBT.

28 5. "LABOR SERVITUDE" MEANS LABOR THAT IS PERFORMED OR PROVIDED BY
29 ANOTHER PERSON AND IS INDUCED OR MAINTAINED THROUGH AN ACTOR'S CONDUCT
30 BY ONE OR MORE OF THE FOLLOWING MEANS:

31 (A) WITHHOLDING, DESTROYING, OR CONFISCATING ANY ACTUAL OR PURPORTED
32 PASSPORT, IMMIGRATION DOCUMENT, OR ANY OTHER ACTUAL OR PURPORTED GOVERN-
33 MENT IDENTIFICATION DOCUMENT, OF ANOTHER PERSON;

34 (B) ABUSING OR THREATENING TO ABUSE THE LAW OR LEGAL PROCESS;

35 (C) CAUSING OR THREATENING TO CAUSE HARM TO THE PHYSICAL HEALTH OR
36 SAFETY OF ANY PERSON;

37 (D) RESTRAINING THE PERSON AS DEFINED IN SUBDIVISION ONE OF SECTION
38 135.00 OF THIS TITLE;

39 (E) COERCING THE PERSON AS DEFINED IN SECTION 135.60 OF THIS TITLE;

40 (F) PROVIDING A NARCOTIC OR INTOXICATING SUBSTANCE TO THE PERSON WITH
41 THE INTENT TO IMPAIR THE PERSON'S JUDGMENT OR TO MAINTAIN A STATE OF
42 CHEMICAL DEPENDENCE;

43 (G) WRONGFULLY TAKING, OBTAINING, OR WITHHOLDING PROPERTY;

44 (H) DECEPTION OR FRAUD;

45 (I) BLACKMAIL;

46 (J) DEBT BONDAGE; OR

47 (K) CAUSING OR THREATENING TO CAUSE DEATH OR PHYSICAL INJURY TO ANY
48 PERSON.

49 6. "SEXUAL SERVITUDE" MEANS COMMERCIAL SEXUAL ACTIVITY THAT IS
50 PERFORMED OR PROVIDED BY ANOTHER PERSON AND IS INDUCED OR MAINTAINED
51 THROUGH AN ACTOR'S CONDUCT BY ONE OR MORE OF THE FOLLOWING MEANS:

52 (A) WITHHOLDING, DESTROYING, OR CONFISCATING ANY ACTUAL OR PURPORTED
53 PASSPORT, IMMIGRATION DOCUMENT, OR ANY OTHER ACTUAL OR PURPORTED GOVERN-
54 MENT IDENTIFICATION DOCUMENT, OF ANOTHER PERSON;

55 (B) ABUSING OR THREATENING TO ABUSE THE LAW OR LEGAL PROCESS;

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1 (C) CAUSING OR THREATENING TO CAUSE HARM TO THE PHYSICAL, MENTAL OR
2 EMOTIONAL HEALTH OR SAFETY OF ANY PERSON;

3 (D) RESTRAINING THE PERSON, AS DEFINED IN SUBDIVISION ONE OF SECTION
4 135.00 OF THIS TITLE;

5 (E) COERCING THE PERSON AS DEFINED IN SECTION 135.60 OF THIS TITLE;

6 (F) PROVIDING A NARCOTIC OR INTOXICATING SUBSTANCE TO THE PERSON;

- 7 (G) WRONGFULLY TAKING, OBTAINING OR WITHHOLDING PROPERTY;
- 8 (H) DECEPTION OR FRAUD;
- 9 (I) BLACKMAIL;
- 10 (J) DEBT BONDAGE; OR
- 11 (K) CAUSING OR THREATENING TO CAUSE DEATH OR PHYSICAL INJURY TO ANY
- 12 PERSON.

13 7. "LABOR" MEANS WORK OF ECONOMIC OR FINANCIAL VALUE.

14 8. "COMMERCIAL SEXUAL ACTIVITY" MEANS ANY SEXUAL CONDUCT, AS DEFINED
15 IN SUBDIVISION TEN OF SECTION 130.00 OF THIS TITLE, ON ACCOUNT OF WHICH
16 ANYTHING OF VALUE IS GIVEN, PROMISED, OR RECEIVED BY ANY PERSON.

17 9. "SEXUAL CONDUCT" HAS THE SAME MEANING AS IN SUBDIVISION TEN OF
18 SECTION 130.00 OF THIS TITLE.

19 10. "COERCION" HAS THE SAME MEANING AS IN SECTION 135.60 OF THIS
20 TITLE.

21 11. "MAINTAIN" MEANS, IN RELATION TO LABOR OR COMMERCIAL SEXUAL
22 ACTIVITY, TO SECURE CONTINUED PERFORMANCE THEREOF, REGARDLESS OF ANY
23 INITIAL AGREEMENT ON THE PART OF THE TRAFFICKING VICTIM TO PERFORM SUCH
24 LABOR OR COMMERCIAL SEXUAL ACTIVITY.

25 12. "TRAFFICKING VICTIM" MEANS A PERSON SUBJECTED TO THE PRACTICES
26 PROHIBITED BY SECTION 136.05, 136.10, 136.12 OR 136.13 OF THIS ARTICLE.

27 13. "ABUSE OF LAW" MEANS ANY EXPRESS OR IMPLIED THREAT TO BRING ANY
28 PERSON TO THE ATTENTION OF POLICE, IMMIGRATION AUTHORITIES, OR ANY OTHER
29 LAW ENFORCEMENT OR GOVERNMENT AGENCY, OR ANY EXPRESS OR IMPLIED THREAT
30 TO REPORT THAT A PERSON HAS COMMITTED A CRIME OR IMMIGRATION VIOLATION,
31 WHEN SUCH THREAT IS MADE WITH THE PURPOSE OF INDUCING OR MAINTAINING A
32 PERSON'S COMPLIANCE WITH CONDITIONS OF LABOR SERVITUDE OR SEXUAL SERVI-
33 TUDE.

34 S 136.05 TRAFFICKING A PERSON FOR LABOR SERVITUDE.

35 A PERSON IS GUILTY OF TRAFFICKING A PERSON FOR LABOR SERVITUDE WHEN HE
36 OR SHE KNOWINGLY:

37 1. RECRUITS, ENTICES, HARBORS, TRANSPORTS, PROVIDES OR OBTAINS BY ANY
38 MEANS, OR ATTEMPTS TO RECRUIT, ENTICE, HARBOR, TRANSPORT, PROVIDE OR
39 OBTAIN BY ANY MEANS, ANOTHER PERSON FOR THE PURPOSE OF SUBJECTING SUCH
40 PERSON TO LABOR SERVITUDE; OR

41 2. SUBJECTS ANOTHER PERSON TO LABOR SERVITUDE.

42 TRAFFICKING A PERSON FOR LABOR SERVITUDE IS A CLASS C FELONY.

43 S 136.10 TRAFFICKING A PERSON FOR SEXUAL SERVITUDE.

44 1. A PERSON IS GUILTY OF TRAFFICKING A PERSON FOR SEXUAL SERVITUDE
45 WHEN HE OR SHE KNOWINGLY:

46 (A) RECRUITS, ENTICES, HARBORS, TRANSPORTS, PROVIDES OR OBTAINS BY ANY
47 MEANS, OR ATTEMPTS TO RECRUIT, ENTICE, HARBOR, TRANSPORT, PROVIDE OR
48 OBTAIN BY ANY MEANS, ANOTHER PERSON FOR THE PURPOSE OF SUBJECTING SUCH
49 PERSON TO SEXUAL SERVITUDE; OR

50 (B) SUBJECTS ANOTHER PERSON TO SEXUAL SERVITUDE.

51 2. EVIDENCE OF THE FOLLOWING FACTS OR CONDITIONS SHALL NOT CONSTITUTE
52 A DEFENSE UNDER THIS SECTION, NOR SHALL SUCH EVIDENCE PRECLUDE A FINDING
53 OF SEXUAL SERVITUDE:

54 (A) A TRAFFICKING VICTIM'S SEXUAL HISTORY OR HISTORY OF COMMERCIAL
55 SEXUAL ACTIVITY;

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1 (B) A TRAFFICKING VICTIM'S CONNECTION BY BLOOD OR MARRIAGE TO A
2 DEFENDANT IN THE CASE;

3 (C) CONSENT OF OR PERMISSION BY A TRAFFICKING VICTIM OR ANYONE ELSE ON
4 THE TRAFFICKING VICTIM'S BEHALF TO COMMERCIAL SEXUAL ACTIVITY.

5 TRAFFICKING A PERSON FOR SEXUAL SERVITUDE IS A CLASS C FELONY.

6 S 136.12 TRAFFICKING A MINOR FOR SEXUAL SERVITUDE.

7 1. A PERSON IS GUILTY OF TRAFFICKING A MINOR FOR SEXUAL SERVITUDE
8 WHEN HE OR SHE KNOWINGLY:

9 (A) RECRUITS, ENTICES, HARBORS, TRANSPORTS, PROVIDES, OBTAINS, OR
10 MAINTAINS BY ANY MEANS, OR ATTEMPTS TO RECRUIT, ENTICE, HARBOR, TRANS-
11 PORT, PROVIDE, OBTAIN, OR MAINTAIN BY ANY MEANS, ANOTHER PERSON UNDER
12 EIGHTEEN YEARS OF AGE, KNOWING THAT THE MINOR WILL ENGAGE IN, OR BE USED
13 IN, COMMERCIAL SEXUAL ACTIVITY, SEXUAL PERFORMANCE AS DEFINED IN SECTION
14 263.00 OF THIS PART, OR OBSCENE SEXUAL PERFORMANCE AS DEFINED IN SECTION
15 263.00 OF THIS PART; OR

16 (B) SUBJECTS A PERSON UNDER SEVENTEEN YEARS OF AGE TO SEXUAL SERVI-
17 TUDE.

18 2. EVIDENCE OF THE FOLLOWING FACTS OR CONDITIONS SHALL NOT CONSTITUTE
19 A DEFENSE UNDER THIS SECTION, NOR SHALL SUCH EVIDENCE PRECLUDE A FINDING
20 OF SEXUAL SERVITUDE OF A MINOR:

21 (A) A MINOR TRAFFICKING VICTIM'S SEXUAL HISTORY OR HISTORY OF COMMER-
22 CIAL SEXUAL ACTIVITY;

23 (B) A MINOR TRAFFICKING VICTIM'S CONNECTION BY BLOOD OR MARRIAGE TO A
24 DEFENDANT IN THE CASE;

25 (C) CONSENT OF OR PERMISSION BY A MINOR TRAFFICKING VICTIM OR ANYONE
26 ELSE ON THE MINOR TRAFFICKING VICTIM'S BEHALF TO COMMERCIAL SEXUAL
27 ACTIVITY, SEXUAL PERFORMANCE, OR OBSCENE SEXUAL PERFORMANCE; OR

28 (D) THAT THE ACTOR BELIEVED OR HAD CAUSE TO BELIEVE THAT THE MINOR
29 TRAFFICKING VICTIM WAS AT LEAST SEVENTEEN YEARS OF AGE.

30 TRAFFICKING A MINOR FOR SEXUAL SERVITUDE IS A CLASS B FELONY.

31 S 136.13 AGGRAVATED TRAFFICKING.

32 A PERSON IS GUILTY OF AGGRAVATED TRAFFICKING WHEN HE OR SHE COMMITS
33 THE CRIME OF TRAFFICKING A PERSON FOR LABOR SERVITUDE, OR TRAFFICKING A
34 PERSON FOR SEXUAL SERVITUDE, AND:

35 1. THE OFFENSE INVOLVES MORE THAN ONE TRAFFICKING VICTIM, OR

36 2. THE VICTIM IS MAINTAINED IN LABOR SERVITUDE OR SEXUAL SERVITUDE FOR
37 MORE THAN THIRTY DAYS, OR

38 3. THE VICTIM SUFFERS PHYSICAL INJURY, SERIOUS PHYSICAL INJURY, OR
39 DEATH, OR

40 4. WHILE IN A CONDITION OF LABOR SERVITUDE OR SEXUAL SERVITUDE, THE
41 VICTIM IS SUBJECTED TO RAPE IN THE FIRST DEGREE, CRIMINAL SEXUAL ACT IN
42 THE FIRST DEGREE, SEXUAL ABUSE IN THE FIRST DEGREE, OR AGGRAVATED SEXUAL
43 ABUSE IN THE FIRST, SECOND, THIRD, OR FOURTH DEGREE.

44 AGGRAVATED TRAFFICKING IS A CLASS B FELONY.

45 S 136.15 BENEFITING FROM TRAFFICKING.

46 A PERSON IS GUILTY OF BENEFITING FROM TRAFFICKING WHEN HE OR SHE KNOW-
47 INGLY RECEIVES ANYTHING OF VALUE FROM PARTICIPATION IN A VENTURE WHICH
48 HAS INVOLVED AN ACT IN VIOLATION OF SECTION 136.05, 136.10, 136.12,
49 136.13, OR 136.25 OF THIS ARTICLE.

50 BENEFITING FROM TRAFFICKING IS A CLASS D FELONY.

51 S 136.20 PROMOTING SEX TOURISM.

52 A PERSON IS GUILTY OF PROMOTING SEX TOURISM WHEN HE OR SHE KNOWINGLY
53 SELLS OR OFFERS TO SELL TRAVEL-RELATED SERVICES THAT INCLUDE OR FACILI-
54 TATE IN-STATE OR OUT-OF-STATE TRAVEL FOR THE PURPOSE OF ENGAGING IN
55 ACTIVITY THAT WOULD CONSTITUTE PATRONIZING A PROSTITUTE IF THE ACTIVITY
56 OCCURRED IN NEW YORK STATE.

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1 PROMOTING SEX TOURISM IS A CLASS C FELONY.

2 S 136.25 ACCOMPLICE LIABILITY.

3 WHOEVER KNOWINGLY AIDS, ABETS OR CONSPIRES WITH ONE OR MORE PERSONS TO
4 VIOLATE SECTION 136.05, 136.10, 136.12 OR 136.15 OF THIS ARTICLE SHALL
5 BE PUNISHABLE IN THE SAME MANNER AS FOR A COMPLETED VIOLATION OF THAT
6 SECTION.

7 S 136.30 VICTIM PROSECUTION; DEFENSE.

8 IN ANY PROSECUTION FOR A VIOLATION OF SECTION 230.00 OF THIS PART IT
9 SHALL BE A DEFENSE THAT THE DEFENDANT IS OR HAS BEEN THE VICTIM OF TRAF-

10 FICKING A PERSON FOR SEXUAL SERVITUDE AS DEFINED IN SECTION 136.10 OF
11 THIS ARTICLE OR TRAFFICKING A MINOR FOR SEXUAL SERVITUDE AS DEFINED IN
12 SECTION 136.12 OF THIS ARTICLE.

13 S 136.35 RESTITUTION.

14 1. RESTITUTION SHALL BE MANDATORY UNDER THIS ARTICLE. FOR OFFENSES
15 UNDER THIS ARTICLE INVOLVING LABOR SERVITUDE, IN ADDITION TO ANY OTHER
16 LOSS IDENTIFIED, THE COURT SHALL ORDER RESTITUTION INCLUDING THE GREATER
17 OF:

18 (A) THE GROSS INCOME OR VALUE TO THE DEFENDANT OF THE TRAFFICKING
19 VICTIM'S LABOR; OR

20 (B) THE VALUE OF THE TRAFFICKING VICTIM'S LABOR AS GUARANTEED UNDER
21 THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT
22 AND THE STATE'S LABOR LAWS.

23 2. FOR VIOLATIONS OF THIS ARTICLE INVOLVING SEXUAL SERVITUDE, IN ADDI-
24 TION TO ANY OTHER LOSS IDENTIFIED, THE COURT SHALL ORDER RESTITUTION
25 INCLUDING THE INCOME OR VALUE OBTAINED BY THE DEFENDANT FROM THE SEXUAL
26 SERVITUDE OF THE TRAFFICKING VICTIM.

27 3. WHERE NECESSARY, THE COURT MAY IMPUTE INCOME OR VALUE AWARDED UNDER
28 THIS SECTION.

29 4. FOR ALL OFFENSES UNDER THIS ARTICLE, IN ADDITION TO ANY OTHER LOSS
30 IDENTIFIED, THE COURT SHALL ORDER RESTITUTION TO COMPENSATE THE TRAF-
31 FICKING VICTIM FOR THE COST OF:

32 (A) MEDICAL AND PSYCHOLOGICAL TREATMENT;

33 (B) PHYSICAL AND OCCUPATIONAL THERAPY AND REHABILITATION;

34 (C) NECESSARY TRANSPORTATION, TEMPORARY HOUSING, AND CHILDCARE; AND

35 (D) ATTORNEY'S FEES AND COSTS, INCLUDING EXPERT WITNESS FEES AND
36 EXPENSES.

37 5. THE DOLLAR LIMITS ON RESTITUTION FOUND IN SUBDIVISION FIVE OF
38 SECTION 60.27 OF THIS CHAPTER SHALL NOT APPLY TO OFFENSES COMMITTED
39 UNDER THIS ACT.

40 S 136.40 VICTIM ASSISTANCE.

41 TRAFFICKED VICTIMS SHALL BE PROVIDED WITH INFORMATION ABOUT THEIR
42 RIGHTS AND APPLICABLE SERVICES, INCLUDING:

43 1. THE RIGHT TO PRO BONO AND LOW-COST LEGAL SERVICES;

44 2. IN EVERY CASE CHARGED UNDER THIS ARTICLE BY A LAW ENFORCEMENT OFFI-
45 CER, THE LAW ENFORCEMENT OFFICER SHALL, AS SOON AS POSSIBLE, PROVIDE TO
46 TRAFFICKING VICTIMS WRITTEN REFERRAL INFORMATION FOR LOCAL VICTIM
47 ASSISTANCE ORGANIZATIONS AND, WHERE POSSIBLE, ARRANGE FOR A MEETING
48 BETWEEN TRAFFICKING VICTIMS AND SUCH ORGANIZATIONS;

49 3. THE RIGHT TO ACCESS EXISTING FEDERAL AND STATE BENEFITS AND
50 SERVICES, SUCH AS REGULARIZED IMMIGRATION STATUS, BENEFITS AND SERVICES
51 UNDER THE FEDERAL VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF
52 2000, AS AMENDED, AND STATE COMPENSATION.

53 S 136.45 ASSESSMENT OF VICTIM PROTECTION NEEDS.

54 1. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL, NO LATER THAN ONE
55 YEAR FROM THE EFFECTIVE DATE OF THIS ARTICLE ISSUE A REPORT OUTLINING
56 HOW EXISTING VICTIM/WITNESS LAWS AND REGULATIONS RESPOND TO THE NEEDS OF
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1 TRAFFICKING VICTIMS AND SUGGESTING AREAS OF IMPROVEMENT AND MODIFICA-
2 TION.

3 2. THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL, NO LATER
4 THAN ONE YEAR FROM THE EFFECTIVE DATE OF THIS ARTICLE, ISSUE A REPORT
5 OUTLINING HOW EXISTING SOCIAL SERVICES PROGRAMS RESPOND OR FAIL TO
6 RESPOND TO THE NEEDS OF TRAFFICKING VICTIMS, THE INTERPLAY OF SUCH
7 EXISTING PROGRAMS WITH FEDERALLY-FUNDED VICTIM SERVICE PROGRAMS, AND
8 SUGGESTING AREAS OF IMPROVEMENT AND MODIFICATION.

9 S 2. The second undesignated paragraph of section 230.03 of the penal
10 law, as added by chapter 627 of the laws of 1978, is amended to read as

11 follows:

12 Patronizing a prostitute in the fourth degree is a class [B] A misde-
13 meanor.

14 S 3. The second undesignated paragraph of section 230.04 of the penal
15 law, as added by chapter 627 of the laws of 1978, is amended to read as
16 follows:

17 Patronizing a prostitute in the third degree is a class [A misdemea-
18 nor] E FELONY.

19 S 4. Section 230.05 of the penal law, as added by chapter 627 of the
20 laws of 1978, is amended to read as follows:

21 S 230.05 Patronizing a prostitute in the second degree.

22 A person is guilty of patronizing a prostitute in the second degree
23 when, being [over] eighteen years [of age] OLD OR MORE, he OR SHE
24 patronizes a prostitute and the person patronized is less than [four-
25 teen] FIFTEEN years [of age] OLD.

26 Patronizing a prostitute in the second degree is a class [E] D felony.

27 S 5. Section 230.06 of the penal law, as added by chapter 627 of the
28 laws of 1978, is amended to read as follows:

29 S 230.06 Patronizing a prostitute in the first degree.

30 A person is guilty of patronizing a prostitute in the first degree
31 when:

32 1. he OR SHE patronizes a prostitute and the person patronized is less
33 than eleven years [of age] OLD; OR

34 2. BEING EIGHTEEN YEARS OLD OR MORE, HE OR SHE patronizes a prostitute
35 and the person patronized is less than thirteen years old.

36 Patronizing a prostitute in the first degree is a class [D] B felony.

37 S 6. The opening paragraph of subdivision 3 of section 125.25 of the
38 penal law, as amended by chapter 264 of the laws of 2003, is amended to
39 read as follows:

40 Acting either alone or with one or more other persons, he commits or
41 attempts to commit robbery, burglary, kidnapping, arson, rape in the
42 first degree, criminal sexual act in the first degree, sexual abuse in
43 the first degree, aggravated sexual abuse, TRAFFICKING A PERSON FOR
44 LABOR SERVITUDE, TRAFFICKING A PERSON FOR SEXUAL SERVITUDE, TRAFFICKING
45 A MINOR FOR SEXUAL SERVITUDE, escape in the first degree, or escape in
46 the second degree, and, in the course of and in furtherance of such
47 crime or of immediate flight therefrom, he, or another participant, if
48 there be any, causes the death of a person other than one of the partic-
49 ipants; except that in any prosecution under this subdivision, in which
50 the defendant was not the only participant in the underlying crime, it
51 is an affirmative defense that the defendant:

52 S 7. Paragraph (a) of subdivision 4-b and subdivision 6 of section
53 1310 of the civil practice law and rules, paragraph (a) of subdivision
54 4-b as added by chapter 655 of the laws of 1990 and subdivision 6 as
55 added by chapter 669 of the laws of 1984, are amended to read as
56 follows:

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1 (a) a conviction of a person for a violation of section 220.18,
2 220.21, 220.41, or 220.43 of the penal law, or where the accusatory
3 instrument charges one or more of such offenses, conviction upon a plea
4 of guilty to any of the felonies for which such plea is otherwise
5 authorized by law or a conviction of a person for conspiracy to commit a
6 violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law,
7 where the controlled substances which are the object of the conspiracy
8 are located in the real property which is the subject of the forfeiture
9 action, OR A FELONY CONVICTION OF A PERSON FOR A VIOLATION OF ARTICLE
10 ONE HUNDRED THIRTY-SIX OF THE PENAL LAW; or

11 6. "Pre-conviction forfeiture crime" means only a felony defined in

12 article two hundred twenty or section 136.05, 136.10, 136.12, 136.13,
13 221.30 or 221.55 of the penal law.

14 S 8. Paragraph (a) of subdivision 1 of section 1311 of the civil prac-
15 tice law and rules, as added by chapter 669 of the laws of 1984, is
16 amended to read as follows:

17 (a) Actions relating to post-conviction forfeiture crimes. An action
18 relating to a post-conviction forfeiture crime must be grounded upon a
19 conviction of a felony defined in subdivision five of section one thou-
20 sand three hundred ten of this article, or upon criminal activity aris-
21 ing from a common scheme or plan of which such a conviction is a part,
22 or upon a count of an indictment or information alleging a felony which
23 was dismissed at the time of a plea of guilty to a felony in satisfac-
24 tion of such count. A court may not grant forfeiture until such
25 conviction has occurred. However, an action may be commenced, and a
26 court may grant a provisional remedy provided under this article, prior
27 to such conviction having occurred. An action under this paragraph must
28 be dismissed at any time after sixty days of the commencement of the
29 action unless the conviction upon which the action is grounded has
30 occurred, or an indictment or information upon which the asserted
31 conviction is to be based is pending in a superior court. An action
32 under this paragraph shall be stayed during the pendency of a criminal
33 action which is related to it; provided, however, that such stay shall
34 not prevent the granting or continuance of any provisional remedy
35 provided under this article or any other provisions of law. IN NO EVENT
36 SHALL THE AMOUNT THAT A TRAFFICKING VICTIM IS ELIGIBLE TO RECEIVE PURSU-
37 ANT TO SECTION 136.35 OF THE PENAL LAW BE DIMINISHED THROUGH THE APPLI-
38 CATION OF THIS SECTION.

39 S 9. Paragraph (a) of subdivision 1 of section 460.10 of the penal
40 law, as amended by chapter 442 of the laws of 2006, is amended to read
41 as follows:

42 (a) Any of the felonies set forth in this chapter: sections 120.05,
43 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relat-
44 ing to homicide; sections 130.25, 130.30 and 130.35 relating to rape;
45 sections 135.20 and 135.25 relating to kidnapping; section 135.65 relat-
46 ing to coercion; SECTIONS 136.05, 136.10, 136.12 AND 136.13 RELATING TO
47 THE TRAFFICKING OF PERSONS; sections 140.20, 140.25 and 140.30 relating
48 to burglary; sections 145.05, 145.10 and 145.12 relating to criminal
49 mischief; article one hundred fifty relating to arson; sections 155.30,
50 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10,
51 177.15, 177.20 and 177.25 relating to health care fraud; article one
52 hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and
53 165.54 relating to criminal possession of stolen property; sections
54 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to
55 forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to
56 false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to
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1 insurance fraud; sections 178.20 and 178.25 relating to criminal diver-
2 sion of prescription medications and prescriptions; sections 180.03,
3 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10,
4 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and
5 215.19 relating to bribery; sections 190.40 and 190.42 relating to crim-
6 inal usury; section 190.65 relating to schemes to defraud; sections
7 205.60 and 205.65 relating to hindering prosecution; sections 210.10,
8 210.15, and 215.51 relating to perjury and contempt; section 215.40
9 relating to tampering with physical evidence; sections 220.06, 220.09,
10 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46,
11 220.55 and 220.60 relating to controlled substances; sections 225.10 and
12 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relat-

13 ing to promoting prostitution; sections 235.06, 235.07 and 235.21 relat-
14 ing to obscenity; section 263.10 relating to promoting an obscene
15 performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12,
16 265.13 and the provisions of section 265.10 which constitute a felony
17 relating to firearms and other dangerous weapons; and sections 265.14
18 and 265.16 relating to criminal sale of a firearm; and section 275.10,
19 275.20, 275.30, or 275.40 relating to unauthorized recordings; and
20 sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering;
21 or

22 S 10. Paragraph (b) of subdivision 8 of section 700.05 of the criminal
23 procedure law, as amended by chapter 442 of the laws of 2006, is amended
24 to read as follows:

25 (b) Any of the following felonies: assault in the second degree as
26 defined in section 120.05 of the penal law, assault in the first degree
27 as defined in section 120.10 of the penal law, reckless endangerment in
28 the first degree as defined in section 120.25 of the penal law, promot-
29 ing a suicide attempt as defined in section 120.30 of the penal law,
30 criminally negligent homicide as defined in section 125.10 of the penal
31 law, manslaughter in the second degree as defined in section 125.15 of
32 the penal law, manslaughter in the first degree as defined in section
33 125.20 of the penal law, murder in the second degree as defined in
34 section 125.25 of the penal law, murder in the first degree as defined
35 in section 125.27 of the penal law, abortion in the second degree as
36 defined in section 125.40 of the penal law, abortion in the first degree
37 as defined in section 125.45 of the penal law, rape in the third degree
38 as defined in section 130.25 of the penal law, rape in the second degree
39 as defined in section 130.30 of the penal law, rape in the first degree
40 as defined in section 130.35 of the penal law, criminal sexual act in
41 the third degree as defined in section 130.40 of the penal law, criminal
42 sexual act in the second degree as defined in section 130.45 of the
43 penal law, criminal sexual act in the first degree as defined in section
44 130.50 of the penal law, sexual abuse in the first degree as defined in
45 section 130.65 of the penal law, unlawful imprisonment in the first
46 degree as defined in section 135.10 of the penal law, kidnapping in the
47 second degree as defined in section 135.20 of the penal law, kidnapping
48 in the first degree as defined in section 135.25 of the penal law,
49 custodial interference in the first degree as defined in section 135.50
50 of the penal law, coercion in the first degree as defined in section
51 135.65 of the penal law, TRAFFICKING A PERSON FOR LABOR SERVITUDE AS
52 DEFINED IN SECTION 136.05 OF THE PENAL LAW, TRAFFICKING A PERSON FOR
53 SEXUAL SERVITUDE AS DEFINED IN SECTION 136.10 OF THE PENAL LAW, TRAF-
54 FICKING A MINOR FOR SEXUAL SERVITUDE AS DEFINED IN SECTION 136.12 OF THE
55 PENAL LAW, AGGRAVATED TRAFFICKING AS DEFINED IN SECTION 136.13 OF THE
56 PENAL LAW, criminal trespass in the first degree as defined in section
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1 140.17 of the penal law, burglary in the third degree as defined in
2 section 140.20 of the penal law, burglary in the second degree as
3 defined in section 140.25 of the penal law, burglary in the first degree
4 as defined in section 140.30 of the penal law, criminal mischief in the
5 third degree as defined in section 145.05 of the penal law, criminal
6 mischief in the second degree as defined in section 145.10 of the penal
7 law, criminal mischief in the first degree as defined in section 145.12
8 of the penal law, criminal tampering in the first degree as defined in
9 section 145.20 of the penal law, arson in the fourth degree as defined
10 in section 150.05 of the penal law, arson in the third degree as defined
11 in section 150.10 of the penal law, arson in the second degree as
12 defined in section 150.15 of the penal law, arson in the first degree as
13 defined in section 150.20 of the penal law, grand larceny in the fourth

14 degree as defined in section 155.30 of the penal law, grand larceny in
15 the third degree as defined in section 155.35 of the penal law, grand
16 larceny in the second degree as defined in section 155.40 of the penal
17 law, grand larceny in the first degree as defined in section 155.42 of
18 the penal law, health care fraud in the fourth degree as defined in
19 section 177.10 of the penal law, health care fraud in the third degree
20 as defined in section 177.15 of the penal law, health care fraud in the
21 second degree as defined in section 177.20 of the penal law, health care
22 fraud in the first degree as defined in section 177.25 of the penal law,
23 robbery in the third degree as defined in section 160.05 of the penal
24 law, robbery in the second degree as defined in section 160.10 of the
25 penal law, robbery in the first degree as defined in section 160.15 of
26 the penal law, unlawful use of secret scientific material as defined in
27 section 165.07 of the penal law, criminal possession of stolen property
28 in the fourth degree as defined in section 165.45 of the penal law,
29 criminal possession of stolen property in the third degree as defined in
30 section 165.50 of the penal law, criminal possession of stolen property
31 in the second degree as defined by section 165.52 of the penal law,
32 criminal possession of stolen property in the first degree as defined by
33 section 165.54 of the penal law, trademark counterfeiting in the first
34 degree as defined in section 165.73 of the penal law, forgery in the
35 second degree as defined in section 170.10 of the penal law, forgery in
36 the first degree as defined in section 170.15 of the penal law, criminal
37 possession of a forged instrument in the second degree as defined in
38 section 170.25 of the penal law, criminal possession of a forged instru-
39 ment in the first degree as defined in section 170.30 of the penal law,
40 criminal possession of forgery devices as defined in section 170.40 of
41 the penal law, falsifying business records in the first degree as
42 defined in section 175.10 of the penal law, tampering with public
43 records in the first degree as defined in section 175.25 of the penal
44 law, offering a false instrument for filing in the first degree as
45 defined in section 175.35 of the penal law, issuing a false certificate
46 as defined in section 175.40 of the penal law, criminal diversion of
47 prescription medications and prescriptions in the second degree as
48 defined in section 178.20 of the penal law, criminal diversion of
49 prescription medications and prescriptions in the first degree as
50 defined in section 178.25 of the penal law, escape in the second degree
51 as defined in section 205.10 of the penal law, escape in the first
52 degree as defined in section 205.15 of the penal law, absconding from
53 temporary release in the first degree as defined in section 205.17 of
54 the penal law, promoting prison contraband in the first degree as
55 defined in section 205.25 of the penal law, hindering prosecution in the
56 second degree as defined in section 205.60 of the penal law, hindering
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1 prosecution in the first degree as defined in section 205.65 of the
2 penal law, criminal possession of a weapon in the third degree as
3 defined in subdivisions two, three, four and five of section 265.02 of
4 the penal law, criminal possession of a weapon in the second degree as
5 defined in section 265.03 of the penal law, criminal possession of a
6 dangerous weapon in the first degree as defined in section 265.04 of the
7 penal law, manufacture, transport, disposition and defacement of weapons
8 and dangerous instruments and appliances defined as felonies in subdivi-
9 sions one, two, and three of section 265.10 of the penal law, sections
10 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons
11 as defined in subdivision two of section 265.35 of the penal law, relat-
12 ing to firearms and other dangerous weapons;
13 S 11. The civil practice law and rules is amended by adding a new
14 section 1311-b to read as follows:

15 S 1311-B. VICTIM OF TRAFFICKING; CAUSE OF ACTION. 1. A PERSON WHO HAS
16 BEEN SUBJECT TO TRAFFICKING UNDER ARTICLE ONE HUNDRED THIRTY-SIX OF THE
17 PENAL LAW MAY BRING A CAUSE OF ACTION AGAINST THE DEFENDANT FOR ACTUAL
18 DAMAGES, COMPENSATORY DAMAGES, PUNITIVE DAMAGES, INJUNCTIVE RELIEF, OR
19 ANY COMBINATION THEREOF, OR ANY OTHER APPROPRIATE RELIEF. A PREVAILING
20 PLAINTIFF SHALL ALSO BE AWARDED ATTORNEY'S FEES AND COSTS. TREBLE
21 DAMAGES SHALL BE AWARDED ON PROOF OF ACTUAL DAMAGES WHERE DEFENDANT'S
22 ACTS WERE WILLFUL AND MALICIOUS.

23 2. ANY LEGAL GUARDIAN, FAMILY MEMBER, OR OTHER REPRESENTATIVE OF THE
24 TRAFFICKED PERSON, OR COURT APPOINTEE, MAY REPRESENT THE TRAFFICKED
25 PERSON'S RIGHTS, IN THE EVENT THE TRAFFICKED PERSON IS DECEASED OR
26 OTHERWISE UNABLE TO REPRESENT HIS OR HER OWN INTERESTS IN COURT.

27 S 12. The civil practice law and rules is amended by adding a new
28 section 213-d to read as follows:

29 S 213-D. ACTION BY VICTIM OF TRAFFICKING. 1. A CAUSE OF ACTION BY A
30 VICTIM OF A TRAFFICKING OFFENSE UNDER ARTICLE ONE HUNDRED THIRTY-SIX OF
31 THE PENAL LAW AGAINST A DEFENDANT BROUGHT PURSUANT TO SECTION THIRTEEN
32 HUNDRED ELEVEN-B OF THIS CHAPTER MAY BE COMMENCED WITHIN SEVEN YEARS OF
33 THE DATE OF THE CRIME.

34 2. DISABILITY SHALL TOLL THE RUNNING OF THE STATUTE OF LIMITATION
35 ESTABLISHED PURSUANT TO THIS SECTION. AS USED IN THIS SECTION, "DISABIL-
36 ITY" MEANS THAT THE PLAINTIFF IS UNDER THE AGE OF EIGHTEEN, INSANE,
37 IMPRISONED OR UNDER OTHER INCAPACITY OR THAT SUCH PERSON IS PHYSICALLY
38 OR MENTALLY INJURED TO THE EXTENT THAT IT IS IMPOSSIBLE OR IMPRACTICAL
39 FOR HIM OR HER TO COMMENCE OR MAINTAIN AN ACTION PURSUANT TO SECTION
40 THIRTEEN HUNDRED ELEVEN-B OF THIS CHAPTER.

41 3. THE STATUTE OF LIMITATION WILL NOT RUN AGAINST AN INCOMPETENT OR
42 MINOR IN THE EVENT A GUARDIAN AD LITEM IS APPOINTED. SUCH APPOINTMENT
43 SHALL NOT PREJUDICE THE PLAINTIFF'S RIGHT TO BRING THE CAUSE OF ACTION
44 AFTER HIS OR HER DISABILITY CEASES.

45 4. A DEFENDANT IS ESTOPPED FROM ASSERTING A DEFENSE OF THE STATUTE OF
46 LIMITATIONS WHEN THE EXPIRATION OF THE STATUTE IS DUE TO: CONDUCT BY THE
47 DEFENDANT INDUCING THE PLAINTIFF TO DELAY THE FILING OF THE ACTION, OR
48 PREVENTING THE PLAINTIFF FROM FILING THE ACTION; OR THREATS MADE BY THE
49 DEFENDANT THAT CAUSED DURESS UPON THE PLAINTIFF.

50 5. SUSPENSION OF THE STATUTE OF LIMITATION DUE TO DISABILITY OR ESTO-
51 PPEL SHALL APPLY TO ALL CLAIMS ARISING FROM THE TRAFFICKING OFFENSE.

52 S 13. Subdivision 5 of section 621 of the executive law, as amended by
53 chapter 620 of the laws of 1997, is amended to read as follows:

54 5. "Victim" shall mean (a) a person who suffers personal physical
55 injury as a direct result of a crime; (b) a person who is the victim of
56 either the crime of (1) unlawful imprisonment in the first degree as
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1 defined in section 135.10 of the penal law, (2) kidnapping in the second
2 degree as defined in section 135.20 of the penal law, [or] (3) kidnap-
3 ping in the first degree as defined in section 135.25 of the penal law,
4 (4) TRAFFICKING A PERSON FOR LABOR SERVITUDE AS DEFINED IN SECTION
5 136.05 OF THE PENAL LAW, (5) TRAFFICKING A PERSON FOR SEXUAL SERVITUDE
6 AS DEFINED IN SECTION 136.10 OF THE PENAL LAW, (6) TRAFFICKING A MINOR
7 FOR SEXUAL SERVITUDE AS DEFINED IN SECTION 136.12 OF THE PENAL LAW, OR
8 (7) AGGRAVATED TRAFFICKING AS DEFINED IN SECTION 136.13 OF THE PENAL
9 LAW; or a person who has had a frivolous lawsuit filed against them.

10 S 14. The criminal procedure law is amended by adding a new section
11 60.80 to read as follows:

12 S 60.80 RULES OF EVIDENCE; VICTIM OF HUMAN TRAFFICKING.

13 1. EVIDENCE OF THE FOLLOWING FACTS OR CONDITIONS SHALL BE INADMISSIBLE
14 IN A PROSECUTION UNDER SECTION 136.05, 136.10, 136.12, OR 136.13 OF THE
15 PENAL LAW:

16 A TRAFFICKING VICTIM'S SEXUAL HISTORY, OR HISTORY OF CONVICTION OF ONE
17 OR MORE PROSTITUTION OFFENSES.

18 2. FOR PURPOSES OF THIS SECTION, "TRAFFICKING VICTIM" SHALL HAVE THE
19 MEANING SET FORTH IN SUBDIVISION TWELVE OF SECTION 136.00 OF THE PENAL
20 LAW.

21 S 15. The social services law is amended by adding a new article 10-D
22 to read as follows:

23 ARTICLE 10-D

24 SERVICES FOR TRAFFICKED PERSONS

25 SECTION 483-M. DEFINITIONS.

26 483-N. SERVICES FOR TRAFFICKING VICTIMS.

27 483-O. INTERAGENCY ADVISORY COMMITTEE ON HUMAN TRAFFICKING.

28 483-P. DATA COLLECTION ON HUMAN TRAFFICKING.

29 483-Q. RESIDENTIAL SERVICES FOR TRAFFICKING VICTIMS.

30 S 483-M. DEFINITIONS. IN THIS ARTICLE:

31 1. "COORDINATOR OF SERVICES FOR VICTIMS OF HUMAN TRAFFICKING" SHALL
32 MEAN A NOT-FOR-PROFIT CONTRACTOR WITH LINGUISTICALLY AND CULTURALLY
33 APPROPRIATE STAFF TO ASSIST VICTIMS OF HUMAN TRAFFICKING. SUCH ASSIST-
34 ANCE SHALL INCLUDE, BUT NOT BE LIMITED TO, THE SERVICES DESCRIBED IN
35 PARAGRAPH (A) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY-THREE-N
36 OF THIS ARTICLE.

37 2. "TRAFFICKING VICTIM" SHALL MEAN A PERSON WHO IS A VICTIM OF A CRIME
38 OF HUMAN TRAFFICKING AS SUCH CRIME MAY BE DEFINED BY STATE OR FEDERAL
39 LAW.

40 S 483-N. SERVICES FOR TRAFFICKING VICTIMS. 1. COORDINATION OF
41 SERVICES. (A) THE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE SHALL
42 ENSURE THAT COORDINATORS OF SERVICES FOR VICTIMS OF HUMAN TRAFFICKING
43 ARE REASONABLY AVAILABLE FOR VICTIMS OF HUMAN TRAFFICKING WHO ARE FOUND
44 IN THE STATE. SERVICES PROVIDED BY SUCH COORDINATORS SHALL INCLUDE, BUT
45 NOT BE LIMITED TO, ASSISTANCE WITH:

46 (I) APPLICATIONS FOR T NON-IMMIGRANT STATUS OR U NON-IMMIGRANT STATUS
47 AVAILABLE UNDER THE FEDERAL VICTIMS OF TRAFFICKING AND VIOLENCE
48 PROTECTION ACT OF 2000;

49 (II) APPLICATIONS FOR LEGAL PERMANENT RESIDENCE FOR ELIGIBLE RECIPI-
50 ENTS OF T NON-IMMIGRANT STATUS OR U NON-IMMIGRANT STATUS;

51 (III) IDENTIFICATION OF AND APPLICATION FOR AVAILABLE PUBLIC BENEFITS,
52 INCLUDING BUT NOT LIMITED TO, TEMPORARY ASSISTANCE, REFUGEE MATCH
53 GRANTS, REFUGEE CASH ASSISTANCE, FOOD STAMPS, CHILD CARE AND MEDICAL
54 ASSISTANCE;

55 (IV) ACCESS TO BOTH SHORT TERM AND LONG TERM SAFE AND APPROPRIATE
56 HOUSING;

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1 (V) ACCESS TO NEEDED MEDICAL CARE, DENTAL CARE, AND MENTAL HEALTH
2 TREATMENT, INCLUDING BUT NOT LIMITED TO, WHERE THE VICTIM HAS BEEN A
3 VICTIM OF SEXUAL ASSAULT, FREE OPTIONAL TESTING FOR HIV AND OTHER SEXU-
4 ALLY TRANSMITTED DISEASES AND A COUNSELING SESSION BY A MEDICALLY
5 TRAINED PROFESSIONAL ON THE ACCURACY OF SUCH TESTS AND THE RISK OF TRAN-
6 SMISION OF SEXUALLY TRANSMITTED DISEASES;

7 (VI) ACCESS TO JOB TRAINING AND PLACEMENT, WHERE APPROPRIATE;

8 (VII) ACCESS TO LANGUAGE TRANSLATION SERVICES IN THE VICTIM'S NATIVE
9 LANGUAGE OR LANGUAGE OF FLUENCY;

10 (VIII) ACCESS TO EDUCATION OR ENGLISH AS A SECOND LANGUAGE TRAINING,
11 WHERE APPROPRIATE; AND

12 (IX) ACCESS TO ANY OTHER SERVICES NECESSARY TO SAFEGUARD THE HEALTH
13 AND WELL-BEING OF VICTIMS OF TRAFFICKING.

14 (B) COORDINATORS OF SERVICES FOR VICTIMS OF HUMAN TRAFFICKING SHALL
15 ASSIST VICTIMS OF TRAFFICKING WITH APPLICATION FOR T NON-IMMIGRANT
16 STATUS OR U NON-IMMIGRANT STATUS BY COMPLETING OR ASSISTING THE TRAF-

17 FICKING VICTIM IN COMPLETING AN ORAL OR WRITTEN REQUEST TO STATE LAW
18 ENFORCEMENT REQUESTING THAT STATE LAW ENFORCEMENT SUBMIT A WRITTEN
19 REQUEST TO FEDERAL AUTHORITIES ASKING THAT THE TRAFFICKING VICTIM BE
20 GRANTED TEMPORARY IMMIGRATION STATUS KNOWN AS "CONTINUED PRESENCE"; BY
21 COMPLETING OR ASSISTING THE TRAFFICKING VICTIM IN COMPLETING AN ORAL OR
22 WRITTEN REQUEST TO STATE LAW ENFORCEMENT FOR LAW ENFORCEMENT DOCUMENTS
23 NECESSARY TO SUPPORT AN APPLICATION FOR T NON-IMMIGRANT STATUS OR U
24 NON-IMMIGRANT STATUS SUCH AS A DECLARATION OF LAW ENFORCEMENT OFFICER
25 FOR VICTIM OF TRAFFICKING IN PERSONS; AND BY COMPLETING OR ASSISTING THE
26 TRAFFICKING VICTIM IN COMPLETING AN ORAL OR WRITTEN REQUEST FROM LAW
27 ENFORCEMENT FOR DOCUMENTATION NECESSARY TO SUPPORT THE TRAFFICKING
28 VICTIM'S REQUEST FOR BENEFITS AND SERVICES AUTHORIZED BY THE FEDERAL
29 VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000.

30 2. SERVICES MADE AVAILABLE TO A VICTIM OF HUMAN TRAFFICKING SHALL NOT,
31 UNLESS OTHERWISE REQUIRED BY FEDERAL LAW, BE PROVIDED TO SUCH VICTIM
32 CONTINGENT UPON HIS OR HER IMMIGRANT STATUS, WILLINGNESS TO COOPERATE
33 WITH A LAW ENFORCEMENT INVESTIGATION, OR PROSECUTION OR CONVICTION OF
34 THE ALLEGED HUMAN TRAFFICKER.

35 S 483-O. INTERAGENCY ADVISORY COMMITTEE ON HUMAN TRAFFICKING. 1. THE
36 INTERAGENCY ADVISORY COMMITTEE ON HUMAN TRAFFICKING IS HEREBY CREATED
37 WITHIN THE EXECUTIVE DEPARTMENT TO HAVE AND EXERCISE THE FUNCTIONS,
38 POWERS AND DUTIES PROVIDED BY THE PROVISIONS OF THIS SECTION AND ANY
39 OTHER APPLICABLE PROVISION OF LAW. THE ADVISORY COMMITTEE SHALL BE
40 COMPRISED OF APPROPRIATE OFFICIALS FROM THE OFFICE OF TEMPORARY AND
41 DISABILITY ASSISTANCE, THE OFFICE OF CHILDREN AND FAMILY SERVICES, THE
42 DEPARTMENT OF LAW, THE DEPARTMENT OF HEALTH, THE DEPARTMENT OF CRIMINAL
43 JUSTICE SERVICES, THE DIVISION OF PAROLE, THE DEPARTMENT OF LABOR, THE
44 OFFICE OF MENTAL HEALTH AND THE OFFICE OF ALCOHOL AND SUBSTANCE ABUSE
45 SERVICES. THE ADVISORY COMMITTEE SHALL ALSO BE COMPRISED OF AT LEAST TEN
46 OTHER INDIVIDUALS FROM EIGHT OR MORE NONGOVERNMENTAL ORGANIZATIONS WITH
47 EXPERTISE IN THE AREAS OF IMMIGRATION LAW AND SERVICES FOR TRAFFICKING
48 VICTIMS. SUCH NONGOVERNMENTAL ORGANIZATIONS SHALL REFLECT THE GEOGRAPH-
49 ICAL DIVERSITY OF NEW YORK STATE, INCLUDING REPRESENTATIVES FROM NEW
50 YORK CITY AND OTHER UPSTATE REGIONS, AND SHALL POSSESS A RANGE OF EXPER-
51 TISE IN PROVIDING SERVICES TO TRAFFICKING VICTIMS SUBJECTED TO BOTH
52 LABOR SERVITUDE AND SEXUAL SERVITUDE. A REPRESENTATIVE FROM THE OFFICE
53 OF TEMPORARY AND DISABILITY ASSISTANCE SHALL BE CHAIRPERSON OF THE TASK
54 FORCE AND SHALL APPOINT THE NONGOVERNMENTAL MEMBERS OF THE ADVISORY
55 COMMITTEE. THE CHAIRPERSON SHALL TAKE INTO CONSIDERATION, WHEN APPOINT-
56 ING SUCH NONGOVERNMENTAL MEMBERS, ORGANIZATIONS THAT ARE GRANTEES OF
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1 FEDERAL FUNDS PROVIDED THROUGH THE UNITED STATES DEPARTMENT OF JUSTICE
2 BUREAU OF JUSTICE ASSISTANCE AND OFFICE FOR VICTIMS OF CRIME TO ASSIST
3 SUCH ORGANIZATIONS IN THE PROVISION OF SERVICES TO VICTIMS OF HUMAN
4 TRAFFICKING. THE ADVISORY COMMITTEE SHALL MEET AS NECESSARY TO CARRY
5 OUT ITS FUNCTIONS, POWERS AND DUTIES, BUT SUCH MEETINGS SHALL OCCUR AT
6 LEAST ONCE EACH QUARTER.

7 2. THE ADVISORY COMMITTEE SHALL, IN CONSULTATION WITH GOVERNMENTAL AND
8 NONGOVERNMENTAL ORGANIZATIONS AND IN CONSULTATION WITH TRAFFICKING
9 VICTIMS, PROVIDE AN INTERAGENCY FORUM FOR THE COLLABORATION OF VARIOUS
10 STATE AGENCIES AND SERVICE PROVIDERS TO DEVELOP STATE POLICIES TO MEET
11 THE VARIED NEEDS OF TRAFFICKING VICTIMS FOUND IN THE STATE. THE DUTIES
12 OF THE ADVISORY COMMITTEE SHALL INCLUDE, BUT NOT BE LIMITED TO:

13 (A) COORDINATION OF ACTIVITIES NECESSARY TO IMPLEMENT THE PROVISIONS
14 OF THIS ARTICLE;

15 (B) COORDINATION OF TRAINING BASED ON EXISTING TRAINING MATERIALS THAT
16 WERE DEVELOPED WITH FEDERAL FUNDING FROM THE DEPARTMENT OF HEALTH AND
17 HUMAN SERVICES TO EDUCATE INDIVIDUALS LIKELY TO COME INTO CONTACT WITH

18 TRAFFICKING VICTIMS, INCLUDING BUT NOT LIMITED TO, HEALTH CARE PROVID-
19 ERS, STATE AND LOCAL LAW ENFORCEMENT OFFICER, DOMESTIC VIOLENCE SERVICE
20 PROVIDERS AND LABOR, HOUSING AND SOCIAL SERVICES OFFICIALS. SUCH TRAIN-
21 ING MATERIALS SHALL BE USED TO EDUCATE THESE INDIVIDUALS ON THE PHENOME-
22 NON OF HUMAN TRAFFICKING, STATE AND FEDERAL LAWS THAT ADDRESS TRAFFICK-
23 ING AND THE RIGHTS OF TRAFFICKING VICTIMS, THE NEEDS OF TRAFFICKING
24 VICTIMS, METHODS FOR ACCURATELY IDENTIFYING TRAFFICKING VICTIMS AND TO
25 THEN PROVIDE THEM EFFECTIVE SERVICES, ADVISE THEM OF THEIR RIGHTS AND
26 PROTECT THEIR SAFETY, AND PROCEDURES AND TECHNIQUES FOR ADDRESSING THE
27 SPECIALIZED NEEDS OF TRAFFICKING VICTIMS THAT MAY ARISE DUE TO CULTURAL
28 OR LANGUAGE BARRIERS;

29 (C) THE DEVELOPMENT OF MEASURES TO EVALUATE STATE PROGRESS IN THE
30 AREAS OF TRAFFICKING PREVENTION, PROTECTION, AND ASSISTANCE TO VICTIMS
31 OF TRAFFICKING, AND THE PROSECUTION OF AND ENFORCEMENT AGAINST PERPETRA-
32 TORS OF HUMAN TRAFFICKING;

33 (D) THE CREATION AND OVERSIGHT OF INTERAGENCY PROCEDURES TO COLLECT
34 AND ORGANIZE DATA, WHICH WILL RESPECT THE CONFIDENTIALITY OF TRAFFICKING
35 VICTIMS, RELATING TO TRAFFICKING, INCLUDING BUT NOT LIMITED TO, SIGNIF-
36 ICANT RESEARCH AND RESOURCE INFORMATION ON DOMESTIC TRAFFICKING;

37 (E) THE EVALUATION OF AVAILABLE FUNDING STREAMS, INCLUDING BUT NOT
38 LIMITED TO, ANY FEDERAL GRANTS THAT MAY BE AVAILABLE TO ASSIST STATES IN
39 ESTABLISHING OR EXPANDING PROGRAMS FOR TRAFFICKING VICTIMS, TO PROVIDE
40 SERVICES TO TRAFFICKING VICTIMS AND TO CREATE AND DISSEMINATE TRAINING
41 AND EDUCATIONAL MATERIALS ON HUMAN TRAFFICKING AND TECHNICAL ASSISTANCE
42 TO STATE AGENCIES APPLYING FOR ANY SUCH IDENTIFIED FUNDING; AND

43 (F) THE COMPLETION OF A COMPREHENSIVE NEEDS ASSESSMENT TO EVALUATE THE
44 NEEDS OF TRAFFICKING VICTIMS, THE SERVICES THAT CURRENTLY EXIST TO MEET
45 THOSE NEEDS, THE SERVICES THAT ARE CURRENTLY IN PLACE WHICH COULD MEET
46 THE NEEDS OF TRAFFICKING VICTIMS WITH SMALL CHANGES, AND A LONG TERM
47 PLAN TO DEVELOP A SERVICE SYSTEM TO BETTER MEET THE NEEDS OF TRAFFICKING
48 VICTIMS.

49 3. THE ADVISORY COMMITTEE SHALL PROVIDE A REPORT TO THE GOVERNOR, THE
50 TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY ONE
51 YEAR AFTER THE EFFECTIVE DATE OF THIS ARTICLE AND ANNUALLY THEREAFTER.
52 SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION ON THE
53 PROGRESS OF THE STATE IN THE AREAS OF TRAFFICKING PREVENTION, PROTECTION
54 OF TRAFFICKING VICTIMS, ASSISTANCE AND SERVICES FOR TRAFFICKING VICTIMS,
55 THE PROSECUTION OF AND ENFORCEMENT AGAINST TRAFFICKERS AND THE NUMBER OF
56 TRAFFICKING VICTIMS WHO RECEIVED SERVICES FROM COORDINATORS OF SERVICES
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1 FOR VICTIMS OF HUMAN TRAFFICKING AND THE TYPES OF SERVICES RECEIVED BY
2 THOSE VICTIMS.

3 S 483-P. DATA COLLECTION ON HUMAN TRAFFICKING. THE OFFICE OF TEMPO-
4 RARY AND DISABILITY ASSISTANCE SHALL COLLECT THE FOLLOWING DATA ON TRAF-
5 FICKING CASES SERVED BY COORDINATORS OF SERVICES FOR VICTIMS OF HUMAN
6 TRAFFICKING IN THE STATE:

7 1. THE NUMBER OF TRAFFICKED PERSONS WHO RECEIVED THE FOLLOWING, THE
8 NUMBER OF TRAFFICKED PERSONS WHO WERE REFUSED THE FOLLOWING, AND THE
9 NUMBER OF TRAFFICKED PERSONS WHOSE APPLICATIONS ARE IN PROCESS FOR:

10 A. CONTINUOUS PHYSICAL PRESENCE STATUS;

11 B. T NON-IMMIGRANT VISAS; AND

12 C. U NON-IMMIGRANT VISAS;

13 2. THE NUMBER OF TRAFFICKING CASES INVESTIGATED BY LAW ENFORCEMENT;

14 3. THE NUMBER OF PROSECUTIONS, CONVICTIONS AND PLEA BARGAINS FOR TRAF-
15 FICKING RELATED CRIMES;

16 4. THE AGE, SEX AND NATIONALITY OF THE TRAFFICKING VICTIMS AND PERPE-
17 TRATORS OF TRAFFICKING IN ALL CASES PROSECUTED; AND

18 5. THE FORM OF TRAFFICKING FOR EACH TRAFFICKING CASE INVESTIGATED

19 INCLUDING WHETHER THE TRAFFICKING VICTIM WAS SUBJECTED TO SEX TRAFFICK-
20 ING, COERCION, DEBT BONDAGE, INVOLUNTARY SERVITUDE OR PEONAGE, AS SUCH
21 ARE DEFINED IN THE FEDERAL VICTIMS OF TRAFFICKING AND VIOLENCE
22 PROTECTION ACT OF 2000.

23 S 483-Q. RESIDENTIAL SERVICES FOR TRAFFICKING VICTIMS. THE OFFICE OF
24 CHILDREN AND FAMILY SERVICES SHALL PREPARE A PLAN TO MEET THE EMERGENCY
25 SHELTER NEEDS OF TRAFFICKING VICTIMS IN A MANNER THAT ENSURES SAFETY AND
26 CONFIDENTIALITY FOR TRAFFICKING VICTIMS.

27 S 16. Paragraph (g) of subdivision 1 of section 158 of the social
28 services law, as added by section 44 of part B of chapter 436 of the
29 laws of 1997, is amended to read as follows:

30 (g) is a qualified alien who is ineligible to receive assistance
31 funded under the temporary assistance for needy families block grant
32 solely because of section four hundred three of the federal personal
33 responsibility and work opportunity reconciliation act of 1996 (P.L.
34 104-193) [or], is an alien who is permanently residing under color of
35 law but is not a qualified alien, OR IS AN ALIEN WHO HAS PROVIDED CREDI-
36 BLE EVIDENCE THAT HE OR SHE HAS MORE LIKELY THAN NOT BEEN A VICTIM OF
37 TRAFFICKING AND HAS NOT YET RECEIVED THE TEMPORARY IMMIGRATION STATUS OF
38 CONTINUED PRESENCE.

39 S 17. Section 63 of the executive law is amended by adding a new
40 subdivision 16 to read as follows:

41 16. APPOINT AN ASSISTANT TO FUNCTION AS A LIAISON WITH THE UNITED
42 STATES DEPARTMENT OF JUSTICE IN ORDER TO LINK THE STATE AND FEDERAL
43 RESPONSE TO HUMAN TRAFFICKING, SUCH ASSISTANT SHALL WORK DIRECTLY WITH
44 THE FEDERAL GOVERNMENT TO IDENTIFY FEDERAL FUNDING STREAMS FOR THE STATE
45 TO ASSIST TRAFFICKING VICTIMS AND TO ASSIST COORDINATORS OF SERVICES FOR
46 VICTIMS OF HUMAN TRAFFICKING IN THEIR WORK TO OBTAIN FEDERAL DOCUMENTA-
47 TION NEEDED FOR CONTINUOUS PHYSICAL PRESENCE STATUS, T NON-IMMIGRANT
48 VISAS OR U NON-IMMIGRANT VISAS.

49 S 18. The executive law is amended by adding a new section 214-c to
50 read as follows:

51 S 214-C. HUMAN TRAFFICKING INTERVENTION. IN ORDER TO ENSURE THAT
52 TRAFFICKING VICTIMS ARE ABLE TO ACCESS ALL AVAILABLE FEDERAL BENEFITS
53 AND PROGRAMS FOR TRAFFICKED PERSONS, THE STATE POLICE SHALL:

54 (1) KEEP FEDERAL AUTHORITIES INFORMED ABOUT TRAFFICKING CASES KNOWN TO
55 THE STATE POLICE;

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15

1 (2) WITHIN SEVENTY-TWO HOURS OF A WRITTEN REQUEST FOR SUBMISSION FROM
2 A PERSON IDENTIFIED BY LOCAL OR STATE AUTHORITIES AS SOMEONE WHO HAS,
3 MORE LIKELY THAN NOT, BEEN A VICTIM OF TRAFFICKING OR A WRITTEN REQUEST
4 FROM HIS OR HER AUTHORIZED REPRESENTATIVE, SUBMIT A WRITTEN REQUEST TO
5 THE APPROPRIATE FEDERAL AUTHORITIES REQUESTING THAT THE TRAFFICKING
6 VICTIM BE GRANTED THE TEMPORARY IMMIGRATION STATUS OF CONTINUED PRES-
7 ENCE;

8 (3) WITHIN SEVENTY-TWO HOURS OF A WRITTEN REQUEST FOR DOCUMENTATION
9 FROM A PERSON IDENTIFIED BY LOCAL OR STATE AUTHORITIES AS SOMEONE WHO
10 HAS, MORE LIKELY THAN NOT, BEEN A VICTIM OF TRAFFICKING OR A WRITTEN
11 REQUEST FROM HIS OR HER AUTHORIZED REPRESENTATIVE, PROVIDE THE PERSON
12 WITH A DECLARATION OF LAW ENFORCEMENT OFFICER FOR VICTIM OF TRAFFICKING
13 IN PERSONS THAT SATISFIES THE LAW ENFORCEMENT AGENCY ENDORSEMENT REGU-
14 LATIONS IN SUPPORT OF SUCH PERSON'S APPLICATION FOR THE T NON-IMMIGRANT
15 STATUS OR THE U NON-IMMIGRANT STATUS AVAILABLE TO TRAFFICKING VICTIMS;
16 AND

17 (4) WITHIN SEVENTY-TWO HOURS OF A REQUEST FOR DOCUMENTATION FROM A
18 PERSON IDENTIFIED BY LOCAL OR STATE AUTHORITIES AS SOMEONE WHO HAS, MORE
19 LIKELY THAN NOT, BEEN A VICTIM OF TRAFFICKING, OR A WRITTEN REQUEST FROM
20 HIS OR HER AUTHORIZED REPRESENTATIVE, PROVIDE THE PERSON WITH DOCUMENTA-

21 TION IN SUPPORT OF SUCH PERSON'S REQUEST FOR BENEFITS AND SERVICES TO BE
22 PROVIDED TO TRAFFICKING VICTIMS BY THE OFFICE OF REFUGEE AND RESETTLE-
23 MENT IN THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES.
24 S 19. This act shall take effect on the first of November next
25 succeeding the date on which it shall have become a law.

- This bill is not active in this session.

S T A T E O F N E W Y O R K

4352

2007-2008 Regular Sessions

I N A S S E M B L Y

February 2, 2007

Introduced by M. of A. SCARBOROUGH, GLICK, BENJAMIN, HEASTIE, PAULIN -- Multi-Sponsored by -- M. of A. COOK, R. DIAZ, LENTOL, McENENY, ROBINSON -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, the family court act and the penal law, in relation to services for sexually exploited youth

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Article 6 of the social services law is amended by adding a
2 new title 8-A to read as follows:

3 TITLE 8-A
4 SAFE HARBOUR FOR EXPLOITED YOUTH

5 SECTION 447-A. DEFINITIONS.

6 447-B. SERVICES FOR SEXUALLY EXPLOITED YOUTH.

7 S 447-A. DEFINITIONS. AS USED IN THIS TITLE: 1. THE TERM "SEXUALLY
8 EXPLOITED YOUTH" MEANS ANY PERSON UNDER THE AGE OF EIGHTEEN WHO MAY BE
9 SUBJECT TO SEXUAL EXPLOITATION BECAUSE HE OR SHE HAS ENGAGED OR AGREED
10 OR OFFERED TO ENGAGE IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR
11 A FEE, TRADED SEX FOR FOOD, CLOTHING OR A PLACE TO STAY, STRIPPED, BEEN
12 FILMED OR PHOTOGRAPHED DOING SEXUAL ACTS, TRADED SEX FOR DRUGS, BEEN
13 PAID FOR PERFORMING SEXUAL ACTS OR LOITERED FOR THE PURPOSE OF ENGAGING
14 IN A PROSTITUTION OFFENSE AS DEFINED IN SECTION 240.37 OF THE PENAL LAW.

15 2. THE TERM "CRISIS INTERVENTION SERVICE" MEANS A SERVICE OPERATED BY
16 A NOT-FOR-PROFIT ORGANIZATION IN ACCORDANCE WITH THE REGULATIONS OF THE
17 OFFICE OF CHILDREN AND FAMILY SERVICES FOR THE PURPOSE OF PROVIDING
18 SEXUALLY EXPLOITED YOUTH IMMEDIATE TWENTY-FOUR HOUR ACCESS TO A TRAINED
19 COUNSELOR WHO CAN PROVIDE APPROPRIATE SUPPORT AND INTERVENTION SERVICES.

20 3. THE TERM "EMERGENCY SHELTER CARE" MEANS A FACILITY OPERATED BY A
21 NOT-FOR-PROFIT ORGANIZATION IN ACCORDANCE WITH THE REGULATIONS OF THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 OFFICE OF CHILDREN AND FAMILY SERVICES THAT PROVIDES SAFE, IMMEDIATE AND
2 APPROPRIATE HOUSING AND SERVICES FOR SEXUALLY EXPLOITED YOUTH FOR THE
3 DURATION OF ANY LEGAL PROCEEDING OR PROCEEDINGS IN WHICH THEY ARE EITHER
4 THE COMPLAINING WITNESS OR THE SUBJECT CHILD. WHERE THERE IS AN

5 APPROVED RUNAWAY PROGRAM PROVIDING RESIDENTIAL SERVICES, THOSE SERVICES
6 MAY BE USED AS VOLUNTARY RESPITE SERVICES FOR SEXUALLY EXPLOITED YOUTH
7 WHERE APPROPRIATE.

8 4. THE TERM "LONG TERM PLACEMENT FACILITY" MEANS A FACILITY OPERATED
9 BY A NOT-FOR-PROFIT ORGANIZATION IN ACCORDANCE WITH THE REGULATIONS OF
10 THE OFFICE OF CHILDREN AND FAMILY SERVICES THAT PROVIDES SAFE AND APPRO-
11 PRIATE LONG TERM HOUSING AND SERVICES FOR SEXUALLY EXPLOITED YOUTH WHO
12 ARE UNABLE TO RETURN TO THEIR FAMILIES OR OTHERWISE BE MAINTAINED IN THE
13 COMMUNITY.

14 5. THE TERM "COMMUNITY-BASED PROGRAM" MEANS A PROGRAM OPERATED BY A
15 NOT-FOR-PROFIT ORGANIZATION THAT PROVIDES SERVICES SUCH AS PEER COUN-
16 SELING, INDIVIDUAL COUNSELING, FAMILY-THERAPY AND REFERRALS FOR SERVICES
17 SUCH AS EDUCATIONAL AND VOCATIONAL TRAINING AND HEALTH CARE.

18 S 447-B. SERVICES FOR SEXUALLY EXPLOITED YOUTH. 1. EVERY LOCAL SOCIAL
19 SERVICES DISTRICT SHALL ENSURE THAT A CRISIS INTERVENTION SERVICE AND
20 COMMUNITY-BASED PROGRAM DESIGNED SPECIFICALLY TO SERVE SEXUALLY
21 EXPLOITED YOUTH IS AVAILABLE TO YOUTH RESIDING IN SUCH DISTRICT. CRISIS
22 INTERVENTION SERVICES AND COMMUNITY-BASED PROGRAMMING MAY, WHERE APPRO-
23 PRIATE, BE PROVIDED BY THE SAME NOT-FOR-PROFIT AGENCY. LOCAL SOCIAL
24 SERVICES DISTRICTS MAY WORK COOPERATIVELY TO PROVIDE SUCH SERVICES AND
25 PROGRAMMING AND ACCESS TO SUCH SERVICES AND PROGRAMMING MAY BE PROVIDED
26 ON A REGIONAL BASIS. PROVIDED, HOWEVER, THAT SUCH SERVICES AND PROGRAMS
27 SHALL BE READILY ACCESSIBLE TO SEXUALLY EXPLOITED YOUTH IN EVERY LOCAL
28 SOCIAL SERVICES DISTRICT.

29 2. THE CAPACITY OF THE CRISIS INTERVENTION SERVICES AND
30 COMMUNITY-BASED PROGRAMS IN SUBDIVISION ONE OF THIS SECTION SHALL BE
31 BASED ON THE NUMBER OF SEXUALLY EXPLOITED YOUTH IN EACH DISTRICT WHO ARE
32 IN NEED OF SUCH SERVICES. A DETERMINATION OF SUCH NEED SHALL BE MADE
33 ANNUALLY IN EVERY SOCIAL SERVICES DISTRICT BY THE LOCAL COMMISSIONER OF
34 SOCIAL SERVICES. SUCH DETERMINATION SHALL BE MADE IN CONSULTATION WITH
35 LOCAL LAW ENFORCEMENT, RUNAWAY AND HOMELESS YOUTH PROGRAM PROVIDERS, THE
36 RUNAWAY AND HOMELESS YOUTH COORDINATOR FOR THE LOCAL SOCIAL SERVICES
37 DISTRICT, CHILD ADVOCATES AND SERVICES PROVIDERS WHO WORK DIRECTLY WITH
38 SEXUALLY EXPLOITED YOUTH.

39 3. THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL CONTRACT WITH AN
40 APPROPRIATE NOT-FOR-PROFIT AGENCY WITH EXPERIENCE WORKING WITH SEXUALLY
41 EXPLOITED YOUTH TO DESIGN AND DEVELOP TWO RESIDENTIAL FACILITIES IN
42 GEOGRAPHICALLY APPROPRIATE AREAS OF THE STATE WHICH SHALL SERVE AS EMER-
43 GENCY SHELTER CARE AND AS A LONG TERM PLACEMENT FACILITY FOR SEXUALLY
44 EXPLOITED YOUTH THROUGHOUT THE STATE. THE APPROPRIATENESS OF THE
45 GEOGRAPHIC LOCATION SHALL BE DETERMINED TAKING INTO ACCOUNT THE AREAS OF
46 THE STATE WITH HIGH NUMBERS OF SEXUALLY EXPLOITED YOUTH AND THE NEED FOR
47 SEXUALLY EXPLOITED YOUTH TO FIND SHELTER AND LONG TERM PLACEMENT IN A
48 REGION THAT CANNOT BE READILY ACCESSED BY THE PERPETRATORS OF SEXUAL
49 EXPLOITATION.

50 4. THE LOCAL SOCIAL SERVICES COMMISSIONER SHALL, IN CONJUNCTION WITH
51 LOCAL LAW ENFORCEMENT OFFICIALS, CONTRACT WITH AN APPROPRIATE
52 NOT-FOR-PROFIT AGENCY WITH EXPERIENCE WORKING WITH SEXUALLY EXPLOITED
53 YOUTH TO TRAIN ALL LAW ENFORCEMENT OFFICIALS WHO ARE LIKELY TO ENCOUNTER
54 SEXUALLY EXPLOITED YOUTH IN THE COURSE OF THEIR LAW ENFORCEMENT DUTIES
55 ON HOW TO IDENTIFY AND OBTAIN APPROPRIATE SERVICES FOR SEXUALLY
56 EXPLOITED YOUTH. LOCAL SOCIAL SERVICES DISTRICTS MAY WORK COOPERATIVELY
A. 4352 3

1 TO PROVIDE SUCH TRAINING AND SUCH TRAINING MAY BE PROVIDED ON A REGIONAL
2 BASIS. PROVIDED, HOWEVER, THAT SUCH TRAINING SHALL BE AVAILABLE TO ALL
3 LAW ENFORCEMENT OFFICIALS WHO ARE LIKELY TO ENCOUNTER SEXUALLY EXPLOITED
4 YOUTH IN THE COURSE OF THEIR LAW ENFORCEMENT DUTIES IN EVERY LOCAL
5 SOCIAL SERVICES DISTRICT.

6 S 2. Subdivision (a) of section 732 of the family court act, as
7 amended by section 6 of part E of chapter 57 of the laws of 2005, is
8 amended to read as follows:

9 (a) the respondent is an habitual truant or is incorrigible, ungovern-
10 able, or habitually disobedient and beyond the lawful control of his or
11 her parents, guardian or lawful custodian, OR HAS BEEN THE VICTIM OF
12 SEXUAL EXPLOITATION AS DEFINED IN SUBDIVISION ONE OF SECTION FOUR
13 HUNDRED FORTY-SEVEN-A OF THE SOCIAL SERVICES LAW, and specifying the
14 acts on which the allegations are based and the time and place they
15 allegedly occurred. Where habitual truancy is alleged or the petitioner
16 is a school district or local educational agency, the petition shall
17 also include the steps taken by the responsible school district or local
18 educational agency to improve the school attendance and/or conduct of
19 the respondent;

20 S 3. Section 230.00 of the penal law, as amended by chapter 169 of the
21 laws of 1969, is amended to read as follows:

22 S 230.00 Prostitution.

23 A person EIGHTEEN YEARS OF AGE OR OLDER is guilty of prostitution when
24 such person engages or agrees or offers to engage in sexual conduct with
25 another person in return for a fee.

26 Prostitution is a class B Misdemeanor.

27 S 4. This act shall take effect on the thirtieth day after it shall
28 have become a law.

**UNIFORM ACT ON PREVENTION OF AND REMEDIES
FOR HUMAN TRAFFICKING***

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 16, 2013

***The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws. The prefatory note and comments are forthcoming.**

**UNIFORM ACT ON PREVENTION OF AND REMEDIES FOR
HUMAN TRAFFICKING**

ARTICLE I

GENERAL PROVISIONS

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Act on Prevention of and Remedies for Human Trafficking.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Adult” means an individual 18 years of age or older.

(2) “Business entity” means a person other than an individual.

(3) “Coercion” means:

(A) the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

(B) the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;

(C) the abuse or threatened abuse of law or legal process;

(D) controlling or threatening to control an individual’s access to a controlled substance set forth in [insert the appropriate state code sections defining controlled substances];

(E) the destruction of, taking of, or the threat to destroy or take an individual’s identification document or other property;

(F) use of debt bondage;

(G) the use of an individual’s physical or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions;

or

(H) the commission of civil or criminal fraud.

(4) “Commercial sexual activity” means sexual activity for which anything of value is given to, promised to, or received by a person.

(5) “Debt bondage” means inducing an individual to provide:

(A) commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

(B) labor or services in payment toward or satisfaction of a real or purported debt if:

(i) the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

(ii) the length of the labor or services is not limited and the nature of the labor or services is not defined.

(6) “Human trafficking” means the commission of any of the offenses created in Sections 3 through 7 of this [act].

(7) “Identification document” means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government.

(8) “Labor or services” means activity having economic value.

(9) “Minor” means an individual less than 18 years of age.

(10) “Person” means an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.

(11) “Public corporation” means an entity that is:

(A) owned by a government, or a governmental subdivision, agency, or instrumentality; or

(B) created to perform a governmental function or to operate under the control of a government or governmental subdivision, agency, or instrumentality.

(12) “Serious harm” means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm.

(13) “Sexual activity” means [to be defined in each state by cross-referencing existing state statutory provisions or listing specific sexual activity, either or both], or sexually-explicit performances.

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(15) “Victim” means an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this [act] been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or convicted.

Legislative Note: For Section 2(13), states can cite their state laws on prostitution and similar crimes, or name specific sex acts, such as, for example, sexual intercourse, cunnilingus, fellatio, anal intercourse, intrusion by any object into the genital or anal opening of another’s body and the stimulation by hand or an object of another individual’s genitals or breasts, for the purpose of arousing or gratifying the sexual desire of any individual.

ARTICLE II

PENALTIES

SECTION 3. TRAFFICKING AN INDIVIDUAL.

(a) A person commits trafficking an individual if the person knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of:

(1) forced labor in violation of Section 4; or

(2) sexual servitude in violation of Section 5.

(b) Trafficking an individual is a [class c felony].

(c) Trafficking an individual when the individual is a minor is a [class b felony].

Legislative Note: A state will need to ensure that the offense classifications [class b-d] in this act are modified to correspond with the existing grading and punishment ranges of the state. The three classes of felonies in the act are not intended to unduly restrict legislative discretion in the classification of offenses.

SECTION 4. FORCED LABOR.

(a) A person commits forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or law of this state other than this [act].

(b) Forced labor is a [class c felony].

(c) Forced labor when the individual is a minor is a [class b felony].

SECTION 5. SEXUAL SERVITUDE.

(a) A person commits sexual servitude if the person knowingly:

(1) maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

(2) uses coercion or deception to compel an adult to engage in commercial sexual

activity.

(b) It is not a defense in a prosecution under subsection (a)(1) that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(c) Sexual servitude under subsection (a)(1) is a [class b felony].

(d) Sexual servitude under subsection (a)(2) is a [class c felony].

SECTION 6. PATRONIZING A VICTIM OF SEXUAL SERVITUDE.

(a) A person commits patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that an individual may engage in commercial sexual activity with another individual and the person knows that the other individual is a victim of sexual servitude.

(b) Patronizing a victim of sexual servitude is a [class d felony].

(c) Patronizing a victim of sexual servitude who is a minor is a [class c felony].

[SECTION 7. PATRONIZING A MINOR.

(a) A person commits patronizing a minor if:

(1) with the intent that an individual engage in commercial sexual activity with a minor, the person gives, agrees to give, or offers to give anything of value to a minor or another person so that the individual may engage in commercial sexual activity with a minor; or

(2) the person gives, agrees to give, or offers to give anything of value to a minor or another person so that an individual may engage in commercial sexual activity with a minor.

(b) Patronizing a minor under subsection (a)(1) is a [class b felony].

(c) Patronizing a minor under subsection (a)(2) is a [class c felony].]

Legislative Note: A majority of states already have statutory provisions addressing the offense of Commercial Sexual Abuse of a Minor or Patronizing a Minor. If a state has a provision comparable to Section 7, a state may indicate that such offense is provided for in [cite relevant state law] and may also cross reference the provision in Section 6. For those that do not, the

language in bracketed Section 7 should be inserted.

SECTION 8. BUSINESS ENTITY LIABILITY.

(a) A business entity may be prosecuted for an offense under this [act] if:

- (1) the entity knowingly engages in conduct that constitutes human trafficking; or
- (2) an employee or nonemployee agent of the entity engages in conduct that constitutes human trafficking and the commission of the offense was part of a pattern of illegal activity under this [act] for the benefit of the entity, which the entity knew was occurring and failed to take effective action to stop.

(b) The court may consider the severity of a business entity's offense under this [act] and order penalties in addition to those otherwise provided for the offense, including:

- (1) a fine of not more than \$[1,000,000] per offense;
- (2) disgorgement of profit from illegal activity in violation of the [act]; and
- (3) debarment from state and local government contracts.

[SECTION 9. AGGRAVATING CIRCUMSTANCE.

(a) An aggravating circumstance during the commission of an offense under Section 3, 4, or 5 of this [act] occurs when [:

(1)] the defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless[.] [; or

(2) [insert any additional aggravating factor]].

(b) If the trier of fact finds that an aggravating circumstance occurred, the defendant may be imprisoned for up to [five] years in addition to the period of imprisonment prescribed for the offense.]

Legislative Note: A state will need to examine its existing aggravating circumstances provisions to ensure that they cover the human trafficking offenses created by this act. If a state has no general statutory provision covering aggravating circumstances, the bracketed Section 9 provides a model, where states would insert additional circumstances. The circumstance set forth in Section 9(a)(1) is specific to human trafficking and a state should include along with other aggravating circumstances.

SECTION 10. RESTITUTION.

(a) The court shall order a person convicted of an offense under Section 3, 4, or 5 of this [act] to pay restitution to the victim for:

(1) expenses incurred or reasonably certain to be incurred by the victim as a result of the offense, including reasonable attorney's fees and costs; and

(2) an amount equal to the greatest of the following, with no reduction for expenses the defendant incurred to maintain the victim:

(A) the gross income to the defendant for, or the value to the defendant of, the victim's labor or services or sexual activity;

(B) the amount the defendant contracted to pay the victim; or

(C) the value of the victim's labor or services or sexual activity, calculated under the minimum wage and overtime provisions of the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., [as amended,] or [cite state minimum wage and overtime provisions], whichever is higher, even if the provisions do not apply to the victim's labor or services or sexual activity.

(b) The court shall order restitution under subsection (a) even if the victim is unavailable to accept payment of restitution.

(c) If the victim is unavailable for [five] years from the date of the restitution order, the restitution ordered under subsection (a) must be paid to the [Human Trafficking [Council] created under Section 19 for operational costs] [[insert applicable state crime victims

compensation fund] to help human trafficking victims].

Legislative Note: States should choose whether the restitution monies available after five years under subsection (c) should be paid to the Human Trafficking Council, if one exists, or to the state crime victims compensation fund and delete the bracket not chosen.

In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(2)(C).

[SECTION 11. FORFEITURE.

(a) On motion, the court shall order a person convicted of an offense under Section 3, 4, or 5 of this [act] to forfeit:

(1) any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense; and

(2) any interest in real or personal property constituting or derived from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(b) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(c) Proceeds from the public sale or auction of property forfeited under subsection (a) must be distributed in the manner otherwise provided for the distribution of the proceeds of [criminal forfeitures] [judicial sales].]

Legislative Note: A state will need to examine its existing forfeiture provisions to ensure that they cover the human trafficking offenses created by this act. States with such provisions should: (1) follow the procedures outlined in those provisions to proceed against real and personal property used as an instrumentality in committing the offense and real and personal property derived from the proceeds of the offense; (2) rely on existing procedures and judicial discretion to determine whether the seizure of assets is proportional to the criminal activity at issue; and (3) ensure proceeds from the public sale or auction of property forfeited are distributed first to victims awarded restitution or civil judgments by courts. If a state has no general forfeiture statute, the bracketed section provides a model for inclusion in this act.

ARTICLE III

VICTIM PROTECTIONS

[SECTION 12. STATUTE OF LIMITATIONS. A prosecution for an offense under this [act] must be commenced within 20 years after commission of the offense.

SECTION 13. VICTIM CONFIDENTIALITY. In an investigation of or a prosecution for an offense under this [act], [law-enforcement officers and prosecuting agencies] shall keep the identity and pictures or images of the victim and the victim's family confidential, except to the extent that disclosure is necessary for the purpose of investigation or prosecution, is required by law or court order, or is necessary to ensure provision of services and benefits for the victim and the victim's family.

SECTION 14. PAST SEXUAL BEHAVIOR OF VICTIM. In a prosecution or civil action for damages under this [act], evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

- (1) admitted in accordance with [cite state's rape shield evidence rule or statute]; or
- (2) offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

Legislative Note: A state will need to ensure that the state's rape shield evidence rule or statute, including the relevant procedures, apply to civil and criminal proceedings and contain no provision that would conflict with the purpose of this section.

SECTION 15. IMMUNITY OF MINOR.

(a) An individual who was a minor at the time of the offense is not criminally liable or subject to a [juvenile delinquency proceeding] for [prostitution] and [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking.

(b) An individual who was a minor at the time of the offense who has engaged in commercial sexual activity is not criminally liable or subject to a [juvenile delinquency proceeding] for [prostitution].

(c) A minor who is immune from criminal liability or [juvenile delinquency] under subsection (a) or (b) is presumed to be a [child in need of services] under [cite child protection statutes].

(d) The immunities granted by this section do not apply in a prosecution for [patronizing a prostitute].

***Legislative Note:** A state should determine the other non-violent offenses to be immunized by subsection (a). Examples of non-violent offenses might include such offenses as forgery, possession of stolen property, shoplifting, or uttering worthless checks. Those offenses selected by the enacting state should be added to the provision in place of the second bracketed language. In those states where a term is used other than “prostitution” and “patronizing a prostitute,” those terms should be substituted within bracket one.*

SECTION 16. DEFENSE TO CHARGE OF [PROSTITUTION]. An individual charged with [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim.

***Legislative Note:** A state should determine the other non-violent offenses to be subject to an affirmative defense as established in this section. Those offenses should be added to the provision in place of the second bracketed language. In those states where a term is used other than “prostitution,” that term should be substituted within bracket one.*

SECTION 17. MOTION TO VACATE CONVICTION.

(a) An individual convicted of [prostitution] or [insert other non-violent offenses] committed as a direct result of being a victim of human trafficking may apply to [insert name of appropriate court] to vacate the applicant’s record of conviction for the offense. A court may grant such motion on a finding that the defendant’s participation in the offense was a direct result

of being a victim of human trafficking.

(b) No official determination or documentation is required to grant a motion under this section, but official documentation from a federal, state, local, or tribal government agency indicating that the defendant was a victim at the time of the offense creates a presumption that the defendant's participation in the offense was a direct result of being a victim.

(c) A motion filed under subsection (a), any hearing conducted on the motion, and any relief granted, are governed by [insert the appropriate state code section governing post-conviction relief procedures].

***Legislative Note:** A state should determine whether any other non-violent offenses are to be subject to post-conviction review under subsection (a). Those offenses should be added to the provision in place of the second bracket. In those states where a term is used other than "prostitution," that term should be substituted within bracket one.*

Because some, but not all, states specify the sentencing court as the proper entity to hear post-conviction motions, a state also should identify the appropriate court to hear a motion to vacate a conviction under this section by inserting the appropriate court in place of the third bracket. A state should cite the appropriate statute or rule governing post-conviction relief procedures in subsection (c) in place of the fourth bracket.

SECTION 18. CIVIL ACTION.

(a) A victim may bring a civil action against a person that commits an offense under Section 3, 4, or 5 of this [act] for [actual] [compensatory] damages, punitive damages, injunctive relief, and any other appropriate relief.

(b) In an action under this section, the court shall award a prevailing victim reasonable attorney's fees and costs.

(c) An action under this section must be commenced not later than [10] years after the later of the date on which the victim:

(1) was freed from the human trafficking situation; or

(2) attained 18 years of age.

(d) Damages awarded to the victim under this section for an item must be offset by any restitution paid to the victim pursuant to Section 10 for the same item.

(e) This section does not preclude any other remedy available to the victim under federal law or law of this state other than this [act].

Legislative Note: The question of whether the civil action survives the victim's death should be addressed by the state's survival statute. The adopting state should choose whether to use "actual" or "compensatory" damages in subsection (a).

ARTICLE IV

STATE COORDINATION

[SECTION 19. HUMAN TRAFFICKING [COUNCIL].

(a) The [Governor] shall appoint the chair and members of a [council] on human trafficking within the [state department], including designees from [state, local, or tribal agencies] that have contact with victims or perpetrators, nongovernmental organizations that represent or work with victims, and other organizations and individuals, including victims, whose expertise would benefit the [council].

(b) The [state departments] represented on the [council] created under this section shall provide staff to the [council].

(c) The [council] created under this section shall meet on a regular basis and:

(1) develop a coordinated and comprehensive plan to provide victims with services;

(2) collect and evaluate data on human trafficking in this state and submit an annual report to the [Governor] [and legislature];

(3) promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

(4) create a public-awareness sign that contains the [state, local, and] National Human Trafficking Resource Center hotline information;

(5) coordinate training on human trafficking prevention and victim services for state [and local] employees who may have recurring contact with victims or perpetrators; and

(6) conduct other appropriate activities.

Legislative Note: *In States where a state or local hotline is in operation and is comparable to the national hotline operated by the National Human Trafficking Resource Center, the language in the bracket should be added.]*

Legislative Note: *States will determine the proper authority for appointing members of the Human Trafficking Council. This may not in all cases be relegated exclusively to the executive branch.*

[SECTION 20. DISPLAY OF PUBLIC-AWARENESS SIGN; PENALTY FOR FAILURE TO DISPLAY.

(a) The [state transportation department] shall display a public-awareness sign [created under Section 19(c)(4)] in every transportation station, rest area, and welcome center in the state which is open to the public.

(b) A public awareness sign [created under Section 19(c)(4)] shall be displayed at the following locations in a place that is clearly conspicuous and visible to employees:

(1) a strip club and any other sexually-oriented business;

(2) an entity found to be a nuisance for prostitution under [cite state nuisance law];

(3) a job recruitment center;

(4) a hospital; and

(5) an emergency care provider.

(c) The [state labor department] shall impose a [fine] of \$[300] per violation on an

employer that knowingly fails to comply with subsection (b). The [fine] is the exclusive remedy for failure to comply.]

SECTION 21. ELIGIBILITY FOR SERVICES.

(a) A victim is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], including compensation under the [applicable state crime victims compensation fund], regardless of immigration status.

(b) A minor engaged in commercial sexual activity is eligible for a benefit or service available through the state [and identified in the plan developed under Section 19(c)(1)], regardless of immigration status.

(c) As soon as practicable after a first encounter with an individual who reasonably appears to [the appropriate state or local agency] to be a victim or a minor engaged in commercial sexual activity, the [agency] shall notify the [appropriate state or local agency] [identified in the comprehensive plan developed under Section 19(c)(1)] that the individual may be eligible for a benefit or service under this [act].

SECTION 22. LAW-ENFORCEMENT AGENCY PROTOCOL.

(a) On request from an individual whom a [law-enforcement officer] reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T)[, as amended,] or 8 U.S.C. Section 1101(a)(15)(U)[, as amended,] or for continued presence, under 22 U.S.C. Section 7105(c)(3) [,as amended,] the [law-enforcement officer], as soon as practicable after receiving the request, shall complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal [law enforcement officer] to

request continued presence.

(b) If the [law-enforcement agency] determines that an individual does not meet the requirements for the [agency] to comply with subsection (a), the [agency] shall inform the individual of the reason and that the individual may make another request under subsection (a) and submit additional evidence satisfying the requirements.

***Legislative Note:** In states in which the constitution, or other law, does not permit the phrase “as amended” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a).*

[SECTION 23. GRANT TO OR CONTRACT WITH SERVICE PROVIDER.

(a) [To the extent that funds are appropriated for this purpose, the] [The] [appropriate state agency] may make a grant to or contract with a unit of state and local government [, Indian tribe,] and nongovernmental victims service organization to develop or expand service programs for victims.

(b) A recipient of a grant or contract under subsection (a) shall report annually to [the [council] created by Section 19] [insert appropriate authority] the number and demographic information of all trafficking victims served.]

***Legislative Note:** States that must have explicit authority to authorize a state entity to make grants to or contract with units of local government or non-governmental organizations to provide or expand services to victims should consider enacting this section.*

ARTICLE V

MISCELLANEOUS PROVISIONS

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.


[SECTION 25. SEVERABILITY. If any provision of this [act] or its application to

any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 26. EFFECTIVE DATE. This [act] takes effect....

Legislative Note: States may need to consider amending or repealing existing law.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Criminal Procedure Law (Refs & Annos)
Chapter 11-A. Of the Consolidated Laws (Refs & Annos)
Part Two. The Principal Proceedings
Title M. Proceedings After Judgment (Refs & Annos)
Article 440. Post-Judgment Motions (Refs & Annos)

McKinney's CPL § 440.10

§ 440.10 Motion to vacate judgment

Effective: August 1, 2012

[Currentness](#)

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

- (a) The court did not have jurisdiction of the action or of the person of the defendant; or
- (b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or
- (c) Material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false; or
- (d) Material evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or
- (e) During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect, was incapable of understanding or participating in such proceedings; or

(f) Improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom; or

(g) New evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant; provided that a motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence; or

(g-1) Forensic DNA testing of evidence performed since the entry of a judgment, (1) in the case of a defendant convicted after a guilty plea, the court has determined that the defendant has demonstrated a substantial probability that the defendant was actually innocent of the offense of which he or she was convicted, or (2) in the case of a defendant convicted after a trial, the court has determined that there exists a reasonable probability that the verdict would have been more favorable to the defendant.

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States; or

(i) The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under [section 230.34 of the penal law](#) or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that

(i) a motion under this paragraph shall be made with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii) official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

2. Notwithstanding the provisions of subdivision one, the court must deny a motion to vacate a judgment when:

(a) The ground or issue raised upon the motion was previously determined on the merits upon an appeal from the judgment, unless since the time of such appellate determination there has been a retroactively effective change in the law controlling such issue; or

(b) The judgment is, at the time of the motion, appealable or pending on appeal, and sufficient facts appear on the record with respect to the ground or issue raised upon the motion to permit adequate review thereof upon such an appeal. This paragraph shall not apply to a motion under paragraph (i) of subdivision one of this section; or

(c) Although sufficient facts appear on the record of the proceedings underlying the judgment to have permitted, upon appeal from such judgment, adequate review of the ground or issue raised upon the motion, no such appellate review or determination occurred owing to the defendant's unjustifiable failure to take or perfect an appeal during the prescribed period or to his unjustifiable failure to raise such ground or issue upon an appeal actually perfected by him; or

(d) The ground or issue raised relates solely to the validity of the sentence and not to the validity of the conviction.

3. Notwithstanding the provisions of subdivision one, the court may deny a motion to vacate a judgment when:

(a) Although facts in support of the ground or issue raised upon the motion could with due diligence by the defendant have readily been made to appear on the record in a manner providing adequate basis for review of such ground or issue upon an appeal from the judgment, the defendant unjustifiably failed to adduce such matter prior to sentence and the ground or issue in question

was not subsequently determined upon appeal. This paragraph does not apply to a motion based upon deprivation of the right to counsel at the trial or upon failure of the trial court to advise the defendant of such right, or to a motion under paragraph (i) of subdivision one of this section; or

(b) The ground or issue raised upon the motion was previously determined on the merits upon a prior motion or proceeding in a court of this state, other than an appeal from the judgment, or upon a motion or proceeding in a federal court; unless since the time of such determination there has been a retroactively effective change in the law controlling such issue; or

(c) Upon a previous motion made pursuant to this section, the defendant was in a position adequately to raise the ground or issue underlying the present motion but did not do so.

Although the court may deny the motion under any of the circumstances specified in this subdivision, in the interest of justice and for good cause shown it may in its discretion grant the motion if it is otherwise meritorious and vacate the judgment.

4. If the court grants the motion, it must, except as provided in subdivision five or six of this section, vacate the judgment, and must dismiss the accusatory instrument, or order a new trial, or take such other action as is appropriate in the circumstances.

5. Upon granting the motion upon the ground, as prescribed in paragraph (g) of subdivision one, that newly discovered evidence creates a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant in that the conviction would have been for a lesser offense than the one contained in the verdict, the court may either:

(a) Vacate the judgment and order a new trial; or

(b) With the consent of the people, modify the judgment by reducing it to one of conviction for such lesser offense. In such case, the court must re-sentence the defendant accordingly.

6. If the court grants a motion under paragraph (i) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances.

7. Upon a new trial resulting from an order vacating a judgment pursuant to this section, the indictment is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time the previous trial was commenced, regardless of whether any count was dismissed by the court in the course of such trial, except (a) those upon or of which the defendant was acquitted or deemed to have been acquitted, and (b) those dismissed by the order vacating the judgment, and (c) those previously dismissed by an appellate court upon an appeal from the judgment, or by any court upon a previous post-judgment motion.

8. Upon an order which vacates a judgment based upon a plea of guilty to an accusatory instrument or a part thereof, but which does not dismiss the entire accusatory instrument, the criminal action is, in the absence of an express direction to the contrary, restored to its prepleading status and the accusatory instrument is deemed to contain all the counts and to charge all the offenses which it contained and charged at the time of the entry of the plea, except those subsequently dismissed under circumstances specified in paragraphs (b) and (c) of subdivision six. Where the plea of guilty was entered and accepted, pursuant to [subdivision three of section 220.30](#), upon the condition that it constituted a complete disposition not only of the accusatory instrument underlying the judgment vacated but also of one or more other accusatory instruments against the defendant then pending in the same court, the order of vacation completely restores such other accusatory instruments; and such is the case even though such order dismisses the main accusatory instrument underlying the judgment.

Credits

(L.1970, c. 996, § 1. Amended [L.2010, c. 332, §§ 1 to 5](#), eff. Aug. 13, 2010; [L.2012, c. 19, § 4](#).)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by William C. Donnino

2012

Vacation of Judgment by DNA Evidence

Introduction

In 2012, the statute requiring DNA samples from persons convicted of certain crimes was expanded to include any New York felony and any New York Penal Law misdemeanor except the misdemeanor of the possession of marihuana as defined in [Penal Law § 221.10\(1\)](#) if the defendant was not previously convicted of a crime. [L. 2012, c. 19](#) (applicable to a conviction on or after August 1, 2012, as set forth by amendment in [L. 2012, c. 55](#), Part A, section 2). [Executive Law §§ 995\(7\) and 995-c\(3\)](#).

As part of that expansion, the legislation made certain amendments to the laws of discovery and post-judgment relief, as they relate to DNA evidence.

Notably, albeit there is no federal constitutional right to post-judgment access to DNA evidence, New York was the first state to so provide by statute. [District Attorney's Office for Third Judicial Dist. v. Osborne](#), 557 U.S. 52, 129 S.Ct. 2308, 174 L.Ed.2d 38 (2009).

The 2012 amendments stem from the New York State Justice Task Force “Recommendations Regarding Post-Conviction Access to DNA Testing and Databank Comparisons” (January 2012) (hereinafter the “Task Force Recommendations”).

Prior to the amendments, since 1994, [CPL 440.30\(1-a\)](#) had provided a mechanism for a defendant convicted by verdict to gain access to certain evidence for the purpose of conducting a DNA test thereon, and to have the results of that test utilized in a motion to set aside the judgment based on newly discovered evidence [[CPL 440.30\(1\)\(g\)](#)]. Decisional law had, however, held that the provisions of [CPL 440.30\(1-a\)](#) eliminated the newly discovered evidence requirement that the application be made with “due diligence.” [People v. Pitts](#), 4 N.Y.3d 303, 311, 795 N.Y.S.2d 151, 828 N.E.2d 67 (2005) (“We hold that there is no time limit for bringing a postconviction motion requesting the performance of forensic DNA testing.”). Also, for cases which arose before the addition of [CPL 440.30\(1-a\)\(b\)](#), [Pitts](#) embraced the import of that provision by holding that “the defendant does not bear the burden of showing that the specified DNA evidence exists and is available in suitable quantities to make testing feasible. To the contrary, it is the People ... who must show what evidence exists and whether the evidence is available for testing.” *Id.* at 311. *Cf. People v. Garcia*, 65 A.D.3d 932, 933, 886 N.Y.S.2d 110 (1st Dept. 2009) (“The People presented detailed affidavits by the detectives and the prosecutor, based on personal knowledge, setting forth their diligent but unsuccessful efforts to locate certain items recovered in 1995 from the scene of a homicide. This satisfied the People's burden to show that the evidence on

which forensic DNA testing was to be performed could no longer be located and was thus no longer available for testing”).

After the 2012 amendments, a motion to set aside a judgment based on the results of DNA evidence need no longer rest on the ground of newly discovered evidence. The grounds for post-judgment relief set forth in CPL 440.10 were expanded to account specifically for a DNA test “performed since the entry of the judgment.” CPL 440.10(1)(g-1). Whether the judgment is vacated pursuant to that provision initially depends on whether the judgment was based on a verdict or a plea of guilty. If by verdict, the court must determine that given the DNA evidence, there exists a “reasonable probability” that the “verdict would have been more favorable to the defendant.” If by guilty plea, the court must determine that given the DNA evidence, the defendant has demonstrated a “substantial probability” that he or she was “actually innocent.”

At the same time, the amendments expanded authorization for court-ordered DNA testing of specified evidence and court-ordered comparative analysis of a relevant DNA sample to a DNA database. The defendant would be required to pay the costs unless the court finds that “payment of such cost would impose a hardship upon the defendant, and in such case, the state shall bear such costs.” [L. 2012, c. 19](#), section 8.

An appeal may be taken from an order granting or denying a DNA test. [CPL 450.10\(5\)](#) and [450.20\(11\)](#).

Finally, the legislation expanded pre-trial discovery as it relates to DNA evidence [[CPL 240.40\(1\)\(d\)](#); *see* Supplementary Practice Commentary to that section], and allowed in certain circumstances for post-judgment discovery as incident to a motion to vacate a judgment [CPL 440.10] premised on a verdict after a trial which convicted the defendant of a felony. [CPL 440.30\(1\)\(b\)](#).

Guilty plea

The difference between the grounds for vacation of a judgment premised on a verdict after trial and a guilty plea is understandable. Plainly in the guilty plea situation, the defendant has in open court said he was in fact guilty and is seeking to vacate the conviction on the grounds that subsequent DNA testing proves he falsely admitted his guilt. Thus, the requirement for vacation of the judgment based on a guilty plea is that there be a “substantial probability” (not certainty) that the defendant was “actually innocent” (not that the government may not be able to prove the defendant's guilt beyond a reasonable doubt).

In recommending that standard for a judgment based on a guilty plea, the Justice Task Force “recognized the need to provide a formal mechanism to exonerate the innocent post-plea, while also acknowledging the importance of preserving the integrity of the plea process, maintaining a level of finality in the system and attempting to prevent frivolous petitions from guilty defendants seeking to take advantage of the system.” Task Force Recommendations.

In furtherance of that goal, some additional restrictions, as well as provisions for DNA testing and comparisons, were recommended by the Justice Task Force and incorporated in the legislation. *See* [CPL 440.30\(1-a\)\(a\)\(2\)](#).

Parenthetically, the Task Force had made all its recommendations in the context of when a defendant who has pled guilty would be entitled to “post-conviction DNA *testing*” (emphasis added). The legislation converted the Justice Task Force's basic standard for authorizing DNA “testing” into the grounds for setting aside a judgment set forth in CPL 440.10(1)(g-1), and then separately set forth the grounds for authorizing DNA “testing” and the restrictions on doing so in [CPL 440.30\(1-a\)\(a\)\(2\)](#).

For a defendant, after a judgment by guilty plea, to obtain DNA testing of “specified evidence,” the defendant must first stand convicted of one of the statutorily specified felonies (generally a homicide, felony sex offense, or violent felony offense), or any other felony “after being charged” in an indictment or superior court information with one of the specified felonies. That latter alternative should at least cover a plea of guilty to a non-specified felony in satisfaction of a specified felony. Second, the application must be made within the statute of limitations of five years after entry of the judgment, albeit there are exceptions which allow a court to overlook a longer delay in the interest of justice. Third, in determining the application the court “shall consider” whether the defendant “unjustifiably” failed to request such testing prior to entry of the guilty plea. Upon satisfaction of those three conditions, the court “shall grant the motion” for the DNA testing “upon its determination that evidence containing DNA was secured in connection with the investigation or prosecution of the defendant, and if a DNA test had been conducted on such evidence and the results had been known to the parties prior to the entry of the defendant's plea and judgment thereon, there exists a substantial probability that the evidence would have established the defendant's actual innocence ...” [CPL 440.30\(1-a\)\(a\)\(2\)](#).

“In response to a motion” for DNA testing, a court may also order a comparative analysis of “a DNA profile obtained from probative biological material gathered in connection with the investigation or prosecution of the defendant against DNA

databanks ...”; provided, had “the results ... been available to the defendant prior to the plea, a reasonable probability exists that the conviction would not have resulted.” [CPL 440.30\(1-a\)\(a\)\(2\)\(c\)](#).

The DNA testing provisions of [CPL 440.30\(1-a\)\(a\)\(2\)](#) apply to a “guilty plea entered” on or after August 1, 2012, the effective date of the legislation. [L. 2012, c. 19](#), section 9 amended by [L. 2012, c. 55](#). Part A section 2.

Verdict after trial

While the 2012 legislation set forth the grounds for post-judgment relief in [CPL 440.10\(1\)\(g-1\)](#) for a judgment of conviction premised on either a guilty plea or verdict, with respect to a judgment based on a verdict, those grounds inferentially already existed by virtue of a provision which required a court to grant DNA testing upon the court's determination “that if a DNA test had been conducted on such evidence, and if the results had been admitted in the trial resulting in the judgment, there exists a reasonable probability that the verdict would have been more favorable to the defendant.” [CPL 440.30\(1-a\)\(a\)\(1\)](#).

“In response to a motion” for such DNA testing, a court may also order a comparative analysis of “a DNA profile obtained from probative biological material gathered in connection with the investigation or prosecution of the defendant against DNA databanks ...”; provided, “if such comparison had been conducted, and if the results had been admitted in the trial resulting in the judgment, a reasonable probability exists that the verdict would have been more favorable to the defendant.” [CPL 440.30\(1-a\)\(a\)\(2\)\(c\)](#).

Criteria for testing

The criteria for granting a request for DNA testing are the same as the criteria for granting vacation of the judgment. Plainly, however, when a person applies for DNA testing of property, the court is not aware of what the results of any such test would be. In order to grant the application for DNA testing, therefore, is the court initially to assume that the results of the test would favor the defendant, and then determine that that result alone or in conjunction with other evidence would or would not meet the standard for vacation of the judgment? In deciding that New York's statutory procedures were consistent with federal due process requirements, the Second Circuit decided to “express no opinion regarding whether [section 440.30\(1-a\)\(a\)](#) does or does not require New York courts to assume that the DNA testing sought will yield

exculpatory results. We simply hold that even if, as [plaintiff] asserts, the statute does not require that assumption, it nevertheless passes constitutional muster under [*District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, *supra*].” *McKithen v. Brown*, 626 F.3d 143, 153 n.6 (2nd Cir. 2010). Although New York appellate courts have been called upon to decide whether to grant or deny post-judgment access to DNA evidence for testing, they have not defined a procedural framework for such decisions. *See, e.g., People v. West*, 41 A.D.3d 884, 884-85, 837 N.Y.S.2d 415, 416 (3rd Dept. 2007) (DNA test granted where the evidence of guilt “was not so overwhelming that a different verdict would not have resulted if new DNA testing excluded him”); *People v. Figueroa*, 36 A.D.3d 458, 459, 826 N.Y.S.2d 256, 256-57 (1st Dept. 2007) (DNA test denied where “there is no basis upon which to suspect that any blood found on the street near the victim's body came from anyone but the victim”); *People v. Brown*, 36 A.D.3d 961, 962, 827 N.Y.S.2d 742, 743 (3rd Dept. 2007) (“Defendant was not convicted based on the small hair [found on the victim's sweater] belonging to someone of his ethnicity, but on the testimony of his codefendant, victim, and two residents of the apartment, each of whom testified that they either saw or heard defendant carrying out the sexual attack. This testimony would not have been impeached by proof that the hair [which reasonably could have belonged to a number of people] did not belong to defendant”).

Post-judgment Discovery

As part of the legislation expanding the requirement for the taking of DNA samples from persons convicted of certain crimes [L. 2012, c.19], a provision allowed for post-judgment discovery of “property” [defined in [CPL 240.10\(3\)](#)], as incident to an evidentiary hearing on a motion to vacate a judgment [CPL 440.10]. [CPL 440.30\(1\)\(b\)](#). There are limitations on the availability of such discovery. The motion to vacate judgment must stem from a verdict after trial convicting the defendant of a felony. The application for discovery must be “upon credible allegations by the defendant and a finding by the court that such property, if obtained, would be probative to the determination of defendant's actual innocence, and that the request is reasonable.” Thus, while there is no express limitation upon which grounds for vacation of the judgment must be advanced to obtain the discovery, the “determination of defendant's actual innocence” must be in issue. Indeed, the statute provides that the court “shall deny” any discovery request where the defendant's motion “does not seek to demonstrate his or her actual innocence of the offense or offenses of which he or she was convicted that are the subject of the motion.”

The only CPL 440.10 motion premised expressly in part on “actual innocence” is where it is asserted that, notwithstanding a plea of guilty, DNA proves that there was

“a substantial probability that the defendant was actually innocent” [CPL 440.10(1)(g-1)]. But this discovery provision does not apply if the judgment is based on a guilty plea. On the other hand, the discovery statute does not state that the grounds of the motion to vacate expressly require proof of “actual innocence.” Thus, although not an expressed ground for vacation of a judgment premised on a verdict after a trial, the issue of actual innocence may be pressed in the context of such a motion; for example, a motion based on newly discovered evidence [CPL 440.10(1)(g)] or a motion based on DNA evidence which must show that “there exists a reasonable probability that the verdict would have been more favorable to the defendant” [CPL 440.10(1)(g-1)]. Of course, whether this discovery provision will apply to a CPL 440.10 provision in the absence of an applicable ground expressly premised on “actual innocence” remains for the courts to determine.

If authorized, discovery may yet be denied for a series of alternative reasons basically concerned with maintaining the “integrity” of the property or the safety and security of an individual or the public. [CPL 440.30\(1\)\(b\)](#).

Finally, there is a requirement that the application be made within the statute of limitations of five years after entry of the judgment, albeit there are exceptions which either extend the period by five years or allow a court to overlook a delay beyond the statute of limitations in the interest of justice. [CPL 440.30\(1\)\(b\)\(ii\)](#).

by Peter Preiser

2010

In 2010 the Legislature added paragraph (i) to subdivision one, to establish a new basis for a post judgment motion to vacate a conviction. This will permit a person who can establish he or she had been victimized through sex-trafficking committed in violation of state or federal law to have a judgment of conviction for prostitution or for one that charged loitering for the purpose of engaging in a prostitution offense (other than for patronizing or promoting) vacated and the accusatory instrument dismissed.

Since the purpose of this new remedy was to remove a blot on the character of such victims so as to help those presumably not criminally responsible for the offense to gain useful employment and rebuild their lives, two provisions carry out the bill's stated intent to make the motion available for convictions irrespective of whether they occurred before or after enactment of this remedy. Thus, an exemption was inserted into subdivision two that otherwise would have foreclosed the motion if the conviction were still appealable (see paragraph [b]) and also in subdivision three, which grants

the court discretion for denial of the motion, if the basis for an appeal could have been but was not made to appear on the record before the conviction occurred (see paragraph [a]).

Additionally, the bill amended subdivision four to coordinate with a newly added subdivision six, to make it clear that upon granting the motion under new subparagraph i the court must in all cases at least vacate the judgment and dismiss the accusatory instrument.

2008

Two recent developments bearing upon this section are especially worthy of note. One is based upon a significant opinion of first impression. In *People v. Cuadrado*, 2007, 9 N.Y.3d 362, 850 N.Y.S.2d 375, 880 N.E.2d 861, the Court of Appeals placed a limitation on use of this section as a remedy for a jurisdictional or fundamental error if defendant unjustifiably failed to raise it by appeal. In other words, defendant apparently no longer would have a choice of two avenues to remedy errors that do not require preservation for appeal. Note too, that since a motion under this section is not constrained by any time limit, one might also predict that this will place a time limit upon the manner of attacking stale convictions.

The *Cuadrado* opinion appears to have changed a prior understanding of an avenue for collaterally vacating a conviction in situations where a slip-up in a negotiated waiver of indictment procedure resulted in a jurisdictional defect that permitted a motion for withdrawal of the guilty plea (see Practice Commentaries for [CPL § 195.10](#)). Defendant fell squarely within this pattern and, after waiting twelve years, decided to bring this motion under subdivision one (a) to collaterally vacate his conviction, alleging a jurisdictional or fundamental defect underlying it. The People conceded that the waiver of indictment was invalid and this implied that the guilty plea was taken in default of trial court's jurisdiction. Accordingly, defendant's motion was fully within the basis for such a motion as authorized hereunder. Ordinarily that would have sufficed, irrespective of failure to preserve the error for an appeal by pre conviction motion (see *e.g.*, *People v. Boston*, 75 N.Y.2d 585, 555 N.Y.S.2d 27, 554 N.E.2d 64 [1990]; *People v. Trueluck*, 88 N.Y.2d 546, 647 N.Y.S.2d 476, 670 N.E.2d 977 [1996]). But the People successfully raised a new argument, pointing out that since the error was clear through examination of the record, the statute requires denial of defendant's motion to vacate due to his unjustifiable failure to have appealed, citing subdivision 2(c) of this section.

Defendant countered, arguing denial of a fundamental right, citing the Court's 1928 opinion granting *habeas corpus* to an inmate whose similar waiver of the fundamental right to prosecution by indictment was obtained under a then unconstitutional statute (see *People ex rel Battista v. Christian*, 249 N.Y. 314, 164 N.E. 111). But the Court noted that the *habeas corpus* procedure for collateral attack of a conviction had since been replaced by this section and that the Legislature had the right to regulate the manner in which a jurisdictional defect may be raised. Thus, in effect, the case put a time cap on the remedy - *i.e.*, the thirty-day window for an appeal (CPL § 460.10) versus here 12 years or unlimited time.

My summary here may be placing too much far reaching significance on this case because defendant in fact had appealed his conviction on another ground - excessiveness of the sentence - failed to express dissatisfaction with his plea, and had absolutely no excuse for not challenging the error on appeal. However, one might well wonder how far the Court will go in limiting the avenues for raising fundamental errors or errors in the mode of proceedings that are exempt from preservation. (for a discussion of such errors, see Practice Commentaries for CPL § 470.05). Dictum in the Court's opinion bespoke a broad application. Thus the opinion stated:

There are obvious good reasons for the Legislature's choice to require that jurisdictional *as well as other, defects* that can be raised on direct appeal be raised in that way or not at all. As this case shows, a less restrictive rule would be an invitation to abuse.

9 N.Y. 3d at 365 (emphasis supplied).

The other recent development involves the right of a state court to give retroactive effect to federal constitutional rulings. On Page 249 of the main volume the Practice Commentaries note that although New York may be free to apply standards that are more liberal than those utilized by federal courts for retroactive application of federal law on collateral attack, available indications did not support any movement in that direction. It now has been established however that the Court of Appeals is free to give retroactive effect to federal constitutional rules in reviewing New York convictions by making clear it is applying New York law. In *Danforth v. Minnesota*, 2008, U.S., 128 S.Ct. 1029, 169 L.Ed.2d 859, a case involving a state court's retroactive application of a recent opinion limiting the use of hearsay at criminal trials (see *Crawford v. Washington*, 2004, 541 U.S.36, 124 S.Ct. 1354, 158 L.Ed.2d 177), the Court distinguished between a requirement that a state apply federal constitutional law and a state devising a state law remedy for a violation of federal constitutional

law. This provides a clear avenue for New York lawyers to attempt to convince the Court of Appeals to retroactively apply various federal constitutional rules that would be barred from retroactive federal *habeas corpus* challenge to a New York state conviction.

PRACTICE COMMENTARIES

by Peter Preiser

Prior to enactment of this section New York had no statute for collateral attack on a judgment of conviction. Defendants who had run the gamut of direct appeal and exhausted common law remedies were limited to federal habeas corpus (28 U.S.C. 2254) as a remedy for violation of their constitutional rights. Also, due to the absence of a state procedure, federal courts would pass upon claims of errors by New York trial courts without an opportunity for the state to consider these claims first. As an aid to understanding the purpose of this statute and its relation to common law, this commentary commences with a short history of the development of this collateral attack statute and its relationship to the common law.

In 1943 the Court of Appeals resurrected the ancient writ of *coram nobis* by which a person convicted of an offense could petition the trial court to exercise its inherent power to set aside the judgment of conviction on the basis of facts not disclosed prior to judgment due to duress, fraud or excusable mistake; which, had they been disclosed to the court, would have prevented entry of the judgment (*Lyons v. Goldstein*, 290 N.Y. 19, 25 to 26, 47 N.E.2d 425 [1943]). The spark thus ignited rapidly grew to a fire, fueled to some extent by Stanley (later Judge & Chief Judge) Fuld's frequently cited article in the New York Law Journal (Fuld, The Writ of Error *coram nobis*, N.Y.L.J., June 5, 1947, at 2212, col. 1), with the bulk of the cases involving either claims of off-record circumstances that induced improvident guilty pleas or claims of denial of counsel.

In 1964 the Supreme Court, ruling upon a federal habeas corpus by a New York defendant who claimed error in the procedure for admitting his allegedly coerced confession and who had exhausted his New York remedies, determined that the procedure at the defendant's trial was constitutionally deficient and announced a new constitutional requirement regarding a hearing on voluntariness. In so doing, however, the Court opined that New York in the first instance should be given the opportunity to correct the error by holding the required hearing (*Jackson v. Denno*, 378 U.S. 368, 393 to 396, 84 S.Ct. 1774, 1789 to 1791, 12 L.Ed.2d 908 [1964]). As a result, a procedure had to be developed to cope with other defendants seeking relief on the same ground and

the Court of Appeals stretched the ancient writ of *coram nobis* to cover this situation (see *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838, 204 N.E.2d 179 [1967]). Subsequently, as Fourteenth Amendment incorporation of federal constitutional rights of defendants rapidly burgeoned in the 1960s, the use of the writ was expanded to include all manner of alleged constitutional errors -- whether based upon facts in the record or not -- where direct appellate review was foreclosed (see *e.g.*, *People v. Pohl*, 23 N.Y.2d 290, 296 N.Y.S.2d 352, 244 N.E.2d 47 [1968]). This no doubt was due to the circumstance that, absent some readily available post-conviction procedure to reconsider convictions in the light of retroactively applicable constitutional rulings, the federal habeas corpus prerequisite of exhaustion of state remedies would not bar access to the federal courts for initial review of the effect of alleged constitutional error on state court convictions (see *e.g.*, *Picard v. Connor*, 92 S.Ct. 509, 404 U.S. 270, 30 L.Ed.2d 438 [1971]; see also Practice Commentaries by Judge Denzer in the 1971 edition of this volume at p. 179).

In addition to remedies available through *coram nobis* and federal and state habeas corpus, post-judgment remedies were available for relief that would not be cognizable thereunder -- *i.e.*, motion for a new trial on the ground of newly-discovered evidence (Code of Cr.Proc. §§ 465[7], 466), and motion for resentencing addressed exclusively to the legality of the sentence.

As Judge Denzer (the principal CPL draftsman) noted in his original Practice Commentary, the motions codified in this Article -- *i.e.*, to vacate judgment (CPL § 440.10) and to set aside sentence (CPL § 440.20) -- are designed collectively to embrace all extant non-appellate post-judgment remedies and motions to challenge the validity of a judgment of conviction.

When considering use of the motion to vacate judgment, it first is necessary to distinguish between that motion and state habeas corpus (CPLR Article 70). A motion to vacate judgment must be brought in the court where the defendant was convicted and, unlike state *habeas corpus*, cannot be brought in the court of another county where the defendant happens to be detained (compare CPL § 440.10[1] with CPLR § 7002[b]). But of the eight grounds for the motion to vacate judgment (see subd. 1 par. [a] through [h]), the only one common to both that motion and state habeas corpus is lack of trial jurisdiction of the action that resulted in the conviction or lack of jurisdiction of the person of the defendant (subd. 1[a]). The other grounds for the motion to vacate judgment do not qualify for habeas corpus, because the only immediate relief that could be granted on those grounds is a new trial or a new appeal; as distinguished from immediate release from custody, which is the basis for a writ of habeas corpus (see *People ex rel. Kaplan in Behalf of Fuentes v. Commissioner of Correction of City of New York*, 60 N.Y.2d 648, 467 N.Y.S.2d 566, 454 N.E.2d 1309 [1983]).

Next, it is important to note that this section replaces all aspects of the common law writs that it directly covers and thus resort to *coram nobis* is unavailable in situations covered by the statute (*cf.*, [People v. Corso](#), 40 N.Y.2d 578, 388 N.Y.S.2d 886, 357 N.E.2d 377 [1976]; [People v. Jackson](#), 78 N.Y.2d 638, 647, 578 N.Y.S.2d 483, 585 N.E.2d 795 [1991]).

“[B]ut the Legislature did not expressly abolish the common-law writ of *coram nobis* or necessarily embrace all of its prior or unanticipated functions within CPL § 440.10”, and therefore the writ remains available as a remedy where one is required and none is provided by statute ([People v. Bachert](#), 69 N.Y.2d 593, 599, 516 N.Y.S.2d 623, 509 N.E.2d 318 [1987]). Accordingly, the Court of Appeals approved use of the writ for a claim of ineffective assistance of appellate counsel, opining that the proper forum for the writ in such case is the appellate court where the alleged deficiency occurred ([People v. Bachert](#), *supra*). Note however that a claim of ineffective assistance of counsel in an intermediate appellate court may nevertheless be raised on direct appeal to the Court of Appeals, if timely made on an adequate record. [People v. Vasquez](#), 70 N.Y.2d 1, 516 N.Y.S.2d 921, 509 N.E.2d 934 (1987). Although the door to collateral attack for ineffective assistance of appellate counsel was opened by *Bachert* in 1987, it was not until 2002 that the Court of Appeals was given statutory authority to review intermediate appellate court decisions on such claims (see L.2002, c.498, amending CPL § 450.90) and the first such review occurred in 2004. See [People v. Stultz](#), 2 N.Y.3d 277, 778 N.Y.S.2d 431, 810 N.E.2d 883 (2004). Exercising this authority for the first time, the Court opined that it would be “inapt to have one standard for trials and another for appeals” and expressed confidence in the ability of appellate courts “who are uniquely suited to evaluate what is meaningful in their own area” to apply the *Baldi* standard ([People v. Baldi](#), 54 N.Y.2d 137, 147, 444 N.Y.S.2d 893, 429 N.E.2d 400 [1981]) of “meaningful representation” applicable to representation by trial counsel in gauging effectiveness of appellate counsel (2 N.Y.3d at 279).

As noted above, this section was designed to encompass all extant non-appellate post-judgment remedies and motions to challenge the validity of a judgment of conviction; and accordingly those are set forth in subdivision one. We turn now to subdivisions two and three, which specify bars to relief notwithstanding allegation of statutory grounds. The bars specified in subdivision two are absolute, and those in subdivision three may be lifted in the discretion of the court, in the interest of justice and for good cause shown.

Paragraph (a) of subdivision two prevents post-conviction review of points previously determined on appeal, except in the very rare instance where a subsequent change in the law must be given retroactive effect. Federally, there would be two occasions for such

retroactivity: (1) where a change in substantive law placed the conduct for which the defendant was convicted beyond the power of the state to proscribe; or (2) where the defendant was deprived of a procedural right implicit in the concept of orderly liberty (see *Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 [1989]). As last expressed by the Court of Appeals, the New York standard is no broader than the latter -- *i.e.*, the alleged error must be one that would “go to the heart of a reliable determination of guilt or innocence” (see *People v. Pepper*, 53 N.Y.2d 213, 221, 440 N.Y.S.2d 889, 423 N.E.2d 366 [1981] *cert. denied*, 454 U.S. 1162, 102 S.Ct. 1035, 71 L.Ed.2d 318). New York, of course, is free to apply more liberal standards with respect to retroactive application on collateral attack after the appellate process has been exhausted -- provided it does so as a matter of New York law -- but available indications do not point in that direction (see *e.g.*, *People v. Eastman*, 85 N.Y.2d 265, 624 N.Y.S.2d 83, 648 N.E.2d 459 [1995]).

Paragraphs (b) and (c) of subdivision two are designed to prevent use of the motion as a substitute for appeal (see *People v. Cooks*, 67 N.Y.2d 100, 103, 500 N.Y.S.2d 503, 491 N.E.2d 676 [1986]). In certain circumstances there may be some doubt as to whether sufficient facts appear on the record for an appellate ruling on the issue of law to be decided, and a definitive answer on sufficiency of the record will not be forthcoming until an appellate court has reviewed it. In such case the defendant should be careful to perfect a timely appeal and not to rely solely upon a motion under this section; because, should the record be found by the motion court to have been sufficient for review of the point on direct appeal, the motion must be dismissed (see subd. 2[b], [c]) and the defendant, having permitted the time for perfecting the appeal to elapse, will be left without a remedy. Moreover, even if the defendant prevails on the motion, the direct appeal should be perfected so that it can be consolidated with the People's appeal from the motion. Otherwise, if the appellate court decides the trial record was sufficient for passing upon the issue, the decision on the motion will be reversed (see subd. 2[c]) and the defendant, having failed to perfect direct appeal, will be left without a remedy. This ironic turn of events actually occurred in *People v. Cooks, supra*.

In connection with Paragraph (c) of subdivision two, note the escape hatch regarding “unjustifiable failure.” This implies that failure to perfect an appeal, or to have raised a point on appeal where the *nisi prius* record was sufficient could be excused, if it can be justified. Although the revisors did not supply any specific explanation of the purpose of this escape hatch, and there is no generally applicable appellate rubric construing it, consideration might be given to applying it in two situations. One would be where the ground was overlooked due to ineffective assistance of counsel. Note, though, that this does not include simple neglect to advise of the right to appeal -- *i.e.*, the old “*Montgomery* relief” -- for which the only remedy is a motion under [CPL § 460.30](#)

(see *People v. Corso*, 40 N.Y.2d 578, 388 N.Y.S.2d 886, 357 N.E.2d 357 [1976] and Practice Commentaries for CPL § 460.30). The other situation might be where an appeal seemed futile due to the state of the law at the time, but subsequent retroactively effective changes would be applicable and in the light of those changes the defendant's trial had it occurred today would be deemed fundamentally unfair.

Paragraph (d) of subdivision two simply serves as a reminder that the proper vehicle for an attack leveled at the sentence, as distinguished from the conviction, is the motion to set aside sentence prescribed by CPL § 440.20.

Judge Denzer's original Practice Commentary serves well to outline the workings of subdivision three. As he stated, subdivision three predicates three situations in which the court in its discretion “may” -- as distinguished from “must” (subd. 2) -- deny the motion. To illustrate the first situation (paragraph a), he posited a motion based upon allegedly prejudicial newspaper publicity before and during trial. Such a claim can be made and placed upon the record before or during trial in the form of a motion for an adjournment or for a change of venue, and in such case the point would be reviewable upon appeal from the judgment of conviction. If the defendant never mentioned the matter at the trial and hence precluded appellate review thereof, the court may on that ground alone deny the motion, although it may, if it chooses, disregard the defendant's laxity and entertain the motion notwithstanding.

The second situation (paragraph b) gives a trial court discretion to entertain a second or subsequent collateral motion on a ground previously denied by the same or another trial court, provided the point was not previously determined on a direct appeal from the judgment. The exception at the end makes it clear that the provisions of this paragraph cannot be applied to bar relief, if subsequent to the prior determination there has been a retroactively effective change in the law.

Under paragraph (c), the third situation, the test as to whether the court will exercise discretion to relieve the defendant from forfeiture will be whether the defendant can demonstrate good cause for failure to raise the ground on a prior motion. This provision is consistent with other CPL provisions aimed at discouraging motion proliferation and dilatory tactics (see CPL §§ 210.20[3], 255.20[2]).

Subdivision four is self-explanatory, but also should be read in conjunction with subdivision 5(b), which applies when the motion is made on the ground of newly-discovered evidence. Where the newly-discovered evidence, had it been received at trial, would merely have reduced the verdict to one for a lesser included offense, the court -- in lieu of vacating the judgment and ordering a new trial -- may, with the consent of the

People, simply modify the conviction to one for the lesser included offense in the same manner as it might on a motion to set aside the verdict (see [CPL § 330.50\[3\]](#)).

Subdivisions six and seven set forth the blueprint for the status of the accusatory instrument in further proceedings following an order that vacates the judgment of conviction and directs a new trial. Subdivision six, however, requires legislative attention. Insofar as it permits retrial on the original indictment where a prior trial or a subsequent ruling culminated in conviction of a lesser included offense -- rather than the offense as charged in the indictment -- it is unconstitutional (see [People v. Mayo](#), 48 N.Y.2d 245, 253, 422 N.Y.S.2d 361, 397 N.E.2d 1166 [1979]). There, however, are several ways to deal with this problem absent legislative revision. One method is to dismiss the indictment or the count without prejudice to an application by the People for leave to resubmit to a Grand Jury the facts upon which the conviction was based (see e.g., [People v. Banch](#), 80 N.Y.2d 610, 621 n. 5, 593 N.Y.S.2d 491, 608 N.E.2d 1069 [1992]); for other alternatives see Practice Commentaries for [CPL § 310.60](#) (at p. 423 of that volume).

Additionally, there may be difficulty in determining whether the defendant is deemed to have been acquitted of a count not submitted to the jury on the prior trial. If the count was dismissed by trial order of dismissal, such action clearly is deemed an acquittal and, where the dismissal occurred prior to discharge of the jury -- or after if the dismissal is not reversed -- it cannot be retried due to principles of double jeopardy (see [Sanabria v. United States.](#), 437 U.S. 54, 98 S.Ct. 2170, 57 L.Ed.2d 43 [1978]; see also [Arizona v. Rumsey](#), 467 U.S. 203, 104 S.Ct. 2305, 81 L.Ed.2d 164 [1984] and Practice Commentaries for [CPL § 290.10](#)). When, however, the count simply was not submitted to the trier of the fact at the first trial and therefore was deemed dismissed under circumstances not constituting the statutory functional equivalent of a trial order of dismissal (see [CPL § 300.40\[7\]](#)), retrial of the count after the defendant has succeeded in overturning the verdict depends upon whether the circumstances indicate that the failure to submit it was based upon a finding of legal insufficiency. See [People v. Biggs](#), 1 N.Y.3d 325, 771 N.Y.S.2d 49, 803 N.E.2d 370 (2004).

Finally, returning to the grounds for the motion, note that the improper and prejudicial prosecutorial conduct ground, subdivision 1(f), requires the defendant to show actual prejudice as a prerequisite for relief. And here the Court of Appeals has deviated from federal standards. Two types of improper and allegedly prejudicial conduct have recently been considered: failure to turn over specifically requested exculpatory (“*Brady*”) material; and failure to turn over prior statements made by prosecution witnesses -- “*Rosario* material”.

In *People v. Vilardi*, 76 N.Y.2d 67, 556 N.Y.S.2d 518, 555 N.E.2d 915 (1990), the Court dealt with the question of whether New York should adopt the federal constitutional standard for determining whether prosecutorial failure to disclose specifically requested “*Brady* material” should result in vacating a conviction on a post-judgment motion. Under the federal rubric -- known as the *Bagley* standard (*United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 [1985]) -- the undisclosed evidence is deemed material only if there is a *reasonable probability* that had it been disclosed to the defense the result of the proceeding would have been different -- *i.e.*, a probability sufficient to undermine the reviewing court's confidence in the outcome of the trial. Most importantly, that standard applies without regard to whether the defense made a specific request for the evidence. The Court of Appeals found the *Bagley* standard too stringent for defendant in situations where the evidence was specifically requested. Accordingly, New York courts will utilize a less rigorous test if the failure relates to an item that was specifically requested. In such case the standard is whether there is a *reasonable possibility* that the failure to disclose contributed to the verdict.

In the other situation, failure to turn over a witness' prior statements in possession of the People, the Court of Appeals originally opted for a rule that required *per se* reversal of the judgment when the issue arose on direct appeal (see *People v. Rangelhelle*, 69 N.Y.2d 56, 511 N.Y.S.2d 580, 503 N.E.2d 1011 [1986]), but applied the less punitive *reasonable possibility* of prejudice test when considering prosecutorial failure on collateral attack -- *i.e.*, on a motion to vacate judgment under this section (see *People v. Jackson*, 78 N.Y.2d 638, 578 N.Y.S.2d 483, 585 N.E.2d 795 (1991)). Subsequently, the Legislature stepped in, and by amendment of the CPL in 2000 the test, whether on direct appeal or motion to vacate the judgment, became *reasonable possibility* (see CPL § 240.75).


The difference between the “*reasonable probability*” test and the New York “*reasonable possibility*” test is that under the former the undisclosed evidence receives no more weight than it would have been accorded had it been introduced at trial, and thus a reviewing court must determine how that evidence would have affected the jury's deliberations. As characterized by the Court of Appeals, the *reasonable probability* test is an “outcome-oriented standard of review that gives dispositive weight to the strength of the People's case,” remitting “the impact of the exculpatory evidence to appellate hindsight” (*People v. Vilardi, supra*, 76 N.Y.2d at 77). Stated another way, a reviewing court will not find prejudice unless the item the prosecution failed to reveal would have been so material as to reasonably “put the whole case in such a different light as to undermine confidence in the verdict”. *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). The “*reasonable possibility*” test, on the other hand, focuses upon the evidence withheld and the question of whether the failure to disclose it possibly contributed to the verdict. In other words, *reasonable “probability”* requires a

finding that the error undermines the reviewing court's confidence in the verdict; while reasonable “possibility” is satisfied by a finding that the error could have affected the verdict.

The Court of Appeals perhaps adopted the *reasonable possibility* test because of the severe consequences for a prosecutor who fails to reveal the necessary information. Thus, the Court pointed out that its *reasonable possibility* standard carried a greater incentive for prosecutors to take care in combing their files for the requested evidence (*People v. Vilardi, supra, 76 N.Y.2d at 77*), as the penalty for prosecution's failure to disclose the information closely resembles the federal standard for constitutional error -- *i.e.*, “harmless beyond a reasonable doubt” (see *United States v. Bagley, 473 U.S. 667, 679 to 680, n.9, 105 S.Ct. 3382, 87 L.Ed.2d 481 [1985]*); except in this context the defendant has the burden of establishing the prejudicial effect of the People's failure to comply.

[Notes of Decisions \(2325\)](#)

McKinney's CPL § 440.10, NY CRIM PRO § 440.10
Current through L.2013, chapters 1 to 340.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Criminal Procedure Law (Refs & Annos)
Chapter 11-A. Of the Consolidated Laws (Refs & Annos)
Part Three. Special Proceedings and Miscellaneous Procedures
Title T. Procedures for Securing Evidence by Means of Court Order and for
Suppressing Evidence Unlawfully or Improperly Obtained
Article 700. Eavesdropping and Video Surveillance Warrants (Refs &
Annos)

McKinney's CPL § 700.05

§ 700.05 Eavesdropping and video surveillance warrants; definitions of terms

Effective: November 11, 2010

Currentness

As used in this article, the following terms have the following meanings:

1. “Eavesdropping” means “wiretapping”, “mechanical overhearing of conversation,” or the “intercepting or accessing of an electronic communication”, as those terms are defined in [section 250.00 of the penal law](#), but does not include the use of a pen register or trap and trace device when authorized pursuant to article 705 of this chapter.
2. “Eavesdropping warrant” means an order of a justice authorizing or approving eavesdropping.
3. “Intercepted communication” means (a) a telephonic or telegraphic communication which was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver, by means of any instrument, device or equipment, or (b) a conversation or discussion which was intentionally overheard or recorded, without the consent of at least one party thereto, by a person not present thereat, by means of any instrument, device or equipment; or (c) an electronic communication which was intentionally intercepted or accessed, as that term is defined in [section 250.00 of the penal law](#). The term “contents,” when used with respect to a communication, includes any information concerning the identity of the parties to such

communications, and the existence, substance, purport, or meaning of that communication. The term “communication” includes conversation and discussion.

3-a. “Telephonic communication”, “electronic communication”, and “intentionally intercepted or accessed” have the meanings given to those terms by subdivisions three, five, and six respectively, of [section 250.00 of the penal law](#).

4. “Justice,” except as otherwise provided herein, means any justice of an appellate division of the judicial department in which the eavesdropping warrant is to be executed, or any justice of the supreme court of the judicial district in which the eavesdropping warrant is to be executed, or any county court judge of the county in which the eavesdropping warrant is to be executed. When the eavesdropping warrant is to authorize the interception of oral communications occurring in a vehicle or wire communications occurring over a telephone located in a vehicle, “justice” means any justice of the supreme court of the judicial department or any county court judge of the county in which the eavesdropping device is to be installed or connected or of any judicial department or county in which communications are expected to be intercepted. When such a justice issues such an eavesdropping warrant, such warrant may be executed and such oral or wire communications may be intercepted anywhere in the state.

5. “Applicant” means a district attorney or the attorney general or if authorized by the attorney general, the deputy attorney general in charge of the organized crime task force. If a district attorney or the attorney general is actually absent or disabled, the term “applicant” includes that person designated to act for him and perform his official function in and during his actual absence or disability.

6. “Law enforcement officer” means any public servant who is empowered by law to conduct an investigation of or to make an arrest for a designated offense, and any attorney authorized by law to prosecute or participate in the prosecution of a designated offense.

7. “Exigent circumstances” means conditions requiring the preservation of secrecy, and whereby there is a reasonable likelihood that a continuing investigation would be thwarted by alerting any of the persons subject to surveillance to the fact that such surveillance had occurred.

8. “Designated offense” means any one or more of the following crimes:

(a) A conspiracy to commit any offense enumerated in the following paragraphs of this subdivision, or an attempt to commit any felony enumerated in the following paragraphs of this subdivision which attempt would itself constitute a felony;

(b) Any of the following felonies: assault in the second degree as defined in [section 120.05 of the penal law](#), assault in the first degree as defined in [section 120.10 of the penal law](#), reckless endangerment in the first degree as defined in [section 120.25 of the penal law](#), promoting a suicide attempt as defined in [section 120.30 of the penal law](#), strangulation in the second degree as defined in [section 121.12 of the penal law](#), strangulation in the first degree as defined in [section 121.13 of the penal law](#), criminally negligent homicide as defined in [section 125.10 of the penal law](#), manslaughter in the second degree as defined in [section 125.15 of the penal law](#), manslaughter in the first degree as defined in [section 125.20 of the penal law](#), murder in the second degree as defined in [section 125.25 of the penal law](#), murder in the first degree as defined in [section 125.27 of the penal law](#), abortion in the second degree as defined in [section 125.40 of the penal law](#), abortion in the first degree as defined in [section 125.45 of the penal law](#), rape in the third degree as defined in [section 130.25 of the penal law](#), rape in the second degree as defined in [section 130.30 of the penal law](#), rape in the first degree as defined in [section 130.35 of the penal law](#), criminal sexual act in the third degree as defined in [section 130.40 of the penal law](#), criminal sexual act in the second degree as defined in [section 130.45 of the penal law](#), criminal sexual act in the first degree as defined in [section 130.50 of the penal law](#), sexual abuse in the first degree as defined in [section 130.65 of the penal law](#), unlawful imprisonment in the first degree as defined in [section 135.10 of the penal law](#), kidnapping in the second degree as defined in [section 135.20 of the penal law](#), kidnapping in the first degree as defined in [section 135.25 of the penal law](#), labor trafficking as defined in [section 135.35 of the penal law](#), custodial interference in the first degree as defined in [section 135.50 of the penal law](#), coercion in the first degree as defined in [section 135.65 of the penal law](#), criminal trespass in the first degree as defined in [section 140.17 of the penal law](#), burglary in the third degree as defined in [section 140.20 of the penal law](#), burglary in the second degree as defined in [section 140.25 of the penal law](#), burglary in the first degree as defined in [section 140.30 of the penal law](#), criminal mischief in the third degree as defined in [section 145.05 of the penal law](#), criminal mischief in the second degree as defined in [section 145.10 of the penal law](#), criminal mischief in the first degree as defined in [section 145.12 of the penal law](#), criminal tampering in the first degree as defined in [section 145.20 of the penal law](#), arson in the fourth degree as defined in [section 150.05 of the penal law](#), arson in the third degree as defined in [section 150.10 of the penal law](#), arson in the second degree as defined in [section 150.15 of the penal law](#), arson in the first degree as defined in [section 150.20 of the penal law](#), grand larceny in the fourth degree as defined in [section 155.30 of the penal law](#), grand larceny in the third degree as defined in [section 155.35 of the penal law](#), grand larceny in the second degree as defined in [section 155.40 of the penal law](#), grand larceny in the first degree as defined in [section 155.42 of the penal law](#), health care fraud in the fourth degree as defined in [section 177.10 of the penal law](#), health care fraud in the

third degree as defined in [section 177.15 of the penal law](#), health care fraud in the second degree as defined in [section 177.20 of the penal law](#), health care fraud in the first degree as defined in [section 177.25 of the penal law](#), robbery in the third degree as defined in [section 160.05 of the penal law](#), robbery in the second degree as defined in [section 160.10 of the penal law](#), robbery in the first degree as defined in [section 160.15 of the penal law](#), unlawful use of secret scientific material as defined in [section 165.07 of the penal law](#), criminal possession of stolen property in the fourth degree as defined in [section 165.45 of the penal law](#), criminal possession of stolen property in the third degree as defined in [section 165.50 of the penal law](#), criminal possession of stolen property in the second degree as defined by [section 165.52 of the penal law](#), criminal possession of stolen property in the first degree as defined by [section 165.54 of the penal law](#), trademark counterfeiting in the second degree as defined in [section 165.72 of the penal law](#), trademark counterfeiting in the first degree as defined in [section 165.73 of the penal law](#), forgery in the second degree as defined in [section 170.10 of the penal law](#), forgery in the first degree as defined in [section 170.15 of the penal law](#), criminal possession of a forged instrument in the second degree as defined in [section 170.25 of the penal law](#), criminal possession of a forged instrument in the first degree as defined in [section 170.30 of the penal law](#), criminal possession of forgery devices as defined in [section 170.40 of the penal law](#), falsifying business records in the first degree as defined in [section 175.10 of the penal law](#), tampering with public records in the first degree as defined in [section 175.25 of the penal law](#), offering a false instrument for filing in the first degree as defined in [section 175.35 of the penal law](#), issuing a false certificate as defined in [section 175.40 of the penal law](#), criminal diversion of prescription medications and prescriptions in the second degree as defined in [section 178.20 of the penal law](#), criminal diversion of prescription medications and prescriptions in the first degree as defined in [section 178.25 of the penal law](#), residential mortgage fraud in the fourth degree as defined in [section 187.10 of the penal law](#), residential mortgage fraud in the third degree as defined in [section 187.15 of the penal law](#), residential mortgage fraud in the second degree as defined in [section 187.20 of the penal law](#), residential mortgage fraud in the first degree as defined in [section 187.25 of the penal law](#), escape in the second degree as defined in [section 205.10 of the penal law](#), escape in the first degree as defined in [section 205.15 of the penal law](#), absconding from temporary release in the first degree as defined in [section 205.17 of the penal law](#), promoting prison contraband in the first degree as defined in [section 205.25 of the penal law](#), hindering prosecution in the second degree as defined in [section 205.60 of the penal law](#), hindering prosecution in the first degree as defined in [section 205.65 of the penal law](#), sex trafficking as defined in [section 230.34 of the penal law](#), criminal possession of a weapon in the third degree as defined in subdivisions two, three and five of [section 265.02 of the penal law](#), criminal possession of a weapon in the second degree as defined in [section 265.03 of the penal law](#), criminal possession of a weapon in the first degree as defined in [section 265.04 of the penal law](#), manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in [subdivisions one, two, and three of section 265.10 of the penal law](#), [sections 265.11, 265.12 and 265.13 of the penal law](#), or prohibited use of weapons as defined in [subdivision two of section 265.35 of the penal law](#), relating to firearms and other dangerous

weapons, or failure to disclose the origin of a recording in the first degree as defined in [section 275.40 of the penal law](#);

(c) Criminal possession of a controlled substance in the seventh degree as defined in [section 220.03 of the penal law](#), criminal possession of a controlled substance in the fifth degree as defined in [section 220.06 of the penal law](#), criminal possession of a controlled substance in the fourth degree as defined in [section 220.09 of the penal law](#), criminal possession of a controlled substance in the third degree as defined in [section 220.16 of the penal law](#), criminal possession of a controlled substance in the second degree as defined in [section 220.18 of the penal law](#), criminal possession of a controlled substance in the first degree as defined in [section 220.21 of the penal law](#), criminal sale of a controlled substance in the fifth degree as defined in [section 220.31 of the penal law](#), criminal sale of a controlled substance in the fourth degree as defined in [section 220.34 of the penal law](#), criminal sale of a controlled substance in the third degree as defined in [section 220.39 of the penal law](#), criminal sale of a controlled substance in the second degree as defined in [section 220.41 of the penal law](#), criminal sale of a controlled substance in the first degree as defined in [section 220.43 of the penal law](#), criminally possessing a hypodermic instrument as defined in [section 220.45 of the penal law](#), criminal possession of methamphetamine manufacturing material in the second degree as defined in [section 220.70 of the penal law](#), criminal possession of methamphetamine manufacturing material in the first degree as defined in [section 220.71 of the penal law](#), criminal possession of precursors of methamphetamine as defined in [section 220.72 of the penal law](#), unlawful manufacture of methamphetamine in the third degree as defined in [section 220.73 of the penal law](#), unlawful manufacture of methamphetamine in the second degree as defined in [section 220.74 of the penal law](#), unlawful manufacture of methamphetamine in the first degree as defined in [section 220.75 of the penal law](#), unlawful disposal of methamphetamine laboratory material as defined in [section 220.76 of the penal law](#), operating as a major trafficker as defined in [section 220.77 of the penal law](#), criminal possession of marijuana in the first degree as defined in [section 221.30 of the penal law](#), criminal sale of marijuana in the first degree as defined in [section 221.55 of the penal law](#), promoting gambling in the second degree as defined in [section 225.05 of the penal law](#), promoting gambling in the first degree as defined in [section 225.10 of the penal law](#), possession of gambling records in the second degree as defined in [section 225.15 of the penal law](#), possession of gambling records in the first degree as defined in [section 225.20 of the penal law](#), and possession of a gambling device as defined in [section 225.30 of the penal law](#);

(d) Commercial bribing, commercial bribe receiving, bribing a labor official, bribe receiving by a labor official, sports bribing and sports bribe receiving, as defined in article one hundred eighty of the penal law;

(e) Criminal usury, as defined in article one hundred ninety of the penal law;

(f) Bribery in the third degree, bribery in the second degree, bribery in the first degree, bribe receiving in the third degree, bribe receiving in the second degree, bribe receiving in the first degree, bribe giving for public office and bribe receiving for public office, as defined in article two hundred of the penal law;

(g) Bribing a witness, bribe receiving by a witness, bribing a juror and bribe receiving by a juror, as defined in article two hundred fifteen of the penal law;

(h) Promoting prostitution in the first degree, as defined in [section 230.32 of the penal law](#), promoting prostitution in the second degree, as defined by [subdivision one of section 230.30 of the penal law](#);

(i) Riot in the first degree and criminal anarchy, as defined in article two hundred forty of the penal law;

(j) Eavesdropping, as defined in article two hundred fifty of the penal law;

(k) Any of the acts designated as felonies in [subdivisions two and four of section four hundred eighty-one of the tax law](#), which section relates to penalties under the tax on cigarettes imposed by article twenty of such law, and any of the acts designated as felonies in subdivision c of section 11-1317 of the administrative code of the city of New York, which section relates to penalties under the cigarette tax imposed by chapter thirteen of title eleven of such code.

(l) Scheme to defraud in the first degree as defined in article one hundred ninety of the penal law.

(m) Any of the acts designated as felonies in [section three hundred fifty-two-c of the general business law](#).

(n) Any of the acts designated as felonies in title twenty-seven of article seventy-one of the environmental conservation law.

(o) Money laundering in the first degree, as defined in [section 470.20 of the penal law](#), money laundering in the second degree as defined in [section 470.15 of the penal law](#), money laundering in the third degree as defined in section 470.10 of such law, and money laundering in the fourth degree as defined in section 470.05 of such law, where the property involved represents or is represented to be the proceeds of specified criminal conduct which itself constitutes a designated offense within the meaning of this subdivision.

(p) Stalking in the second degree as defined in [section 120.55 of the penal law](#), and stalking in the first degree as defined in [section 120.60 of the penal law](#).

(q) Soliciting or providing support for an act of terrorism in the second degree as defined in [section 490.10 of the penal law](#), soliciting or providing support for an act of terrorism in the first degree as defined in [section 490.15 of the penal law](#), making a terroristic threat as defined in [section 490.20 of the penal law](#), crime of terrorism as defined in [section 490.25 of the penal law](#), hindering prosecution of terrorism in the second degree as defined in [section 490.30 of the penal law](#), hindering prosecution of terrorism in the first degree as defined in [section 490.35 of the penal law](#), criminal possession of a chemical weapon or biological weapon in the third degree as defined in [section 490.37 of the penal law](#), criminal possession of a chemical weapon or biological weapon in the second degree as defined in [section 490.40 of the penal law](#), criminal possession of a chemical weapon or biological weapon in the first degree as defined in [section 490.45 of the penal law](#), criminal use of a chemical weapon or biological weapon in the third degree as defined in [section 490.47 of the penal law](#), criminal use of a chemical weapon or biological weapon in the second degree as defined in [section 490.50 of the penal law](#), and criminal use of a chemical weapon or biological weapon in the first degree as defined in [section 490.55 of the penal law](#).

(r) Falsely reporting an incident in the second degree as defined in [section 240.55 of the penal law](#), falsely reporting an incident in the first degree as defined in [section 240.60 of the penal law](#), placing a false bomb in the second degree as defined in [section 240.61 of the penal law](#), placing a false bomb in the first degree as defined in [section 240.62 of the penal law](#), and placing a false bomb in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in [section 240.63 of the penal law](#).

(s) Identity theft in the second degree, as defined in [section 190.79 of the penal law](#), identity theft in the first degree, as defined in [section 190.80 of the penal law](#), unlawful possession of personal identification information in the second degree, as defined in [section 190.82 of the penal law](#), and

unlawful possession of personal identification information in the first degree, as defined in [section 190.83 of the penal law](#).

(t) Menacing a police officer or peace officer as defined in [section 120.18 of the penal law](#); aggravated criminally negligent homicide as defined in [section 125.11 of the penal law](#); aggravated manslaughter in the second degree as defined in [section 125.21 of the penal law](#); aggravated manslaughter in the first degree as defined in [section 125.22 of the penal law](#); aggravated murder as defined in [section 125.26 of the penal law](#).

9. “Video surveillance” means the intentional visual observation by law enforcement of a person by means of a television camera or other electronic device that is part of a television transmitting apparatus, whether or not such observation is recorded on film or video tape, without the consent of that person or another person thereat and under circumstances in which such observation in the absence of a video surveillance warrant infringes upon such person's reasonable expectation of privacy under the constitution of this state or of the United States.

10. “Video surveillance warrant” means an order of a justice authorizing or approving video surveillance.

Credits

(L.1970, c. 996, § 1. Amended L.1972, c. 586, § 1; L.1973, c. 276, § 28; L.1978, c. 22, §§ 1, 2; L.1979, c. 410, § 28; L.1981, c. 565, § 1; L.1983, c. 105, § 1; L.1983, c. 646, § 1; L.1984, c. 919, § 1; L.1985, c. 611, § 1; L.1986, c. 671, § 26; L.1988, c. 744, §§ 6 to 10; L.1990, c. 154, § 1; L.1991, c. 496, § 7; L.1992, c. 490, § 2; L.1995, c. 1, § 28; L.1998, c. 2, § 40, eff. Nov. 1, 1998; L.1999, c. 635, § 5, eff. Dec. 1, 1999; L.2000, c. 489, § 2, eff. Nov. 1, 2000; L.2001, c. 300, § 8, eff. Sept. 17, 2001; L.2001, c. 301, § 9, eff. Sept. 17, 2001; L.2001, c. 302, § 4, eff. Sept. 17, 2001; L.2002, c. 619, § 6, eff. Nov. 1, 2002; L.2003, c. 264, § 49, eff. Nov. 1, 2003; L.2004, c. 1, pt. A, § 3, eff. July 23, 2004; L.2005, c. 394, § 6, eff. Oct. 1, 2005; L.2005, c. 765, § 14, eff. Dec. 21, 2005; L.2006, c. 442, § 11, eff. Nov. 1, 2006; L.2007, c. 74, § 8, eff. Nov. 1, 2007; L.2007, c. 568, § 2, eff. Nov. 1, 2007; L.2007, c. 570, § 1, eff. Nov. 1, 2007; L.2008, c. 472, § 20, eff. Nov. 1, 2008; L.2009, c. 56, pt. AAA, § 11, eff. Nov. 1, 2009; L.2010, c. 405, § 4, eff. Nov. 11, 2010.)

Editors' Notes

PRACTICE COMMENTARIES

by Peter Preiser

In 1967 the Supreme Court struck down as an unconstitutional invasion of privacy ([U.S. Const. amends. IV and XIV](#)) New York's procedure for obtaining information by means of electronic surveillance ([Berger v. New York, 1967, 388 U.S. 41, 87 S.Ct. 1873, 18 L.Ed.2d 1040](#)). Shortly thereafter Congress enacted the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351), Title III of which set out a comprehensive national system for regulating electronic eavesdropping ([18 U.S.C.A. §§ 2510-2520](#)) based upon congressional authority under the Commerce Clause ([U.S. Const. art. I, § 8, cl. 3](#)). Included therein were provisions meticulously specifying a procedure for obtaining eavesdropping warrants that could be utilized by federal and state officers. States were authorized to adopt similar provisions so long as they were at least in conformity with federal minimum requirements (see [18 U.S.C. § 2516\[2\]](#)). State laws granting broader authority would run afoul of the Supremacy Clause ([U.S. Const. art. VI, cl. 2](#)). As a result, in 1969 New York enacted its version of the federal procedure that, with the enactment of the CPL, was carried over to become CPL Article 700 (see [People v. Vespucci, 1990, 75 N.Y.2d 434, 438, 554 N.Y.S.2d 417, 553 N.E.2d 965, certiorari denied 498 U.S. 814, 111 S.Ct. 52, 112 L.Ed.2d 28](#)).

The 1967 law was designed to cover only the more primitive forms of electronic surveillance, commonly known as “wiretapping” and “bugging”. This proved inadequate for the rapidly emerging technology. Accordingly, in 1986 Congress passed the Electronic Communications and Privacy Act of 1986, [Pub.L. 99-508](#) (the “ECPA”), which expanded and clarified federal law relating to interception of electronic communications, and banned electronic surveillance under nonconforming state law effective October 21, 1988. New York responded in time to meet the deadline and amended its procedures as embodied in this article, also revising the prohibitions set forth Penal Law Article 250 ([L.1988, c. 744](#), effective 12/22/88). This expansion to electronic communications brought within the eavesdropping concept all manner of electronic devices employed for transmitting information. Thus the term “eavesdropping” is somewhat misleading, if employed to characterize the current law. Presently the Eavesdropping statutes apply beyond devices that transmit the human voice to transmissions of words, data and signals sent by fax machines, computers, pen registers, trap and trace devices, and photo-optical systems, etc.

Subdivision Commentary

Subdivisions one, three and three-a basically set forth cross-references to [Penal Law § 250.00](#) for definition of the types of unauthorized electronic interception prohibited

by law. These are useful for understanding the coverage of this article as it relates to warrants defined as an “eavesdropping warrant” (see subd. 2)

Note however that the term “eavesdropping warrant” does not include two other types of electronic surveillance authorizations required if the user is to avoid suppression and/or criminal penalty. One is a “video surveillance warrant” (see subdivision 10). Unauthorized police video surveillance, though not punishable under the Penal Law, nevertheless requires a warrant pursuant to this chapter, if suppression of the fruits of the activity is to be avoided. The other exception is an “order” to authorize lawful use of a pen register or trap and trace device (see [CPL § 705.05](#)). Here, unlike video surveillance, unlawful use of such a device by any party is punishable under [Penal Law § 250.05](#), but the requirements for such an order and the criteria for suppression are less stringent than are those of an eavesdropping warrant.

Subdivision four limits the authority to grant warrants for electronic surveillance to appellate division and superior court judges and justices designated to serve in the geographical area where the surveillance is to take place. Note that unlike warrants of arrest and search warrants, which can be issued only by local criminal courts (see [CPL §§ 120.30\[1\], 690.05\[1\]](#)), an electronic surveillance warrant cannot be issued by a local criminal court. These restrictions as to the general jurisdiction of the issuing jurist and the geographical limitation for issuance of the warrant were designed to implement the congressional purpose of assuring responsible state judicial participation (see [People v. Rodriguez Y Paz, 1983, 58 N.Y.2d 327, 335, 461 N.Y.S.2d 248, 448 N.E.2d 102](#)).

Authorization for issuance of warrants to intercept communications occurring in a vehicle was inserted by amendment in 1986. Conversations in a moving vehicle may well occur in a variety of judicial bailiwicks as the vehicle travels. Thus it was necessary to expand geographical jurisdiction for such cases to include a jurist where the device is to be installed or one in the area where the communication is expected to be intercepted, and any such warrant is valid for interception wherever the vehicle travels within the state. It might be noted here that the amendment, somewhat confusingly, uses the term “wire communications,” which is not a defined term under New York law. Under federal law the term “wire communication” has substantially the same meaning as the term “telephonic communication” in the New York law (compare [18 U.S.C.A. § 2510\[1\]](#) with [Penal Law § 250\[3\]](#)). The use of this term in the New York law combined with the specification that the communication be “over a telephone” could possibly be construed as reflecting a legislative intent to limit the expanded judicial authority to warrants authorizing acquisition of aural transfers (as distinguished for example from electronic communications to and from a fax machine located in a vehicle). However, it seems doubtful that any such distinction was intended.

Subdivision five -- in stark contrast to applications for search warrants, which may be obtained on the application of any public servant acting in the course of his official duties (see [CPL § 690.05\[1\]](#)) -- restricts authority to apply for an eavesdropping or video surveillance warrant to specific high level prosecutorial officials. Insofar as the eavesdropping warrant is concerned, this limitation is required by the federal act (see [18 U.S.C.A. 2516\[2\]](#)) and reflects the desire of Congress to focus responsibility and accountability for use of this invasive technique upon public officials directly responsible to the political process. Also, delegation to assistants is not permitted, except by designation of a person to act in case of the absence or disability of the specified title holder (see [United States v. Giordano, 1974, 416 U.S. 505, 94 S.Ct. 1820, 40 L.Ed.2d 341](#)).

Subdivisions six and seven are self explanatory. Subdivision eight reflects congressional policy to limit issuance of eavesdropping warrants to surveillance for prevention and detection of crimes the legislative authority specifically deems serious enough to warrant the use of extraordinary surveillance (see [18 U.S.C.A. § 2516\[2\]](#)). The federal statute sets forth several offenses as examples, but these should not be construed as limitations because the menu goes on to include the catch-all phrase “or other crime dangerous to life, limb or property and punishable by imprisonment for more than one year.” As is obvious by perusal of the listing of offenses set forth in this subdivision, which has been expanded virtually every year, the Legislature has considered the use of electronic surveillance to be applicable to virtually any felony. Indeed, as the Court of Appeals noted, the Legislature has construed the federal restrictions on the type of crime for which electronic surveillance would be authorized to mean that Congress intended “the word ‘crime’ to be construed generically and did not seek to unreasonably limit the power of a State Legislature to enact enabling legislation” (see [People v. Principe, 1985, 65 N.Y.2d 33, 38, 489 N.Y.S.2d 463, 478 N.E.2d 979](#)).

Subdivisions nine and ten define and authorize a warrant for a type of electronic surveillance not criminalized by the Penal Law nor covered under the federal eavesdropping statutes, as this does not involve interception of an electronic transmission of a communication. Video surveillance was added to this article to provide a clear method for authorizing police invasion of privacy to observe and record criminal activity within a place where suspects have a constitutionally protected expectation of privacy. Under prior law a perceived gap in police invasion of privacy between the eavesdropping warrant provisions of this article and the ordinary search warrant provisions of CPL Article 690, which authorize police to intrude only for seizing property or arrest of a person, was closed by an interpretation of search warrant authority that gave an unusual unique construction to [CPL § 690.10\[4\]](#) (see [People v. Teicher,](#)

1981, 52 N.Y.2d 638, 654-655, 439 N.Y.S.2d 846, 422 N.E.2d 506) to cover video surveillance. Upon specifying video surveillance in the electronic eavesdropping article, the Legislature apparently accomplished two things. It clarified the definition of the type of video surveillance--*i.e.*, television transmission--apparently to distinguish it from a device that would require an eavesdropping warrant (aural or electronic interception), and it subjected the covered technique to specific electronic eavesdropping warrant procedure.

Looking to the future, the Legislature may now have to create another new type of warrant to fill an apparent gap between a search warrant authorized by Article 690 and a video surveillance warrant authorized by this article. In *People v. Weaver*, 12 N.Y.3d 433, 2009, 882 N.Y.S.2d 357, 909 N.E.2d 1195, a divided bench held that the attachment of a global position monitoring device (GPS) to the bumper of a motor vehicle to monitor the movements of the vehicle without first receiving a judicially approved warrant authorizing the police to do so violated the suspect's right to privacy as protected by the New York Constitution. The Court's rationale conflated the suspect's property right (trespass upon the bumper) with privacy and thus found a need for a warrant to trespass upon personal property for the purpose of seizing information. Though the majority did not specify the type of warrant, the provisions of search warrant Article 690 presently are geared to a search to seize property and would not fit easily within it; but see *People v. Teicher*, 1981, 52 N.Y.2d 638, 651, 439 N.Y.S.2d 846, 422 N.E.2d 506. Accordingly, since the majority did not suggest legislation or, as Judge READ noted in her dissent, analyze any of the existing statutes that deal with warrants, the Legislature will have to innovate either through amendment of Article 690, adoption of a variation on the "video surveillance" development defined in subdivision nine of this article, or perhaps create some different solution, should it decide that the police may continue to use the technique employed here.

[Notes of Decisions \(39\)](#)

McKinney's CPL § 700.05, NY CRIM PRO § 700.05
Current through L.2013, chapters 1 to 340.

McKinney's Consolidated Laws of New York Annotated
Criminal Procedure Law (Refs & Annos)
Chapter 11-A. Of the Consolidated Laws (Refs & Annos)
Part Three. Special Proceedings and Miscellaneous Procedures
Title T. Procedures for Securing Evidence by Means of Court Order and for
Suppressing Evidence Unlawfully or Improperly Obtained
Article 700. Eavesdropping and Video Surveillance Warrants (Refs &
Annos)

McKinney's CPL § 700.10

§ 700.10 Eavesdropping and video surveillance warrants; in general

Currentness

1. Under circumstances prescribed in this article, a justice may issue an eavesdropping warrant or a video surveillance warrant upon ex parte application of an applicant who is authorized by law to investigate, prosecute or participate in the prosecution of the particular designated offense which is the subject of the application.
2. No eavesdropping or video surveillance warrant may authorize or approve the interception of any communication or the conducting of any video surveillance for any period longer than is necessary to achieve the objective of the authorization, or in any event longer than thirty days. Such thirty day period shall begin on the date designated in the warrant as the effective date, which date may be no later than ten days after the warrant is issued.

Credits

(L.1970, c. 996, § 1. Amended L.1972, c. 586, § 2; L.1988, c. 744, § 11.)

Editors' Notes

PRACTICE COMMENTARIES

by Peter Preiser


Subdivision one furnishes general authorization for issuance of the warrant. Note especially that the terms “justice” and “applicant” are defined in [CPL § 700.05](#) in a way

to limit their meaning to particular jurists and prosecutors (see Practice Commentaries for [CPL § 700.05 subds. 4 and 5](#)).

Subdivision two provides for commencement and the outer length of the warrant. Prior to a 1988 amendment of subdivision two of this section there was no statutory provision specifying commencement of the thirty day limitation on the permissible period of surveillance, now fixed at not more than ten days after issuance of the warrant, which will be specified in the warrant as the effective date of commencement. Thus, although the statutory provision for the form and content of the warrant instructs that “the authorization to intercept or conduct video surveillance shall be executed as soon as practicable” (see [CPL § 700.30\[7\]](#)), the commencement and termination of the surveillance authority is to be fixed by the court in the warrant to commence upon a date specified in the application as occurrence of probable cause for the surveillance (which may not be the date of issuance of the warrant) but not later than ten days after the date of issuance of the warrant and terminate not later than thirty days after commencement of the surveillance. Presumably, this would be set forth in the warrant as the period of time authorized for surveillance (see [CPL § 700.30\[6\]](#)).

[Notes of Decisions \(41\)](#)

McKinney's CPL § 700.10, NY CRIM PRO § 700.10
Current through L.2013, chapters 1 to 340.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10. Child Protective Proceedings (Refs & Annos)
Part 1. Jurisdiction (Refs & Annos)

McKinney's Family Court Act § 1012

§ 1012. Definitions

Effective: August 11, 2009

[Currentness](#)

When used in this article and unless the specific context indicates otherwise:

- (a) “Respondent” includes any parent or other person legally responsible for a child's care who is alleged to have abused or neglected such child;
- (b) “Child” means any person or persons alleged to have been abused or neglected, whichever the case may be;
- (c) “A case involving abuse” means any proceeding under this article in which there are allegations that one or more of the children of, or the legal responsibility of, the respondent are abused children;
- (d) “Drug” means any substance defined as a controlled substance in [section thirty-three hundred six of the public health law](#);
- (e) “Abused child” means a child less than eighteen years of age whose parent or other person legally responsible for his care
- (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or

protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; allows, permits or encourages such child to engage in any act described in [sections 230.25, 230.30 and 230.32 of the penal law](#); commits any of the acts described in [sections 255.25, 255.26 and 255.27 of the penal law](#); or allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

(f) “Neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that

the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in [subdivision five of section three hundred eighty-four-b of the social services law](#), by his parents or other person legally responsible for his care.

(g) “Person legally responsible” includes the child's custodian, guardian,¹ any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

(h) “Impairment of emotional health” and “impairment of mental or emotional condition” includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

(i) “Child protective agency” means the child protective service of the appropriate local department of social services or such other agencies with whom the local department has arranged for the provision of child protective services under the local plan for child protective services or an Indian tribe that has entered into an agreement with the state department of social services pursuant to [section thirty-nine of the social services law](#) to provide child protective services.

(j) “Aggravated circumstances” means where a child has been either severely or repeatedly abused, as defined in [subdivision eight of section three hundred eighty-four-b of the social services law](#); or where a child has subsequently been found to be an abused child, as defined in paragraph (i) or (iii) of subdivision (e) of this section, within five years after return home following placement in foster care as a result of being found to be a neglected child, as defined in subdivision (f) of this section, provided that the respondent or respondents in each of the foregoing proceedings was the same; or where the court finds by clear and convincing evidence that the parent of a child in foster care has refused and has failed completely, over a period of at least six months from the date of removal, to engage in services necessary to eliminate the risk of abuse or neglect if returned to the parent, and has failed to secure services on his or her own or otherwise adequately prepare for the return home and, after being informed by the court that such an admission could eliminate the requirement that

the local department of social services provide reunification services to the parent, the parent has stated in court under oath that he or she intends to continue to refuse such necessary services and is unwilling to secure such services independently or otherwise prepare for the child's return home; provided, however, that if the court finds that adequate justification exists for the failure to engage in or secure such services, including but not limited to a lack of child care, a lack of transportation, and an inability to attend services that conflict with the parent's work schedule, such failure shall not constitute an aggravated circumstance; or where a court has determined a child five days old or younger was abandoned by a parent with an intent to wholly abandon such child and with the intent that the child be safe from physical injury and cared for in an appropriate manner.

(k) “Permanency hearing” means a hearing held in accordance with [section one thousand eighty-nine](#) of this act for the purpose of reviewing the foster care status of the child and the appropriateness of the permanency plan developed by the social services district or agency.

Credits

(Added L.1970, c. 962, § 9. Amended L.1971, c. 469, § 1; L.1972, c. 1015, §§ 1, 2; L.1973, c. 276, § 32; L.1973, c. 1039, § 5; L.1976, c. 666, § 27; L.1977, c. 518, § 1; L.1981, c. 984, § 1; L.1984, c. 191, § 1; L.1985, c. 676, § 19; L.1996, c. 309, § 276; L.1999, c. 7, §§ 39, 40, eff. Feb. 11, 1999; L.2005, c. 3, pt. A, § 8, eff. Dec. 21, 2005; L.2005, c. 3, pt. B, § 3, eff. Nov. 21, 2005; L.2006, c. 320, § 28, eff. Nov. 1, 2006; L.2009, c. 329, § 1, eff. Aug. 11, 2009.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merrill Sobie

2012

4(a) Impairment of Physical, Mental or Emotional Condition

A child's physical, mental or emotional condition may be actually impaired or may be in “imminent danger of becoming impaired” by direct or by indirect parental acts or conduct. One example of indirect neglect is abandonment. Deserting a child clearly places him in imminent danger; whether the youngster has already been injured is irrelevant. An interesting example is *Matter of Lamarcus E. (Jonathan E.)*, 94 A.D.3d 1255, 942 N.Y.S.2d 647 (3d Dept. 2012). In an earlier custody proceeding

the respondent father had been granted custody, and the mother had been granted supervised visitation. One year later the father advised the relevant Department of Social Services that he intended to relocate to Connecticut, but would not be taking his seven year old son with him. He offered no viable alternative for the child's care. CPS thereupon filed a petition, the child was removed temporarily, dad relocated sans child, and Family Court ultimately entered a finding of neglect. The Appellate Division affirmed.

Lamarcus E. is not technically an abandonment case, although the child was on the verge of being abandoned. However, to show neglect the petitioner need not prove actual abandonment. Leaving a young child alone, for one day or permanently, or articulating a firm intent to leave the child, suffices to place the child in imminent danger (the same result would have probably been reached if dad advised CPS of his firm intent to leave the child stranded for weeks instead of indefinitely).

In *Lamarcus E.* the father also sought a voluntary placement under [Social Services Law Section 384-a](#); in fact, that was probably his intent when he initially approached CPS. His contention that Social Services should have accepted a voluntary placement instead of filing an Article 10 petition was summarily rejected by the Third Department: "... voluntary placement is appropriate only where a parent is unable to care for his or her child, and not where a parent is simply unwilling to do so, as here ..." [[94 A.D.3d 1255, 1257](#)].

Parental mental illness may in itself constitute an imminent danger to the child, but then again, it may not. The degree of illness, the manifestations, and the child's age may be among the relevant criteria, and of course the petitioner must prove actual harm or imminent danger. In *Matter of Joseph A. v. Fausat O.*, [91 A.D.3d 638, 937 N.Y.S.2d 250 \(2d Dept. 2012\)](#), mom, a single parent, "... was mentally unstable and suffering from hallucinations and delusions, but had refused treatment". However, her children were thriving academically, had received appropriate medical care, and there was no other indication of neglect. Family Court nevertheless granted a temporary removal order and subsequently continued foster care upon finding neglect. The Second Department reversed-the petitioner had failed to prove actual or imminent danger.

Joseph A. also illustrates the common albeit pernicious problem of delay and piecemeal hearings. The children were removed in June 2008, the Richmond County Family Court commenced the fact-finding hearing 17 months later and concluded the hearing after 16 additional months (yes, the trial was spread over 16 months). As noted by the Second Department: "... the fact-finding issues in this case were not

complicated. The hearing itself was not lengthy. Nevertheless, it took an inordinate amount of time to commence and complete the fact-finding hearing”. A parent and her children were unnecessarily separated for three years (during that period the children resided in a stranger foster home). The emotional cost to the parent and the children must have been huge and perhaps irreparable. Equally enormous, and measurable in dollars, was the institutional fiscal cost (foster care is expensive). It would not take many such cases to exceed the costs of providing an additional judgeship for the overburdened court, thereby avoiding or at least minimizing the practice of piecemeal 16 month trials.

4(e) Excessive Corporal Punishment

In discussing neglect based on “excessive corporal punishment”, the original Commentary, at page 39, notes that “... the courts have frequently found that one isolated non-severe episode does not amount to neglect”. The principle applies even when the parent has been criminally charged with the crime of assault and has pled guilty; *Matter of Nicholas W. (Raymond W.)*, 90 A.D.3d 1614, 936 N.Y.S.2d 450 (4th Dept. 2011). After the respondent had been convicted, Family Court granted summary judgment to the petitioner and entered a finding of neglect. The Fourth Department, concluding “... that petitioner failed to establish that ... [the father's] conduct was a pattern of excessive corporal punishment ...” reversed and remanded for further proceedings, including a fact-finding hearing.

4(f) Misuse of Drugs or Alcohol

A parent who misuses drugs may be found guilty of child neglect. The other parent may also be guilty based on his failure to report the problem and thereby placing his children in imminent danger. In *Matter of Jessica L.*, 93 A.D.3d 522, 941 N.Y.S.2d 421 (1st Dept. 2012), the non-custodial parent suspected that the custodial parent was misusing drugs, but did not report immediately. Instead, he waited until his suspicions were confirmed and then filed an anonymous report. The First Department reversed Family Court's finding of neglect, adding the following admonition:

The Family Court's finding of neglect under these circumstances placed the father in a “Catch-22” situation—once he had failed to act promptly based upon his suspicion, he was faced with the dilemma of involving ACS and risk subjecting himself to a neglect proceeding for not having contacted ACS sooner, or not involving ACS to the detriment of his children. Respondent's actions here did not rise to the level of neglect. [93 A.D.3d 523-524]

Although *Jessica L.* involved the misuse of drugs, the Appellate Division's conclusion would apply equally to other forms of neglect. It may be that in a given case failure to report immediately constitutes neglect, say when the child has been injured. In other cases a parent may have acted reasonably in hesitating to report and precipitating an investigation (to the detriment of his relationship to the child's other parent and perhaps his relationship with the child).

5 Domestic Violence

Minor acts of physical violence between parents should not be condoned, but may not rise to the level of child neglect, even when the children are present and hence witness the incident. In *Matter of Chaim R.*, 94 A.D.3d 1127, 943 N.Y.S.2d 195 (2d Dept. 2012), a parental verbal argument led to a physical altercation in which both sustained minor injuries. By the time the police arrived the incident was over, both parents were calm, and the children appeared to be fine. Citing *Nicholson* and the absence of any evidence of impairment or imminent danger, the Second Department concluded that neglect had not been established.

6 Derivative Abuse or Neglect

An interesting and informative opinion is Judge Olshansky's decision in *Matter of Shyrelle F.*, 33 Misc.3d 1232A, 943 N.Y.S.2d 794 (Fam. Ct. Kings Co. 2011), where the court found that the respondent, who had neglected his step-daughter, did not derivatively neglect his two biological sons. The lengthy opinion includes a comprehensive analysis of the derivative neglect doctrine, citing the leading appellate and Family Court cases.

2011

2 The Child

As noted in the Original Commentary, at pages 27-28, the definition of a child is derived from several statutory sources. One aspect is nevertheless crystal clear; to maintain Article 10 jurisdiction the child must be less than eighteen years of age “at the time the proceeding is initiated”, *i.e.* less than eighteen on the date the petition is filed [see §§ 1012(f) and 1013(c)]. Once jurisdiction has been obtained, it does not expire. The fact that the child attains age eighteen one day or one year after the proceeding has commenced is irrelevant for jurisdictional purposes. Further, the Court's dispositional powers may extend well beyond the child's eighteenth birthday.

A child may remain in foster care until age 21, may be entitled to post-dispositional support services, or may be entitled to special services (such as “special immigrant status”; see the Commentary following [Section 651](#)).

It is therefore surprising that in the past few years a mini-debate has brewed concerning the continuation of proceedings past the supposedly “magical” age of eighteen. *Matter of Sheena B. v. Rory F.*, 83 A.D.3d 1056, 922 N.Y.S.2d 176 (2d Dept. 2011), should settle the dispute. The Family Court had granted the petitioner's motion to discontinue, citing the CPLR's liberal provisions regarding discontinuance by a party. Commenting that: “In matters involving the welfare of a child, not only the parties to the action, but also the public, has an interest in the continuation of the proceeding”, and emphasizing the fact that the child could receive services until age 21, the Appellate Division held that the Family Court should have denied the discontinuance request. (Of course in some cases there may be a valid reason to ultimately dismiss when the child has reached majority, but that is a dispositional matter rather than a jurisdictional issue.)

4(a) Child Neglect; Impairment or Imminent Danger of Impairment

A major post-*Nicholson* case applying the requirement of proving that the child's “... physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired ...” [§ 1012(f)(i)], is the Court of Appeals decision of *Matter of Afton C.*, 17 N.Y.3d 1, 926 N.Y.S.2d 365, 950 N.E.2d 101 (2011). (See the Original Commentary at pages 31-33 for a discussion of the 2004 Nicholson decision.) In *Afton C.* the respondent father had been convicted of rape in the second degree, engaging in sexual intercourse with a person less than fifteen years of age, and patronizing a prostitute, for which he was sentenced to a one year term of imprisonment and was adjudicated a level three sex offender. He subsequently returned home to his wife and children. Relying almost exclusively on the criminal record, the Family Court found his children to be neglected, a finding which had been reversed by the Appellate Division. A unanimous Court of Appeals affirmed the Appellate Division decision:

In *Nicholson*, we rejected use of a presumption of neglect where a parent had allowed a child to witness domestic violence, holding that this bare allegation did not meet the Family Court Act's requirement (see 3 N.Y.3d at 371). We emphasized that a finding of neglect was only permissible where a preponderance of the evidence established actual or imminent harm to the subject children as a result of the parent's failure to exercise a minimal degree of care (see *id.* at 372). For similar reasons, we now reject any presumption that an untreated sex offender residing with his or her children is a neglectful parent. Even where, as here, the offender's crimes involve victims younger than 18, that alone does not demonstrate [neglect] ... [17 N.Y.3d at 5]

The Court was quick to add that there are circumstances in which conviction of a sex offense would in itself be sufficient to meet the standard, such as when the respondent has been convicted of abusing young relatives or other children in his care, or evidence showing that sex offender treatment was necessary but had not been undertaken: “In all cases, however, petitioner must meet its statutory burden”. [17 N.Y.3d at 6]

Afton C. makes it abundantly clear that actual or imminent danger must be proven before the Court can find child neglect. In extremely egregious cases, where the criminal conviction (or a Family Court finding of criminal conduct), prove, *per se*, child neglect, the petitioner and the Court may rely solely on the underlying conviction or finding. In the majority of cases, however, the petitioning agency faces the burden of introducing evidence which directly proves the element of actual or imminent danger. (Similarly, an attorney for the child whose position supports a finding has the responsibility to marshal and introduce the relevant evidence.)

4(b) Educational Neglect

The 2010 Supplementary Commentary discusses the problematic trend of filing a child neglect petition against the parent of a truant adolescent, instead of pursuing the more difficult albeit (in many cases) the more appropriate Article 7 person in need of supervision finding, which emphasizes diversion and ameliorative services. One example may be *Matter of Annalize P. v. Angie D.*, 78 A.D.3d 413, 911 N.Y.S.2d 291 (1st Dept. 2010), where the First Department cited exclusively the number of unexcused school absences and the inevitable adverse affect on the child to support a finding of parental neglect.

4(e) Excessive Corporal Punishment

Intentionally striking a child's face with a belt buckle surely constitutes neglect, but an accidental strike may not support a finding or even justify an “indicated” social services report. In *Matter of Parker v. Carrion*, 80 A.D.3d 458, 914 N.Y.S.2d 150 (1st Dept. 2010), the First Department annulled an indicated finding of maltreatment where the parent attempted to hit the buttocks of her acting out and very mobile offspring, but instead accidentally struck her face, which Mom promptly soothed and treated.

2010

4(b) Failure to Supply Adequate Food, Clothing or Shelter

Providing adequate food, clothing and shelter entails multiple direct parental acts. The necessities of life do not magically appear. Child support also entails a financial obligation; food, clothing and shelter must be purchased. Hence the inclusion in Section 1012(f)(i)(A) of the clause limiting parental liability to situations where the parent neglects to provide necessities although "... financially able to do so".

When the parents are separated, the custodial parent provides most of the child's material needs. The non-custodial parent's primary obligation is to provide financial support, i.e. contribute to the custodial parent's ability to furnish adequate food, clothing and shelter. Can the non-custodial parent's failure to provide child support therefore constitute child neglect? Not necessarily. In *Matter of Alyssa OO.*, 68 A.D.3d 1158, 889 N.Y.S.2d 752 (3d Dept. 2009), the non-custodial parent failed utterly to provide court ordered child support in the amount of fifty dollars per month. However, a finding of neglect was reversed on the ground that:

Absent from the record, however, was any evidence tending to show that Alyssa's needs were not being met or that her welfare was impaired or in imminent danger of being impaired as a result of respondent's failure to meet his child support obligations (see [Family Court Act at § 1021\[f\]\[i\]](#)). Proof that respondent has failed to meet his child support obligations does not, by itself, rise to the level of neglect [68 A.D.3d at 754].

The modest level of court ordered support in *Alyssa OO.* militated toward dismissal. (A contempt finding, assuming a willful violation, would be another matter.) The case does not preclude a neglect finding where the child is placed at imminent risk by the non-custodial parent's failure to pay court ordered support, or, perhaps, provide support even in the absence of a court decree (at least when the custodial parent lacks the requisite financial ability). *Alyssa OO.* does mean that the petitioner must prove that the child's needs went unmet or that her welfare was impaired or in imminent danger of impairment.

4(d) Educational Neglect

In the past few years the volume of educational neglect petitions involving older adolescents has significantly increased; see *Rethinking Educational Neglect for Teenagers*, Vera Institute of Justice, 2009. The reasons are unclear, although the recent legislative reform of Article 7, which in most cases mandates diversion and mediation in lieu of litigation, may have resulted in an increased reliance on Article

10 (see, e.g. [Section 735](#)). Since filing a person in need of supervision truancy petition has become difficult, governmental officials may be more inclined to shift the blame to the parent via the Article 10 educational neglect provisions.

One egregious example is *Matter of Natiello v. Carrion*, 73 A.D.3d 670, 905 N.Y.S.2d 605, (2d Dept. 2010). *Natiello* was not an Article 10 case but, rather, an Article 78 proceeding to review an Office of Children and Family Services administrative determination rejecting an application to amend and seal an indicated child maltreatment report. The child had excessive absences from school, but those had occurred when he resided with the non-respondent parent. Of greater significance, he had since successfully completed high school and was enrolled in college. The Second Department had no problem reversing the administrative determination. Unfortunately, there are probably several similar social service determinations which have gone unchallenged, or Article 7 proceedings in the guise of Article 10 when a teenager has gone absent from school.

5 Domestic Violence

The First Department continues to maintain that when acts of domestic violence occur in the presence of the children: “No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk”; *Matter of Enrique V. (Jose U.V.)*, 68 A.D.3d 427, 888 N.Y.S.2d 747(1st Dept. 2009). (See the original Commentary at pages 41-44). However, in the absence of proof that the child witnessed or was aware of the violence the Third Department reversed a finding based on the failure to show imminent risk; *Matter of Alyssa OO. V. Andrew PP.*, 68 A.D.3d 1158, 889 N.Y.S.2d 752 (3d Dept. 2009).

There are to be sure cases where the level of violence, such as a brutal assault, places the child in imminent risk, regardless of the child's presence or absence. No further proof of risk may be needed. Lesser levels of violence may or may not constitute an imminent risk which, of course, may be shown by factual or expert evidence. In these matters, the presence or absence of the child may be a salient factor (the *Enrique V.* opinion unfortunately does not describe the level of violence), but is not necessarily a dispositive fact.

PRACTICE COMMENTARIES

by Prof. Merrill Sobie

The original Article 10 definitional section included only one term; “neglected child” [L.1962, c. 686, § 312]. The truncated section proved unworkable, and the Legislature has sequentially added and modified a multitude of definitional terms. The contemporary edition is consequently lengthy and, in some respects, convoluted. In enacting multiple amendments, the Legislature has also established a hierarchy of child protective subheadings, ranging from simple neglect, to child abuse, to severe child abuse. Several definitions are vague, an understandable consequence in light of the myriad ways in which a child may be neglected or abused, and a comprehensive body of caselaw has evolved to interpret the multiple subdivisions. In many respects, the Section represents the “key” to Article 10, one which counsel must frequently research and apply during the entire course of a child protective proceeding.

This Commentary will outline the important definitional interpretations. A comprehensive evaluation, which would require a publication of treatise length, is not intended. In light of its scope, the Commentary is divided into the following sections:

1. The Parent and Other Person Legally Responsible Person
2. The Child
3. Child Abuse
 - 3(a) Physical Abuse
 - 3(b) Creating a Risk of Physical Injury
 - 3(c) Emotional Abuse
 - 3(d) Sexual Abuse
4. Child Neglect
 - 4(a) Impairment of Physical, Mental or Emotional Condition
 - 4(b) Failure to Supply Adequate Food, Clothing, or Shelter
 - 4(c) Medical Neglect
 - 4(d) Educational Neglect

- 4(e) Excessive Corporal Punishment
- 4(f) Misuse of Drugs or Alcohol
- 4(g) Abandonment
- 4(h) Other Basis of Neglect
- 5. Domestic Violence
- 6. Derivative Abuse or Neglect
- 7. Aggravated Circumstances
- 8. The Permanency Hearing

1 The Legally Responsible Person

The early child protective laws focused largely on the status of the child, without much thought concerning the person who had caused the harm. The first Act, circa 1877, included, inter alia, a child who was found begging or was destitute [L.1877, c. 428], while an 1882 Act included a child who lacked “proper guardianship” [L.1881, c. 14]. The 1922 Children's Court Act continued the nineteenth century definition, but added that a “neglected child” is also one “whose parent, guardian or person with whom the child lives, by reason of cruelty, mental incapacity, immorality or depravity is unfit to properly care for such child” [1922 New York State Children's Court Act, § 2(4)]. The child's parent or guardian is of course readily determined, and a person with whom the child lives is also ordinarily easy to establish. Parents are obviously legally responsible for their child, but a “person with whom the child lives” may or may not be legally responsible (for example, a grandparent who lives with the family is not legally responsible for the child). Conversely, a person legally responsible, such as a divorced or separated parent who does not have custody, may not live with the child. Although easy to apply, the 1922 Act was both over inclusive and under inclusive.

With the apparent intent of resolving the dichotomy, the 1962 Family Court Act originally defined a “neglected child” as one “whose parent or other person legally responsible for his care ...” is guilty of specific acts [L.1962, c. 686, § 312], but did not define the then newly coined phrase “other person legally responsible”. The absence of a sub-definition precipitated inconsistent caselaw interpretations. For example, a

grandparent who lived with the family might abuse the child, but was not necessarily a person legally responsible for the child. The problem was subsequently resolved with the enactment of present subdivision (g), stating that a “legally responsible” person “... may include any person [who] continually or at regular intervals [is] found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child”. The expanded definition goes beyond what we ordinarily mean by a “legally responsible” person. In fact, the definition, while necessary, is *sui generis* to Article 10.

Applying the definition, the courts have used a commonsense approach, evaluating the relationship of the person to both the child and the parent, and determining whether that person has assumed a parenting role. In *Matter of Yolanda D.*, 88 N.Y.2d 790, 651 N.Y.S.2d 1, 673 N.E.2d 1228 (1996), the Court of Appeals held that the person needs to have acted as the functional equivalent of a parent, based on a case specific analysis of relevant factors, including the frequency and duration of contact with the child and parent, the nature of the individual's contact with the child, and his relationship to the parent. The court continued by emphatically stating that the temporary or fleeting care of the child does not suffice; ergo a teacher, babysitter, or overnight guest is not a person legally responsible for the child. On the other hand, a parent's cohabitant or boyfriend ordinarily qualifies as a “legally responsible” person, even if he does not spend every night in the home; *In re Mikayla U.*, 266 A.D.2d 747, 699 N.Y.S.2d 145 (3d Dept. 1999), and *In re Nicole SS.*, 296 A.D.2d 618, 745 N.Y.S.2d 128 (3d Dept. 2002). Similarly, a child's uncle who lives with the family and assumes at least some parenting responsibilities is an appropriate Article 10 respondent; *In re Dayquan G.*, 22 A.D.3d 431, 803 N.Y.S.2d 510 (1st Dept. 2005). However, the child's grandmother's boyfriend is not “legally responsible” when the child does not live with the grandmother; *In re Brent HH.*, 309 A.D.2d 1016, 765 N.Y.S.2d 671 (3d Dept. 2003), *Lv. App. Den.*, 1 N.Y.3d 506, 776 N.Y.S.2d 222, 808 N.E.2d 358 (2004).

A child's adult sibling who resides in the household may be a “legally responsible” person. However, the Court of Appeals has held that a minor sibling cannot be a person legally responsible for the care of the child under subdivision (g); *Matter of Catherine G.*, 3 N.Y.3d 175, 785 N.Y.S.2d 369, 818 N.E.2d 1110 (2004). *Catherine G.* involved alleged abuse committed by a fourteen year old sibling. After the relevant Child Protective Services declined to investigate, the mother (of both the alleged abuser and the sibling victim) sought leave to file a late civil notice of claim against the local officials. The Court of Appeals held that leave should have been denied, citing Section 1012 and observing that it was the parent who should have intervened to prevent the abuse.

2 The Child

The definition of “child” is constructed through three Section 1012 subdivisions. Under subdivision (b) the word is defined as “... any person or persons alleged to have been abused or neglected”, while subdivision (e) logically defines an “abused child” as one less than eighteen years of age and subdivision (f) similarly restricts the definition of “neglected child” to a person less than age eighteen. In sum, the Section defines an abused or neglected child as a person less than eighteen years of age whose parent or other person legally responsible for his care has committed acts amounting to abuse or neglect. An unborn child or fetus does not satisfy the definition (a few early trial level cases notwithstanding); see *Nassau County Department of Social Services on Behalf of Dante M. v. Denise J.*, 87 N.Y.2d 73, 637 N.Y.S.2d 666, 661 N.E.2d 138 (1995). However, the mother's failure to obtain appropriate pre-natal care may evidence neglect when coupled with a similar deprivation of post-birth medical care for the child; see *In re Markus MM.*, 17 A.D.3d 747, 792 N.Y.S.2d 704 (3d Dept. 2005).

The statute establishes minimum and maximum ages, but does not stipulate whether the child must be living at the time the petition is filed (or at the time of disposition). Until recently, the issue was academic -- there appeared to be no rational reason to commence or continue an Article 10 proceeding when the subject child had died, even when the death was caused by parental abuse or neglect (a criminal charge would be a different matter). If there were surviving siblings who needed protection, derivative neglect or abuse could be charged, and the [Section 1046](#) evidentiary presumption could be used to protect the relevant children (see [§ 1046\(a\)\(1\)](#) and the Commentary thereto).

The equation changed in 1999. As a part of New York's implementation of the Federal Adoption and Safe Families Act (ASFA), the Legislature enacted [Section 1039-b](#), a statute designed to speed the termination of parental rights in cases of egregious child maltreatment. To further that goal, the authorized agency may file a motion to dispense with the traditional and time-consuming requirement of employing “diligent efforts” to rehabilitate and possibly reunify the family (see the Commentary following [Section 1039-b](#)). Further, parental rights may now be terminated pursuant to [Social Services Law Section 384-b](#) when a sibling is abused by the respondent within five years of an Article 10 finding.

The 1999 legislation led directly to the 2004 case of *Matter of Alijah C.*, 1 N.Y.3d 375, 774 N.Y.S.2d 483, 806 N.E.2d 491 (2004), where the Court of Appeals held that an Article 10 proceeding could be commenced, and completed, even when the child was deceased. In *Alijah C.*, the respondent had caused the child's death through acts of neglect. She consented to a finding of derivative neglect of the deceased child's siblings,

but maintained that a finding could not be entered regarding the deceased youngster himself. The Court disagreed, observing that “it would ... be unthinkable to read article 10 of the Family Court Act so that it triggers termination of parental rights proceedings to protect surviving children only where a parent inflicts serious physical injury short of death on another child, but not where abuse is so severe that the child dies” [1 N.Y.3d 375, 380].

One post *Alijah C.* question is whether an action may be pursued when there are no surviving siblings. One could argue that no purpose would be served, and that the assistance of the Court is not needed [see § 1051(c)]. On the other hand, the respondent might subsequently be legally responsible for another child, and it is possible to enter a derivative neglect finding on behalf of a child who was born subsequent to the original neglect finding; see e.g., *Matter of Damaris Makiela O.*, 3 Misc.3d 1108(A), 787 N.Y.S.2d 676, (Fam. Ct. Kings Co. 2004). However, as a practical matter, it is unlikely that overburdened social service agencies will file petitions just to protect possible future children.

3(a) Physical Abuse

Section 1012(e)(i), which is substantially identical to the Penal Law definition of “serious physical injury” [P.L. § 10.00(10)], defines physical abuse unambiguously:

... physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ.

The harm to the child must accordingly be of great magnitude, or the risk of substantial harm must be proven; see, e. g., *In re Quincy Y.*, 276 A.D.2d 419, 714 N.Y.S.2d 293 (1st Dept. 2000), where the child sustained second degree infected burns, or *Matter of Marcus S.*, 123 A.D.2d 702, 507 N.Y.S.2d 68 (2d Dept. 1986), where the child sustained a serious skull fracture.

Of course lesser injuries or the risk of lesser injuries to the child are also actionable. The fact that an abuse finding may not be possible does not preclude a lesser finding of child neglect (see Section 4, of this Commentary).

3(b) Creating a Risk of Physical Injury

Assuming no injury to the child, or where the injury does not rise to the level defined in subdivision (e)(i), an abuse finding may nevertheless be entered when the respondent commits an act which is so inherently dangerous that it “creates ... a substantial risk of physical injury” that would amount to child abuse [§ 1012(e)(ii)]. Examples include *Matter of Anesia E.*, 23 A.D.3d 465, 805 N.Y.S.2d 623 (2d Dept. 2005), where an infant was the victim of Munchausen's Syndrome by Proxy, and *Matter of Marissa RR*, 266 A.D.2d 751, 698 N.Y.S.2d 745 (3d Dept. 1999), where the child's father, with knowledge that the child was in the apartment, fired a shotgun in an attempt to murder the mother.

A more bizarre scenario is the First Department case of *In re Rashard D.*, 15 A.D.3d 209, 791 N.Y.S.2d 1 (1st Dept. 2005). An unarmed child successfully robbed a bank at the direction of his mother (by presenting a written demand to a teller), and escaped unharmed (the mother-child co-conspirators were subsequently apprehended). Observing that the child was “lucky” to avoid injury or worse (from armed guards), the Appellate Division found that, given the risks, the mother had committed child abuse as defined in Section 1012(e)(ii).

Rashard D. may be viewed as a unique case unlikely to be repeated, or, on the other hand, could become a wider precedent. Parents surely subject their child to substantial risks of death or severe injury when they involve the youngster in criminal activities, such as drug running or robbery. But does *Rashard D.* apply to less dangerous criminal endeavors, such as shoplifting? For that matter, driving while intoxicated with the child as a passenger is surely dangerous, as is reckless driving or extreme speeding. So too, legal activities may involve a substantial physical risk to a young child; examples include dashing across a thoroughfare with the youngster to catch a bus, or leaving a young child unattended at home. These situations, which have been traditionally treated as child neglect (assuming any finding is justified), may now progress to the level of child abuse.

Subdivisions (e)(i) and (e)(ii) stipulate that the respondent is guilty of child abuse if she “inflicts or allows to be inflicted” or “creates or allows to be created” injury or the substantial risk of physical injury to the child. Thus, the respondent need not commit the abusive act. For example, a parent who stands idly by while a non-parent commits abuse may be found guilty. However, the respondent must have committed a specific act of malfeasance or misfeasance (such as witnessing abusive conduct without intervening) which resulted in or permitted the abuse. In *In re Shaun B.*, 55 A.D.3d 301, 865 N.Y.S.2d 52 (1st Dept. 2008), the Appellate Division reversed a finding where mother's boyfriend abused the child while the mother was sleeping, concluding that the respondent lacked any reason to believe that her boyfriend would in fact abuse the child.

3(c) Emotional Abuse

The definition of child abuse includes the infliction of an injury or the creation of a substantial risk of injury “which would be likely to cause ... protracted impairment of ... emotional health” [subdivision (e)(ii)]. The protracted impairment of emotional health is not readily provable, although there are acts which are so destructive as to manifestly create the risk of a protracted impairment. See, for example, *Matter of Shanaye C.*, 2 Misc.3d 887, 774 N.Y.S.2d 622 (Fam. Ct. Kings Co. 2003), where the child's father strangled to death the mother and the grandmother, and *Matter of Roy T.*, 126 Misc.2d 172, 481 N.Y.S.2d 257 (Fam. Ct. Monroe Co. 1984), where the child was subjected to cigarette burns, thereby creating an imminent risk to the child's long-term psychological development.

3(d) Sexual Abuse

Section 1012(e)(iii) defines sexual abuse as the commission of a specific sexual offense committed against a child by his parent or other person legally responsible for his care. The list includes the more prevalent sexual offenses, such as rape, sodomy, sexual abuse and sexual misconduct, as well as offenses relating to promoting prostitution or involving the child in a sexual performance.

When “sexual contact” is an element of the Penal Law offense, the petitioner must show that the respondent intended to gratify his sexual desire or the sexual desire of the child (see P.L. § 130.00(3)). However, sexual gratification may be inferred from the respondent's specific acts; see *Matter of Shannon K.*, 222 A.D.2d 905, 635 N.Y.S.2d 751 (3d Dept. 1995).

Sexual abuse ordinarily occurs in a private setting, and there may be little or no medical evidence to support or to corroborate the charge. Hence the frequent and controversial resort to forensic psychological evaluations or testimony by sexual abuse “validators”; see the Commentary following [section 1046](#).

4(a) Child Neglect; Impairment or Imminent Danger of Impairment

The definition of child neglect is found in subdivision (f), which lists a wide variety of acts and conditions which may constitute neglect, ranging from abandonment to the failure to provide the child with adequate food, clothing, or shelter [§ 1012(f)(i)(A)(B)]. However, proof that one or more of the enumerated conditions exist constitutes only one element of the cause of action. The petitioner must additionally prove that the child's

“... physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care” [§ 1012(f)(i)]. Hence the definition of neglect includes both elements; each must be pled and proven by a preponderance of the evidence.

Impairment of the child's physical condition is not specifically defined. However, impairment of the child's mental or emotional condition is defined in subdivision (h) as including “... a state of substantially diminished psychological or intellectual functioning ...”. The subdivision continues by enumerating several factors which should be considered, although a determination is not limited to those factors. Further, subdivision (h) concludes with the proviso “... that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child”; virtually identical language is also found in subdivision (f)(i). In effect, a failure to exercise a minimum degree of care is a prerequisite for finding neglect, regardless of any other circumstance.

Courts grappled with these definitional concepts throughout most of Article 10's history, frequently reaching inconsistent and occasionally incomprehensible results. That era terminated in 2004 when the Court of Appeals decided *Nicholson v. Scopetta*, 3 N.Y.3d 357, 787 N.Y.S.2d 196, 820 N.E.2d 840 (2004). *Nicholson* originated as a class action suit in federal district court. On appeal, the Second Circuit certified several questions to the New York Court of Appeals [see *Nicholson v. Williams*, 344 F.3d 154 (2d Cir. 2003)], seeking the state court's interpretation of several Article 10 provisions, including the definition of neglect and the criteria for determining when children could be temporarily removed from their homes pending an Article 10 disposition. (*Nicholson* specifically involved the issue of child neglect resulting from domestic violence, a subject discussed in Part 5 of this Commentary, but the decision applies to every species of neglect or abuse).

The Court of Appeals first held that actual or imminent danger of physical, emotional or mental impairment to the child must be shown. Situations involving actual impairment are of course more readily apparent, and may be proven through expert medical or psychological testimony, or by factual evidence. However, “imminent danger” is a far more elusive concept. The Court underscored the fact that in determining “imminent danger”, the focus must be on harm or potential harm to the child, rather than what may be deemed to be undesirable parental behavior, warning that the danger “... must be near or impending, not merely possible” [3 N.Y.3d at 369]. In addition, “... there must be a link or causal connection between the basis for the neglect petition and the circumstances that allegedly produce the child's impairment or imminent danger of impairment” [Ibid.];

the court cited, as an example, the *Dante* case [*Nassau County Department of Social Services on behalf of Dante M. v. Denise J.*, 87 N.Y.2d 73, 637 N.Y.S.2d 666, 661 N.E.2d 138 (1995)], where it held that a newborn's positive toxicology for a controlled substance was insufficient, in itself, to prove neglect. Last, assuming the presence of actual or imminent danger, the statute requires, as a separate and additional element, proof that the parent failed to exercise a minimum degree of care. The Court of Appeals emphasized that the required level of parental care is “minimal”, and not maximal or ideal. In applying the minimum degree of care standard to domestic violence cases, the court observed that “whether a particular mother in these circumstances has actually failed to exercise a minimum degree of care is necessarily dependent on facts such as the severity and frequency of the violence, and the resources and options available to her” [3 N.Y.S.3d at 371].

Nicholson has precipitated a caselaw re-evaluation of the Section 1012 standards as applied to the different child abuse and neglect modalities. The dust will probably not settle for another decade, although several early post-*Nicholson* cases herald a new era in determining whether “imminent danger” exists, and whether a parent or other person legally responsible for the child (as that term is defined in § 1012) failed to exercise a minimum degree of care. The cases which involve domestic violence will be discussed in Part 5 of this Commentary; see, for example, *Matter of Paul U.*, 12 A.D.3d 969, 785 N.Y.S.2d 767 (3d Dept. 2004), and *Matter of Ravern H. and Kelly S.*, 15 A.D.3d 991, 789 N.Y.S.2d 563 (4th Dept. 2005).

Important non-domestic violence cases include *Matter of Anna F. And Richard F.*, 56 A.D.3d 1197, 868 N.Y.S.2d 442 (4th Dept. 2008), where the Appellate Division reversed a finding of neglect based on the parent's admission that he drank alcohol or used drugs while caring for his children, although the children were asleep at the time. The Appellate Division concluded that although “the [Family] court nevertheless found that the children were placed at risk because it was possible that they would wake up or need to be taken to the emergency room in the middle of the night ... the record here fails to establish that the children's physical, mental or emotional condition were in imminent danger of becoming impaired”. Similarly, in *Matter of Devin N. v. Sandra N.*, 62 A.D.3d 631, 882 N.Y.S.2d 400 (1st Dept. 2009), the Appellate Division concluded that “... the mere fact that [the child] was in a locked room with a person who appeared to be intoxicated and was smoking a cigarette does not establish that the respondent's conduct placed the child's physical, mental or emotional state in imminent danger of impairment”. Petitioners clearly have a greater burden to meet in the post-*Nicholson* era.

4(b) Failure to Supply Adequate Food, Clothing, or Shelter

One basis for finding child neglect is the failure of the parent or other person legally responsible for the child “in supplying the child with adequate food, clothing, [or] shelter ... though financially able to do so or offered financial or other reasonable means to do so” [§ 1012(f)(i)(A)]; in other words, the failure to provide basic necessities. One obvious example is the failure to supply adequate nutrition, causing the child's alarming underweight; *Matter of Commission of Social Services on Behalf of Female W.*, 182 A.D.2d 589, 583 N.Y.S.2d 363 (1st Dept. 1992); see, also, *Matter of Jennifer B.*, 163 A.D.2d 910, 558 N.Y.S.2d 429 (4th Dept. 1990). Another example is the lack of adequate shelter, such as where the home has no electricity, water, or plumbing; *Matter of Terry S.*, 55 A.D.2d 689, 389 N.Y.S.2d 55 (3d Dept. 1976). Quite frequently a petition is sustained when the home is unsanitary, filthy and garbage strewn; see *Matter of Aaron MM.*, 152 A.D.2d 817, 544 N.Y.S.2d 29 (3d Dept. 1989). In fact, a dirty or messy home is frequently a primary or an “add on” charge in a petition. However, a home which is in disarray and messy (a common condition, regardless of socio-economic status) or filthy cannot support a finding unless the evidence proves that the condition poses an imminent risk to the child; see *Matter of Erik M.*, 23 A.D.3d 1056, 804 N.Y.S.2d 884 (4th Dept. 2005) and *In re Iyanah D.*, 65 A.D.3d 927, 885 N.Y.S.2d 79 (1st Dept. 2009).

A parent may also be neglectful when he excludes the child from the home, thereby depriving the youngster of adequate food, clothing, and shelter; see *Matter of Chantel “ZZ”*, 279 A.D.2d 669, 717 N.Y.S.2d 802 (3d Dept. 2001). The failure to provide basic necessities may result in a finding even when the child has yet to be harmed, or has not been significantly harmed, provided the petitioner can show imminent risk; see, e.g., *Matter of Kayla C.*, 19 A.D.3d 692, 797 N.Y.S.2d 559 (2d Dept. 2005).

Poverty cannot support a finding of neglect; hence the requirement, found in Section 1012(f)(i)(A), that the parent must be financially able to provide necessities or be offered the financial or other reasonable means to do so. Public assistance is usually available when the parent is impoverished; the issue is whether adequate assistance was indeed provided, and whether the parent took advantage of public assistance availability. The statutory amount of public assistance is presumed to be “adequate” (although many believe the rate to be inadequate), and a parent must present unequivocal proof that the amount is inadequate to successfully defend a neglect charge; see *Matter of Amoretta V.*, 227 A.D.2d 879, 643 N.Y.S.2d 694 (3d Dept. 1996), appeal dismissed, 89 N.Y.2d 935, 654 N.Y.S.2d 713 (1997). The defense is of course meritorious where the eligible parent shows that social service officials have failed to provide financial support despite requests; see *Matter of Kevin J.*, 162 A.D.2d 1034, 557 N.Y.S.2d 228 (4th Dept. 1990). When assistance, such as suitable housing, is proffered, but the parent declines, a finding may be entered; see *Matter of Christian Q.*, 32 A.D.3d 669, 821 N.Y.S.2d 282 (3d Dept. 2006).

4(c) Medical Neglect

Section 1012(f)(i)(A) defines neglect as including the failure to provide “... medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so.” Obviously a parent has the responsibility of providing a minimum degree of medical care. As noted by the Third Department in *Matter of Sampson*, 37 A.D.2d 668, 669, 323 N.Y.S.2d 253, 255 (1971): “Initially a parent has the duty and obligation to provide medical care for a child, but if he neglects that duty the State is authorized to act in his stead.” The obligation extends to the full array of needed services, from medical procedures to psychiatric and counseling assistance. However, the need must be significant. As observed by the Court of Appeals, Section 1012 does not require the parent “to beckon the assistance of a physician for every trifling affliction which a child may suffer for everyday experience teaches that many of a child's ills may be overcome by simple household nursing”; *Matter of Hofbauer*, 47 N.Y.2d 648, 655, 419 N.Y.S.2d 936, 940, 393 N.E.2d 1009 (1979).

Medical neglect can be notoriously difficult to ascertain. Reasonable persons may differ, and determining whether a parent has failed to exercise a minimum degree of care in supplying the child with “adequate” medical care may be subjective. In *Matter of Terrence P.*, 38 A.D.3d 254, 831 N.Y.S.2d 384 (1st Dept. 2007), Family Court had entered a finding of medical neglect based, in large part, on the alleged failure of mom to obtain a prescription and medicate her ten year old son who had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). In fact, the respondent had discussed the pros and cons of the medication with the caseworker (and drug therapy for ADHD is controversial), had spoken to the child's pediatrician, and had requested a referral for a second opinion from a non-agency psychiatrist; the later request had been disregarded by Social Service officials. The First Department reversed the finding of medical neglect, commenting that a court should not “... substitute its own judgment in such matters, as this inquiry [as to] whether the parent has made a right or a wrong decision, for the present state or the practice of medicine, despite its vast advances, very seldom permits such definitive conclusions” (The court cited and quoted the Court of Appeals decision of *Matter of Hofbauer*, cited above). Surprisingly, the Family Court had also entered a finding that the respondent had derivatively neglected her other three children: “Although the other three children were ‘okay’ the court found derivative harm to them as a result of respondent's neglect of Devonte.” Of course the derivative findings fell when the primary finding was reversed, but would have been difficult to sustain even if the respondent did medically neglect her ADHD child.

“Ultimately, ... the most significant factor in determining whether a child is being deprived of adequate medical care, and is thus a neglected child within the meaning of the statute, is whether the parents have provided an acceptable course of medical treatment for their child in light of all the surrounding circumstances. This inquiry cannot be posed in terms of whether the parent has made a ‘right’ or a ‘wrong’ decision, for medical treatment alternatives very seldom permits such definite conclusions. Nor can a court assume the role of a surrogate parent and establish as an objective criteria with which to evaluate a parent's decision its own judgment as to the exact method or degree of medical treatment which should be provided, for such standard is fraught with subjectivity”; *Matter of Hofbauer*, 47 N.Y.2d 648, 419 N.Y.S.2d at 941 (1979). In *Hofbauer*, the Court of Appeals held that the parents had not failed to provide a minimum degree of care and that they therefore could not be considered “neglectful” because they had sought and had accepted medical assistance from a duly licensed physician. The physician's approach does not have to be in accord with standard medical practices -- so long as it “has not been totally rejected by all responsible medical authority.” [47 N.Y.2d at 656.]

As always, the second requirement to a finding of neglect is that the parent's failure to obtain medical assistance must result in impairment, or the imminent danger thereof. Like all forms of neglect under Article 10, the result of the failure to seek or consent to medical services must be that the child's “physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.” [§ 1012(f)(i).] Thus, even the failure to consent to a blood transfusion is not neglect in the absence of evidence that the child is in imminent danger of become impaired; see *Cooper v. Wiley*, 128 A.D.2d 455, 513 N.Y.S.2d 151 (1st Dept. 1987). However, the harm to the child need not “threaten the physical life or health of the subject or raise the risk of contagion to the public.” Indeed, the harm may be emotional or psychological in nature. Nevertheless, the failure to obtain medical care must impair or threaten to impair the child. Thus, in refusing to hold that the parents were “neglectful”, the Court of Appeals in *Hofbauer* emphasized “that there is medical proof that the nutritional treatment being administered [the child] was controlling his condition and that such treatment is not as toxic as is the conventional treatment; and that conventional treatments will be administered to the child if his condition so warrants”; (47 N.Y.2d at 657, 419 N.Y.S.2d at 941). See also *In the Matter of Seiferth*, 309 N.Y. 80, 127 N.E.2d 820 (1955), where the child's harelip and cleft palate did not seem to affect his emotional well-being.

Another interesting case is *Matter of Julia BB*, 42 A.D.3d 208, 837 N.Y.S.2d 398 (3d Dept. 2007), which involved child abuse, termination of parental rights and derivative neglect issues. Family Court had determined that the respondents had severely abused their daughter, who suffered a series of seemingly unexplained fractures and bruises.

However, the medical evidence was at best equivocal, the respondents had repeatedly sought medical help, and the child's siblings were thriving. Reversing the determination in a lengthy opinion, which carefully analyzed the voluminous evidence, the Third Department concluded that the child's medical problems were not caused by the respondents (or at least their malfeasance had not been proven) and, in an unusually blunt decree, ordered that the petition be dismissed and the child be returned to her parents without further delay. Turning to the derivative neglect finding, the Court appeared to be outraged that the child's siblings were deemed to have been derivatively neglected, commenting that there was no evidence whatsoever to support the derivative finding (the Court's analysis of the derivative issue was particularly instructive since the derivative findings would have in any event collapsed when the primary finding was reversed).

Article 10 does not include a statute of limitations. Thus, evidence of neglect, including medical neglect, may reach back indefinitely. The petitioner must nevertheless show imminent risk at the time a petition is filed. In *Matter of Austin D. v. Melissa D.*, 63 A.D.3d 1215, 880 N.Y.S.2d 217, (3d Dept. 2009), the Third Department reversed a finding of medical neglect where the acts occurred five years previous to the petition date and there was no showing of present harm or imminent risk.

Last, a parent's bona fide religious belief may constitute a defense to a medical neglect charge. [Public Health Law Section 2164\(9\)](#) exempts parents from child immunization requirements, provided the parents “hold genuine and sincere religious beliefs which are contrary to the practices herein required”, while [Penal Law Section 260.15\(b\)\(c\)](#) grants a parent an affirmative defense to the crime of endangering the welfare of a child when she “is a member or adherent of an organized church or religious group the tenets of which prescribe prayer as the principle treatment for illness” and the child is “treated ... in accordance with such tenets”. However, those provisions are of only limited value to the relevant parent. The United States Supreme Court has continually held that where a conflict exists between a parent's religious convictions and the child's health or welfare, the child's needs prevail; see, e.g. *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed.2d 645 (1944). The New York courts have relied on a balancing test, weighing the harm or potential harm to the child and the parent's bona fide religious belief, a not always facile exercise. Where the condition is life threatening or presents an imminent risk to the child's health (physical or mental), a neglect finding is appropriate; see, e.g., *Matter of Sampson*, 37 A.D.2d 668, 323 N.Y.S.2d 253 (3d Dept. 1971). For lesser risks, the parent's beliefs may outweigh the potential harm. An incisive contemporary analysis of the issue is incorporated in Judge Potter's opinion in *Matter of Eli H.*, 22 Misc.3d 965, 871 N.Y.S.2d 846 (Fam. Ct. St. Lawrence Co. 2008).

4(d) Educational Neglect

One species of child neglect is educational neglect, defined as the failure of a parent or other person legally responsible for the child (as that term is defined in subdivision (g)) to provide “education in accordance with the provisions of part one of article sixty-five of the [education law ...](#)” [[§ 1012\(f\)\(i\)\(A\)](#)]. As always, the failure must result in an impairment or an imminent danger of impairment of the child's physical, mental or emotional condition. Multiple unjustifiable absences clearly constitute substantial evidence of impairment; see, e.g., *Matter of Shawndalaya II.*, 31 A.D.3d 823, 818 N.Y.S.2d 330 (3d Dept. 2006). Special needs coupled with multiple absences may also show impairment, *Matter of Aisha “O”*, 284 A.D.2d 581, 725 N.Y.S.2d 738 (3d Dept. 2001), as can the child's failure of all his subjects, *Matter of Ryan J.*, 255 A.D.2d 999, 679 N.Y.S.2d 495 (3d Dept. 1998). In contrast, see *Matter of Shelby Renea K.*, 79 A.D.2d 1073, 436 N.Y.S.2d 99 (3d Dept. 1981), where there was no evidence that the child's absences and lateness had an adverse impact.

It is not unknown for parents to disagree with a school district's educational plan or placement, and the feud may precipitate an educational neglect proceeding. See *In re Giancarlo P.*, 306 A.D.2d 28, 761 N.Y.S.2d 165 (1st Dept. 2003), where the First Department affirmed Family Court's dismissal of an educational neglect petition, commenting that the child's “prolonged, unexcused absence from school does not, ipso facto, establish either the parental misconduct or the harm or potential harm to the child necessary to a finding of neglect ...” [[761 N.Y.S.2d 166](#)]. On the other hand, educational neglect may be found when the parent refuses to cooperate with school officials in planning for the child (as opposed to a bona fide disagreement); see *Matter of Melissa R.*, 162 A.D.2d 754, 557 N.Y.S.2d 668 (3d Dept. 1990).

Pursuant to [Education Law Section 3204\(2\)](#) a child may receive home instruction in lieu of attendance in a school, provided the home education is “at least substantially equivalent to the instruction given minors of like age and attainments at the public schools of the city or district where the minor resides”. The respondent has the burden of proving the equivalency of home instruction, and the failure to establish that fact may support a neglect finding; see, e.g., *Matter of Fatima A.*, 276 A.D.2d 791, 715 N.Y.S.2d 250 (2d Dept. 2000).

Educational neglect, or, more accurately, the possibility of educational neglect, is related to Article 7 where, pursuant to [Section 712](#), a person in need of supervision petition may be filed alleging that the child is truant. When is the child culpable, and therefore subject to Article 7 prosecution, and when is the parent culpable, and therefore subject to Article 10 prosecution? There is no easy answer. Relevant criteria include the child's

age (an elementary student can hardly be deemed to be truant, whereas a sixteen year old teenage may be truant despite parental oversight), intent (a necessary Article 7 element), the home environment, and parental behavior and attitude. Counsel should evaluate the facts and circumstances, and develop an appropriate position with his client, whether parent or child. (See the Commentary following [Section 712](#) for a discussion of the truancy cause of action.)

4(e) Excessive Corporal Punishment

A parent has the right, or the “privilege” of using reasonable force to maintain discipline or promote the child's welfare. Although controversial, the ancient corporal punishment principle has persisted; see [Penal Law Section 35.10\(1\)](#). The issue is thus whether the physical force was “reasonable” or, conversely, “excessive” [[§ 1012\(f\)\(i\)\(B\)](#)]. When excessive, a child neglect finding may be entered, and a parent may be guilty, even when he had cause to invoke the right to use reasonable or moderate physical punishment; see [Matter of Commissioner on Behalf of Aleno O.](#), 220 A.D.2d 358, 633 N.Y.S.2d 127 (1st Dept. 1995). The line between “reasonable” and “excessive” is not always easy to determine, and may, in part, depend upon parental motivation, the child's age, the circumstances which gave rise to the incident, and whether the parent respected the child's dignity.

As is true in any Article 10 neglect case, actual or imminent danger of impairment to the child's physical, mental, or emotional condition must be proven [[§ 1012\(f\)\(i\)](#)]. However, such impairment may fall short of the standard applicable to child abuse cases, where the petitioner is required to prove the actual or a substantial risk of death, or serious or protracted disfigurement, or the “protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ” [[§ 1012\(e\)\(i\)](#)]. In effect, child neglect due to excessive corporal punishment is a lesser degree of child abuse. Although a single incident may support a finding, at least when physical injury is shown, the courts have frequently found that one isolated non-severe episode does not amount to neglect; see [Matter of Jerrica J.](#), 2 A.D.3d 1161, 770 N.Y.S.2d 171 (3d Dept. 2003), and [Matter of Chanika B. v. Marlon V.B.](#), 60 A.D.3d 671, 874 N.Y.S.2d 251, (2d Dept. 2009).

4(f) Misuse of Drugs or Alcohol

Pursuant to [Section 1012\(f\)\(i\)\(B\)](#) a child neglect finding may be predicated upon the respondent's failure to exercise a minimum degree of care in providing proper supervision or guardianship “by misusing a drug or drugs”, or “by misusing alcoholic

beverages to the extent that he loses self-control of his actions”. Note the distinction between drugs and alcohol. Drugs, such as heroin or cocaine, are sufficiently potent to assume a loss of self-control, whereas alcohol must be consumed in large quantities before one loses control of his actions (social drinking does not amount to neglect). Note, also, that subdivision (d) defines a “drug” as “... any substance defined as a controlled substance in [section thirty-three hundred six of the public health law](#)”. Thus, misuse of a legal prescription “controlled substance” drug may amount to neglect; see *Matter of Sonja I.*, 161 A.D.2d 969, 557 N.Y.S.2d 542 (3d Dept. 1990), *Lv. app. den.*, 76 N.Y.2d 710, 563 N.Y.S.2d 62.

The possession of drugs does not, *per se*, prove neglect, but is nevertheless admissible relevant evidence. Possession of drugs that are accessible by the child, or parental drug related activity in the presence of the child, may, however, constitute neglect; see *In re Andrew DeJ. R.*, 30 A.D.3d 238, 817 N.Y.S.2d 24 (1st Dept. 2006). Similarly, selling drugs in the presence of the child may constitute neglect; *Matter of Paul J.*, 6 A.D.3d 709, 775 N.Y.S.2d 373 (2d Dept. 2004).

Further, [Section 1046\(a\)\(iii\)](#) includes the following provision:

[P]roof that a person repeatedly misuses a drug or drugs or alcoholic beverages, to the extent that it has or would ordinarily have the effect of producing in the user thereof a substantial state of stupor, unconsciousness, intoxication, hallucination, disorientation, or incompetence, or a substantial impairment of judgment, or a substantial manifestation of irrationality, shall be prima facie evidence that a child of or who is the legal responsibility of a such person is a neglected child ...

The provision, which relieves the petitioner from proving actual or imminent impairment to the child, constitutes a powerful evidentiary tool. However, the [Section 1046](#) provision continues by stipulating that drug or alcohol misuse shall nevertheless “... not be prima facie evidence of neglect when such person is voluntarily and regularly participating in a recognized rehabilitative program.” (A similar provision is included in [Section 1012\(f\)\(i\)\(B\)](#).) Intended to encourage voluntary rehabilitation, the provision, when applicable, precludes an automatic or presumed finding of neglect; rather, actual impairment must be shown; see *Matter of Rae Ann Q.*, 299 A.D.2d 487, 749 N.Y.S.2d 905 (2d Dept. 2002). The respondent's participation in a program must be voluntary -- participation through a drug court proceeding to avoid incarceration does not suffice; *Matter of Amber DD*, 26 A.D.3d 689, 809 N.Y.S.2d 657 (3d Dept. 2006). Last, although participation in a recognized drug program is not prima facie proof of neglect, enrollment in a program does not clothe the parent with immunity. For example, the Second Department reversed Family Court's dismissal where mom was duly enrolled in a program, but had nevertheless

repeatedly tested positive during the last stages of her pregnancy; *Matter of Keira O. v. Danielle O.*, 44 A.D.3d 668, 844 N.Y.S.2d 344 (2d Dept. 2007).

4(g) Abandonment

[Section 1012\(f\)\(ii\)](#) permits a finding of neglect when the child has been abandoned in accordance with the definition found in [Social Services Law Section 384-b\(5\)](#). What constitutes abandonment is clear; however, the Social Services Law provision, which governs the termination of parental rights, requires an abandonment period of six months or longer. In that event, neglect is obvious. But may a child neglect case be predicated on a less than six month abandonment period? That is not clear, and there is a surprising paucity of caselaw. The “saving” factor (and one which may explain the sparse caselaw) is that a parent who has abandoned her child has, in all probability, committed other varieties of neglect (such as the failure to supply necessities, or improper supervision).

4(h) Other Basis of Neglect

In addition to the multiple specific grounds upon which a finding of neglect may be based (discussed above), the definitional section includes, as a catch all, the clause “... any other acts of a similarly serious nature requiring the aid of the court” [[§ 1012\(f\)\(i\)\(B\)](#)]. Given the exhaustive compendium of statutory malfeasance and nonfeasance conduct, resort to the “any other acts” clause is relatively uncommon, although certainly possible.

One example is *Matter of M.G. v. Kevin G.*, N.Y.L.J. 1/31/08, (Fam. Ct. Suffolk Co.), where Family Court found that the possession of child pornography constitutes child neglect per se, requiring no further proof of imminent danger to the child. A second example is *Matter of Tajani B.*, 49 A.D.3d 874, 854 N.Y.S.2d 520 (2d Dept. 2008), where the Second Department understandably concluded that placing a loaded gun on a bed accessible to a three year old child and adjacent to a five month old infant amounts to neglect.

A novel basis for neglect is the custodial parent's efforts to interfere with visitation by the non-custodial parent, coupled with attempts to alienate the child from the other parent; *Matter of Ramazan U. Jr.*, 303 A.D.2d 516, 756 N.Y.S.2d 442 (2d Dept. 2003). That breed of post-divorce dispute is usually addressed by a private visitation enforcement or modification action and, in fact, the appeal in *Ramazan U.* also involved a companion case in which the then non-custodial parent successfully gained custody. The need to expend scarce public resources by simultaneously applying the strong arm of the child protective service seems questionable.

5 Domestic Violence

Physical violence perpetrated by one parent against the other parent (or a person acting as a parent) may constitute child neglect. The earlier cases (which date only from the late 1990's) involved repeated severe acts of violence committed in the presence of the child; see *Matter of Lonell J.*, 242 A.D.2d 58, 673 N.Y.S.2d 116 (1st Dept. 1998). The statutory requirement that actual harm or a substantial risk of harm to the child be proven [§ 1012(f)(i)(B)] was deemed to have been met as a presumptive or common sense matter, even in the absence of expert evidence--after all, violent acts must be emotionally horrific to a vulnerable albeit physically untouched youngster who has witnessed the assault.

Several subsequent cases expanded the doctrine to questionable proportions, encompassing virtually every incident involving violence between the parents, regardless of the presence of the child; see, for example, *Matter of Michael G.*, 300 A.D.2d 1144, 752 N.Y.S.2d 772(4th Dept. 2002). On the other hand, the First Department raised a cautionary note in the case of *In Re Daphne G.*, 308 A.D.2d 132, 763 N.Y.S.2d 583(2003). The father had been convicted of feloniously assaulting the child's mother outside the presence of the child (in fact, at the time of the assault the child had been placed in the custody of a collateral relative). Reversing family court's granting of summary judgment against the father, the First Department, in an opinion authored by Justice Sullivan, concluded:

... there is no nexus between the domestic violence and the neglect finding. The incident of domestic violence that occurred while the child was not present is insufficient to establish that the child's physical, mental or emotional condition was in imminent danger of becoming impaired.

The Court also noted that while the Family Court Act provides that abuse or neglect of one child is evidence of abuse or neglect of other children of the same household "... there is no similar provision imputing neglect of a child in the case of spousal abuse".

This brings us to the landmark Court of Appeals case of *Nicholson v. Scopetta*, 3 N.Y.3d 357, 787 N.Y.S.2d 196, 820 N.E.2d 840 (2004). In *Nicholson* the court answered several definitional Section 1012 interpretive questions posed by the Federal Court of Appeals for the Second Circuit, as well as questions concerning the criteria for determining when children could be temporarily removed from their homes pending an Article 10 disposition (see *Nicholson v. Scopetta*, 344 F.3d 154 (2d Cir. 2003)).

The initial certified question read: “Does the definition of a ‘neglected child’ under N.Y. Family Ct. Act § 1012(f),(h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child's care allows the child to witness domestic abuse against the caretaker”? Chief Judge Kaye, writing for a unanimous Court, replied “no”: “That question must be answered in the negative. Plainly, more is required for a showing of neglect under New York law than the fact that a child was exposed to domestic abuse against the caretaker”. [3 N.Y.3d 357, 368]. Judge Kaye continued by delineating each element which must be proven before the trial court may conclude that neglect has been established under Article 10 (regardless of the presence or absence of domestic violence), such as imminent danger and the fact that the parent failed to exercise a minimum degree of care. Those aspects of *Nicholson* are discussed in Section 4(a) of this Commentary.

The early post-*Nicholson* cases appear to apply the newly interpreted standards appropriately, and to balance the interests of all the parties. In *Matter of Paul U.*, 12 A.D.3d 969, 785 N.Y.S.2d 767 (3d Dept. 2004), the Third Department affirmed a finding based on “imminent danger” where the respondent mother voluntarily placed the child with his father, who had a proven history of domestic violence witnessed by the child. In another case, the Third Department, carefully applying each *Nicholson* standard, founded neglect where the respondent mother had initiated a physical altercation between her and the children's grandmother--the severe emotional effect on the witnessing children was clear; *Matter of Richard T. v. Carol T.*, 12 A.D.3d 986, 785 N.Y.S.2d 169 (3d Dept. 2004). However, in *Matter of Ravern H. and Kelly S.*, 15 A.D.3d 991, 789 N.Y.S.2d 563 (4th Dept. 2005), the Fourth Department found that the elements had not been proven where the respondent's boyfriend assaulted her in front of the child. And the Second Department affirmed a dismissal where the domestic violence consisted of an isolated incident which did not occur in the children's presence; *Matter of Davin G. v. Radames G.*, 11 A.D.3d 462, 782 N.Y.S.2d 763 (2d Dept. 2004).

More recently, in *Matter of Casey N.*, 44 A.D.3d 861, 844 N.Y.S.2d 92 (2d Dept. 2007), the Second Department held that “... The mother's admission that there were incidents of domestic violence in the presence of the children, did not, by itself, provide a sufficient basis for the Family Court's finding of neglect. There was no evidence as to the nature or extent of the domestic violence, nor was there any evidence of actual or imminent impairment to the children's emotional or mental condition”. However, in *Matter of Elijah J. v. Michael C.*, 49 A.D.3d 340, 852 N.Y.S.2d 764 (1st Dept. 2008), the First Department surprisingly held that “[t]hese violent acts [in the presence of the child] exposed the child to an imminent risk of harm, and no expert or medical testimony is required to show impairment or risk thereof to the child as the result of the domestic violence” (the magnitude of the violence was not noted by the court).

In sum, whenever exposure of the children to domestic violence is alleged, it is incumbent on the petitioner, or the child's attorney, to prove the probability of detrimental effect through factual or expert evidence (*Elijah J.*, notwithstanding). Finally, although *Nicholson* clarified the elements of neglect and abuse, the decision addressed only the plight of the domestic violence victim, and cannot be used as a shield by the perpetrator of the abuse; see *Matter of Michael W.W.*, 20 A.D.3d 609, 798 N.Y.S.2d 222 (3d Dept. 2005).

6 Derivative Abuse or Neglect

The terms “derivative neglect” and “derivative abuse” do not appear in the Family Court Act or, for that matter, in any statute (e.g. the Social Services Law or the Domestic Relations Law). Rather, they are principles which have developed through case law interpretations of the evidentiary standard found in [Section 1046\(a\)\(i\)](#): “proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of, or the legal responsibility of, the respondent”. It is logical and appropriate to assume that acts of abuse or neglect committed against one child who resides in the household jeopardize other children similarly situated, and the shorthand phrase “derivative neglect” has emerged to characterize the [Section 1046](#) based evidentiary standard. (In some cases, the respondent may prove that the neglect or abuse indeed involved only one child without affecting or jeopardizing the other children, thereby refuting the [section 1046](#) “derivative” presumption.)

Although not new, the principle had, until recently, never been addressed by the Court of Appeals. In *Matter of Marino S.*, 100 N.Y.2d 361, 763 N.Y.S.2d 796, 795 N.E.2d 21 (2003), however, the Court finally reaching the derivative abuse and neglect issue, firmly upheld the evidentiary standard. *Marino S.* involved horrendous facts. The respondent mother had committed and tried to cover up the violent rape and near murder of her daughter by mom's paramour. Family Court found derivative abuse of the respondent's and paramour's two children who lived in the household (one child was physically present when the abuse occurred--both were in the apartment). A derivative finding was necessary, in part, to permit a waiver of “reasonable efforts” under [section 1039-b](#), thereby accelerating the possible, indeed likely, termination of parental rights.

A finding of derivative abuse is unusual (as opposed to derivative neglect); in most cases the Court finds that the parent has committed abuse or neglect against one child, and enters a finding of derivative neglect involving the other relevant child or children. Neglect is easier to find on a derivative basis in light of the broad [section 1012](#) definition of neglect which includes, inter alia, a failure “in providing the child with proper

supervision or guardianship, unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof ..." [see Section 1012(f)(i)(B.)]. On the other hand, a finding of abuse must be predicated on specific egregious acts, physical or sexual, or a substantial risk of a very serious physical injury, such as death or serious disfigurement [see Section 1012(e)(ii)]. The definition is not readily applied derivatively.

Extending the definitional "cocktail", [Social Services Law Section 384-b\(8\)\(a\)\(iii\)](#), which governs termination of parental rights, includes the term "severely abused child" defined, inter alia, as a child whose less than 11-year-old sibling has been the victim of a particularly violent or felonious assault (see Section 7 of this Commentary). In *Marino* the Court of Appeals understandably upheld a finding of severe abuse against the child who had been violently raped; her injuries had brought her close to death--and also upheld a finding of derivative severe abuse against the other children. Accordingly, reasonable efforts to reunite either the child victim or the siblings would not be required [see § 1039-b], and the case could be "fast tracked" for termination purposes. (The Court also held that the ASFA provision could be applied retroactively; see the Commentary following [Section 1039-b](#).)

By definition, the derivative doctrine is flexible, and application may not always yield clearly consistent results. In *Matter of Shaun X.*, [300 A.D.2d 772, 751 N.Y.S.2d 631 \(3d Dept. 2002\)](#), the Third Department found derivative neglect of the respondent's daughter where he had sexually abused his girlfriend's son, i.e., a child for whom he might not legally be responsible. But in *Matter of Christina P.*, [275 A.D.2d 783, 713 N.Y.S.2d 743 \(2d Dept. 2000\)](#), the Second Department reversed a finding that the respondent derivatively neglected her son even though she had acquiesced in the sexual abuse of her daughter by permitting the daughter to sleep in the same bed as the mother's paramour.

Another interesting holding is the Third Department case of *Matter of Cadejah AA*, [33 A.D.3d 1155, 823 N.Y.S.2d 278 \(3d Dept. 2006\)](#). The respondent had been found to have voyeured his teenage stepdaughter by enlarging a hole in her bedroom wall. That finding was not at issue on appeal. However, Family Court had applied the derivative neglect principle to find that the respondent had also thereby neglected his three year old biological son. That was too wide a stretch. Reversing, the Third Department commented that no evidence had been introduced to show that the single act of voyeurism had any impact on the three year old half-sibling, who was unaware of the incident. Significantly, in *Cadejah* the respondent had waived appeal, and his appellate counsel had filed an *Anders* brief. The Appellate Division nevertheless reversed, concluding that even though he clearly understood the explicit appeal waiver, the Court should exercise its inherent authority to review a matter involving the welfare of a child. Appellate counsel should never assume that the Court will refrain from determining a fundamental issue

involving a child, irrespective of procedural impediments. Similarly, trial counsel should be extremely reluctant to agree to a waiver of the client's right to appeal.

More recently, in *Matter of Jessica J. v. Lillie J.*, 57 A.D.3d 271, 871 N.Y.S.2d 7, (1st Dept. 2008), the First Department reversed a derivative finding in an educational neglect case when there was no evidence that the sibling was excessively absent from school or that her educational needs were unmet. However, in *Matter of Kole HH. and Thomas HH.*, 61 A.D.3d 1049, 876 N.Y.S.2d 199 (3d Dept. 2009), the Third Department found derivative neglect when the respondent had sexually abused a neighbor's child, i.e. a child to whom he was not legally responsible, commenting that "... respondent's sexual abuse of a neighborhood child within the family home provides ample support for a finding that by such conduct he derivatively neglected his own two children."

Derivative neglect is not necessarily predicated on contemporaneous acts. Indeed, when egregious, the complained of conduct may have occurred long ago. In *Matter of Justice T. and Justin T.*, 305 A.D.2d 1076, 758 N.Y.S.2d 732 (4th Dept. 2003) the respondent had killed her daughter in 1989. Seven years later and while on parole from the consequent manslaughter conviction, she gave birth, prompting a finding of derivative neglect. However, there must exist a rational nexus between the earlier events and the current case. Thus, in *Matter of Alexis R. v. Ana R.*, 62 A.D.3d 497, 879 N.Y.S.2d 413, (1st Dept. 2009), the First Department reversed a derivative finding based on the fact that the respondent's parental rights to two siblings had been terminated ten years earlier.

In light of *Nicholson* (see Sections 4(a) and 5 of this Commentary), evidence of specific harm to a sibling is needed to support a derivative neglect finding, unless the actual neglect or abuse committed against the "primary" child is of sufficient magnitude to render the conclusion of derivative neglect plainly sustainable even in the absence of extraneous proof (for example, the parent is presently drug addicted). The doctrine represents an extremely powerful tool which may be overused; on occasion, one has the impression that Family Court tosses in a derivative finding as an after-thought. Appropriately invoked, the finding is useful and needed to protect siblings or other children who reside in the same household as the child found to have been neglected or abused.

7 Aggravated Circumstances

The definition of "aggravated circumstances", found in subdivision (j) was added in 1999 [L.1999, c. 7]. Originally limited to cases where a child had been severely or repeatedly abused, in 2005 the Legislature added three new situations; a) where a previously found neglected child has been placed, returned home, and subsequently

abused within five years, b) where the Court finds by clear and convincing evidence a series of complex facts which presumptively evidence a parental intent to refuse to engage in necessary services designed to facilitate the return of the child, and c) where a child less than six days of age (“five days old or younger”) has been abandoned by a parent with an intent to “wholly abandon” (whatever that may mean), and with the intent that the child be safe and cared for [[L.2005, c. 3](#)].

The only logical expansion is a) the abused child who had been previously placed as a neglected child. By defining the contingency as an “aggravated circumstances”, the case may proceed rapidly to a permanency hearing (see Article 10-A), and to the possible termination of parental rights. But the provision will affect only a handful of cases. Almost all neglected children who are placed (the statute uses the word “placement” -- temporary removal does not count) and subsequently returned home are not subsequently abused by the parent (that was not the original problem); they may be again neglected, but that is another matter, one which does not satisfy the definition.

The second expansion of the definition may be summarized (perhaps inaccurately) as a parent's abject refusal over the course of at least six months to provide for or accept reunification services. The provision is extremely confusing. Several of the specific findings that are needed to find “aggravated circumstances” are vague, e.g. an “existence” of “adequate justification”. Others are a practical impossibility, such as the requirement that “the parent has stated in court under oath that he or she intends to continue to refuse such necessary services ...” (how many represented respondent do that?). Given the fact that at least six months must have elapsed since the relevant placement, and that the court must conduct an evidentiary hearing, the better course may be to continue diligent efforts, however frustrating, and shortly thereafter petition for termination of parental rights based on permanent neglect, as defined in [Social Services Law Section 384-b](#). In fact, the permanent neglect alternative may represent the only viable path in most cases.

The last definitional “aggravated circumstances”, the less than six day old child who has been abandoned, appears to be unneeded. If the prerequisites have been met, such as an intent that the child be cared for in an appropriate manner, one wonders why a voluntary surrender could not be achieved (see [Social Security Law § 384-a](#)). In any event, in a termination of parental rights proceeding based on abandonment the agency's diligent or reasonable efforts are irrelevant--that is not an element of the cause of action.

The major purpose in finding “aggravated circumstances” is to permit a [Section 1039-b](#) motion (see [§ 1039-b\(b\)\(1\)](#)). If the 1039-b motion is granted, a) the petitioning agency is relieved from using diligent or reasonable efforts to reunite the family, b) a permanency

hearing must be held within thirty days, and c) a termination of parental rights petition may be filed expeditiously. In short, aggravating circumstances fast tracks the case (see the Commentary following [Section 1039-b](#)).

9 Permanency Hearing


The final Section 1012 subdivision, added in 1999, defines the term “permanency hearing” [L.1999, c. 7]. The definition was needed to implement the Federal Adoption and Safe Families Act (ASFA). Periodic permanency hearings, governed by Article 10-A, are required whenever a child is in placement through either the Family Court Act [see § 1055] or the Social Services Law [See [Social Services Law § 358-a](#)], and the requirement is applicable from the day a child has been placed or removed from his home until the child is adopted or otherwise achieves permanency during the post termination of parental rights period.

[Notes of Decisions \(1187\)](#)

Footnotes

[1](#) So in original. The word “or” probably should be inserted.

McKinney's Family Court Act § 1012, NY FAM CT § 1012
Current through L.2013, chapters 1 to 340.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10. Child Protective Proceedings (Refs & Annos)
Part 5. Orders

McKinney's Family Court Act § 1052

§ 1052. Disposition on adjudication

Effective: March 3, 2009

Currentness

(a) At the conclusion of a dispositional hearing under this article, the court shall enter an order of disposition directing one or more of the following:

- (i) suspending judgment in accord with [section one thousand fifty-three](#) of this part; or
- (ii) releasing the child to the custody of his parents or other person legally responsible in accord with [section one thousand fifty-four](#) of this part; or
- (iii) placing the child in accord with [section one thousand fifty-five](#) of this part; or
- (iv) making an order of protection in accord with one thousand fifty-six of this part; or
- (v) placing the respondent under supervision in accord with [section one thousand fifty-seven](#) of this part; or
- (vi) granting custody of the child to relatives or suitable persons pursuant to [section one thousand fifty-five-b](#) of this part.

However, the court shall not enter an order of disposition combining placement of the child under paragraph (iii) of this subdivision with a disposition under paragraph (i) or (ii) of this subdivision.

An order granting custody of the child pursuant to paragraph (vi) of this subdivision shall not be combined with any other disposition under this subdivision.

(b)(i) The order of the court shall state the grounds for any disposition made under this section. If the court places the child in accord with [section one thousand fifty-five](#) of this part, the court in its order shall determine:

(A) whether continuation in the child's home would be contrary to the best interests of the child and where appropriate, that reasonable efforts were made prior to the date of the dispositional hearing held pursuant to this article to prevent or eliminate the need for removal of the child from his or her home and if the child was removed from the home prior to the date of such hearing, that such removal was in the child's best interests and, where appropriate, reasonable efforts were made to make it possible for the child to safely return home. If the court determines that reasonable efforts to prevent or eliminate the need for removal of the child from the home were not made but that the lack of such efforts was appropriate under the circumstances, the court order shall include such a finding, or if the permanency plan for the child is adoption, guardianship or another permanent living arrangement other than reunification with the parent or parents of the child, the court order shall include a finding that reasonable efforts, including consideration of appropriate in-state and out-of-state placements, are being made to make and finalize such alternate permanent placement.

For the purpose of this section, reasonable efforts to prevent or eliminate the need for removing the child from the home of the child or to make it possible for the child to return safely to the home of the child shall not be required where, upon motion with notice by the social services official, the court determines that:

(1) the parent of such child has subjected the child to aggravated circumstances, as defined in [subdivision \(j\) of section one thousand twelve](#) of this article;

(2) the parent of such child has been convicted of (i) murder in the first degree as defined in section 125.27 or murder in the second degree as defined in [section 125.25 of the penal law](#) and the victim was another child of the parent; or (ii) manslaughter in the first degree as defined in section 125.20 or manslaughter in the second degree as defined in [section 125.15 of the penal law](#) and the victim was another child of the parent, provided, however, that the parent must have acted voluntarily in committing such crime;

(3) the parent of such child has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent; or has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent;

(4) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in [section 120.12 of the penal law](#), and the commission of one of the foregoing crimes resulted in serious physical injury to the child or another child of the parent;

(5) the parent of such child has been convicted in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause two, three or four of this subparagraph, and the victim of such offense was the child or another child of the parent; or

(6) the parental rights of the parent to a sibling of such child have been involuntarily terminated;

unless the court determines that providing reasonable efforts would be in the best interests of the child, not contrary to the health and safety of the child, and would likely result in the reunification of the parent and the child in the foreseeable future. The court shall state such findings in its order.

(7) If the court determines that reasonable efforts are not to be required because of one of the grounds set forth above, a permanency hearing shall be held within thirty days of the finding of the court that such efforts are not required. At the permanency hearing, the court shall determine the appropriateness of the permanency plan prepared by the social services official which shall include whether or when the child: (i) will be returned to the parent; (ii) should be placed for adoption with the social services official filing a petition for termination of parental rights; (iii) should be referred for legal guardianship; (iv) should be placed permanently with a fit and willing relative; or (v) should be placed in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child, if the social services official has documented to the court a compelling reason for determining that it would not be in the best interest of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian. The social services official shall thereafter make reasonable efforts to place the child in a timely manner, including consideration of appropriate in-state and out-of-state placements,

and to complete whatever steps are necessary to finalize the permanent placement of the child as set forth in the permanency plan approved by the court. If reasonable efforts are determined by the court not to be required because of one of the grounds set forth in this paragraph, the social services official may file a petition for termination of parental rights in accordance with [section three hundred eighty-four-b of the social services law](#).

For the purpose of this section, in determining reasonable effort to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

For the purpose of this section, a sibling shall include a half-sibling;

(B) if the child has attained the age of sixteen, the services needed, if any, to assist the child to make the transition from foster care to independent living. Where the court finds that the local department of social services has not made reasonable efforts to prevent or eliminate the need for placement, and that such efforts would be appropriate, it shall direct the local department of social services to make such efforts pursuant to [section one thousand fifteen-a](#) of this article, and shall adjourn the hearing for a reasonable period of time for such purpose when the court determines that additional time is necessary and appropriate to make such efforts; and

(C) whether the local social services district made a reasonable search to locate relatives of the child as required pursuant to [section one thousand seventeen](#) of this article. In making such determination, the court shall consider whether the local social services district engaged in a search to locate any non-respondent parent and whether the local social services district attempted to locate all of the child's grandparents, all suitable relatives identified by any respondent parent and any non-respondent parent and all relatives identified by a child over the age of five as relatives who play or have played a significant positive role in the child's life.

(ii) The court shall also consider and determine whether the need for placement of the child would be eliminated by the issuance of an order of protection, as provided for in paragraph (iv) of subdivision (a) of this section, directing the removal of a person or persons from the child's residence. Such determination shall consider the occurrence, if any, of domestic violence in the child's residence.

(c) Prior to granting an order of disposition pursuant to subdivision (a) of this section following an adjudication of child abuse, as defined in [paragraph \(i\) of subdivision \(e\) of section ten hundred twelve](#) of this act or a finding of a felony sex offense as defined in [sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65 and 130.70 of the penal law](#), the court shall advise the respondent

that any subsequent adjudication of child abuse, as defined in [paragraph \(i\) of subdivision \(e\) of section one thousand twelve](#) of this act or any subsequent finding of a felony sex offense as defined in those sections of the penal law herein enumerated, arising out of acts of the respondent may result in the commitment of the guardianship and custody of the child or another child pursuant to [section three hundred eighty-four-b of the social services law](#). The order in such cases shall contain a statement that any subsequent adjudication of child abuse or finding of a felony sex offense as described herein may result in the commitment of the guardianship and custody of the child, or another child pursuant to [section three hundred eighty-four-b of the social services law](#).

Credits

(Added L.1970, c. 962, § 9. Amended L.1973, c. 1039, § 10; L.1981, c. 739, § 4; L.1984, c. 872, § 3; L.1986, c. 161, § 1; L.1988, c. 478, § 8; L.1989, c. 727, § 6; L.1991, c. 198, § 7; L.1992, c. 538, § 1; L.1999, c. 7, §§ 48, 49, eff. Feb. 11, 1999; L.2005, c. 671, § 4, eff. March 15, 2006; L.2006, c. 12, § 3, eff. March 15, 2006; L.2007, c. 327, pt. B, § 7, eff. Dec. 31, 2007; L.2008, c. 519, § 3, eff. March 3, 2009.)

Editors' Notes

PRACTICE COMMENTARIES

by Prof. Merrill Sobie

The Dispositional Alternatives

Section 1052 establishes the Article 10 dispositional “menu” which counsel and the court turn to following the entry of a [Section 1051](#) order finding that the child has been abused or neglected. (Section 1052 is of course unavailable in the absence of an abuse or neglect finding; see *Matter of Rasha B.*, 139 A.D.2d 962, 527 N.Y.S.2d 933 (4th Dept. 1988), where the Court impermissibly imposed an order of protection upon dismissing the petition). Six specific dispositions are enumerated in subdivision (a); each is discussed in the Commentary following the relevant section. Unmentioned in Section 1052 are three additional dispositional orders which are available to the Court: 1) an adjournment in contemplation of dismissal [[§ 1039](#)]; 2) the dismissal of a petition after finding the child has been neglected on the ground that the Court’s “aid is not required” [[§ 1051\(c\)](#)]; and 3) the discharge of an “abandoned” child to the Commissioner of Social Services [[§ 1059](#)]. Each non-Section 1052 disposition may be viable in a given case, and should be advocated whenever arguably appropriate. Each also avoids a finding (which is why the trio is absent from Section 1052).

The newest subdivision (a) alternative, effective March 3, 2009, is the granting of custody to a relative or other suitable person pursuant to [Section 1055-b](#), which became effective on the same date (see the Commentary following [Section 1055-b](#)). The additional alternative is part of the legislation designed to avoid conflicts between articles 6 and 10, and to further family integrity by reaching out to collateral relatives.

The final subdivision (a) paragraph enumerates those dispositional alternatives which cannot be combined. An order granting custody to a relative or other suitable person "... shall not be combined with any other disposition under this subdivision"; in fact, such an order removes the case entirely from Article 10. (However, the Court may, instead, place the child in a "kinship" foster placement with a suitable relative under [Section 1055\(a\)](#), straight Article 10 disposition which may be combined with other Article 10 remedies.) The only other restriction is that the Court cannot place the child and simultaneously suspend judgment or release the child to the parent; combining those remedies would present patent conflicts. Other subdivision (a) remedies may be, and frequently are, combined; for example, the Court may place the respondent under supervision and issue an order of protection.

Recording the Grounds

Subdivision (b) commences with the requirement that "[t]he order of the court shall state the grounds for any disposition made under this section." Articulating grounds on the record is customary -- mandating that the order itself stipulate the grounds is unusual, if not unique. In part, the provision reflects the fact that Family Court judges, overburdened and juggling a multitude of cases daily, frequently create only a bare bones memorialization of their reasoning. Subsequent proceedings, such as permanency hearings and appeals, may thereby be compromised. As early as 1971 the Court of Appeals expressed its frustration in *Matter of Darlene T.*, 28 N.Y.2d 391, 322 N.Y.S.2d 231, 271 N.E.2d 215 (1971):

The recital in the [dispositional] order relating to the mother's welfare, without reference to the mother's fitness, precludes our consideration of the question presented. Although one could argue that a finding of fitness is implicit in any order awarding custody to the natural parent, the order below on its face, and at best, is equivocal and uncertain [[28 N.Y.2d at 395](#)]

Hence the requirement of a recital in the order itself. As a practical matter, however, no order can include a full description of the grounds or the Court's reasoning for choosing a specified detailed disposition. The subdivision (b) requirement should be read as a minimal stipulation, one which should be accompanied by a fuller judicial articulation on the record.

Reasonable Efforts

Subdivision (b) continues by requiring that before ordering a [Section 1055](#) placement, the Court must specifically determine that continuation in the child's home would be contrary to the child's best interests, and that reasonable reunification efforts to hopefully eliminate the need for placement were expended prior to the date of the dispositional hearing. The provision should be read together with the subdivision (b)(ii) provision that the Court "... shall also consider and determine whether the need for placement of the child would be eliminated by the issuance of an order of protection ... directing the removal of a person or persons from the child's residence". Placement is viewed as a last resort. Reasonable efforts to rehabilitate and reunify the family are statutorily preferable, as is the removal of the abusive or neglectful parent or other person in lieu of the removal, via placement, of the child.

Reasonable efforts must in most cases continue beyond the date of a [Section 1055](#) placement. The exceptions, which were added by a 1999 amendment [[L.1999, c. 7](#)], dispense with the need for reasonable efforts in several circumstances. The [Section 1052](#) provision implements substantially identical provisions included in [Section 1039-b](#) (enacted simultaneously with the [Section 1052](#) amendments). See the Commentary following [Section 1039-b](#) for a discussion.

Placement

In 2007 subdivision (b)(1)(A) was amended to stipulate that where the permanency plan for the child is other than reunification with the child's parent or parents, the court order shall include a finding that reasonable efforts have been made to effect an alternate permanent placement (as opposed to a temporary or "non-permanent placement") "including consideration of appropriate in-state and out-of-state placements" ([L.2007, c. 327](#)). Of course placements within or outside New York State have never been precluded; the new language underscores that fact, and mandates a specific finding.

An "out-of-state" placement may arguably include a foreign country, although there is a paucity of New York caselaw. If the potential of a foreign placement is raised, counsel may wish to consult the California decision of *In re Sabrina H.*, 149 Cal. App. 4th Dept. 1403, 57 Cal. Rptr. 3d 863 (Ct. Appeal, 4th Dist. 2007), where an appellate court upheld the placement of a neglected child (in California jargon, a "dependent" child) with a relative in Mexico. In a lengthy analysis, the Court found that the relevant California statute, which is similar to [Section 1052](#), does not preclude a foreign country placement

and that, at least in the case on appeal, such a placement would not be inimical to the goal of family reunification or prevent parental visitation.

Kinship Placement and Services

Subdivision (b)(i)(c) requires the Court to determine whether the local Department of Social Services conducted a reasonable search to locate suitable relatives of the child pursuant to [Section 1017](#) (see the Commentary following [Section 1017](#)), including grandparents and other relatives identified by a parent and by the child, if over the age of five. The provision reflects the ongoing legislative preference and mandate to place with a relative or other suitable person instead of resorting to a non-kinship foster placement or an agency placement.

The child's transition from placement to independent living has always presented problems, and has received increasing attention in recent years. Many children “age out” of the system with scant skills or resources, and many do not take advantage of their right to remain in placement until age twenty-one (or are not adequately counseled regarding their right to continuing care and services). Hence the stipulation, found in subdivision (b)(i)(B) that the over age sixteen child receive, if needed, services to assist in the transition from foster care to independent living. The child's attorney should advocate for the appropriate court-ordered services (as for any other service which might benefit the child), monitor such services and, when necessary, move for enforcement.

Notice


The final subdivision enumerates specific notices which must be provided to the respondent when the Court has found the child to be abused. The notices are required to be included in the Section 1052 order. However, the absence of notice does not necessarily render the order reversible. See, for example, *Matter of Bianca M. v. Kevin M.*, 57 A.D.3d 1253, 870 N.Y.S.2d 550 (3d Dept. 2008), where the Appellate Division held that “... this technical deficiency in the order was harmless given the absence of any prejudice to respondent as a result of such omission.”

[Notes of Decisions \(88\)](#)

McKinney's Family Court Act § 1052, NY FAM CT § 1052
Current through L.2013, chapters 1 to 340.

End of Document

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10. Child Protective Proceedings (Refs & Annos)
Part 5. Orders

McKinney's Family Court Act § 1055

§ 1055. Placement

Effective: January 27, 2012 to September 17, 2012

Currentness

(a)(i) For purposes of [section one thousand fifty-two](#) of this part the court may place the child in the custody of a relative or other suitable person pursuant to this article, or of the local commissioner of social services or of such other officer, board or department as may be authorized to receive children as public charges, or a duly authorized association, agency, society or in an institution suitable for the placement of a child. The court may also place a child who it finds to be a sexually exploited child as defined in [subdivision one of section four hundred forty-seven-a of the social services law](#) with the local commissioner of social services for placement in an available long-term safe house. The court may also place the child in the custody of the local commissioner of social services and may direct such commissioner to have the child reside with a relative or other suitable person who has indicated a desire to become a foster parent for the child and further direct such commissioner, pursuant to regulations of the office of children and family services, to commence an investigation of the home of such relative or other suitable person within twenty-four hours and thereafter expedite approval or certification of such relative or other suitable person, if qualified, as a foster parent. If such home is found to be unqualified for approval or certification, the local commissioner shall report such fact to the court forthwith so that the court may make a placement determination that is in the best interests of the child.

(ii) An order placing a child directly with a relative or other suitable person pursuant to this part may not be granted unless the relative or other suitable person consents to the jurisdiction of the court. The court may place the person with whom the child has been directly placed under supervision of a child protective agency, social services official or duly authorized agency during the pendency of the proceeding. The court also may issue an order of protection under [section one thousand fifty-six](#) of this part. An order of supervision issued pursuant to this subdivision shall set forth the terms and conditions that the relative or suitable person must meet and the actions

that the child protective agency, social services official or duly authorized agency must take to exercise such supervision.

(b)(i) The court shall state on the record its findings supporting the placement in any order of placement made under this section. The order of placement shall include, but not be limited to:

(A) a description of the visitation plan;

(B) a direction that the respondent or respondents shall be notified of the planning conference or conferences to be held pursuant to [subdivision three of section four hundred nine-e of the social services law](#), of their right to attend the conference, and of their right to have counsel or another representative or companion with them;

(C) a date certain for the permanency hearing, which may be the previously-scheduled date certain, but in no event more than eight months from the date of removal of the child from his or her home. Provided, however, that if there is a sibling or half-sibling of the child who was previously removed from the home pursuant to this article, the date certain for the permanency hearing shall be the date certain previously scheduled for the sibling or half-sibling of the child who was the first child removed from the home, where such sibling or half-sibling has a permanency hearing date certain scheduled within the next eight months, but in no event later than eight months from the date of removal of the child from his or her home;

(D) a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the agency may be required by law to file a petition to terminate parental rights. A copy of the court's order and the service plan shall be given to the respondent; and

(E) [As amended by [L.2010, c. 41, § 67](#). See, also, subpar. (E) below.] where the permanency goal is return to the parent and it is anticipated that the child may be finally discharged to his or her parent before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and child's attorney. If the court on its own motion or the child's attorney on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the

child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a child aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child, the local social services district may also discharge the child on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a child aging out of foster care shall mean that a child is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing. Children placed under this section shall be placed until the court completes the initial permanency hearing scheduled pursuant to article ten-A of this act. Should the court determine pursuant to article ten-A of this act that placement shall be extended beyond completion of the scheduled permanency hearing, such extended placement and any such successive extensions of placement shall expire at the completion of the next scheduled permanency hearing, unless the court shall determine, pursuant to article ten-A of this act, to continue to extend such placement.

(E) [As amended by L.2010, c. 342, § 1. See, also, subpar. (E) above.] where the permanency goal is return to the parent and it is anticipated that the child may be finally discharged to his or her parent before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and the attorney for the child. If the court on its own motion or the attorney for the child on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that a youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the youth and there remains a date certain for the scheduled permanency hearing. Trial discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the child reaches the age of twenty-one, if a child over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the

local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that re-entry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with [paragraph two of subdivision \(a\) of section one thousand ninety-one](#) of this act. Children placed under this section shall be placed until the court completes the initial permanency hearing scheduled pursuant to article ten-A of this act. Should the court determine pursuant to article ten-A of this act that placement shall be extended beyond completion of the scheduled permanency hearing, such extended placement and any such successive extensions of placement shall expire at the completion of the next scheduled permanency hearing, unless the court shall determine, pursuant to article ten-A of this act, to continue to extend such placement.

(ii) Upon placing a child under the age of one, who has been abandoned, with a local commissioner of social services, the court shall, where either of the parents do not appear after due notice, include in its order of disposition pursuant to [section one thousand fifty-two](#) of this part, a direction that such commissioner shall promptly commence a diligent search to locate the child's non-appearing parent or parents or other known relatives who are legally responsible for the child, and to commence a proceeding to commit the guardianship and custody of such child to an authorized agency pursuant to [section three hundred eighty-four-b of the social services law](#), six months from the date that care and custody of the child was transferred to the commissioner, unless there has been communication and visitation between such child and such parent or parents or other known relatives or persons legally responsible for the child. In addition to such diligent search the local commissioner of social services shall provide written notice to the child's parent or parents or other known relatives or persons legally responsible as provided for in this paragraph. Such notice shall be served upon such parent or parents or other known relatives or persons legally responsible in the manner required for service of process pursuant to [section six hundred seventeen](#) of this act. Information regarding such diligent search, including, but not limited to, the name, last known address, social security number, employer's address and any other identifying information to the extent known regarding the non-appearing parent, shall be recorded in the uniform case record maintained pursuant to [section four hundred nine-f of the social services law](#).

(iii) Notice as required by paragraph (ii) of this subdivision shall state:

(A) that the local commissioner of social services shall initiate a proceeding to commit the guardianship and custody of the subject child to an authorized agency and that such proceeding shall be commenced six months from the date the child was placed in the care and custody of such commissioner with such date to be specified in the notice;

(B) that there has been no visitation and communication between the parent and the child since the child has been placed with the local commissioner of social services and that if no such visitation and communication with the child occurs within six months of the date the child was placed with such commissioner the child will be deemed an abandoned child as defined in [section three hundred eighty-four-b of the social services law](#) and a proceeding will be commenced to commit the guardianship and custody of the subject child to an authorized agency;

(C) that it is the legal responsibility of the local commissioner of social services to reunite and reconcile families whenever possible and to offer services and assistance for that purpose;

(D) the name, address and telephone number of the caseworker assigned to the subject child who can provide information, services and assistance with respect to reuniting the family;

(E) that it is the responsibility of the parent, relative or other person legally responsible for the child to visit and communicate with the child and that such visitation and communication may avoid the necessity of initiating a petition for the transfer of custody and guardianship of the child.

Such notice shall be printed in both Spanish and English and contain in conspicuous print and in plain language the information set forth in this paragraph.

(c) In addition to or in lieu of an order of placement made pursuant to subdivision (b) of this section, the court may make an order directing a child protective agency, social services official or other duly authorized agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child. Such efforts shall include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care. Such order may include a specific plan of action for such agency or official including, but not limited to, requirements that such agency or official assist the parent or other person responsible for the child's care in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment. Such order shall also include encouraging and facilitating visitation with the child by the non-custodial parent and grandparents who have obtained orders pursuant to part eight of this article, and may include encouraging and facilitating visitation with the child by the child's siblings. Nothing in this subdivision shall be deemed to limit the authority of the court to make an order pursuant to [section two hundred fifty-five](#) of this act.

(d) In addition to or in lieu of an order of placement made pursuant to subdivision (b) of this section, the court may make an order directing a social services official or other duly authorized agency to institute a proceeding to legally free the child for adoption, if the court finds reasonable cause to believe that grounds therefor exist. Upon a failure by such official or agency to institute such a proceeding within ninety days after entry of such order, the court shall permit the foster parent or parents in whose home the child resides to institute such a proceeding unless the social services official or other duly authorized agency caring for the child, for good cause shown and upon due notice to all parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the children in a subsequent adoption proceeding.

(e) No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday. However, a former foster care youth under the age of twenty-one who was previously discharged from foster care due to a failure to consent to continuation of placement may make a motion pursuant to [section one thousand ninety-one](#) of this act to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges. In such motion, the youth must consent to enrollment in and attendance at a vocational or educational program in accordance with [paragraph two of subdivision \(a\) of section one thousand ninety-one](#) of this act.

(f) [Eff. until federal approval of state plan amendment, pursuant to [L.2011, c. 605, § 12](#), as amended, and [L.2012, c. 3, § 29](#). See, also, subd. (f) below.] If a child is placed in the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, such person shall provide for such child as in the case of a destitute child or as otherwise authorized by law.

(f) [Eff. upon federal approval of state plan amendment, pursuant to [L.2011, c. 605, § 12](#), as amended, and [L.2012, c. 3, § 29](#). See, also, subd. (f) above.] If a child is placed in the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, such person shall provide for such child as authorized by law, including, but not limited to [section three hundred ninety-eight of the social services law](#).

(g) If the parent or person legally responsible for the care of any such child or with whom such child resides receives public assistance and care, any portion of which is attributable to such child, a copy of the order of the court providing for the placement of such child from his or her home shall be

furnished to the appropriate social services official, who shall reduce the public assistance and care furnished such parent or other person by the amount attributable to such child, provided, however, that when the child service plan prepared pursuant to [section four hundred nine-e of the social services law](#) includes a goal of discharge of the child to the parent or person legally responsible for the care of the child or other member of the household, such social services official shall not, to the extent that federal reimbursement is available therefor, reduce the portion attributable to such child which is intended to meet the cost of shelter and fuel for heating.

(h) Any order made under this section shall be suspended upon the entry of an order of disposition with respect to a child whose custody and guardianship have been committed pursuant to [section three hundred eighty-four-b of the social services law](#), and shall expire upon the expiration of the time for appeal of such order or upon the final determination of any such appeal and any subsequent appeals authorized by law; provided, however, that where custody and guardianship have been committed pursuant to [section three hundred eighty-four-b of the social services law](#) or where the child has been surrendered pursuant to [section three hundred eighty-three-c](#) or [three hundred eighty-four of the social services law](#), the child shall nonetheless be deemed to continue in foster care until such time as an adoption or other alternative living arrangement is finalized. A permanency hearing or hearings regarding such child shall be conducted in accordance with article ten-A of this act. Nothing in this subdivision shall cause such order of placement to be suspended or to expire with respect to any parent or other person whose consent is required for an adoption against whom an order of disposition committing guardianship and custody of the child has not been made.

(i) In making an order under this section, the court may direct a local commissioner of social services to place the subject child together with minor siblings or half-siblings who have been placed in the custody of the commissioner, or to provide or arrange for regular visitation and other forms of communication between such child and siblings where the court finds that such placement or visitation and communication is in the child's best interests. Placement or regular visitation and communication with siblings or half-siblings shall be presumptively in the child's best interests unless such placement or visitation and communication would be contrary to the child's health, safety or welfare, or the lack of geographic proximity precludes or prevents visitation.

Credits

(Added L.1970, c. 962, § 9. Amended L.1974, c. 937, § 9; L.1975, c. 220, §§ 2, 3; L.1976, c. 666, § 29; L.1982, c. 117, § 1; [L.1987, c. 75, § 1](#); [L.1987, c. 129, § 1](#); [L.1988, c. 638, §§ 1, 2](#); L.1989, c. 458, § 2; L.1989, c. 747, § 1; L.1990, c. 283, § 1, L.1990, c. 323, § 4; L.1990, c. 605, § 1; L.1990, c. 854, § 4; L.1992, c. 538, §§ 2, 3; L.1997, c. 353, § 2, eff. Nov. 3, 1997; L.1998, c. 164, § 1, eff. July 7, 1998; L.1999, c. 7, § 50, eff. Feb. 11, 1999; L.2002, c. 663, § 3, eff. Dec. 3, 2002; L.2005,

c. 3, pt. A, § 18, eff. Dec. 21, 2005; L.2005, c. 671, § 6, eff. March 15, 2006; L.2006, c. 12, § 5, eff. March 15, 2006; L.2006, c. 437, §§ 3, 4, eff. July 26, 2006; L.2008, c. 519, § 4, eff. March 3, 2009; L.2010, c. 41, § 67, eff. April 14, 2010; L.2010, c. 58, pt. G, § 12, eff. July 2, 2010, deemed eff. April 1, 2010; L.2010, c. 342, § 1, eff. Nov. 11, 2010; L.2012, c. 3, § 5.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merrill Sobie

2012

The Placement Duration

Subdivision (c) provides that upon the child's consent foster care may continue beyond age 18 and until age 21 (and the child who leaves foster care may subsequently opt back in under the [Section 1091](#) foster care re-entry provision). The court's continuing jurisdiction over the post-18 “foster care” child is clear. Does the court also maintain jurisdiction over the parent of the now legally emancipated child? Yes, at least in limited circumstances; *Matter of Fay GG. (John GG.)*, 97 A.D.3d 918, 948 N.Y.S.2d 730 (3d Dept. 2012): “In light of petitioner's continued responsibilities for Michael arising from his election to stay in foster care, Family Court had jurisdiction ... to require respondent's participation in services designed to help ensure that his role and access were in the best interests of the child.”

2010

The Placement Duration and Foster Care “Re-Entry”

Subdivision (e) stipulates that a placement may not be continued or extended beyond the child's eighteenth birthday without the child's consent. On the other hand, upon consent a placement may be extended by six month increments until age 21. Until now, a determination to terminate the placement at or above age eighteen was final; when a child opted to withhold consent there was no turning back. A subsequent conclusion that relinquishing the benefits of foster care was a mistake (a not unusual scenario for the foster care adolescent) had been legally meaningless.

The problem of impetuous decisions to terminate placement has now been alleviated. Subdivision (e) has been amended to permit re-entry into foster care upon motion by the post-eighteen year old child [L.2010, c. 342]. Subdivision (b) has also been amended to require notification of the right of re-entry. The procedures to be followed in determining a motion are spelled out in newly enacted Article 10-B. See the 2010 Supplementary Commentary to [Section 1091](#) for a description.

PRACTICE COMMENTARIES

by Prof. Merrill Sobie

Section 1055 has a lengthy history. The grand-daddy 1922 Children's Court Act provided that the Court could:

Commit the child to the care and custody of a suitable institution maintained by the state or any subdivision thereof, or to the care and custody of a duly authorized association, agency, society or institution; or

Continue the care and place the child in its own home or in the custody of a relative or a duly authorized association, agency, society or institution, for a certain designated period under order of the court [§ 22(c)(d)].

The Court's broad placement authority, including what we now call “kinship” placement, is apparent. The procedural and substantive details are absent, as was common in early twentieth century legislation. Placement was to be for a period “designated” by the Court, which could be until the child attained majority (and the Court thereby lost jurisdiction). In fact, the normal “designated” duration was until majority, although a parent could subsequently petition to terminate the placement.

The 1962 Family Court Act continued the above provisions with only minor substantive change, but, significantly, limited a placement's duration to an initial twelve months. [See repealed Section 355]. Since the Court could place for only a modest finite period, the 1962 Act introduced a new species of proceeding, the “extension of placement”. Placements could thus be extended by one year intervals until the child attained age eighteen (or 21, with the child's consent), parental rights were terminated, or the family was reunited. The establishment of periodic reviews implemented the much older doctrine of continuing jurisdiction. From 1962 until the twenty-first century, Section 1055 (or its predecessor, Section 355) remained largely unamended.

How times change. Between 2003 and 2009, Section 1055 has been amended frequently and significantly. The most important modifications were enacted as part of the 2005 Permanency Act. Extensions of placement provisions were repealed, and Article 10-A permanency hearings were substituted. A placement's duration was reduced to, at most, eight months for an initial placement and six months for a continuation following a [Section 1089](#) hearing. Provisions regarding kinship placement were strengthened. Foster parent rights were enhanced. Perhaps most significantly, the Court's authority to issue detailed orders and, in effect, micro-manage a placement, has been greatly augmented.

The Placement Decision and Order

At the outset, it should be emphasized that placement is the most drastic remedy available to the Court, one which is viewed as a last resort. Hence the requirement, found in [Section 1052](#), that before it may order a Section 1055 placement the Court must determine that continuation in the child's home would be contrary to her best interests, and that, where appropriate, reasonable efforts were made to prevent or eliminate the need for placement [[§ 1052\(b\)](#); see the Commentary following that section]. Further, the Court must determine that the need for placement would not be eliminated by issuance of an order of protection [[§ 1052\(c\)](#)].

Once the decision that the child must be placed has been reached, the clear preference is placement with an appropriate relative [[§ 1055\(a\)](#)]. To facilitate kinship placement, the subdivision further authorizes an expedited licensing procedure so that a relative or other suitable person may become eligible for foster parent status and payment (or, alternatively, be quickly found to be unqualified). The Court may also order the individual to whom placement is awarded to be placed under social service supervision. Identifying a possible appropriate relative as a placement resource should have occurred at a date much earlier than the dispositional hearing, i.e., the foundation should have been constructed prior to the time when Section 1055 becomes applicable (see the commentaries following [sections 1017](#) and [1052](#)).

One thorny issue in effecting kinship placement had been the conflict between an Article 10 placement and an Article 6 custody award. That has now been resolved with the enactment of [Section 1055-b](#), and the amendment of related Article 6 and Article 10 provisions (see the commentaries following [Sections 651](#) and [1055-b](#)).

Of course, the Court is not required to order a kinship placement (or any other placement) and, in many cases, a relative or other suitable person is not available. In such event, the Court may place with the relevant Social Services Commissioner for replacement in a “stranger” foster home, or place the child with an authorized public or private agency.

The ability of the Court to specify placement details, as well as review and, if appropriate, modify the agency's plans, is illustrated in *Matter of Damien A.*, 195 Misc.2d 661, 760 N.Y.S.2d 825 (Fam. Ct. Suffolk Co. 2003), where the Suffolk County Family Court ordered that the young mother, a foster child herself, be placed in the same foster home as her child. The fact that permanency plans do not have to move inexorably toward adoption is underscored in *Matter of Glenn B.*, 303 A.D.2d 498, 756 N.Y.S.2d 599 (2d Dept. 2003), an extension of placement case. The Second Department affirmed Family Court's rejection of adoption as a permanency goal where the mother, although incarcerated, had actively participated in prison drug treatment programs, earned a GED, maintained contact with the children, and was scheduled for release within months.

The decision to place or not place a child resides squarely with the judge, and only with the judge (subject of course to appellate review). In *Matter of Elijah Q.*, 36 A.D.3d 974, 828 N.Y.S.2d 607 (3d Dept. 2007), the law guardian, who had filed the Article 10 petition, specifically sought only a supervision order requiring the respondent to accept preventive services. Similarly, the Department of Social Services did not seek placement (or even commence the proceeding). Family Court's decision to place, based on serious documented failings on the part of the respondent, was nevertheless upheld.

Last, subdivision (b)(i)(E) grants the Court the discretion to provide, as part of the order, that, assuming a goal of return to the parent and the anticipation that the child will actually be returned prior to the initial permanency hearing, the agency may return the child upon ten days notice to the Court and the law guardian. The agency may thereby effectively terminate the placement with no further complications, such as a permanency hearing (a similar provision is found in [Section 1089](#)). That may be a logical measure in the relatively few cases where the placement is intended to be very temporary. Much the same, albeit with greater judicial oversight, may be accomplished by ordering a short initial placement period; the Court is perfectly free to set the placement period at, say, three months, or, for that matter, three weeks, and calendar the initial permanency hearing accordingly. Unlike a clause in the order granting the agency carte blanche (subject only to the ten day notification clause), every relevant figure, including the law guardian and the judge, thereby maintains the ability to evaluate the matter in the context of a court proceeding prior to the child's return. The subdivision also provides that the agency may return the child on a "trial basis", unless the Section 1055 order prohibits such a move; that provision constitutes the codification of a long-standing practice.

The Placement Duration

The durational limitation of a Section 1055 placement is addressed in subdivision (b). Whereas the Court could formerly initially place the child “for a period of up to one year”, it now is required to place “... until the court completes the initial permanency hearing scheduled pursuant to Article Ten-A of this act” [§ 1055(b)(i)]. And, under Section 1089 of Article 10-A the initial permanency hearing must be commenced on a date certain no later than “... six months from the date which is sixty days after the child was removed from his or her home ...”, or, in plain English, eight months from the date of removal or placement (give or take a few days). If the child has not been temporarily removed, but is first placed pursuant to Section 1055 as a disposition, the time is measured from the disposition date. When the child has been removed earlier, you look back to the original date of removal in computing the date for the initial permanency hearing (in fact, the permanency hearing date should have already been established; see, e.g., [Section 1022](#)). The upshot is that the maximum duration of the initial “permanent” placement has been reduced to approximately eight months (and reduced even further when the child has been removed prior to disposition). Note that, although worded differently than the predecessor provision, the Court is still perfectly free to place for a shorter period. In appropriate circumstances, the Court may order that the initial permanency hearing be held, for example, in five months or, for that matter, in one month.

Similarly, whereas the Court could, prior to Section 1055's substantial amendment, extend the initial placement, after hearing, for up to one year, the time limitation is now “... no later than six months after the completion of the previous permanency hearing” [see [Section 1089\(3\)](#)]; although the phrase “extension of placement” has been deleted, the effect is identical). As with initial placements, the statute stipulates only the maximum duration, and the Court may schedule a subsequent permanency hearing within a few months, or weeks, of the initial hearing's conclusion.

Diligent Efforts

Subdivision (c) stipulates that, as an adjunct to or in lieu of a Section 1055 order, the Court may order specific “diligent efforts” on the part of the agency to encourage and strengthen the parental relationship. At first blush, the subdivision appears to permit what is already mandatory. After all, when the child has been placed the agency is obligated to utilize diligent or reasonable efforts, unless relieved pursuant to [Section 1039-b](#). However, the subdivision is clearly not limited to placement cases. The Court may issue a subdivision (c) order “in lieu of” a placement (just why the provision was added to the placement section, instead of [Section 1052](#), is unfathomable to this writer). Hence, the Court may prescribe specific efforts in addition to, say, a [Section 1054](#) supervision order, or as an adjunct to a [Section 1053](#) order suspending

judgment. The subdivision includes a lengthy “menu” of specific services the Court may order, including the obtaining of adequate housing, employment, medical or psychiatric treatment -- and, perhaps surprisingly, visitation with the non-custodial parent, siblings, or grandparents. The statute enhances the Court's ability to fashion a highly detailed and individualized case management plan for each and every Article 10 disposition.

Subdivision (d) permits the Court to direct the initiation of a termination proceeding if the Court finds “reasonable cause” to believe that grounds exist (a less stringent standard than “probable cause”). The provision should prove helpful in the small number of cases where the child may have been abandoned, or in the unlikely event that she has been in placement prior to disposition for a sufficiently lengthy period upon which to base a permanent neglect or abandonment petition.

The Interstate Compact on the Placement of Children

[Social Services Law Section 374-a](#) incorporates the Interstate Compact on the Placement of Children (ICPC), a uniform law whereby “Article 10” children may be placed in a different state. Frequently, the goal is placement with a collateral relative, one who happens to live in a different state (a rather common occurrence, particularly in the New York City “tri-state” area) or, perhaps, continued placement with a foster parent who has relocated. One problem is that the compact's implementation entails several steps involving multiple governmental agencies, local and state (in two separate jurisdictions). That inevitably results in lengthy delays. To cut through the red tape, family courts often permit a placement to proceed prior to final approval, on the understandable ground that the child needs the specific placement immediately -- the inter-governmental approvals can follow. However, the Second Department has held the practice to be invalid, concluding that approval must be obtained before implementing an interstate placement; *In re Melinda D.*, 31 A.D.3d 24, 815 N.Y.S.2d 644 (2d Dept. 2006).

Fortunately, a revised ICPC has been drafted. And a Federal law, entitled the “Safe and Timely Interstate Placement of Foster Children Act of 2006”, expresses the “sense of congress” that states ratify the new compact (H.R. 5403; [Public Law 109-239](#)). The Federal measure further requires states to implement the revised ICPC's proposed 60 day deadline for interstate home studies, and encourages the expeditious placement of children as part of their foster care plans submitted for federal approval for reimbursement purposes. To further encourage implementation, the Act provides an incentive payment of \$1,500 for each interstate home study completed within thirty days. Ultimately, the revised ICPC should help. But, even ultimately, it is likely that the tangled complicated process will consume precious time.

The travails of using the Interstate Compact on the Placement of Children (ICPC) are notorious. Suppose the parties, faced with an exigent need, simply take the child out-of-state prior to obtaining the usually delayed approval, thus violating the ICPC provisions? *In Matter of the Adoption of the Child R.*, 14 Misc.3d 806, 828 N.Y.S.2d 846 (Queens Co. Fam. Ct. 2006), they did just that. Reviewing the circumstances, Family Court decided to proceed without levying any sanction. Not the ideal way, not advice for counsel to give a party, but an interesting aspect of the problem. An understandable violation may be forgiven.


[Notes of Decisions \(238\)](#)

McKinney's Family Court Act § 1055, NY FAM CT § 1055

Current through L.2013, chapters 1 to 340.

End of Document

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Family Court Act (Refs & Annos)
Article 10-A. Permanency Hearings for Children Placed Out of Their Homes

McKinney's Family Court Act § 1089

§ 1089. Permanency hearings

Effective: January 27, 2012

Currentness

(a) Scheduling, commencement and completion of permanency hearings. (1) Children freed for adoption. (i) At the conclusion of the dispositional hearing at which the child was freed for adoption in a proceeding pursuant to [section three hundred eighty-three-c](#), [three hundred eighty-four](#) or [three hundred eighty-four-b of the social services law](#), the court shall set a date certain for the initial freed child permanency hearing and advise all parties in court of the date set, except for the respondent or respondents. The permanency hearing shall be commenced no later than thirty days after the hearing at which the child was freed and shall be completed within thirty days, unless the court determines to hold the permanency hearing immediately upon completion of the hearing at which the child was freed, provided adequate notice has been given.

(ii) At the conclusion of the hearing pursuant to [section one thousand ninety-one](#) of this act where the court has granted the motion for a former foster care youth who was discharged from foster care due to a failure to consent to continuation of placement to return to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, the court shall set a date certain for a permanency hearing and advise all parties in court of the date set. The permanency hearing shall be commenced no later than thirty days after the hearing at which the former foster care youth was returned to foster care.

(2) [Eff. until federal approval of state plan amendment, pursuant to [L.2011, c. 605, § 12](#), as amended. See, also, par. (2) below.] All other permanency hearings. At the conclusion of the hearing pursuant to [section one thousand twenty-two](#), [one thousand twenty-seven](#), or [one thousand fifty-two](#) of this act at which the child was remanded or placed and upon the court's approval of a voluntary placement instrument pursuant to [section three hundred fifty-eight-a of the social services law](#), the court shall set a date certain for an initial permanency hearing, advise all parties

in court of the date set and include the date in the order. Orders issued in subsequent court hearings prior to the permanency hearing, including, but not limited to, the order of placement issued pursuant to [section one thousand fifty-five](#) of this act, shall include the date certain for the permanency hearing. The initial permanency hearing shall be commenced no later than six months from the date which is sixty days after the child was removed from his or her home; provided, however, that if a sibling or half-sibling of the child has previously been removed from the home and has a permanency hearing date certain scheduled within the next eight months, the permanency hearing for each child subsequently removed from the home shall be scheduled on the same date certain that has been set for the first child removed from the home, unless such sibling or half-sibling has been removed from the home pursuant to article three or seven of this act. The permanency hearing shall be completed within thirty days of the scheduled date certain.

(2) [Eff. upon federal approval of state plan amendment, pursuant to [L.2011, c. 605, § 12](#), as amended. See, also, par. (2) above.] All other permanency hearings. At the conclusion of the hearing pursuant to [section one thousand twenty-two, one thousand twenty-seven, one thousand fifty-two, one thousand eighty-nine, one thousand ninety-one, one thousand ninety-four or one thousand ninety-five](#) of this act at which the child was remanded or placed and upon the court's approval of a voluntary placement instrument pursuant to [section three hundred fifty-eight-a of the social services law](#), the court shall set a date certain for an initial permanency hearing, advise all parties in court of the date set and include the date in the order. Orders issued in subsequent court hearings prior to the permanency hearing, including, but not limited to, the order of placement issued pursuant to [section one thousand fifty-five](#) of this act, shall include the date certain for the permanency hearing. The initial permanency hearing shall be commenced no later than six months from the date which is sixty days after the child was removed from his or her home; provided, however, that if a sibling or half-sibling of the child has previously been removed from the home and has a permanency hearing date certain scheduled within the next eight months, the permanency hearing for each child subsequently removed from the home shall be scheduled on the same date certain that has been set for the first child removed from the home, unless such sibling or half-sibling has been removed from the home pursuant to article three or seven of this act. The permanency hearing shall be completed within thirty days of the scheduled date certain.

(3) Subsequent permanency hearings for a child who continues in out-of-home placement or who is freed for adoption shall be scheduled for a date certain which shall be no later than six months from the completion of the previous permanency hearing and such subsequent permanency hearings shall be completed within thirty days of the date certain set for such hearings.

(b) Notice of permanency hearings. (1) No later than fourteen days before the date certain for a permanency hearing scheduled pursuant to this section, the local social services district shall serve the notice of the permanency hearing and the permanency hearing report by regular mail upon:

(i) the child's parent, including any non-respondent parent, unless the parental rights of the parent have been terminated or surrendered and any other person legally responsible for the child's care at the most recent address or addresses known to the local social services district or agency, and the foster parent in whose home the child currently resides, each of whom shall be a party to the proceeding; and

(ii) the agency supervising the care of the child on behalf of the social services district with whom the child was placed, the child's attorney, and the attorney for the respondent parent.

(2) The notice and the permanency hearing report shall also be provided to any pre-adoptive parent or relative providing care for the child and shall be submitted to the court. The notice of the permanency hearing only shall be provided to a former foster parent in whose home the child previously had resided for a continuous period of twelve months in foster care, if any, unless the court, on motion of any party or on its own motion, dispenses with such notice on the basis that such notice would not be in the child's best interests. However, such pre-adoptive parent, relative, or former foster parent, on the basis of such notice, shall have the right to be heard but shall not be a party to the permanency hearing. The failure of such pre-adoptive parent, relative or former foster parent to appear at a permanency hearing shall constitute a waiver of the right to be heard. Such failure to appear shall not cause a delay of the permanency hearing nor be a ground for the invalidation of any order issued by the court pursuant to this section.

(c) Content of the permanency hearing report. The permanency hearing report shall include, but need not be limited to, up-to-date and accurate information regarding:

(1) the child's current permanency goal, which may be:

(i) return to the parent or parents;

(ii) placement for adoption with the local social services official filing a petition for termination of parental rights;

(iii) referral for legal guardianship;

(iv) permanent placement with a fit and willing relative; or

(v) placement in another planned permanent living arrangement that includes a significant connection to an adult who is willing to be a permanency resource for the child, including documentation of the compelling reason for determining that it would not be in the best interests of the child to be returned home, placed for adoption, placed with a legal guardian, or placed with a fit and willing relative;

(2) the health, well-being, and status of the child since the last hearing including:

(i) a description of the child's health and well-being;

(ii) information regarding the child's current placement;

(iii) an update on the educational and other progress the child has made since the last hearing including a description of the steps that have been taken by the local social services district or agency to enable prompt delivery of appropriate educational and vocational services to the child, including, but not be¹ limited to:

(A) where the child is subject to article sixty-five of the education law or elects to participate in an educational program leading to a high school diploma, the steps that the local social services district or agency has taken to promptly enable the child to be enrolled or to continue enrollment in an appropriate school or educational program leading to a high school diploma;

(B) where the child is eligible to be enrolled in a pre-kindergarten program pursuant to [section thirty-six hundred two-e of the education law](#), the steps that the local social services district or agency has taken to promptly enable the child to be enrolled in an appropriate pre-kindergarten program, if available;

(C) where the child is under three years of age and is involved in an indicated case of child abuse or neglect, or where the local social services district suspects that the child may have a disability as defined in [subdivision five of section twenty-five hundred forty-one of the public health law](#) or if the child has been found eligible to receive early intervention or special educational services prior to or during the foster care placement, in accordance with title two-A of article twenty-five of the public health law or article eighty-nine of the education law, the steps that the local social services district or agency has taken to make any necessary referrals of the child for early intervention, pre-school special educational or special educational evaluations or services, as appropriate, and any available information regarding any evaluations and services which are being provided or are scheduled to be provided in accordance with applicable law; and

(D) where the child is at least sixteen and not subject to article sixty-five of the education law and elects not to participate in an educational program leading to a high school diploma, the steps that the local social services district has taken to assist the child to become gainfully employed or enrolled in a vocational program;

(iv) a description of the visitation plan or plans describing the persons with whom the child visits, including any siblings, and the frequency, duration and quality of the visits;

(v) where a child has attained the age of fourteen, a description of the services and assistance that are being provided to enable the child to learn independent living skills; and

(vi) a description of any other services being provided to the child;

(3) the status of the parent, including:

(i) the services that have been offered to the parent to enable the child to safely return home;

(ii) the steps the parent has taken to use the services;

(iii) any barriers encountered to the delivery of such services;

(iv) the progress the parent has made toward reunification; and

(v) a description of any other steps the parent has taken to comply with and achieve the permanency plan, if applicable.

(4) a description of the reasonable efforts to achieve the child's permanency plan that have been taken by the local social services district or agency since the last hearing. The description shall include:

(i) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to [section one thousand thirty-nine-b](#) of this act, the reasonable efforts that have been made by the local social services district or agency to eliminate the need for placement of the child and to enable the child to safely return home, including a description of any services that have been provided;

(ii) where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, the reasonable efforts that have been made by the local social services district or agency to make and finalize such alternate permanent placement, including a description of any services that have been provided and a description of the consideration of appropriate in-state and out-of-state placements;

(iii) where return home of the child is not likely, the reasonable efforts that have been made by the local social services district or agency to evaluate and plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements, and any steps taken to further a permanent plan other than return to the child's parent; or

(iv) where a child has been freed for adoption, a description of the reasonable efforts that will be taken to facilitate the adoption of the child; and

(5) the recommended permanency plan including:

(i) a recommendation regarding whether the child's current permanency goal should be continued or modified, the reasons therefor, and the anticipated date for meeting the goal;

(ii) a recommendation regarding whether the child's placement should be extended and the reasons for the recommendation;

(iii) any proposed changes in the child's current placement, trial discharge or discharge that may occur before the next permanency hearing;

(iv) a description of the steps that will be taken by the local social services district or agency to continue to enable prompt delivery of appropriate educational and vocational services to the child in his or her current placement and during any potential change in the child's foster care placement, during any trial discharge, and after discharge of the child in accordance with the plans for the child's placement until the next permanency hearing;

(v) whether any modification to the visitation plan or plans is recommended and the reasons therefor;

(vi) where a child has attained the age of fourteen or will attain the age of fourteen before the next permanency hearing, a description of the services and assistance that will be provided to enable the child to learn independent living skills;

(vii) where a child has been placed outside this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

(viii) where return home of the child is not likely, the efforts that will be made to evaluate or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements; and

(ix) in the case of a child who has been freed for adoption:

(A) a description of services and assistance that will be provided to the child and the prospective adoptive parent to expedite the adoption of the child;

(B) information regarding the child's eligibility for adoption subsidy pursuant to title nine of article six of the social services law; and

(C) if the child is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances regarding the child's decision to withhold consent and the reasons therefor.

(d) Evidence, court findings and order. The provisions of [subdivisions \(a\) and \(c\) of section one thousand forty-six](#) of this act shall apply to all proceedings under this article. At the conclusion of each permanency hearing, the court shall, upon the proof adduced, which shall include age-appropriate consultation with the child who is the subject of the permanency hearing, and in accordance with the best interests and safety of the child, including whether the child would be at risk of abuse or neglect if returned to the parent or other person legally responsible, determine and issue its findings, and enter an order of disposition in writing:

(1) directing that the placement of the child be terminated and the child returned to the parent or other person legally responsible for the child's care with such further orders as the court deems appropriate; or

(2) where the child is not returned to the parent or other person legally responsible:

(i) whether the permanency goal for the child should be approved or modified and the anticipated date for achieving the goal. The permanency goal may be determined to be:

(A) return to parent;

(B) placement for adoption with the local social services official filing a petition for termination of parental rights;

(C) referral for legal guardianship;

(D) permanent placement with a fit and willing relative; or

(E) placement in another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child if the local social services

official has documented to the court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights and placed for adoption, placed with a fit and willing relative, or placed with a legal guardian;

(ii) placing the child in the custody of a fit and willing relative or other suitable person, or continuing the placement of the child until the completion of the next permanency hearing, provided, however, that no placement may be continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past the child's twenty-first birthday; provided, however, that a former foster youth who was previously discharged from foster care due to a failure to consent to continuation of placement may be returned to the custody of the local commissioner of social services or other officer, board or department authorized to receive children as public charges if the court has granted the motion of the former foster care youth or local social services official upon a finding that the youth has no reasonable alternative to foster care and has consented to enrollment in and attendance at a vocational or educational program in accordance with [section one thousand ninety-one](#) of this act;

(iii) determining whether reasonable efforts have been made to effectuate the child's permanency plan as follows:

(A) unless the child is freed for adoption or there has been a determination by a court that such efforts are not required pursuant to [section one thousand thirty-nine-b](#) of this act, whether reasonable efforts have been made to eliminate the need for placement of the child and to enable the child to safely return home;

(B) where the permanency plan is adoption, guardianship, placement with a fit and willing relative or another planned permanent living arrangement other than return to parent, whether reasonable efforts have been made to make and finalize such alternate permanent placement, including consideration of appropriate in-state and out-of-state placements;

(iv) where return home of the child is not likely, what efforts should be made to evaluate or plan for another permanent plan, including consideration of appropriate in-state and out-of-state placements;

(v) the steps that must be taken by the local social services official or agency to implement the educational and vocational program components of the permanency hearing report submitted pursuant to subdivision (c) of this section, and any modifications that should be made to such plan;

(vi) specifying the date certain for the next scheduled permanency hearing;

(vii) where placement of the child is extended, such order shall also include:

(A) a description of the visitation plan or plans;

(B) where the child is not freed for adoption, a direction that the child's parent or parents, including any non-respondent parent or other person legally responsible for the child's care shall be notified of the planning conference or conferences to be held pursuant to [subdivision three of section four hundred nine-e of the social services law](#) and notification of their right to attend such conference or conferences and their right to have counsel or another representative with them;

(C) where the child is not freed for adoption, a direction that the parent or other person legally responsible for the child's care keep the local social services district or agency apprised of his or her current whereabouts and a current mailing address;

(D) where the child is not freed for adoption, a notice that if the child remains in foster care for fifteen of the most recent twenty-two months, the local social services district or agency may be required by law to file a petition to terminate parental rights;

(E) where a child has been freed for adoption and is over age fourteen and has voluntarily withheld his or her consent to an adoption, the facts and circumstances with regard to the child's decision to withhold consent and the reasons therefor;

(F) where a child has been placed outside of this state, whether the out-of-state placement continues to be appropriate, necessary and in the best interests of the child;

(G) where a child has or will before the next permanency hearing reach the age of fourteen, the services and assistance necessary to assist the child in learning independent living skills; and

(viii) any other findings or orders that the court deems appropriate, which may include:

(A) Whether the court should issue any orders for services in the manner specified in [section one thousand fifteen-a](#) of this act in order to achieve the permanency plan and, if so, what services should be ordered.

(B) Where a child has been freed for adoption, the order may also:

(I) direct that such child be placed for adoption in the foster family home where he or she resides or has resided or with any other suitable person or persons;

(II) direct the local social services district to provide services or assistance to the child and the prospective adoptive parent authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. Such order shall include, where appropriate, the evaluation of eligibility for adoption subsidy pursuant to title nine of article six of the social services law, but shall not require the provision of such subsidy. Violation of such an order shall be subject to punishment pursuant to [section seven hundred fifty-three of the judiciary law](#); and

(III) recommend that the office of children and family services investigate the facts and circumstances concerning the discharge of responsibilities for the care and welfare of such child by a local social services district pursuant to [section three hundred ninety-five of the social services law](#); and

(IV) recommend that the attorney for the child, local social services district or agency file a petition pursuant to part one-A of article six of this act to restore the parental rights of a child who has been freed for adoption.

(C) [As amended by [L.2010, c. 41, § 80](#). See, also, cl. (C) below.] Where the permanency goal is return to parent and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and child's attorney. If the court on its own motion or the child's attorney on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the

purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a child aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the child, the local social services district may also discharge the child on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a child aging out of foster care shall mean that a child is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing.

(C) [As amended by L.2010, c. 342, § 6. See, also, cl. (C) above.] Where the permanency goal is return to parent and it is anticipated that the child may be returned home before the next scheduled permanency hearing, the court may provide the local social services district with authority to finally discharge the child to the parent without further court hearing, provided that ten days prior written notice is served upon the court and attorney for the child. If the court on its own motion or the attorney for the child on motion to the court does not request the matter to be brought for review before final discharge, no further permanency hearings will be required. The local social services district may also discharge the child on a trial basis to the parent unless the court has prohibited such trial discharge or unless the court has conditioned such trial discharge on another event. For the purposes of this section, trial discharge shall mean that the child is physically returned to the parent while the child remains in the care and custody of the local social services district. Permanency hearings shall continue to be held for any child who has returned to his or her parents on a trial discharge. Where the permanency goal for a youth aging out of foster care is another planned permanent living arrangement that includes a significant connection to an adult willing to be a permanency resource for the youth, the local social services district may also discharge the youth on a trial basis to the planned permanent living arrangements, unless the court has prohibited or otherwise conditioned such a trial discharge. Trial discharge for a youth aging out of foster care shall mean that the youth is physically discharged but the local social services district retains care and custody or custody and guardianship of the child and there remains a date certain for the scheduled permanency hearing. Trial discharge for a youth aging out of foster care may be extended at each scheduled permanency hearing, until the youth reaches the age of twenty-one, if a youth over the age of eighteen consents to such extension. Prior to finally discharging a youth aging out of foster care to another planned permanent living arrangement, the local social services official shall give the youth notice of the right to apply to reenter foster care within the earlier of twenty-four months of the final discharge or the youth's twenty-first birthday in accordance with article ten-B of this act. Such notice shall also advise the youth that re-entry into foster care will only be available where the former foster care youth has no reasonable alternative to foster care

and consents to enrollment in and attendance at an appropriate educational or vocational program in accordance with [paragraph two of subdivision \(a\) of section one thousand ninety-one](#) of this act.

(D) The court may make an order of protection in the manner specified by [section one thousand fifty-six](#) of this act in assistance or as a condition of any other order made under this section. The order of protection may set forth reasonable conditions of behavior to be observed for a specified period of time by a person before the court.

(E) Where the court finds reasonable cause to believe that grounds for termination of parental rights exist, the court may direct the local social services district or other agency to institute a proceeding to legally free the child for adoption pursuant to [section three hundred eighty-four-b of the social services law](#). Upon a failure by such agency to institute such proceeding within ninety days after entry of such order, the court shall permit the foster parent or parents in whose home the child resides to institute such a proceeding unless the local social services district or other agency, for good cause shown and upon due notice to all the parties to the proceeding, has obtained a modification or extension of such order, or unless the court has reasonable cause to believe that such foster parent or parents would not obtain approval of their petition to adopt the child in a subsequent adoption proceeding.

(F) The court may make an order directing a local social services district or agency to undertake diligent efforts to encourage and strengthen the parental relationship when it finds such efforts will not be detrimental to the best interests of the child and there has been no prior court finding that such efforts are not required. Such efforts shall include encouraging and facilitating visitation with the child by the parent or other person legally responsible for the child's care. Such order may include a specific plan of action for the local social services district or agency including, but not limited to, requirements that such agency assist the parent or other person legally responsible for the child's care in obtaining adequate housing, employment, counseling, medical care or psychiatric treatment. Such order shall also include encouraging and facilitating visitation with the child by the noncustodial parent and grandparents who have the right to visitation pursuant to [section one thousand eighty-one](#) of this act, and may include encouraging and facilitating visitation with the child by the child's siblings. Nothing in this subdivision shall be deemed to limit the authority of the court to make an order pursuant to [section two hundred fifty-five](#) of this act.

(G) Except as provided for herein, in any order issued pursuant to this section, the court may require the local social services district or agency to make progress reports to the court, the parties, and the child's attorney on the implementation of such order.

(H) Where a child freed for adoption has not been placed in a prospective adoptive home and the court has entered an order of disposition directing that the child be placed for adoption or directing the provision of services or assistance to the child and the agency charged with the guardianship and custody of the child fails, prior to the next scheduled permanency hearing, to comply with such order, the court at the time of such hearing may, in the best interests of the child, enter an order committing the guardianship and custody of the child to another authorized agency or may make any other order authorized pursuant to [section two hundred fifty-five](#) of this act.

(e) Service of court order and permanency hearing report. A copy of the court order which includes the date certain for the next permanency hearing and the permanency hearing report as approved, adjusted, or modified by the court, shall be given to the parent or other person legally responsible for the child.

Credits

(Added L.2005, c. 3, pt. A, § 27, eff. Dec. 21, 2005. Amended L.2006, c. 437, §§ 7 to 10, eff. July 26, 2006; L.2007, c. 327, pt. B, §§ 8 to 12, eff. Dec. 31, 2007; L.2009, c. 334, § 2, eff. Oct. 10, 2009; L.2010, c. 41, §§ 79, 80, eff. April 14, 2010; L.2010, c. 342, §§ 4 to 6, eff. Nov. 11, 2010; L.2010, c. 343, § 2, eff. Nov. 11, 2010; L.2011, c. 605, § 8.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

by Prof. Merrill Sobie

2012

Consultation with and Presence of the Child

The requirement of “age-appropriate consultation with the child”, found in Section 1089(d), is easily overlooked, particularly when the parties have agreed to a permanency plan. But the statutory mandate must nevertheless be fulfilled; *Matter of Dakota E.*, 92 A.D.3d 1097, 939 N.Y.S.2d 586 (3d Dept. 2012):

Although the statute does not require a young child, such as then six year old Dakota, to be personally produced in court ... Family Court must find some age-appropriate manner to

consult with the child. The court erred by not consulting with the child in any manner, or even eliciting an opinion or the child's wishes from the attorney for the child ...

Whether an attorney's statement on the record which conveyed the child's wishes would have sufficed was undecided. Given the child's age, his presence in court or his availability for an in-camera discussion was problematic; ergo his attorney's statements (after counsel had interviewed the child), perhaps supplemented by testimony or in-court statements by the caseworker or other appropriate witness, would have probably satisfied the "age appropriate" consultation rule. For older children the best course may be an in-court or an in-camera colloquy between the court and the child.

The Disposition

The 2011 Supplementary Commentary discusses the frequently appropriate (although often overlooked) goal of "placement in another planned permanent living arrangement" (APPLA). The permanency goal of APPLA may be the most appropriate alternative for the adolescent child who does not wish and will not consent to adoption. Several recent Fourth Department decisions vacate the goal of adoption and substitute APPLA in these circumstances; see, e.g., *Matter of Jose T. lv. Halvorsen*, 87 A.D.3d 1335, 929 N.Y.S.2d 823 (4th Dept. 2011), and *Matter of Lavalle W.*, 88 A.D.3d 1300, 930 N.Y.S.2d 387 (4th Dept. 2011).

Custody may be determined via an Article 6 petition, but cannot be determined pursuant to a Section 1089 permanency hearing. In *Matter of Alexis AA.*, 93 A.D.3d 1090, 941 N.Y.S.2d 318 (3d Dept. 2012), the court determined upon the consent of both parents that the child should be returned. However, the court then went beyond the stipulation by entering a custody order granting the mother sole custody with visitation for the father. The later provision was vacated; the father had agreed to terminate placement and have the child returned, but had not agreed to relinquish custody.

Section 1089 authorizes the court to determine the permanency goal. The court frequently determines that adoption is an appropriate goal, but, perhaps confronting the fact that parental rights have not yet been terminated and may not be terminated for some time, if ever, orders the parallel goal of return to or reunification with the parent. However, the ability to simultaneously order the two competing goals has been held to be ultra vires; *Matter of Dakota F.*, 92 A.D.3d 1097, 939 N.Y.S.2d 586 (3d Dept. 2012):

Family Court erred by imposing concurrent and contradicting goals ... As signified by the use of the conjunction “or” and the singular word “goal” as opposed to the plural “goals”, the permissible options for permanency goal are listed as alternatives, with the court to choose only one.

Dakota F. may spell the end to what is known as “concurrent planning”. If the child should be adopted, only that goal may be entered, even when termination of parental rights is not feasible in the immediate future (or until the next scheduled permanency hearing).

2011

Calendaring the Hearing

Section 1089 requires that the initial permanency hearing be held within approximately eight months of the child's removal or placement. Moreover, upon placement the permanency hearing date is set in stone and cannot be modified. Logically, the underlying Article 10 case should have been completed by that time, as most are. But a significant number have not reached disposition when the magic “permanency” date, established eight months earlier, arrives. In that event, the permanency hearing must go forward - “permanency” must be determined even before the child has been permanently placed. In other cases, the dispositional hearing may be scheduled contemporaneously with the long calendared permanency hearing. If the two mandated hearings are ready to go at approximately the same time, or at least in the same month, are two separate hearings needed, or may they be combined? In *Matter of Telsa Z. v. Denise Z.*, 84 A.D.3d 1599, 923 N.Y.S.2d 768 (3d Dept. 2011), the Appellate Division held that the hearings could be consolidated.

The efficiency of a consolidated hearing is clear. However, counsel for all the parties should be sure that the voluminous Section 1089 requirements have been satisfied, including the filing and service of the permanency hearing report and notice to all the parties, including the foster parents.

The Disposition

As noted in the original Commentary, at pages 218-219, Section 1089 grants the Court extensive authority, indeed virtually plenary power, to determine, guide, modify and enforce the child's permanency plan. Several recent unsuccessful challenges to the Court's predominant role are illustrative. In *Matter of Jacelyn TT*, 80 A.D.3d 1119,

[915 N.Y.S.2d 732 \(3d Dept. 2011\)](#), the Family Court sua sponte changed the requested permanency goal to adoption. The Appellate Division affirmed:

While the statute does not explicitly permit the court to modify a permanency goal in the absence of an application by one of the parties ... it suggests such authority and does not expressly constrain the court from doing so ... We, therefore, conclude that Family Court has the authority to modify an existing permanency goal absent a specific request by a party [[80 A.D.3d at 1120](#)]

In *Matter of Christopher G. v. Priscilla H.*, [82 A.D.3d 1549](#), [919 N.Y.S.2d 244 \(3d Dept. 2011\)](#), the local Department of Social Services discharged the child and terminated foster care, a measure which agencies unilaterally executed in the pre-Article 10-A days, but which Section 1089 now precludes. The gambit to shortcut the Court's jurisdiction failed when the Third Department upheld Family Court's decision to treat the event as a “trial discharge”, which Social Services could do (unless prohibited by an earlier dispositional or permanency order), a decision which preserved the Court's jurisdiction to hear the case and, if appropriate, to over-rule or modify the Social Service decision. That said, a permanent discharge prior to the next scheduled permanency hearing is not precluded under Section 1089. However, the discharge must be approved in advance by the Court. Counsel for any of the parties may of course request an immediate permanency hearing for that purpose, thereby allowing input from every interested party and permitting the Court to weigh the evidence and reach an impartial decision (in the interim, a trial discharge by the agency would be permitted in most cases).

The final decision in the Third Department trilogy of Section 1089 cases is *Matter of Taylor EE*, [80 A.D.3d 822](#), [914 N.Y.S.2d 404 \(3d Dept. 2011\)](#), where the Department of Social Services unsuccessfully appealed a Family Court finding that it had failed to make reasonable efforts to finalize a permanency plan for a child who had been freed for adoption. The caseworker had testified that she had brought up the subject of adoption with the pre-adoptive mother only on the morning of the permanency hearing - the mother's response was that she would consider the possibility. Waiting until the day of the hearing before broaching the possibility of adoption is unprofessional and is legally unforgiveable in light of the Section 1089 requirements. Appealing a decision granting the pre-adoption mother and child an opportunity to consider the option seems bizarre. In any event, the Family Court's greatly enhanced authority under Article 10-A has been affirmed by several relevant appellate decisions.

One Section 1089 dispositional alternative which may be overlooked is “placement in another planned permanent living arrangement” [APPLA; *see* § 1089(d)(2)(i)(E)]. That option may include continued or “permanent” foster care, i.e., foster care until

the child attains age 21. In *Matter of Sean S.*, 85 A.D.3d 1575, 926 N.Y.S.2d 230 (4th Dept. 2011), the teenage children opposed adoption, a conclusion supported by a psychological evaluation report. Further, the foster parents had agreed in writing to be a permanent resource for the two boys. The Family Court order incorporating the goal of adoption was accordingly reversed and APPLA substituted. In some circumstances, a foster care or other long-term relationship which falls under the APPLA umbrella is preferable to the seemingly more “permanent” goals of adoption or guardianship.

2010

The Permanency Hearing Report

Subdivision (b) places the responsibility of filing and serving the permanency hearing report upon the local social services agency, usually the relevant county Department of Social Services. Hence it is logical that a social services official would sign and acknowledge the report. However, the rules governing the execution and filing of litigation documents throughout the unified court system stipulate that: “Every pleading, written motion, and other paper, served on another party or filed or submitted to the court shall be signed by an attorney, or by a party if the party is not represented by an attorney” [22 NYCRR 130-1.1a]. Family Court articles 3, 7 and 8 are excluded from the rule; the remaining Family Court articles, including articles 10 and 10-A are not excluded. Ergo, a Section 1089 permanency report must be signed and certified by the attorney who represents the petitioning local Department of Social Services, i.e., the County Attorney's office or Corporation Counsel; *Matter of Heaven C. (Julia B.)*, 71 A.D.3d 1301, 898 N.Y.2d 281 (3d Dept. 2010). The requirement should be equally applicable to proceedings under any other non-excluded Family Court Act article, including articles 4 and 5.

The Disposition

Section 1089's dispositional reach has been extended by the enactment of two additional alternatives. The first is the possible restoration of parental rights which had been previously terminated. Section 1089 cannot accomplish that feat; restoration proceedings are governed by newly minted Part One-A of Article 6. Hence at the conclusion of a Section 1089 permanency hearing the Court may “recommend that the attorney for the child, local social services district or agency file a petition pursuant to part one-A of article 6 of this act to restore the parental rights of a child who has been freed for adoption” [L.2010, c. 343]. See the 2010 supplementary commentaries to [sections 635 et seq.](#)

The second legislative initiative authorizes a child over the age of eighteen who had been in foster care, but had declined to consent to continued placement, to move for re-entry into the foster care system [L.2010, c. 342]. In effect, the provision permits the child to change his mind by opting to restore foster care benefits until age 21. The procedures for restoration of foster care are spelled out in newly enacted [Section 1091](#) (see the 2010 Commentary to [Section 1091](#)).

In a sense, the ability to regain foster care placement status is an exception to the permanency concept. “Permanency” may have already been achieved by discharge from foster care, but is then negated by a [Section 1091](#) motion. In another sense, “permanency” for foster children may be viewed henceforth as unachievable until age of 21, regardless of the child's current status. Granting a [Section 1091](#) motion also precipitates a Section 1089 hearing, as well as the possibility of subsequent periodic permanency reviews.

Section 1089's scope and authority are illustrated in the Second Department case of *Matter of Cristella B.*, 65 A.D.3d 1037, 884 N.Y.S.2d 773 (2d Dept. 2009), where the Appellate Division, reversing a Family Court determination approving a permanency goal of returning the children to their parents, cogently analyzed Section 1089's purpose and intent. Another albeit more questionable Second Department decision underscores the confusion and inequities when, as happens occasionally, the carefully scripted child protective legislative timetable is disregarded. In *Matter of Aniyah Mc.*, 69 A.D.3d 729, 891 N.Y.S.2d 664 (2nd Dept. 2010), the Section 1089 hearing preceded a determination of the underlying Article 10 child neglect petition. That is not unusual; a permanency review is mandated within eight months of the child's removal, while a contested Article 10 proceeding may not reach the dispositional phase within the allotted time. In *Aniyah Mc.* the Family Court ordered the return of the child to the parents following a Section 1089 hearing, a disposition perfectly consistent with the Section's language. The Appellate Division nevertheless reversed, concluding that the appropriate vehicle to contest a temporary removal is [Section 1028](#). In other words, family reunification cannot be achieved in a permanency hearing when the Court has yet to determine neglect or abuse. (Whether the result would have been different if a [Section 1028](#) hearing had already been held is unclear.) Counsel for parents and the child's attorney should always move for a [Section 1028](#) hearing when seeking the return of the child, regardless of the always pending Section 1089 hearing.

PRACTICE COMMENTARIES

by Prof. Merrill Sobie

Section 1089 is the central statute governing Article 10-A permanency hearings. Incorporating provisions ranging, chronologically, from scheduling the permanency hearing through disposition and service of the dispositional order, the Section clearly details every step which must be followed by the placement agency, counsel, and the Court.

Calendaring the Hearing

Under subdivision (a) the initial permanency hearing is calendared for a date certain, with in-court notice to the interested parties, whenever a child is placed, regardless of whether the placement is ordered after a preliminary hearing (e.g., a [Section 1027](#) temporary removal), an Article 10 fact-finding or dispositional hearing, or a termination of parental rights proceeding (e.g. a [Social Services Law Section 384-b](#) hearing). If the child has been freed for adoption following a Social Services Law proceeding, the initial permanency hearing must be commenced within thirty days [§ 1089(a)(1)]. In all other situations, i.e. whenever the child has not been freed for adoption, the initial permanency hearing must be scheduled and commenced “... no later than six months from the date which is sixty days after the child was removed from his or her home and shall be completed within thirty days of commencement.” Mixing days and months into the computation may be a needless complication; the effect is that the hearing must be scheduled and commenced within eight months of placement, give or take a few days (a straight eight month rule would have achieved the same result without needless confusion).

The subdivision is strangely silent concerning adjournments. In fact, the statute appears to stipulate that the hearing must commence on the pre-fixed date, no ands, ifs or buts, though it may be continued for up to thirty days. That infuses precious little flexibility. While adjournments should be discouraged, they may be necessary or inevitable. A parent may be ill or otherwise temporarily unavailable, additional information or witnesses may be needed or may be desirable, an attorney may have a conflict or be otherwise unavailable, or the Court may be unable to hear the case on the exact date which, after all, had been established eight months earlier. In the absence of statutory criteria, the courts have, at an early date, established a “good cause” standard for adjourning the commencement, the continuation, or the conclusion of the hearing (or as an alternative, a court may unfortunately resort to a ploy, such as commencing the hearing on the date certain by permitting a few minutes of testimony or argument, then

adjourning for ten additional days -- the statute seems to encourage that well known albeit useless tactic).

The absence of breathing space was bound to precipitate litigation. In *Matter of Anthony QQ.*, 48 A.D.3d 1014, 852 N.Y.S.2d 459 (3d Dept. 2008), the respondent asserted, correctly, that the hearing was not completed within the statutorily prescribed time frame. Noting that both the respondent's counsel and the attorney for the child had requested an adjournment, and that a second brief delay was granted to permit the respondent, who was traveling, to appear in person, the Appellate Division concluded that “[t]hese circumstances presented good cause to justify the brief adjournments”, in effect injecting a “good cause” adjournment provision into Section 1089.

Far more problematic is the Family Court decision in *Matter of the Application of St. Vincent's Services, Inc.*, 17 Misc.3d 443, 841 N.Y.S.2d 834 (Fam. Ct. Kings Co. 2007), where a series of adjournments delayed the permanency hearing, which should have commenced in April 2006, to April 2007, i.e. the thirty day statutory permissible period between commencement and conclusion was stretched to approximately 360 days. In the interim, the agency filed a termination of parental rights petition, even though the goal established at the original permanency review was reunification. Family Court valiantly attempted to sort out the resulting mess of conflicting permanency goals, missed permanency hearings, and termination procedures, pointing out during the process that the sources of the delay were the usual suspects, an over burdened court and attorneys who must maintain large caseloads and coordinate appearances with other counsel assigned to the case.

Section 1089's purpose and intent may be achieved when hearings are adjourned briefly (*Anthony QQ.*), but are utterly destroyed when the proceedings are delayed over the course of several months or years (*St. Vincent's*). The statute, by establishing a rigid time table, evades the issue. Hopefully, the caselaw, commencing with *Anthony QQ.*, will develop a rational policy, balancing the need for speed with the need for at least a modicum of calendaring flexibility.

Subsequent hearings, i.e. permanency hearings after the initial hearing has been concluded, must be commenced within six months of the completion of the earlier permanency hearing, and, like the initial hearing, should be completed within thirty day [§ 1089(a)(3)]. The six month requirement (and the earlier approximate eight month requirement for calendaring the initial hearing) represents a significant decrease from the former one year requirement (for “extension of placement”), and unfortunately further burdens an already congested Court. (To meet the caseload burden, many Family Courts schedule permanency hearings, upon the consent of the parties, before referees

rather than judges.) Note, also, that “extensions” of placement are no longer part of the child protective proceeding lexicon. The result may be similar, but the terminology has changed.

Notice

Subdivision (b) addresses notice. Two essential Article 10-A principles bear mentioning before confronting the subdivision. First, child protective cases are now viewed as ongoing -- the phrase “continuing jurisdiction” has been carried to its logical (or beyond) conclusion. The Court and counsel are dealing with one case from the date of initial filing under the Family Court Act or the Social Services Law; fact-finding, dispositional and permanency hearings are sequential events which may occur while the case remains on the Court's calendar. Hence, a new petition is never needed. Every requested judicial action, including a continuation of a placement, a termination of placement, or the modification of an order, is addressed by filing and serving a motion. In a very real sense, an Article 10 or Social Services Law disposition is permanency, even if that event occurs years or decades after the initial petition has been filed. Second, the permanency hearing participants, including the petitioner, the parent or other respondent, and the law guardian, were present in Court and on record when the date certain for the permanency hearing (or a successive permanency hearing) had been determined. Everyone presumably knows where to be and when to be there, even if the date is eight months after the receipt of notice (and even if the parent, or other party, has long forgotten the hurried in-court notice issued on the traumatic day when the child had been removed or placed). Subdivision (b) should hence be read as providing a backup or a second notice. Several weeks prior to the permanency hearing which had been scheduled many months earlier, the local social services agency must send written notice by regular mail.

One potential notice problem is the fact that regular mail may not be the most reliable method. Nor does regular mail (unlike certified or registered) provide a paper trail -- but that is legally unnecessary since each participant has received actual in-court notice, however distant in time from the event. As a result, the subdivision places an ethical responsibility on counsel for the parent and the child's attorney, who should contact their respective clients and insure that they know the court date. Of course counsel should by that time (i.e., a few weeks prior to the hearing) actively consult the client, obtain and study the permanency hearing report, and otherwise prepare for the evidentiary proceeding.

The Permanency Hearing Report

The contents of the permanency hearing report are prescribed in subdivision (c). The subdivision is extremely voluminous -- the Legislature leaves nothing to chance, discretion, or inattention. In addition, subdivision (d)(viii)(G) authorizes the court to order, after the initial permanency hearing, “progress reports” concerning the implementation of the Court's order. One theme of Article 10 is inflated cases records. The report must be made available at least ten days prior to the hearing date. The form of service (e.g. mail, personal, email, etc.) is not statutorily prescribed, but is governed by court order or rule.

In response, [Section 205.17\(c\) of the Uniform Rules](#) for the Family Court provides that copies of the report must be sent to the respondent parents' last known address, and to their attorneys, not less than fourteen days in advance of the permanency hearing date. The rule further stipulates that a copy of the report and notice of the hearing must be sent to a non-respondent parent, to the foster parent or parents, and to the child's attorney. Last, the petitioner is required to “make reasonable efforts” to provide actual additional notice of the hearing to the respondent parents (who were originally provided notice when the hearing date had been scheduled at a court appearance several months earlier). The possible remedies for rule 205.17 violations are not articulated, but presumably include an adjournment of the hearing to permit sufficient time to review the report and prepare for the event. Unfortunately, if past practice is any guide, Social Services officials may not comply and counsel will have to demand or cajole the agency to furnish a timely report.

The also unfortunately common syndrome of providing only an incomplete report is illustrated in [Matter of Melinda M., 22 Misc.3d 983, 870 N.Y.S.2d 745, \(Fam. Ct., Clinton Co. 2008\)](#). Confronting a report which omitted virtually any mention of visitation, or information concerning the child's siblings, the Court issued a detailed order enumerating specific facts which the Department of Social Services must include, in that case and in future cases. *Melinda M.* underscores the Court's authority to control every Section 1089 hearing aspect, including the requirement of a complete report which must be provided to the Court and the participants prior to the scheduled hearing date.

Consultation with and Presence of the Child

In 2007, subdivision (d) was amended to require that at each permanency hearing the Court shall determine the disposition upon the proof adduced “which shall include age-appropriate consultation with the child who is the subject of the permanency

hearing ...” [L.2007, c. 327]. The requirement, which is mandated by Federal legislation, is further bolstered by a Court rule stipulating that “[i]n any permanency hearing under Article 10-A of the Family Court Act, the child shall be represented by a law guardian and the Family Court shall consider the child's position regarding the child's permanency plan” [22 NYCRR § 205.17(e)]. Adding to the trend of child involvement, the New York City Family Court has adopted a policy that the child, or at least the older child, should be present at the hearing.

The statutory prescription of “consultation with the child”, the rule that the Court “consider the child's position”, and the policy of encouraging child presence and participation are not synonymous, although consistent. The stipulations are also consistent with and may overlap the [Section 241](#) generic requirement, applicable throughout Family Court proceedings, that the law guardian “help them [the children] express their wishes to the court.” In fact, Section 1089 presumably goes further than [Section 241](#) (if not, there would be no need for the legislation). So just what do the requirements mean in practice? That is not yet clear. At the very least, however, the law guardian or counsel must advise the court of the child's position (that is not new), and address the need for “age-appropriate consultation” by the Court. For the teenager and most pre-teenage children the age appropriate requirement for consultation probably includes the child's presence in court for the purpose of consultation directly by the judge or referee in open court or in chambers (unless the Court determines on the record that the child need not be present). For younger children, including the pre-verbal child, “consultation” cannot be taken literally; in fact, “age-appropriate” consultation with an infant means, for obvious reasons, zero consultation. In any event, the legislation encourages, indeed requires, the child's involvement at every permanency hearing. For that matter, although not covered by Section 1089, the older child should be involved at every stage of an Article 10 proceeding. (For a general discussion of the child's presence and participation in Family Court see the Commentary following [Section 162](#).)

The only reported case to date which addresses the issue [in detail is *Matter Pedro M.*, 21 Misc.3d 645, 864 N.Y.S.2d 869, \(Fam. Ct. Albany Co. 2008\)](#). Analyzing the statutory language, and using the common law threshold of age seven, Judge Duggan held that the statute and rule establishes a presumption that any child over the age of seven will be produced in Court, whereas a child under the age of seven will not be present (the presumption is of course rebuttable upon a sufficient showing on the record). The Court reasoned:

After all, we have always had Law Guardians to advocate for the child. Clearly, by this amendment our Legislature is telling the Judge not to do things the old way, which was to hear only from the Law Guardian. Now, it is the law's expectation that, at a permanency review

hearing, the child will be present and the proceedings are meant to be a two-way conversation between the judge and the child. The judge and the child are to “consult” with each other.

Pedro M. constitutes but one logical guide in deciphering the “new world” of presence and participation by children in Section 1089 hearings; see, also, *Matter of Rebecca KK.*, 61 A.D.3d 1035, 876 N.Y.S.2d 217 (3d Dept. 2009), where the Appellate Division, although finding that Family Court's failure to consult with the child was in that case harmless error in light of the specific disposition, underscored the need to consult the child. Last, by analogy, although not yet by statute, the provision should be followed in all Family Court hearings where the child's interests are significantly affected.

The Disposition

Subdivision (d) grants the court the expansive authority to prescribe a detailed order following the completion of a permanency hearing. Topics include, inter alia, parental visitation, diligent efforts on the part of the petitioner, services to be offered and implemented, the child's educational plan, placement in a specific foster home, adoption, and the mandated filing of an action to terminate parental rights. Most parts of the authorized dispositional “menu” are not novel, but their breadth, and the authority of the judge to continue the case before the Court (for example, by scheduling an early subsequent permanency hearing), are rather awesome. Shortly after enactment, the Legislature clarified the placement agency authority to take specific measures without court authorization [L.2006, c. 437]. Section 1089 now explicitly permits the agency to discharge the child to the parent on a “trial basis” (or to a suitable non-parent adult on a “trial basis” when the permanency goal is aging out of foster care); the Legislature also abrogated the need for a further permanency hearing when the child had already been returned to the parent by the agency, but only when permitted to do so by prior court order. By recent amendment, the “special” evidentiary rules found in [Section 1046](#) are applicable in a Section 1089 hearing, facilitating, for example, the introduction of records and otherwise privileged communications (see the Commentary following [Section 1046](#)). The Section also vests counsel for the parent, a foster parent, and the law guardian with the ability to argue, present evidence, and justify extensive relief for their respective clients.

The importance of a comprehensive hearing and the careful consideration of every potential alternative, including services which would facilitate family reunification, is underscored in *Matter of Natasha R.*, 42 A.D.3d 762, 839 N.Y.S.2d 623, (3d Dept. 2007). Family Court's decision to extend the child's placement was reversed and remitted for consideration of reunification, even though the parents required significant services. As noted by the Third Department, family reunification is not only one alternative -- it is

the preferred option. And reunification may be possible even when the parents need relatively extensive and ongoing services.

As noted, by virtue of Section 1089 the Court may exercise extensive authority by formulating a very detailed order encompassing, inter alia, the permanency goal, visitation, services, and further legal action, such as termination of parental rights or adoption; see, e.g., *Matter of Sharu K.*, 20 Misc.3d 479, 860 N.Y.S.2d 806 (Fam. Ct., Monroe Co. 2007). The court is also perfectly free to order a change in the permanency goal, assuming modification is supported by the record; *Matter of Rebecca KK.*, 55 A.D.3d 984, 865 N.Y.S.2d 722 (3d Dept. 2008). Another interesting case is *Matter of Shannson R.*, 24 Misc.3d 882, 878 N.Y.S.2d 880, (Fam. Ct., Clinton Co. 2009), where the Court, frustrated by the lack of a suitable permanency goal for a child who had been freed for adoption, established a new (non-statutory) goal of “finalization of the adoption”.

The Court's virtual plenary powers to determine, modify, or change a disposition is perhaps best, illustrated in the recent case of *Matter of Isaiah S. v. Stacy J.*, 65 A.D.3d 629, 884 N.Y.S.2d 456 (2d Dept. 2009), where the Second Department, upset at Social Services and Family Court delay, took the bull directly by the horns:

Although the children were removed from the mother's custody in June 2008, the permanency hearing, while commenced, was not completed by the time this appeal was argued in June 2009. Given the unique circumstances of this case, it is in the best interests ... [if the children] are returned to their mother [cf. Family Court Act § 1089], with appropriate safeguards, pending completion of the permanency hearing. It is also necessary that, within 30 days of the date of this decision and order [social services] provide such services as are ordered herein, and such additional services as may be necessary to facilitate the trial discharge ...

The direct assumption of Family Court's role by the Appellate Division is highly unusual and a telling confirmation of Section 1089's effectiveness.

A wide range of interested parties possess full standing to participate in a permanency hearing, and may engage in discovery techniques, call witnesses, cross-examine, present arguments, and appeal. The “cast of characters” include the agency, the parents or other persons legally responsible for the child, the foster parents, and the child herself. The comprehensive prerogatives which flow from standing were affirmed in *Matter of Amanda G. v. Allison B.*, 64 A.D.3d 595, 882 N.Y.S.2d 490, (2d Dept. 2009), where the Appellate Division held that: “The foster parents have the right to participate in these neglect [sic] proceedings which concern children who reside with them, and have the right to appeal from an order by which they are aggrieved”.

Finally, the time between the Article 10 or Social Services Law disposition and the permanency hearing (or between permanency hearings) is not “down time”. The case remains on the calendar and any party may move, by order to show cause or notice, for a modification. Counsel for the parties (petitioner and parent) and the child's attorney should continually monitor the case and should seek judicial relief whenever appropriate.

Notes of Decisions (186)

Footnotes

1 So in original (“be” inadvertently added).

McKinney's Family Court Act § 1089, NY FAM CT § 1089
Current through L.2013, chapters 1 to 340.



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title M. Offenses Against Public Health and Morals
Article 230. Prostitution Offenses (Refs & Annos)

McKinney's Penal Law § 230.34

§ 230.34 Sex trafficking

Effective: November 1, 2007

[Currentness](#)

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment:
(a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in [paragraph \(a\) of subdivision four of section thirty-three hundred two of the public health law](#); (c) methadone; or
(d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;

5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of [section 135.05](#) of this chapter; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or

(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

Sex trafficking is a class B felony¹

Credits

(L.2007, c. 74, § 2, eff. Nov. 1, 2007.)

Editors' Notes

PRACTICE COMMENTARY

by William C. Donnino

Introduction

In 2007, the Legislature enacted comprehensive legislation designed to deal with “human trafficking.” L.2007, c. 74. According to the memorandum in support of the legislation:

“This bill addresses human trafficking in three ways: with new crimes that specifically target the methods used by traffickers to exploit their victims; with mechanisms to facilitate the delivery of social services to trafficking victims who are currently ineligible to receive such services; and with the creation of a task force to coordinate implementation of the new laws and to ensure that the state's efforts are effective in fighting trafficking and protecting victims.” Memorandum in Support of Senate Bill 5902.

The legislation created two crimes: “sex trafficking” [Penal Law § 230.34], a class B felony, and “labor trafficking” [Penal Law § 135.35], a class D felony. At the same time, an existing “patronizing a prostitute” crime was amended to increase the authorized sentence, and an existing “promoting prostitution” crime was amended to interdict the sale of travel-related services intended to facilitate travel for the purpose of patronizing a prostitute, irrespective of whether prostitution is legal or illegal in the destination foreign jurisdiction. *See* Practice Commentary at the end of Penal Law § 230.00.

There are federal laws against “human trafficking” and, according to the New York Times, “[a]t least 29 states already have laws specifically addressing human trafficking. The State Department has estimated that 14,500 to 17,500 people a year are brought into the United States and then used for forced labor or sex, although experts say such statistics are inexact estimates.” “Albany Agrees on Law Against Sexual and Labor Trafficking,” N.Y. Times, May 17, 2007. Advocacy groups claimed that “Federal

law enforcement has focused mostly on the largest criminal trafficking rings, rather than smaller operations like sweatshops and brothels, advocacy groups say. Moreover, although local law enforcement officials are most likely to stumble across victims of trafficking, the advocacy groups say, the absence of a state trafficking law has provided little incentive for local prosecutors to tackle such cases.” *Id.*

Sex Trafficking

The 2007 legislation created the class B felony of “sex trafficking” [Penal Law § 230.34]. There are five alternative methods of commission of this crime. A person is guilty of the crime if he or she “intentionally advances or profits from prostitution by” one of the alternatives. Those alternative subdivisions of the statute are:

1. By “unlawfully providing to a person who is patronized, with intent to impair said person's judgment” one of the several listed drugs. “Unlawfully” is not defined; but the drugs listed are “controlled substances,” and the giving of a controlled substance “unlawfully” normally means in violation of Public Health Law article 33. [Penal Law § 220.00\(2\)](#). While the listed drugs will generally have the effect of impairing a person's judgment, it is not required that they do so; it is only required that the drug is given with the “intent” that this occur. It seems ironic that if a person is intentionally advancing or profiting from prostitution by giving the person to be patronized an unlisted drug with the requisite intent, and the drug in fact impairs that person's judgment, the actor is not liable under this statutory alternative.

2. By “making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity.” The term “material” appears to modify each of the actionable forms of conduct: false statements, misstatements, or omissions. Materiality is difficult to define and is normally a fact question for the jury based on the nature and context of the false statement, misstatement, or omission. “Misstatement” would appear to apply to a wrong or misleading statement. See Random House Webster's Unabridged Dictionary (1999) definition of “misstate” (“to state wrongly or misleadingly; make a wrong statement about.”). The words or omissions must be for the purpose of inducing a person to engage or continue in prostitution.

3. By “withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement.” It is not required that the withholding of the document in fact impair said person's freedom of movement, but only that the actor intend that it does. There is a proviso excluding

liability for a person who takes a social security or immigration document for the purpose of attempting to have the document corrected and the attempt is not made “for the purpose of any express or implied threat.” It is a little difficult to understand the purpose of the proviso. If the document is legitimately taken to have it corrected, the actor's intent is not to impair the person's movement, albeit that may be the consequence during the period the document is being corrected. Also, it is not clear whether the “express or implied threat” is other than to impair said person's freedom of movement.

4. By “requiring that prostitution be performed to retire, repay, or service a real or purported debt.” Notably, the debt need not be real; it need only be a debt that the actor asserts exists and which must be paid by prostitution.

5. By “using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will” engage in one of the forms of conduct listed in this subdivision. This subdivision substantially restates the class A misdemeanor crime of “coercion in the second degree” [[Penal Law § 135.60](#)]. *See* Practice Commentary to [Penal Law § 135.60](#). There are some differences between the two statutes. Perhaps the most important difference is in the predicate language (quoted above) which sets forth the conduct the actor is required at a minimum to engage in. For “coercion,” the only predicate requirement is that the actor must compel or induce the victim to engage in certain conduct by instilling the requisite fear. In this statute, the actor must be “using force or engaging in any scheme, plan or pattern” to “compel or induce.” There are other, somewhat minor, differences between the second-degree coercion statute and this subdivision. For example:

The coercion statute refers to the actor's engaging in other conduct constituting a crime [[Penal Law § 135.60\(3\)](#)]. This statute limits the actor to engaging in other conduct constituting a felony or the misdemeanor of unlawful imprisonment [[Penal Law § 230.34\(5\)\(c\)](#)].

The coercion statute refers to the actor's accusing some person of a crime or causing criminal charges to be instituted [[Penal Law § 135.60\(4\)](#)]. This statute adds the causing of deportation proceedings to be instituted [[Penal Law § 230.34\(5\)\(d\)](#)].

The coercion statute's catchall provision applies to conduct calculated to harm a person's “health, safety, business, calling, career, financial condition, reputation or personal relationships” [[Penal Law § 135.60](#)]. The comparable “sex trafficking” provision applies

to conduct calculated to harm the victim's "health, safety, or immigration status" [Penal Law § 230.34(5)(h)].

In a prosecution for sex trafficking, there is no need to corroborate the testimony of a person from whose prostitution activity the defendant is alleged to have advanced or attempted to advance or profited or attempted to profit because, by statute, the witness is deemed not to be an accomplice of that defendant [Penal Law § 230.36].

Labor Trafficking

The 2007 legislation created the class D felony of "labor trafficking" [Penal Law § 135.35]. The statute begins by holding that a "person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person [to engage in labor] by means of intentionally" engaging in one of the four listed forms of conduct. *See* CJI2d [NY] Penal Law § 135.35(1). This language will cause some interpretation concerns, particularly when there is an attempt to link the language with the alternative forms of intentional conduct which follow. Those alternatives are:

1. By "unlawfully providing a controlled substance to such person with intent to impair said person's judgment." While this provision is similar to a provision in the "sex trafficking" crime [Penal Law § 230.34], the key difference is that here there is no limitation on the kind of controlled substance that is used; any controlled substance used with the requisite intent will suffice. Again, as with "sex trafficking," it is not necessary that the drug in fact impair a person's judgment, but only that the actor intend that it does. If the controlled substance would not have the effect of impairing a person's judgment, that fact may in an appropriate factual context be advanced to negate the actor's intent; but lack of knowledge of the true effect of a drug does not necessarily negate an "intent" that an administered drug impair another person's judgment. Also, as with "sex trafficking," "unlawfully" is not defined; but, the giving of a controlled substance "unlawfully" normally means in violation of Public Health Law article 33. Penal Law § 220.00(2).

2. By "requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person." Notably, the debt need not be one that is in fact owed; it may be a "purported" debt which the actor must have caused by a "systematic ongoing course of conduct." "Course of conduct" language always seems to present issues as to its meaning in individual cases. There is no statutory definition of the term and it is only clear that an "isolated incident" does not constitute a "systematic ongoing course of conduct." *See*

Practice Commentary to [Penal Law § 120.40](#), under the sub-heading of “Stalking in the fourth degree,” which comments on the meaning of “course of conduct” in the stalking statutes. “Intent to defraud,” which appears in many criminal law statutes, is also not defined. It has, however, been suggested that an intent to defraud should be “for the purpose of leading another into error or to disadvantage.” *People v. Briggins*, 50 N.Y.2d 302, 309, 428 N.Y.S.2d 909, 406 N.E.2d 766 (1980) (concurring opinion). See Black's Law Dictionary 423 (6th ed. 1990) (“Intent to defraud means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power ...”).

Subdivisions 3, 4, and 5 of this section [[Penal Law § 135.35](#)] are identical to subdivisions 3, 4, and 5 of the “sex trafficking” crime [[Penal Law § 230.34\(3\)](#)], discussed above.


In a prosecution for labor trafficking, a witness who has been compelled or induced or recruited, enticed, harbored or transported to engage in labor is deemed not to be an accomplice of the defendant; thus, there is no accomplice corroboration requirement of the witness's testimony [[Penal Law § 135.36](#)].

[Notes of Decisions \(1\)](#)

Footnotes

¹ So in original (period inadvertently omitted).

McKinney's Penal Law § 230.34, NY PENAL § 230.34
Current through L.2013, chapters 1 to 340.

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Penal Law (Refs & Annos)
Chapter 40. Of the Consolidated Laws (Refs & Annos)
Part Three. Specific Offenses
Title H. Offenses Against the Person Involving Physical Injury, Sexual
Conduct, Restraint and Intimidation
Article 135. Kidnapping, Coercion and Related Offenses (Refs & Annos)

McKinney's Penal Law § 135.35

§ 135.35 Labor trafficking

Effective: November 1, 2007

[Currentness](#)

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of [section 135.05](#) of this chapter; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or

(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Labor trafficking is a class D felony.

Credits

(Added [L.2007, c. 74, § 3, eff. Nov. 1, 2007.](#))

Editors' Notes

PRACTICE COMMENTARY


by William C. Donnino

See Practice Commentary to [Penal Law § 230.34](#).

McKinney's Penal Law § 135.35, NY PENAL § 135.35
Current through L.2013, chapters 1 to 340.

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Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)
Chapter 55. Of the Consolidated Laws
Article 6. Children
Title 1. Care and Protection of Children (Refs & Annos)

McKinney's Social Services Law § 371

§ 371. Definitions

Effective: January 27, 2012 to September 17, 2012
[Currentness](#)

Unless the context or the subject matter manifestly requires a different interpretation, when used in this article or in any special act relating to children,

1. “Child” means a person actually or apparently under the age of eighteen years;
2. “Abandoned child” means a child under the age of eighteen years who is abandoned by both parents, or by the parent having its custody, or by any other person or persons lawfully charged with its care or custody, in accordance with the definition and other criteria set forth in [subdivision five of section three hundred eighty-four-b](#);
3. [Eff. until federal approval of state plan amendment, pursuant to [L.2012, c. 3, § 29](#). See, also, subd. 3 below.] “Destitute child” means a child who, through no neglect on the part of its parent, guardian or custodian, is
 - (a) destitute or homeless, or
 - (b) in a state of want or suffering due to lack of sufficient food, clothing, or shelter, or medical or surgical care, or

(c) a person under the age of eighteen years who is absent from his legal residence without the consent of his parent, legal guardian or custodian, or

(d) a person under the age of eighteen who is without a place of shelter where supervision and care are available, or

(e) a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to continuation in placement, who has returned to foster care pursuant to [section one thousand ninety-one of the family court act](#).

3. [Eff. upon federal approval of state plan amendment, pursuant to [L.2012, c. 3, § 29](#). See, also, subd. 3 above.] “Destitute child” means :

(a) a child under the age of eighteen who is in a state of want or suffering due to lack of sufficient food, clothing, shelter, or medical or surgical care; and:

(i) does not fit within the definition of an “abused child” or a “neglected child” as such terms are defined in [section one thousand twelve of the family court act](#); and

(ii) is without any parent or caretaker as such term is defined in [section one thousand ninety-two of the family court act](#), available to sufficiently care for him or her, due to:

(A) the death of a parent or caretaker; or

(B) the incapacity or debilitation of a parent or caretaker, where such incapacity or debilitation would prevent such parent or caretaker from being able to knowingly and voluntarily enter into a written agreement to transfer the care and custody of said child pursuant to [section three hundred fifty-eight-a](#) or [three hundred eighty-four-a of the social services law](#); or

(C) the inability of the local social services district to locate any parent or caretaker, after making reasonable efforts to do so; or

(D) the parent or caretaker being physically located outside of the state of New York and the local social services district is or has been unable to return said child to such parent or caretaker while or after making reasonable efforts to do so, unless the lack of such efforts is or was appropriate under the circumstances;

(b) a child who is under the age of eighteen years and absent from his or her legal residence without the consent of his or her parent, legal guardian or custodian; or

(c) a child under the age of eighteen who is without a place of shelter where supervision and care are available who is not otherwise covered under paragraph (a) of this subdivision; or

(d) a person who is a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges, and who was discharged from foster care due to a failure to consent to continuation in placement, who has returned to foster care pursuant to [section one thousand ninety-one of the family court act](#).

4. Repealed.

4-a. “Neglected child” means a child less than eighteen years of age

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature

requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned by his parents or other person legally responsible for his care.

4-b. "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care

(i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ, or

(iii) commits, or allows to be committed, an act of sexual abuse against such child as defined in the penal law.

5. "Juvenile delinquent" means a person over seven and less than sixteen years of age who does any act which, if done by an adult, would constitute a crime.

6. "Person in need of supervision" means a person less than eighteen years of age who is habitually truant or who is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care, or other lawful authority.

7. “Dependent child” means a child who is in the custody of, or wholly or partly maintained by an authorized agency or an institution, society or other organization of charitable, eleemosynary, correctional, or reformatory character;

8. “Mentally disabled child” means a child who has a mental disability as defined in [section 1.03 of the mental hygiene law](#);

9. “Physically handicapped child” means a child who, by reason of a physical disability or infirmity, whether congenital or acquired by accident, injury or disease, is or may be expected to be totally or partially incapacitated for education or for remunerative occupation, as provided in the education law, or is or may be expected to be handicapped, as provided in the public health law;

10. “Authorized agency” means

(a) Any agency, association, corporation, institution, society or other organization which is incorporated or organized under the laws of this state with corporate power or empowered by law to care for, to place out or to board out children, which actually has its place of business or plant in this state and which is approved, visited, inspected and supervised by the office of children and family services or which shall submit and consent to the approval, visitation, inspection and supervision of such office as to any and all acts in relation to the welfare of children performed or to be performed under this title; provided, however, that on and after June first, two thousand seven, such term shall not include any for-profit corporation or other for-profit entity or organization for the purposes of the operation, management, supervision or ownership of agency boarding homes, group homes, homes including family boarding homes of family free homes, or institutions which are located within this state;

(b) Any court or any social services official of this state authorized by law to place out or to board out children or any Indian tribe that has entered into an agreement with the department pursuant to [section thirty-nine](#) of this chapter;

(c) Any agency, association, corporation, institution, society or other organization which is not incorporated or organized under the laws of this state, placing out a child for adoption whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act ¹ is sought for the purpose of adoption in the State of New York or who has been brought into the United States with such status and for such

purpose, provided, however, that such agency, association, corporation, institution, society or other organization is licensed or otherwise authorized by another state to place out children for adoption, that such agency, association, corporation, institution, society or other organization is approved by the department to place out such children with non-quota immigrant status for adoption in the State of New York, and provided further, that such agency, association, corporation, institution, society or other organization complies with the regulations of the department pertaining to such placements. Notwithstanding any other provision of law to the contrary, such agency shall be limited in its functioning as an authorized agency to the placing out and adoption of such children. This paragraph shall not require the department to approve any such agency, association, corporation, institution, society or other organization which is located in a state which is a party to the interstate compact on the placement of children.

11. “Custody” means custody in pursuance of or in compliance with expressed provisions of law;

12. “Place out” means to arrange for the free care of a child in a family other than that of the child's parent, step-parent, grandparent, brother, sister, uncle, or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care;

13. “Place” or “commit” includes replace and recommit;

14. “Board out” means to arrange for the care of a child in a family, other than that of the child's parent, step-parent or legal guardian, to whom payment is made or agreed to be made for care and maintenance.

15. “Home” includes a family boarding home or a family free home.

16. agency² boarding home shall mean a family-type home for children and/or for minors operated by an authorized agency, in quarters or premises owned, leased or otherwise under the control of such agency, for the purpose of providing care and maintenance therein for children or minors under the care of such agency.

17. “Group home” shall mean a facility for the care and maintenance of not less than seven, nor more than twelve children, who are at least five years of age, operated by an authorized agency except that such minimum age shall not be applicable to siblings placed in the same facility nor to children whose mother is placed in the same facility.

18. “Public institution for children” shall mean an institution which is established and maintained by a public welfare district for the purpose of providing care and maintenance therein for children and minors for whose care such district is responsible and who require care away from their own homes.

19. “Foster parent” shall mean any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care, and “foster child” shall mean any person, in the care, custody or guardianship of an authorized agency, who is placed for temporary or long-term care.

20. “Therapeutic foster parent” means a foster parent who is certified or licensed pursuant to [section three hundred seventy-five](#) or [section three hundred seventy-six](#) of this article, or otherwise approved and who has successfully completed a training program developed by professionals experienced in treating children who exhibit high levels of disturbed behavior, emotional disturbance or physical or health needs. For any such child placed in their care, such parent shall assist in the implementation of the therapeutic treatment portion of the family service plan required by [section four hundred nine-e](#) of this article.

21. “Supervised independent living program” shall mean one or more of a type of agency boarding home operated and certified by an authorized agency in accordance with the regulations of the office of children and family services to provide a transitional experience for older youth who, based upon their circumstances, are appropriate for transition to the level of care and supervision provided in the program. Each supervised independent living unit shall be located in the community separate from any of the agency's other congregate dwellings.

22. *Repealed.*

Credits

(Added L.1962, c. 690, § 21. Amended L.1962, c. 584, § 1; L.1962, c. 947, § 1; L.1965, c. 347, § 1; L.1965, c. 406, § 1; L.1967, c. 276, § 1; L.1967, c. 479, § 1; L.1969, c. 640, § 1; L.1970, c. 570, § 14; L.1970, c. 745, § 1; L.1971, c. 782, § 1; L.1973, c. 315, § 1; L.1973, c. 1037, §§ 1, 2; L.1975, c. 281, § 1; L.1975, c. 427, § 1; L.1976, c. 666, § 7; L.1976, c. 880, § 1; L.1977, c. 450, § 2; L.1977, c. 518, § 2; L.1978, c. 550, § 51; L.1978, c. 555, § 7; L.1978, c. 722, § 2; L.1979, c. 368, § 1; L.1981, c. 984, § 3; L.1982, c. 920, § 71; L.1983, c. 268, § 1; L.1985, c. 491, § 3; L.1986, c. 127, § 3; [L.1987, c. 419, § 27](#); [L.1987, c. 462, § 7](#); [L.1987, c. 838, § 5](#); [L.1989, c. 731, § 2](#); [L.1993,](#)

c. 87, § 3; L.2000, c. 596, § 1; L.2004, c. 160, § 3, eff. Nov. 17, 2004; L.2007, c. 107, § 1, eff. July 3, 2007, deemed eff. June 1, 2007; L.2010, c. 342, § 9, eff. Nov. 11, 2010; L.2012, c. 3, § 21.)

Editors' Notes

PRACTICE COMMENTARIES

by Joseph R. Carrieri

Section 371 of the Social Services Law defines the terms associated with foster children, their care, custody and adoption. Some of the terminology which is used in the field, but not defined in Section 371, include the following:

Abandonment--When the parent does not visit or contact the child for a six month period prior to filing a petition to terminate parental rights, [Section 384-b of the Social Services Law](#).

Adoption--Legal proceeding whereby an adult person takes another adult or minor person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent with respect to said adult or minor ([Section 110 of the Domestic Relations Law](#)).

Agency Adoption--The adoption of a person by an adult wherein an authorized agency is involved and is one of the parties consenting to the adoption. In the case of *In Re A. by K.S.*, 158 Misc.2d 760, 601 N.Y.S.2d 762 (Family Court, NY Co., 1993), Judge Kaplin, in distinguishing between a private adoption and an agency adoption, quotes the commentary pointing out that not all terminology used in the field of foster care and adoptions is contained in Section 371 and then defines an agency adoption as an adoption of a person by an adult wherein an authorized agency is involved, and is one of the parties consenting to the adoption.

Birth Parent--The biological parent of a child is now called the birth parent and is no longer called the *natural* parent.

Burden of Proof--The quantum of proof necessary in order to have a petition sustained. In the case of a termination-of-parental rights proceeding, the burden of proof is by clear and convincing evidence, which is a more stringent burden than preponderance of the evidence.

Destitute Child--The case of *In Re Nurayah J.*, 41 A.D.3 477, 839 N.Y.S.2d 97 (App. Div., 2nd Dept. 2007) held that the child was not neglected by her mother, dismissed the proceeding holding that the child was a destitute child because the mother, who was only 16 years of age, was herself a foster child, and was currently unable to provide the child with food, clothing, or shelter. A destitute child should not be confused with an abandoned child. A child who is abandoned indicates lack of planning on the part of the parent and not visiting or contacting a child for six months. On the other hand, a destitute child does not connote any neglect on the part of the parent. In other words, in an abandonment case, there is fault and, in a destitute case, there may not be fault. However, a child protective agency may assume care of a destitute child in order to protect the child from harm. The Appellate Division made a distinction between an abandoned child, a neglected child and a destitute child when it defined a destitute child as a child whose mother was currently unable to provide the child with food, clothing or shelter. See *In Re Nurayah J.* (2nd Dept. 2007) 41 A.D.3d 477, 839 N.Y.S.2d 97.

Diligent Efforts--Reasonable attempts by an authorized agency to assist, develop, and encourage a meaningful relationship between the parent and the child, including, but not limited to:

1. consultation and cooperation with the parents in developing a plan for appropriate services to the child and his/her family,
2. making suitable arrangements for the parents to visit the child,
3. provision of services and other assistance to the parents so that problems preventing the discharge of the child from care may be resolved or ameliorated, and
4. informing the parents at appropriate intervals of the child's progress, development and health ([Section 384-b of the Social Services Law](#)).

Dispositional Hearing--A hearing to determine what order of disposition should be made in accordance with the best interests of the child ([Section 623 of the Family Court Act](#)). The burden of proof in a dispositional hearing is the preponderance of the credible evidence.

Fact-Finding Hearing--In the case of a petition for the commitment of the guardianship and custody of a child, a hearing to determine whether the allegations required by [paragraphs A, B, C, and D of Subdivision 1 of Section 614 of the Family Court Act](#) are supported by clear and convincing evidence ([Section 622 of the Family Court Act](#)).

Fair Hearing--A hearing conducted by a representative of the state to determine whether or not the decision of the agency to remove a foster child from one foster home to another is arbitrary, capricious, or unreasonable ([Section 400 of the Social Services Law](#)).

Foster Child--Any person in the care, custody, or guardianship of an authorized agency, who is placed for temporary or long-term care.

Foster Parent--Any person with whom a child, in the care, custody or guardianship of an authorized agency, is placed for temporary or long-term care ([Section 371 of the Social Services Law](#)).

Guardian Ad Litem--The person assigned by the court, not necessarily an attorney, to protect the interests of an infant, incompetent or other incapacitated person.

Independent Review--A review provided by the Commissioner of Social Services of the City of New York when a child who has been in one foster home is removed and placed in another foster home. If the local official disagrees with the authorized agency, the child must remain with the original foster parents, and the decision is not appealable by the agency.

Jury Trial--In a custody proceeding, the parties are not entitled to a jury trial, and all custody matters are heard by a judge or special referee without a jury.

Law Guardian--An attorney assigned by the court to protect the interests of an infant. The Law Guardian is now called the attorney for the child.

Mental Illness--An affliction with a mental disease or mental condition that is manifested by a disorder or disturbance in behavior, feeling, thinking, or judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the Family Court Act ([Section 374B of the Social Services Law](#)).

Mental Retardation--Subaverage intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the Family Court Act ([Section 384B of the Social Services Law](#)).

Open Adoption--An adoption in which the birth parent(s) is permitted, by agreement with the adoptive parents, to visit the child(ren) subsequent to the adoption.

Private Adoption--An adoption, also called independent adoption, wherein an agency is not involved, and the birth parents contract directly with the adoptive parents to consummate the adoption. The distinction between a private adoption and an agency adoption is that a private adoption entails a contract between the birth parent and the adoptive parents. An agency adoption, on the other hand, is between an authorized agency and the adoptive parents. The birth parents are not involved in any agency adoption because their parental rights have already been terminated by court proceedings or by an execution of a surrender. An authorized agency permitted to consent to adoption is any agency, association, corporation, institution, society or other organization incorporated under the laws of the State of New York. The agency must have corporate powers and must be empowered by law to care for, to place out, or to board out children. The agency must be approved, visited, inspected, and supervised by the Department of Social Services of the State of New York. (Social Services Law Section 371(10)(a)).

Putative Father--A child's biological father, who was not married to the child's birth mother at the time of the birth of the child.

Surrender--A written document signed by the birth parent terminating the parent's parental rights, giving guardianship to the authorized agency to place the child for adoption. There are two types of surrender: Judicial Surrenders and Extra-Judicial Surrenders. A Judicial Surrender is signed before a Judge who must approve the surrender. An Extra-Judicial Surrender is not executed and acknowledged before a judge. The authorized agency must petition the court to have the judge approve the Extra-Judicial Surrender. See [Section 383-c of the Social Services Law](#).

Voluntary Commitment--A method of placing a child in foster care when a written instrument is signed by a parent or legal guardian entrusting the care of the child to an authorized agency (Section 384A of the Social Services Law).

Birth Parents

There has always been some confusion as to the proper terminology in referring to a parent of a child, especially when that parent has a child in foster care. The statutes of the State of New York, including the Domestic Relations Law and Social Services Law, referred to the father or mother of a child in foster care as a “natural parent”. Foster parents, who sometimes seek to adopt a foster child would denote such a parent as a “biological parent”. Foster parents did not like the terminology “natural parent” and natural parents did not like the terminology “biological parent”. Perhaps the legislature struck a compromise, amended the law and now a “natural parent” is known as a “birth

parent”. Henceforth, it is appropriate to denote respondents in all petitions in the family court and surrogate's court as “birth parents” and not “natural parents”.

Notes of Decisions (17)

Footnotes

1 8 USCA § 1101 et seq.


2 So in original. Probably should be capitalized.

McKinney's Social Services Law § 371, NY SOC SERV § 371

Current through L.2013, chapters 1 to 340.

 KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted **Prior Version Held Unconstitutional by** [Lee TT. v. Dowling](#), N.Y., Apr 04, 1996

 KeyCite Yellow Flag - Negative Treatment Proposed Legislation

[McKinney's Consolidated Laws of New York Annotated](#)
[Social Services Law \(Refs & Annos\)](#)
[Chapter 55. Of the Consolidated Laws](#)
[Article 6. Children](#)
[Title 6. Child Protective Services \(Refs & Annos\)](#)

McKinney's Social Services Law § 412

§ 412. General definitions

Effective: June 30, 2013

[Currentness](#)

When used in this title and unless the specific context indicates otherwise:

1. An “abused child” means a child under eighteen years of age and who is defined as an abused child by the family court act;
2. A “maltreated child” includes a child under eighteen years of age:
 - (a) defined as a neglected child by the family court act, or
 - (b) who has had serious physical injury inflicted upon him or her by other than accidental means;
3. “Person legally responsible” for a child means a person legally responsible as defined by the family court act;
4. “Subject of the report” means any parent of, guardian of, or other person eighteen years of age or older legally responsible for, as defined in [subdivision \(g\) of section one thousand twelve of the family court act](#), a child reported to the statewide central register of child abuse and maltreatment who is allegedly responsible for causing injury, abuse or maltreatment to such child or who

allegedly allows such injury, abuse or maltreatment to be inflicted on such child; or a director or an operator of, or employee or volunteer in, a home operated or supervised by an authorized agency, the office of children and family services, or in a family day-care home, a day-care center, a group family day care home, a school-age child care program or a day-services program who is allegedly responsible for causing injury, abuse or maltreatment to a child who is reported to the statewide central register of child abuse or maltreatment or who allegedly allows such injury, abuse or maltreatment to be inflicted on such child;

5. “Other persons named in the report” shall mean and be limited to the following persons who are named in a report of child abuse or maltreatment other than the subject of the report: the child who is reported to the statewide central register of child abuse and maltreatment; and such child's parent, guardian, or other person legally responsible for the child who has not been named in the report as allegedly responsible for causing injury, abuse or maltreatment to the child or as allegedly allowing such injury, abuse or maltreatment to be inflicted on such child;

6. An “unfounded report” means any report made pursuant to this title unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists;

7. An “indicated report” means a report made pursuant to this title if an investigation determines that some credible evidence of the alleged abuse or maltreatment exists.

8. “Substance abuse counselor” or “alcoholism counselor” means any person who has been issued a credential therefor by the office of alcoholism and substance abuse services, pursuant to [paragraphs one and two of subdivision \(d\) of section 19.07 of the mental hygiene law](#).

9, 10. *Repealed by L.2008, c. 323, § 3, eff. Jan. 17, 2009.*

11 to 13. *Renumbered subds. 6 to 8, by L.2008, c. 323, § 3, eff. Jan. 17, 2009.*

Credits

(Added L.1973, c. 1039, § 1. Amended L.1977, c. 518, § 3; L.1982, c. 600, § 1; L.1984, c. 822, §§ 1, 2; L.1985, c. 676, §§ 2, 3; L.1986, c. 717, § 1; L.1986, c. 719, §§ 2, 3; L.1986, c. 875, § 10; L.1988 c. 543, § 1; L.1988, c. 634, §§ 1 to 3; L.1992, c. 32, §§ 1 to 6; L.1994, c. 306, § 1; L.2006, c. 320, § 29, eff. Nov. 1, 2006; L.2008, c. 323, §§ 2, 3, eff. Jan. 17, 2009; L.2012, c. 501, pt. D, §§ 2, 2-a eff. June 30, 2013.)

McKinney's Social Services Law § 412, NY SOC SERV § 412
Current through L.2013, chapters 1 to 340.

End of Document

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KeyCite Red Flag - Severe Negative Treatment

Enacted Legislation **Amended by** 2013 Sess. Law News of N.Y. Ch. 430 (A. 2600) (McKINNEY'S),



KeyCite Yellow Flag - Negative Treatment Proposed Legislation

McKinney's Consolidated Laws of New York Annotated
Social Services Law (Refs & Annos)

Chapter 55. Of the Consolidated Laws

Article 6. Children

Title 1. Care and Protection of Children (Refs & Annos)

McKinney's Social Services Law § 384-b

§ 384-b. Guardianship and custody of destitute or dependent children; commitment by court order; modification of commitment and restoration of parental rights

Effective: January 27, 2012 to September 17, 2012

[Currentness](#)

1. Statement of legislative findings and intent.

(a) The legislature recognizes that the health and safety of children is of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further hereby finds that:

(i) it is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive;

(ii) it is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered;

(iii) the state's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home; and

(iv) when it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

(b) The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents or other custodians. Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. The legislature further finds that provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays.

It is the intent of the legislature in enacting this section to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

2. For the purposes of this section, (a) “child” shall mean a person under the age of eighteen years; and, (b) “parent” shall include an incarcerated parent unless otherwise qualified.

3. (a) The guardianship of the person and the custody of a destitute or dependent child may be committed to an authorized agency, or to a foster parent authorized pursuant to [section one thousand eighty-nine of the family court act](#) to institute a proceeding under this section, or to a relative with care and custody of the child, by order of a surrogate or judge of the family court, as hereinafter provided. Where such guardianship and custody is committed to a foster parent or to a relative with care and custody of the child, the family court or surrogate's court shall retain continuing jurisdiction over the parties and the child and may, upon its own motion or the motion of any party, revoke, modify or extend its order, if the foster parent or relative fails to institute a proceeding for the adoption of the child within six months after the entry of the order committing the guardianship and custody of the child to such foster parent or relative. Where the foster parent or relative institutes a proceeding for the adoption of the child and the adoption petition is finally denied or dismissed, the court which committed the guardianship and custody of the child to the foster parent or relative shall revoke the order of commitment. Where the court revokes an order committing the guardianship and custody of a child to a foster parent or relative, it shall commit the guardianship and custody of the child to an authorized agency.

(b) A proceeding under this section may be originated by an authorized agency or by a foster parent authorized to do so pursuant to [section one thousand eighty-nine of the family court act](#) or by a relative with care and custody of the child or, if an authorized agency ordered by the court to originate a proceeding under this section fails to do so within the time fixed by the court, by the child's attorney or guardian ad litem on the court's direction.

(c) [Eff. until federal approval of state plan amendment, pursuant to [L.2012, c. 3, § 29](#). See, also, par. (c) below.] Where a child was placed or continued in foster care pursuant to article ten or ten-A of the family court act or [section three hundred fifty-eight-a](#) of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten or ten-A of the family court act or [section three hundred fifty-eight-a](#) of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to [section one thousand fifty-five](#) or [one thousand eighty-nine of the family court act](#), all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten or ten-A of the family court act regarding any of the children who are the subjects of the proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

(c) [Eff. upon federal approval of state plan amendment, pursuant to [L.2012, c. 3, § 29](#). See, also, par. (c) above.] Where a child was placed or continued in foster care pursuant to article ten, ten-A or ten-C of the family court act or [section three hundred fifty-eight-a](#) of this chapter, a proceeding under this section shall be originated in the family court in the county in which the proceeding pursuant to article ten, ten-A or ten-C of the family court act or [section three hundred fifty-eight-a](#) of this chapter was last heard and shall be assigned, wherever practicable, to the judge who last heard such proceeding. Where multiple proceedings are commenced under this section concerning a child and one or more siblings or half-siblings of such child, placed or continued in foster care with the same commissioner pursuant to [section one thousand fifty-five](#), [one thousand eighty-nine](#) or [one thousand ninety-five of the family court act](#), all of such proceedings may be commenced jointly in the family court in any county which last heard a proceeding under article ten, ten-A or ten-C of the family court act regarding any of the children who are the subjects of the

proceedings under this section. In such instances, the case shall be assigned, wherever practicable, to the judge who last presided over such proceeding. In any other case, a proceeding under this section, including a proceeding brought in the surrogate's court, shall be originated in the county where either of the parents of the child reside at the time of the filing of the petition, if known, or, if such residence is not known, in the county in which the authorized agency has an office for the regular conduct of business or in which the child resides at the time of the initiation of the proceeding. To the extent possible, the court shall, when appointing an attorney for the child, appoint an attorney who has previously represented the child.

(c-1) Before hearing a petition under this section, the court in which the termination of parental rights petition has been filed shall ascertain whether the child is under the jurisdiction of a family court pursuant to a placement in a child protective or foster care proceeding or continuation in out-of-home care pursuant to a permanency hearing and, if so, which court exercised jurisdiction over the most recent proceeding. If the court determines that the child is under the jurisdiction of a different family court, the court in which the termination of parental rights petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the court that exercised jurisdiction over the most recent proceeding. The communication shall be recorded or summarized on the record by the court in which the termination of parental rights petition was filed. Both courts shall notify the parties and child's attorney, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction. The court that exercised jurisdiction over the most recent proceeding shall determine whether it will accept or decline jurisdiction over the termination of parental rights petition. This determination of jurisdiction shall be incorporated into an order regarding jurisdiction that shall be issued by the court in which the termination of parental rights petition was filed within thirty days of such filing. If the court that exercised jurisdiction over the most recent proceeding determines that it should exercise jurisdiction over the termination of parental rights petition, the order shall require that the petition shall be transferred to that court forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the judge who heard the most recent proceeding. If the court that exercised jurisdiction over the most recent proceeding declines to exercise jurisdiction over the adoption petition, the court in which the termination of parental rights petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(d) The family court shall have exclusive, original jurisdiction over any proceeding brought upon grounds specified in paragraph (c), (d) or (e) of subdivision four of this section, and the family court and surrogate's court shall have concurrent, original jurisdiction over any proceeding brought upon grounds specified in paragraph (a) or (b) of subdivision four of this section, except as provided in paragraphs (c) and (c-1) of this subdivision.

(e) A proceeding under this section is originated by a petition on notice served upon the child's parent or parents, the attorney for the child's parent or parents and upon such other persons as the court may in its discretion prescribe. Such notice shall inform the parents and such other persons that the proceeding may result in an order freeing the child for adoption without the consent of or notice to the parents or such other persons. Such notice also shall inform the parents and such other persons of their right to the assistance of counsel, including any right they may have to have counsel assigned by the court in any case where they are financially unable to obtain counsel. The petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section and [section three hundred eighty-four-c](#) of this title, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice pursuant to the provisions of this section or of [section three hundred eighty-four-c](#) of this title. When the proceeding is initiated in family court service of the petition and other process shall be made in accordance with the provisions of [section six hundred seventeen of the family court act](#), and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of [section three hundred seven of the surrogate's court procedure act](#). When the proceeding is initiated on the grounds of abandonment of a child less than one year of age at the time of the transfer of the care and custody of such child to a local social services official, the court shall take judicial notice of efforts to locate the child's parents or other known relatives or other persons legally responsible pursuant to paragraph (ii) of [subdivision \(b\) of section one thousand fifty-five of the family court act](#).

(f) In any proceeding under this section in which the surrogate's court has exercised jurisdiction, the provisions of the surrogate's court procedure act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section in which the family court has exercised jurisdiction, the provisions of articles one, two and eleven of the family court act shall apply to the extent that they do not conflict with the specific provisions of this section. In any proceeding under this section, the provisions and limitations of article thirty-one of the civil practice law and rules shall apply to the extent that they do not conflict with the specific provisions of this section. In determining any motion for a protective order, the court shall consider the need of the party for the discovery to assist in the preparation of the case and any potential harm to the child from the discovery. The court shall set a schedule for discovery to avoid unnecessary delay. Any proceeding originated in family court upon the ground specified in paragraph (d) of subdivision four of this section shall be conducted in accordance with the provisions of part one of article six of the family court act.

(g)(i) An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon a finding that one or more of the grounds specified in subdivision four of this section are based upon clear and convincing proof.

(ii) Where a proceeding has been properly commenced under this section by the filing of a petition before the eighteenth birthday of a child, an order committing the guardianship and custody of a child pursuant to this section upon a finding under subdivision four of this section shall be granted after the eighteenth birthday of a child where the child consents to such disposition.

(h) In any proceeding brought upon a ground set forth in paragraph (c) of subdivision four, neither the privilege attaching to confidential communications between husband and wife, as set forth in [section forty-five hundred two of the civil practice law and rules](#), nor the physician-patient and related privileges, as set forth in [section forty-five hundred four of the civil practice law and rules](#), nor the psychologist-client privilege, as set forth in [section forty-five hundred seven of the civil practice law and rules](#), nor the social worker-client privilege, as set forth in [section forty-five hundred eight of the civil practice law and rules](#), shall be a ground for excluding evidence which otherwise would be admissible.

(i) In a proceeding instituted by an authorized agency pursuant to the provisions of this section, proof of the likelihood that the child will be placed for adoption shall not be required in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child to an authorized agency.

(j) The order and the papers upon which it was granted in a proceeding under this section shall be filed in the court, and a certified copy of such order shall also be filed in the office of the county clerk of the county in which such court is located, there to be recorded and to be inspected or examined in the same manner as a surrender instrument, pursuant to the provisions of [section three hundred eighty-four](#) of this chapter.

(k) Where the child is over fourteen years of age, the court may, in its discretion, consider the wishes of the child in determining whether the best interests of the child would be promoted by the commitment of the guardianship and custody of the child.

(l)(i) Notwithstanding any other law to the contrary, whenever: the child shall have been in foster care for fifteen months of the most recent twenty-two months; or a court of competent jurisdiction

has determined the child to be an abandoned child; or the parent has been convicted of a crime as set forth in subdivision eight of this section, the authorized agency having care of the child shall file a petition pursuant to this section unless based on a case by case determination: (A) the child is being cared for by a relative or relatives; or (B) the agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child; or (C) the agency has not provided to the parent or parents of the child such services as it deems necessary for the safe return of the child to the parent or parents, unless such services are not legally required; or (D) the parent or parents are incarcerated, or participating in a residential substance abuse treatment program, or the prior incarceration or participation of a parent or parents in a residential substance abuse treatment program is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided that the parent maintains a meaningful role in the child's life based on the criteria set forth in subparagraph (v) of this paragraph and the agency has not documented a reason why it would otherwise be appropriate to file a petition pursuant to this section.

(ii) For the purposes of this section, a compelling reason whereby a social services official is not required to file a petition for termination of parental rights in accordance with subparagraph (i) of this paragraph includes, but is not limited to, where:

(A) the child was placed into foster care pursuant to article three or seven of the family court act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living;

(B) the child has a permanency goal other than adoption;

(C) the child is fourteen years of age or older and will not consent to his or her adoption;

(D) there are insufficient grounds for filing a petition to terminate parental rights; or

(E) the child is the subject of a pending disposition under article ten of the family court act, except where such child is already in the custody of the commissioner of social services as a result of a proceeding other than the pending article ten proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian.

(iii) For the purposes of this paragraph, the date of the child's entry into foster care is the earlier of sixty days after the date on which the child was removed from the home or the date the child was found by a court to be an abused or neglected child pursuant to article ten of the family court act.

(iv) In the event that the social services official or authorized agency having care and custody of the child fails to file a petition to terminate parental rights within sixty days of the time required by this section, or within ninety days of a court direction to file a proceeding not otherwise required by this section, such proceeding may be filed by the foster parent of the child without further court order or by the attorney for the child on the direction of the court. In the event of such filing the social services official or authorized agency having care and custody of the child shall be served with notice of the proceeding and shall join the petition.

(v) For the purposes of clause (D) of subparagraph (i) of this paragraph, an assessment of whether a parent maintains a meaningful role in his or her child's life shall be based on evidence, which may include the following: a parent's expressions or acts manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child; efforts by the parent to communicate and work with the authorized agency, law guardian, foster parent, the court, and the parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel for the purpose of complying with the service plan and repairing, maintaining or building the parent-child relationship; a positive response by the parent to the authorized agency's diligent efforts as defined in paragraph (f) of subdivision seven of this section; and whether the continued involvement of the parent in the child's life is in the child's best interest. In assessing whether a parent maintains a meaningful role in his or her child's life, the authorized agency shall gather input from individuals and agencies in a reasonable position to help make this assessment, including but not limited to, the authorized agency, law guardian, parent, child, foster parent or other individuals of importance in the child's life, and parent's attorney or other individuals providing services to the parent, including correctional, mental health and substance abuse treatment program personnel. The court may make an order directing the authorized agency to undertake further steps to aid in completing its assessment.

4. An order committing the guardianship and custody of a child pursuant to this section shall be granted only upon one or more of the following grounds:

(a) Both parents of the child are dead, and no guardian of the person of such child has been lawfully appointed; or

(b) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with [section one hundred eleven of the domestic relations law](#), abandoned such child for the period of six months immediately prior to the date on which the petition is filed in the court; or

(c) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with [section one hundred eleven of the domestic relations law](#), are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court; or

(d) The child is a permanently neglected child; or

(e) The parent or parents, whose consent to the adoption of the child would otherwise be required in accordance with [section one hundred eleven of the domestic relations law](#), severely or repeatedly abused such child. Where a court has determined that reasonable efforts to reunite the child with his or her parent are not required, pursuant to the family court act or this chapter, a petition to terminate parental rights on the ground of severe abuse as set forth in subparagraph (iii) of paragraph (a) of subdivision eight of this section may be filed immediately upon such determination.

5. (a) For the purposes of this section, a child is “abandoned” by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency, although able to do so and not prevented or discouraged from doing so by the agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

(b) The subjective intent of the parent, whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child. In making such determination, the court shall not require a showing of diligent efforts, if any, by an authorized agency to encourage the parent to perform the acts specified in paragraph (a) of this subdivision.

6. (a) For the purposes of this section, “mental illness” means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or

judgment to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(b) For the purposes of this section, “mental retardation” means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior to such an extent that if such child were placed in or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the family court act.

(c) The legal sufficiency of the proof in a proceeding upon the ground set forth in paragraph (c) of subdivision four of this section shall not be determined until the judge has taken the testimony of a psychologist, or psychiatrist, in accordance with paragraph (e) of this subdivision.

(d) A determination or order upon a ground set forth in paragraph (c) of subdivision four shall in no way affect any other right, or constitute an adjudication of the legal status of the parent.

(e) In every proceeding upon a ground set forth in paragraph (c) of subdivision four the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or a psychologist licensed pursuant to article one hundred fifty-three of the education law as defined in [section 730.10 of the criminal procedure law](#) in the case of a parent alleged to be mentally ill or retarded, such psychologist or psychiatrist to be appointed by the court pursuant to [section thirty-five of the judiciary law](#). The parent and the authorized agency shall have the right to submit other psychiatric, psychological or medical evidence. If the parent refuses to submit to such court-ordered examination, or if the parent renders himself unavailable therefor whether before or after the initiation of a proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinic records, may testify without an examination of such parent, provided that such other information affords a reasonable basis for his opinion.

7. (a) For the purposes of this section, “permanently neglected child” shall mean a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of either at least one year or fifteen out of the most recent twenty-two months following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the

child. The court shall consider the special circumstances of an incarcerated parent or parents, or of a parent or parents participating in a residential substance abuse treatment program, when determining whether a child is a “permanently neglected child” as defined in this paragraph. In such cases, the court also shall consider the particular constraints, including but not limited to, limitations placed on family contact and the unavailability of social or rehabilitative services to aid in the development of a meaningful relationship between the parent and his or her child, that may impact the parent's ability to substantially and continuously or repeatedly maintain contact with his or her child and to plan for the future of his or her child as defined in paragraph (c) of this subdivision. Where a court has previously determined in accordance with [paragraph \(b\) of subdivision three of section three hundred fifty-eight-a](#) of this chapter or [section one thousand thirty-nine-b, subparagraph \(A\) of paragraph \(i\) of subdivision \(b\) of section one thousand fifty-two, paragraph \(b\) of subdivision two of section seven hundred fifty-four](#) or [paragraph \(c\) of subdivision two of section 352.2 of the family court act](#) that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as defined in this section. In the event that the parent defaults after due notice of a proceeding to determine such neglect, such physical and financial ability of such parent may be presumed by the court.

(b) For the purposes of paragraph (a) of this subdivision, evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is of such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact.

(c) As used in paragraph (a) of this subdivision, “to plan for the future of the child” shall mean to take such steps as may be necessary to provide an adequate, stable home and parental care for the child within a period of time which is reasonable under the financial circumstances available to the parent. The plan must be realistic and feasible, and good faith effort shall not, of itself, be determinative. In determining whether a parent has planned for the future of the child, the court may consider the failure of the parent to utilize medical, psychiatric, psychological and other social and rehabilitative services and material resources made available to such parent.

(d) For the purposes of this subdivision:

(i) A parent shall not be deemed unable to maintain contact with or plan for the future of the child by reason of such parent's use of drugs or alcohol, except while the parent is actually hospitalized or institutionalized therefor; and

(ii) The time during which a parent is actually hospitalized or institutionalized shall not interrupt, but shall not be part of, a period of failure to maintain contact with or plan for the future of a child.

(e) Notwithstanding the provisions of paragraph (a) of this subdivision, evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when:

(i) The parent has failed for a period of six months to keep the agency apprised of his or her location, provided that the court may consider the particular delays or barriers an incarcerated parent or parents, or a parent or parents participating in a residential substance abuse treatment program, may experience in keeping the agency apprised of his or her location; or

(ii) An incarcerated parent has failed on more than one occasion while incarcerated to cooperate with an authorized agency in its efforts to assist such parent to plan for the future of the child, as such phrase is defined in paragraph (c) of this subdivision, or in such agency's efforts to plan and arrange visits with the child as described in subparagraph five of paragraph (f) of this subdivision.

(f) As used in this subdivision, "diligent efforts" shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

(1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;

(2) making suitable arrangements for the parents to visit the child except that with respect to an incarcerated parent, arrangements for the incarcerated parent to visit the child outside the correctional facility shall not be required unless reasonably feasible and in the best interest of the child;

(3) provision of services and other assistance to the parents, except incarcerated parents, so that problems preventing the discharge of the child from care may be resolved or ameliorated;

(4) informing the parents at appropriate intervals of the child's progress, development and health;

(5) making suitable arrangements with a correctional facility and other appropriate persons for an incarcerated parent to visit the child within the correctional facility, if such visiting is in the best interests of the child. When no visitation between child and incarcerated parent has been arranged for or permitted by the authorized agency because such visitation is determined not to be in the best interest of the child, then no permanent neglect proceeding under this subdivision shall be initiated on the basis of the lack of such visitation. Such arrangements shall include, but shall not be limited to, the transportation of the child to the correctional facility, and providing or suggesting social or rehabilitative services to resolve or correct the problems other than incarceration itself which impair the incarcerated parent's ability to maintain contact with the child. When the parent is incarcerated in a correctional facility located outside the state, the provisions of this subparagraph shall be construed to require that an authorized agency make such arrangements with the correctional facility only if reasonably feasible and permissible in accordance with the laws and regulations applicable to such facility; and

(6) providing information which the authorized agency shall obtain from the office of children and family services, outlining the legal rights and obligations of a parent who is incarcerated or in a residential substance abuse treatment program whose child is in custody of an authorized agency, and on social or rehabilitative services available in the community, including family visiting services, to aid in the development of a meaningful relationship between the parent and child. Wherever possible, such information shall include transitional and family support services located in the community to which an incarcerated parent or parent participating in a residential substance abuse treatment program shall return.

8. (a) For the purposes of this section a child is “severely abused” by his or her parent if (i) the child has been found to be an abused child as a result of reckless or intentional acts of the parent committed under circumstances evincing a depraved indifference to human life, which result in serious physical injury to the child as defined in [subdivision ten of section 10.00 of the penal law](#); or

(ii) the child has been found to be an abused child, as defined in paragraph (iii) of [subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in [sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law](#) and, for the purposes of this section the corroboration requirements contained in the penal law shall not apply to proceedings under this section; or

(iii) (A) the parent of such child has been convicted of murder in the first degree as defined in section 125.27, murder in the second degree as defined in section 125.25, manslaughter in the first degree as defined in section 125.20, or manslaughter in the second degree as defined in section 125.15, and the victim of any such crime was another child of the parent or another child for whose care such parent is or has been legally responsible as defined in [subdivision \(g\) of section one thousand twelve of the family court act](#), or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the homicide; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible as defined in [subdivision \(g\) of section one thousand twelve of the family court act](#), or another parent of the child, unless the convicted parent was a victim of physical, sexual or psychological abuse by the decedent parent and such abuse was a factor in causing the attempted homicide; (B) the parent of such child has been convicted of criminal solicitation as defined in article one hundred, conspiracy as defined in article one hundred five or criminal facilitation as defined in article one hundred fifteen of the penal law for conspiring, soliciting or facilitating any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; (C) the parent of such child has been convicted of assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10 or aggravated assault upon a person less than eleven years old as defined in [section 120.12 of the penal law](#), and the victim of any such crime was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or has been convicted of an attempt to commit any of the foregoing crimes, and the victim or intended victim was the child or another child of the parent or another child for whose care such parent is or has been legally responsible; or (D) the parent of such child has been convicted under the law in any other jurisdiction of an offense which includes all of the essential elements of any crime specified in clause (A), (B) or (C) of this subparagraph; and

(iv) the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(b) For the purposes of this section a child is “repeatedly abused” by his or her parent if:

(i) the child has been found to be an abused child, (A) as defined in [paragraph \(i\) of subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; or (B) as defined in [paragraph \(iii\) of subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in [sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law](#); and

(ii) (A) the child or another child for whose care such parent is or has been legally responsible has been previously found, within the five years immediately preceding the initiation of the proceeding in which such abuse is found, to be an abused child, as defined in [paragraph \(i\) or \(iii\) of subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; provided, however, in the case of a finding of abuse as defined in [paragraph \(iii\) of subdivision \(e\) of section ten hundred twelve of the family court act](#) the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in [sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law](#), or (B) the parent has been convicted of a crime under [section 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 or 130.80 of the penal law](#) against the child, a sibling of the child or another child for whose care such parent is or has been legally responsible, within the five year period immediately preceding the initiation of the proceeding in which abuse is found; and

(iii) the agency has made diligent efforts, to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are unlikely to be successful in the foreseeable future. Where a court has previously determined in accordance with this chapter or the family court act that reasonable efforts to make it possible for the child to return safely to his or her home are not required, the agency shall not be required to demonstrate diligent efforts as set forth in this section.

(c) Notwithstanding any other provision of law, the requirements of [paragraph \(g\) of subdivision three of this section](#) shall be satisfied if one of the findings of abuse pursuant to [subparagraph \(i\) or \(ii\) of paragraph \(b\) of this subdivision](#) is found to be based on clear and convincing evidence.

(d) A determination by the court in accordance with [article ten of the family court act](#) based upon clear and convincing evidence that the child was a severely abused child as defined in [subparagraphs \(i\) and \(ii\) of paragraph \(a\) of this subdivision](#) shall establish that the child was a severely abused child in accordance with this section. Such a determination by the court in

accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(e) A determination by the court in accordance with article ten of the family court act based upon clear and convincing evidence that a child was abused¹ as defined in [paragraph \(i\) of subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; or (B) as defined in paragraph (iii) of [subdivision \(e\) of section ten hundred twelve of the family court act](#), as a result of such parent's acts; provided, however, the respondent must have committed or knowingly allowed to be committed a felony sex offense as defined in [sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67, 130.70, 130.75 and 130.80 of the penal law](#) shall establish that the child was an abused child for the purpose of a determination as required by subparagraph (i) or (ii) of paragraph (b) of this subdivision. Such a determination by the court in accordance with article ten of the family court act based upon a fair preponderance of evidence shall be admissible in any proceeding commenced in accordance with this section.

(f) Upon a finding pursuant to paragraph (a) or (b) of this subdivision that the child has been severely or repeatedly abused by his or her parent, the court shall enter an order of disposition either (i) committing the guardianship and custody of the child, pursuant to this section, or (ii) suspending judgment in accordance with [section six hundred thirty-three of the family court act](#), upon a further finding, based on clear and convincing, competent, material and relevant evidence introduced in a dispositional hearing, that the best interests of the child require such commitment or suspension of judgment. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be completed pursuant to [section one thousand eighty-nine of the family court act](#).

9. Nothing in this section shall be construed to terminate, upon commitment of the guardianship and custody of a child to an authorized agency or foster parent, any rights and benefits, including but not limited to rights relating to inheritance, succession, social security, insurance and wrongful death action claims, possessed by or available to the child pursuant to any other provision of law. Notwithstanding any other provision of law, a child committed to the custody and guardianship of an authorized agency pursuant to this section shall be deemed to continue in foster care until such time as an adoption or another planned permanent living arrangement is finalized. Where the disposition ordered is the commitment of guardianship and custody pursuant to this section, an initial freed child permanency hearing shall be held pursuant to [section one thousand eighty-nine of the family court act](#).

10. Upon the court's order transferring custody and guardianship to the commissioner, the attorney for the petitioning authorized agency shall promptly serve upon the persons who have been approved by such agency as the child's adoptive parents, notice of entry of such order and advise such persons that an adoption proceeding may be commenced. In accordance with the regulations of the department, the authorized agency shall advise such persons of the procedures necessary for adoption of the child. The authorized agency shall cooperate with such persons in the provision of necessary documentation.

11. Upon the entry of an order committing the guardianship and custody of a child pursuant to this section, the court shall inquire whether any foster parent or parents with whom the child resides, or any relative of the child, or other person, seeks to adopt such child. If such person or persons do seek to adopt such child, such person or persons may submit, and the court shall accept, all such petitions for the adoption of the child, together with an adoption home study, if any, completed by an authorized agency or disinterested person as such term is defined in [subdivision three of section one hundred sixteen of the domestic relations law](#). The court shall thereafter establish a schedule for completion of other inquiries and investigations necessary to complete review of the adoption of the child and shall immediately set a schedule for completion of the adoption.

12. If the court determines to commit the custody and guardianship of the child pursuant to this section, or if the court determines to suspend judgement pursuant to [section six hundred thirty-three of the family court act](#), the court in its order shall determine if there is any parent to whom notice of an adoption would be required pursuant to [section one hundred eleven-a of the domestic relations law](#). In its order the court shall indicate whether such person or persons were given notice of the proceeding and whether such person or persons appeared. Such determinations shall be conclusive in all subsequent proceedings relating to the custody, guardianship or adoption of the child.

13. A petition to modify a disposition of commitment of guardianship and custody in order to restore parental rights may be brought in accordance with part one-A of article six of the family court act where the conditions enumerated in section six hundred thirty-five of such part have been met.

Credits

(Added L.1976, c. 666, § 3. Amended L.1977, c. 862, § 6; L.1981, c. 284, § 1; L.1981, c. 739, §§ 5-8; L.1982, c. 123, § 1; L.1983, c. 911, §§ 2, 3; L.1987, c. 136, § 1; L.1990, c. 605, § 2; L.1990, c. 867, § 2; L.1991, c. 588, §§ 2, 3; L.1991, c. 691, §§ 1, 2; L.1993, c. 133, § 1; L.1993, c. 294, § 2; L.1994, c. 601, § 5; L.1996, c. 309, § 279; L.1996, c. 607, § 1; L.1999, c. 7, §§ 9 to 14, eff. Feb.

11, 1999; L.2000, c. 145, §§ 4, 5, eff. July 1, 2000; L.2002, c. 312, § 6, eff. Aug. 6, 2002; L.2002, c. 663, § 11, eff. Dec. 3, 2002; L.2005, c. 3, pt. A, §§ 55 to 58, eff. Dec. 21, 2005; L.2006, c. 185, § 6, eff. Oct. 24, 2006; L.2006, c. 460, §§ 1 to 3, eff. Nov. 14, 2006; L.2007, c. 469, § 1, eff. Nov. 29, 2007; L.2010, c. 41, § 96, eff. April 14, 2010; L.2010, c. 113, §§ 1 to 4, eff. June 15, 2010; L.2010, c. 343, § 3, eff. Nov. 11, 2010; L.2012, c. 3, § 22.)

Editors' Notes

SUPPLEMENTARY PRACTICE COMMENTARIES

By Joseph R. Carrieri

2012

Post-Termination of Parental Rights Visitation Between Birth Mother and Child

Traditionally, once a birth parent's rights was terminated and the child was freed for adoption, there was no provision and no cases permitting visitation between the parent and child. This rule of law has been relaxed over the years and some appellate jurisdictions permit post-termination visitation between parent and child and others do not. See the case of *In Re Imani W.*, 26 Misc.3d 792, 889 N.Y.5.2d 902 (Monroe Co., Family Court, 2009) where the Court summarized the decisions of the various appellate jurisdictions. For example, the Fourth Department requires the court which has terminated parental rights of the birth parent to consider post-termination visitation. The Appellate Division First and Second Departments permit post-termination visitation but only when parental rights are terminated due to mental illness or mental retardation. Lastly, the Appellate Division, Third Department has held that post-termination contact cannot be court mandated under any circumstances.

In a case emanating from the Family Court, Nassau County entitled *Matter of Kyshawn F.*, 2012 N.Y. Slip Op 03446 decided on May 1, 2012, the court appears to have broadened the concept of post-termination visitation between parents and child. Judge Dane of the Family Court, Nassau County, terminating the parental rights of the mother upon permanent neglect. The Appellate Division, Second Department modified the Court's Decision and Order and added a provision with respect to post-termination visitation. The Appellate Court remanded the case back to the Family Court, Nassau County for a hearing, if necessary, to determine the extent and frequency of post-termination visitation between the mother and the child that would be in the child's best interest. The reason given for the Court adding a provision to

the lower court's order was that the child was severely disabled, requiring 24 hour professional care in a nursing facility and where he remains emotionally attached to this mother. Based upon a medical condition of the child, the child would not likely be adopted and hence the rationale for continued visitation post-termination.

Post-Termination of Parental Rights Visitation Between Parent and Child

Traditionally, once a parent's rights have been terminated and a child is freed for adoption, there was no provision for visitation between a parent and the child after the parent's rights have been terminated. However, various cases came to different conclusions. Presently, there is no statutory authority for visitation between a parent and a child after the parent's rights have been terminated pursuant to Section 384-b of the Social Services Law.

The case of *People v. Imani W.*, 26 Misc.3d 792, 889 N.Y.S.2d 902 (Monroe County Family Court, 2009) outlines the different opinions of the four Appellate Departments. As pointed out in the case of *In Re Imani W.*, the Fourth Department requires courts to consider whether it is in the best interest of the child to continue to visit with a parent whose rights have been terminated on any ground where such contact is requested by the parent or child. The First and Second Departments in which courts may order posttermination visitation involves cases involving mental illness or mental retardation pursuant to Social Services Law Section 384-b. *In Re Imani W.*, *supra*, points out that the New York State Supreme Court Appellate Division, Third Department has held that post-termination contact cannot be court mandated under any circumstances.

Since the Appellate Departments are in conflict with this issue, one would expect that the issue would be decided by the Court of Appeals and is such the case. In *In Re Hailey Z.Z.*, 19 N.Y.3d 422 (2012), decided by the Court of Appeals of the State of New York in which the highest court, Court of Appeals was called upon to resolve a conflict within the Appellate Divisions as to whether the Family Court may direct continuing contact between parent and child once parental rights have been terminated pursuant to Social Services Law Section 384-b. The Court of Appeals held that the lower courts lacked any authority to direct post-termination visitation between parent and child. The Court of Appeals outlined the decisions of the four Appellate jurisdictions and came to the conclusion that the court cannot legislate post-termination visitation but it was up to the legislature to provide such post-termination visitation. In short, the Court of Appeals held that absent legislative warrant, family court is not authorized to include any such condition for visitation in a dispositional

order made pursuant to Social Services Law Section 384-b where parental rights have been terminated.

No Need for Dispositional Hearing in an Abandonment Proceeding

Under 384-b the attorney for the Petitioner agency may file a Petition to terminate parental rights based upon a number of causes of action, such as abandonment, permanent neglect, mental illness and mental retardation. Of course, the birth parents may voluntarily surrender their parental rights by signing a judicial surrender or an extra judicial surrender. In a recent case based upon abandonment, the Appellate Division, 1st Department, reiterated the other Appellate Division ruling that in an abandonment proceeding, it is not necessary to hold a dispositional hearing. Of course, in a permanent neglect proceeding, there is a fact finding and a dispositional hearing. In a fact finding hearing, the quantum of proof is clear and convincing evidence and, at the dispositional stage, the quantum of proof is preponderance of the evidence. In denying the parent's request for a dispositional hearing after the fact finding of abandonment, the Appellate Division, 1st Department, in *Matter of Keyevon Justice P.*, 211 N.Y. Slip Op. 0891, December 13, 2011, held that clear and convincing evidence shows, among other things, that the respondents had no contact with the children for two years before the filing of the Petition and, therefore, under the circumstances, the family court providently exercised its discretion in denying respondent's request for a dispositional hearing after a finding of abandonment.

Too Little Too Late

The Appellate Division wrote that the respondent's belated argument that she engaged in services and had an alternative plan for the children was unavailing. In effect, the Appellate Division held that anything the mother did after the filing of the petition were not sufficient to defeat a finding of abandonment.

Grandmother's Custody Petition

The Appellate Division affirmed the family court's denial of the maternal grandmother's custody petition writing that the children had not expressed a desire to see the mother's side of the family but, more importantly, held that the grandmother had no preemptive statutory or constitutional right to custody citing *Matter of Peter L.*, 59 N.Y.2d 513, 520 (1983).

2011

Custody Determination

From time to time in a termination of parental rights proceeding where the agency was attempting to terminate the rights of the parents thereby freeing the child for adoption, the court is faced at the dispositional phase of the termination of parental rights proceeding with opposing resources requesting custody and/or adoption. Such was the case in *In Re Vanisha* determined by the Supreme Court of the State of New York, Appellate Division, Second Judicial Department, on April 23, 2011 not yet otherwise reported. In the *Vanisha* case, the Family Court, Kings County (Danoff, J.) terminated the parental rights of the respondent birth mother on the grounds of permanent neglect and had before it a contest between the paternal grandmother and the foster parent. The Family Court Order terminating parental rights thereby permitting the agency to consent to the adoption of the child by the foster parents. The paternal grandmother appealed and lost. The Appellate Division wrote that in the contest between parties requesting a change of custody, the standard to be applied was the best interest of the child. The Court pointed out that [Social Services Law Section 383\(3\)](#) gives preference for adoption to a foster parent who had cared for a child continuously for a period of twelve months or more (while members of the child's extended biological family are given no special preference with regard to custody). The Appellate Division therefore concluded that a non-parent relative and, in this case, the grandmother, takes no preference for custody over the adoptive parents selected by the authorized agency. Further, it is important for the proposition that foster parents have a preference where they have had custody of a child for twelve months or more. There is sometimes confusion that relatives and grandparents have a preference. This is so only in the initial stages where the agency is mandated to look for extended family when placing a child into foster care. Once, however, a child is in foster care for a length of time, it is the foster parents who have a preference for custody where the foster parents have had the child in his/her home for twelve months or more. No such preference attaches to a relative except, again, in the initial stages of the placement of the child when the child is removed from the birth parent's home.

Is it Proper to File a Petition for Mental Illness Against a Parent While there is Still Pending a Suspended Judgment?

The Appellate Division in the *Matter of Anthony W.w. v. Michael W.w.*, 86 A.D.3d 654, 927 N.Y.S.2d 407 (3rd Dep't. 2011) reversed the Family Court order to termination parental rights of the father based upon mental illness based upon

improper testimony of the psychologist who evaluated the respondent father. The Appellate Division reversed the Family Court on the issue of improper admission of records into evidence and improper testimony of the two psychologists. This case is however important for a secondary novel issue.

Is it Proper for the Presentment Agency to File a Petition Against the Respondent Parent Based Upon Mental Illness While there is Still Pending a Suspended Judgment Based Upon Permanent Neglect?

The answer is no, it is not proper.

The Appellate Division in its decision wrote that it shared the Family Court's concern regarding the presentment agency's decision to seek termination of parental rights based upon the existence of mental illness while a suspended judgment was still in full force and effect. The Court found the presentment agency's decision to file a termination petition while a suspended judgment was still pending troubling. The Appellate Division with respect to this issue wrote,

”What is particularly troubling about the process that petitioner employed is that it had made no claim that respondent did anything during the period of suspension that would warrant vacating it or, for that matter, justify the commencement of this proceeding. To the contrary, it appears that respondent and the mother have made progress in planning for their children's future and facilitating their return to the family home. With that in mind, we remind the parties that, by reversing Family Court's order in this proceeding, the petition to extend the suspended judgment is no longer moot and is still pending.“

The Appellate Division reversed the Family Court's order to terminate parental rights based upon improper admission of evidence and testimony. It is suggested that the Appellate Division would have reversed solely on the improper filing of a termination petition while a termination petition with a suspended judgment was still pending based upon a prior filing to terminate parental rights.

Is a Finding of Abandonment and a Finding of a

No Consent Father in a Termination Proceeding Inconsistent?

It depends on what judicial department is deciding the issue. The attorney for the authorized agency on filing a petition to terminate parental rights will usually allege

two causes of action against a respondent father who is not married to the mother: (1) abandonment or permanent neglect; and (2) the father is a notice and not a consent father.

A consent father must have his parental rights terminated to free the child for adoption whereas a notice father must be afforded a best interest hearing. In the case of *In re Jayquan J.*, 77 A.D.3d 947 (App.Div. 2nd Dept., 2010), the Appellate Division, Second Department reversed the family court decision where the family court judge dismissed the petition to terminate parental rights based upon abandonment and found that the putative father's consent was required for the child's adoption. On appeal, the Appellate Division, Second Department reversed and held the termination of parental rights on the grounds of abandonment was warranted and further, the father's consent to the child's adoption was not required. The Appellate Division wrote that contrary to the family court's determination, the agency proved by clear and convincing evidence that the putative father abandoned the child and further held that this father's consent to the child's adoption pursuant to [Domestic Relations Laws § 111\(1\)\(d\)](#) was not required. In effect, the Appellate Division, Second Department in the case of *In re Jayquan J.* held that a finding of abandonment and a finding of notice father only was not inconsistent. The Appellate Division, Third Department held differently in the case of *In re Spencer Isaiah R.*, 78 A.D.3rd 561 (App.Div. 3rd Dept., 2010). In the *Spencer Isaiah R.* case, the family court, after a fact finding hearing, terminated respondent's parental rights and held that pursuant to [Domestic Relations Law § 111\(1\)\(d\)](#), said respondent was not a parent whose consent is required before freeing the child for adoption and, in the alternative, held that pursuant to § 384-b of the Social Service Law, the respondent abandoned the child. The Appellate Division, Third Department disagreed with the lower court writing that once the lower court found that the father was not a consent father but only a notice father, the court should not have terminated the father's rights on the ground of abandonment as there was no need. The Appellate Division wrote that a proceeding to terminate parental rights on the ground of abandonment may only be brought against a parent whose consent to the child's adoption is required under [Domestic Relations Law § 111\(1\)\(d\)](#). Stated differently, the Appellate Division, Third Department held that once the family court made a threshold determination that respondent father's consent was not required prior to adoption but also made an alternative finding that he abandoned the subject child was error. The Appellate Division, Second Department in the case of *Jayquan J.*, held that termination of the putative father's parental rights on the ground of abandonment was warranted and further held that the father's consent to the child's adoption is not required. Whereas in the case of *Spencer Isaiah R.*, the Third Department held that once there is a determination that the putative father is a notice father only and not a consent father, there is no ability for the court to find

abandonment as abandonment may only be brought against a person whose consent to a child's adoption is required. In the case of *In Re Christie R.*, 183 A.D.2d 434 (App.Div. 1st Dept., 1992), the court made the same determination as in the case of *Spencer Isaiah R.* In *In Re Christie R.*, the agency filed a petition to terminate parental rights of the father on the grounds of abandonment. The court dismissed the petition and the Appellate Division, First Department affirmed stating that the dismissal of the petition alleging abandonment was proper because the lower court determined as a threshold issue that respondent was not a person whose consent to adoption was required under [Domestic Relations Law § 111\(1\)\(d\)](#). The court held that a proceeding to terminate parental rights on abandonment may only be brought against a consent father and not a notice father. See also *In Re William B.*, 47 A.D.3d 983 (App.Div. 3rd Dept., 2008) wherein the Appellate Division, Third Department court held that the issue of whether an unwed father is a parent whose consent is necessary for an adoption is a "threshold issue" when proceeding against such an individual in an abandonment proceeding to terminate parental rights. The court wrote that the proper procedure is to hear the matter and determine whether the father is a consent father or a notice father as a threshold issue. The court went on to write that such a determination provides finality preventing the father from later attempting to thwart the adoption process and recognize that once it is established that the respondent was not a consent father, that such a finding would generally foreclose a need for any further determination regarding him under Social Services Law § 384-b (*i.e.*, the abandonment issue). The First and Third Departments contrary to the Second Department indicate in the cases cited above that once there is a determination that the putative father is a notice father only, there can be no adjudication of abandonment as such is not permitted pursuant to [Domestic Relations Law § 111\(1\)\(d\)](#).

Kinship Guardianship

[Section 458-A-B-C-D-E-F](#) are all newly enacted laws dealing with kinship guardianship which became effective April 1, 2011.

[Section 458-A](#) defines the applicable terms involved in kinship guardianship and defines a "relative guardian" as a person who has been appointed as a guardian or permanent guardian for a child after entering into an agreement with a social service official for the receipt of payment and services.

[Section 458-B](#) outlines all of the aspects of kinship guardianship and payments therefore.

[Section 458-C](#) provides for payment for nonrecurring guardianship expenses.

[Section 458-D](#) deals with medical subsidies with respect to kinship guardianship.

[Section 458-E](#) provides for independent living services.

[Section 458-F](#) relates to Fair Hearings.

Section 384-b is utilized by authorized agencies to file petitions to terminate parental rights thereby freeing the child for adoption. Once a child is freed for adoption, the foster parent who has the physical custody of the foster child for more than twelve months has the first preference to adopt the child. However, over the years, the legislature has encouraged relatives to become foster parents and, in order to achieve permanency for the child, urge the relatives who may be the grandparent or aunt to adopt the child. Hence, when permanency was achieved through an adoption, the grandparent was put in a position to adopt her own grandchild, which may, at times, cause friction between the child's mother and the child's grandparent. Some grandparents, aunts, and uncles were unwilling to adopt the child under those circumstances. The federal government by the Adoption Act of 2008 created an option for the individual states to provide for kinship guardianship. This program is partially federally funded and partially funded by the states. In 2009, the New York State Legislature enacted a law authorizing New York's participation in the program. [Social Services Law § 458](#) was enacted and effective April 1, 2011.

Who May Apply for Kinship Guardianship

Only a certified foster parent who is related by blood, marriage or adoption to the foster child and who has resided in the home as a foster child for six months may apply to the family court for appointment as the infant's legal guardian. A certified foster parent who is not related to the foster child by blood, marriage or adoption may not apply for kinship guardianship.

The Relationship Between Kinship Guardian and Child

Once approved by the court, the kinship guardian acquires all the rights over the child the same as a birth parent, including the right to consent to the child's medical treatment and make decisions regarding the child's education. Unlike adoption, the guardian does not become the child's parent.

The Parent's Rights Remain Intact

The guardianship does not terminate a birth parent's parental rights and, with court approval, the birth parent may obtain visits with the child and the birth parent may apply to the court to terminate kinship guardianship and the court may do so if the court finds it is in the best interests of the child.

No Further Agency Involvement

After the court appoints a kinship guardian, the child is discharged from foster care and lives with the kinship guardian without any further intervention or involvement by the authorized agency.

Financial Assistance to the Kinship Guardian

Like foster care, the kinship guardian is given subsidy to care for the foster child. It should be remembered that the local department of social services must first approve the relative as the kinship guardian and, after approval with subsidy in place, the foster parent must then petition the family court for a court order. The local department of social services, after approving the relative as a kinship guardian, will then enter into a financial arrangement agreement with the relative to pay a monthly stipend for the care and maintenance of the child to a foster parent who has a foster child in his or her care. Monthly payment will continue until the child is 18 years of age or, if the child is over 16 when the kinship guardian was appointed by the court, then payment will continue until the child is 21 years of age on the condition that the child either attend school, vocational training or is employed for at least 80 hours per month. These monthly payments will terminate if the guardian is no longer legally responsible for the child or no longer supports the child. However, these payments will continue if the guardian and child move out of New York.

Approval of Kinship Guardian

When the foster parent applies to the local department of social services for approval as a kinship guardian, the agency must conduct a state and national criminal background check of the proposed guardian and of any person over the age of 18 residing in the home. The local department of social services must also apply to the State Central Register to determine whether the proposed guardian and any household

member over the age of 18 are the subjects of an indicated report of child abuse or maltreatment. The local department of social services must also:

1. find as part of the application process that a return to parent or an adoption are not permanency options for the foster child;
2. the foster child demonstrates a strong attachment to the kinship guardian;
3. the kinship guardian demonstrates a strong commitment to care for the child on a permanent basis;
4. the child has been consulted at 14 years of age or older; and
5. appointment of the kinship guardian is in the child's best interest.

Guardianship Agreement

Upon approval by the local department of social services of the kinship guardianship, an assistance agreement is entered into, among other elements, provide:

1. the amount of the assistant payments made to the kinship guardian;
2. additional services that may benefit the child, such as medical assistance, independent living services, educational and training vouchers;
3. the agreement stays in effect even if the kinship guardian and the child move to another state.

Further, the agreement provides that the kinship guardian is entitled to payment of up to \$2,000.00 for attorneys fees and in payment of other necessary expenses, such as travel to New York for court hearings where the guardian is outside the State of New York.

Court Involvement

The Court is not involved initially but only upon approval of the kinship guardian application and entering into a formal agreement between the agency and the respective kinship guardian. Once all of the preliminary conditions are met and the

agency approves the guardianship and enters into an Assistance Agreement, the foster parent must file a petition in the family court for guardianship.

The Petition

The petition is an eight page preprinted form signed by the kinship foster parent and verified. The petition provides for either a kinship guardian (subsidized kinship guardian program) or a permanent guardian. A permanent guardian is different from a kinship guardian and, with respect to permanent guardianship, the guardian may be appointed by the family court if the court finds that it is in the best interest of the person under the age of 21 who has been freed for adoption or whose parents are deceased. To be appointed a kinship guardian, it is not necessary that the parents rights have been terminated either by court order or surrender or the parents are deceased. In both kinship guardianship and permanent guardianship where a person in foster care is over the age of 18, said person must consent to the appointment of the guardian. The person may be appointed as both a permanent and a subsidized kinship guardian but is subsidized only with respect to kinship guardianship. The petition must allege that the certified foster parent is related to the child through blood, marriage, or adoption, that the foster parent has been caring for the child for at least six consecutive months, that the authorized child care agency has either care and custody or guardianship of the child, that there has been a fully executed agreement between the foster parent and the authorized agency providing for assistance payments for the child, that the child is strongly attached to the petitioner, that it is unlikely that the child will return home to the birth parents or be adopted. Where a permanent guardian is requested, the petition must allege that the parental rights have been terminated either by court order or surrender or both parents are deceased. Further, the petitioner must allege that he or she was or is not the subject of an indicated report which was filed with the State Central Register of Child Abuse and Maltreatment, that the petitioner was a subject of an order of protection, a temporary order of protection in any criminal, matrimonial or family court proceeding. If the subject of the proceeding is 18 years of age or older, that person must consent to the application and, if the foster child is over the age of 14, that foster child must indicate a preference for, no preference either way or opposed to an appointment of a guardian. A petitioner must request either kinship guardianship or permanent guardianship or both, must sign the petition twice, having the signatures verified by a notary public, clerk of the court or deputy clerk of the court and the petition must be filed with the family court.

Consent Form

Along with the petition, the foster parent must file a form showing the consent of a person over 18 and preference of a person over 14 regarding the appointment of the kinship guardian. The consent must be signed by the foster person and notarized.

The petition for guardianship is filed either in the Article 10 neglect or abuse proceeding or at a permanency hearing. The court must hold a hearing to determine if guardianship will be approved if all of the parties to the proceeding do not consent. If one of the parties who does not consent is a birth parent, the court must, after hearing testimony, find extraordinary circumstances to permit the approval of the petition. If a party other than the parent does not consent, the court must only find that granting the petition is in the child's best interest.

Order

If the court approves the petition, then the court will sign the order of guardianship. The order directs that once the guardian take the official oath and files the designation as required by law, the petitioner will be appointed as kinship guardian and the appointment shall continue until the subject foster person reaches the age of 18, unless the court approves an application for an extension of the appointment until the age of 21 upon the consent of the subject foster person.

FAILURE TO PLAN FOR ONE YEAR

The case of *In Re Tatianna K. v. Claude U.*, 79 A.D.3d 1184, 912 N.Y.S.2d 166 (App. Div. 3rd Dept., 2010) is important because it defines and redefines the all important one year period which must be proved by the social service agency that the parent failed to plan. Section 384-b[7][a] mandates that an agency seeking to establish permanent neglect must prove that it made diligent efforts to strengthen the parent-child relationship and that, despite those efforts, the parent has failed to maintain contact with the child or, substantially plan for the child's future for one year after the agency has been charged with the child's care. The Family Court held that the agency provided a service plan and did use diligent efforts to reunite the child with the father but held that the father did not substantially plan for the future of the child and terminated his parental rights. The Appellate Division reversed. In the conduct of termination of parental rights proceedings, some judges direct that the agency announce what one year period it is using to establish both diligent efforts and failure to plan on the part of the parents. Likewise, the court limits the testimony to that one year period. The Appellate Division rules that such a ruling is too restrictive and does not take into account a parent's positive efforts following that one year period.

Specifically, the Appellate Division held that the father did substantially plan for the future of the child and more importantly held that the family court was obliged to consider the father's efforts during the interim between the end of the one year period of alleged permanent neglect and the commencement of the proceeding.

The agency's position was that the parent's meaningful plan and meaningful conduct came too little and too late. In fact, the Appellate Division pointed out that the family court characterized the father's meaningful steps as belated (i.e., beyond the one year period) relating to permanent neglect. The Appellate Division in effect expanded the one year period of permanent neglect to include recent meaningful steps taken by a parent after the expiration of the one year period and specifically held that the family court is obliged to consider the parent's conduct and commitment during the interim between the end of the one year period and the commencement of the proceeding. In other words, substantial planning on the part of the parent may defeat a petition to terminate parental rights even where there is a one year period of permanent neglect but the parent has made substantial steps toward planning prior to and at the time the petition to terminate parental rights is filed.

The Appellate Division cites the case of *In Re Star Leslie W.*, 63 N.Y.2d 136, 481 N.Y.S.2d 26 (1984) where the Court of Appeals in dealing with the one year period of permanent neglect wrote,

“that is not to say that the conduct of the parent after the one-year period of neglect should not be considered. At the fact-finding hearing, the court is obliged to consider a conduct and commitment towards her child during the interim, if that conduct has substantially changed, as well as the efforts of the agency”.

Hence the case of *In Re Tatianna K.*, *supra*, is an alert to both the agency and the parent in that the agency should consider recent advancements by the parent as to whether or not to bring the proceeding and the parent should emphasize recent advancements in planning even outside the one year period. Perhaps where there is recent advancement on the part of the parent and substantial planning even though there is a one year permanent neglect period, the parties may consider a Suspended Judgment, which is considered another chance by the parent to reunite with the child.

RESTORATION OF PARENTAL RIGHTS AFTER RIGHTS HAVE BEEN TERMINATED

Effective November 11, 2010, Chapter 343 of the Laws of 2010 amends the Social Services Law, Section 384-b, in regards to restoration of parental rights after parental

rights have been terminated by the family court pursuant to Section 384-b of the Social Services Law.

The family court may reinstate terminated parental rights where:

1. The order committing guardianship and custody of the child was issued at least two years previously;
2. The termination of parental rights was not based upon severe or repeated child abuse;
3. The child is at least 14 years old;
4. The child remains under the family court's jurisdiction, has not been adopted, and does not have a permanency goal of adoption; and
5. The child, the authorized agency, and the parent whose rights have been terminated must consent to the restoration of the parental rights. If the authorized agency does not consent to the reinstatement of parental rights, the court may proceed if it finds the authorized agency withheld its consent without good cause.

This is another step in the right direction of giving birth parents whose rights have been terminated more rights to regain custody of their child(ren). These additional rights have been enacted into the law by the legislature but equally important is case law which permits in certain circumstances visitation between parent and child after the parents rights have been terminated to that child. For a full discussion of post-termination of parental rights visitation between birth parent and child, see [In Re Imani W.](#), 26 Misc.3d 792, 889 N.Y.S.2d 902 (Monroe Co., Family Court, 2009). This case outlines the decisions of the different departments with respect to post-termination of parental rights visitation.

SUSPENDED JUDGMENTS

In permanent neglect proceedings pursuant to § 384-b the Court, at the conclusion of the fact finding and dispositional hearings, must enter one of the following orders of disposition:

1. Dismiss the petition and permit the child to remain in foster care;
2. Dismiss the petition and return the child to the birth parent;

3. Commit the guardianship and custody of the child to an authorized agency with the power of the agency to consent to the adoption of the child;

4. Suspend judgment in accord with [§ 633 of the Family Court Act](#), which section permits a suspended judgment for a duration of one year and where the court finds exceptional circumstances exist to extend the suspended judgment. However, the court cannot suspend judgment beyond the one year extension.

If the birth parent fails to comply with the terms and conditions of the order of suspended judgment, the authorized foster care agency may petition the court for a revocation of the order and request that the child be freed for adoption. However, the order to suspend judgment is not self-executing and, if there is a violation of the terms and conditions by the birth parent, the agency must petition the court for a hearing as to whether or not the parent has violated the terms and conditions of the suspended judgment.

If the court finds there is a violation by the birth parent after the hearing, the court may sign an order terminating parental rights thereby freeing the child for adoption.

TYPE OF HEARING

At issue is whether or not the hearing should be twofold (i.e., violation of terms of the suspended judgment and disposition hearing as to what is the proper disposition with respect to the child). The case of [Matter of Darren V.](#), 61 A.D.3d 986, 878 N.Y.S.2d 171 (App. Div., 2nd Dept., 2009) answered that there need be only one hearing to determine both whether a violation has occurred and whether the child should be freed for adoption. In *Darren V.*, the Court rejected the parent's contention that the Family Court failed to conduct a dispositional hearing and held that a hearing on a petition alleging a violation of a suspended judgment is part of the dispositional phase of a permanent neglect proceeding and, therefore, the Family Court may enforce a suspended judgment without the need for a separate dispositional hearing. The Court, however, noted that the Family Court was aware of and considered the child's best interest in finding the violation and also freeing the child for adoption.

QUANTUM PROOF

The Court determined that the Family Court must find that the parent failed to comply with the terms and conditions of a suspended judgment and is permitted to terminate

the birth parent's parental rights as long as the noncompliance has been demonstrated by a *preponderance of the evidence*. The Court also held that when the Family Court determines compliance with a suspended judgment, it is the parent's obligation to demonstrate that progress has been made to overcome the specific problems which lead to the removal of the child. See also *In Re Christian Anthony*, 78 A.D.3d 410, 912 N.Y.S.2d 11 (App. Div., 1st Dept., 2010) wherein the Appellate Division, 1st Department placed the burden upon the parent to at all times show progress during the period of the suspended judgment as well as compliance with the suspended judgment terms. The Appellate Court went further and stated that it found no merit in the mother's argument that the agency failed to exercise requisite efforts during the suspended judgment to restore the child to her care and pointed out that even lapses by the agency during a suspended judgment period does not relieve a parent of his/her duty to comply with the terms of the suspended judgment.

POST TERMINATION OF PARENTAL RIGHTS VISITATION BETWEEN BIRTH MOTHER AND CHILD

Traditionally, once a parent's rights have been terminated and a child is freed for adoption, there was no provision for visitation between a parent and the child after the parent's rights have been terminated. Presently, there is no statutory authority for visitation between a parent and a child after the parent's rights have been terminated pursuant to Section 384-b of the Social Services Law. However, recent cases have permitted visitation if it is found after a hearing to be in the best interest of the child(ren). In the case of *Matter of Selena C. v. Thelma C.*, 77 A.D.3d 659, 909 N.Y.S.2d 84 (App. Div., 2nd Dept., 2010) decided on October 5, 2010 by the Appellate Division, Second Department, the Court was faced with the issue as to whether or not the Courts have the inherent authority to provide for visitation between an adopted child and a member of his or her birth family where such visitation is in the best interest of the child and does not unduly interfere with the adoptive relationship. In the *Matter of Selena C.*, *supra*, the Court reversed the Order of Fact Finding and Disposition to the extent that the Appellate Division directed that there be a hearing in the Family Court to determine whether visitation between the mother and the child would be in the child's best interest. The Court further held that such hearing to determine whether there be visitation after an adoption be made by the Court in which an adoption petition is pending or, if no such petition is pending, the hearing and determination shall be made by the Family Court.

The Appellate Division in *Selena*, *supra*, recognized that there is no statutory authorization for a court to order continued visitation with the parent once their rights are terminated but held that courts have the inherent authority to provide for

visitation between an adoptive child and a member of his or her birth family where such visitation is [in the best interest of the child citing *Matter of Corinthian Marie S.*, 297 A.D.2d 382, 746 N.Y.S.2d 606 \(App. Div., 2nd Dept., 2002\)](#) . In *Corinthian, supra*, the Appellate Division held that the Family Court properly directed visitation with the children after the mother's parental rights were terminated due to her mental retardation. Both the attorney for the child and the prospective adoptive parents consented to the visitation between the mother and child who was freed for adoption. It is clear from the cases, there is an evolving theory of law which permits post-termination and post-adoption contact between the birth parent and the child where the facts warrant it and where it is the best interest of the child.

In the case of [In Re: Imani W.](#), 26 Misc.3d 792, 889 N.Y.S.2d 902 (Monroe County, Family Court, 2009) is most instructive with respect to the issue of visitation between parent and child after the parent's rights have been terminated. In the case of *In Re: Imani W., supra*, the Court outlines the decisions of the different departments with respect to this issue. For example, the Court points out that the Fourth Department requires courts to consider whether it is in the best interests of the child to continue to visit with a parent whose rights have been terminated on any ground where such contact is requested by the parent or child. The Court cites a number of cases, including [Matter of Kahlil S.](#), 35 A.D.3d 1164, 830 N.Y.S.2d 625 (4th Dept., 2006); [Matter of Seth M.](#), 66 A.D.3d 1448, 885 N.Y.S.2d 824 (4th Dept., 2009); [Matter of Samantha K.](#), 59 A.D.3d 1012, 872 N.Y.S.2d 813 (4th Dept., 2009). The Court in *In Re: Imani W., supra*, informs that the Fourth Department broadens prior judicial holdings from both the Appellate Division, First and Second Departments in which courts may order post-termination visitations but only when parental rights are terminated due to mental illness or mental retardation under Social Services Law Section 384-b(4)(c) and where such visitation is in the child's best interest. The Court cites [In Re: Jasmine Pauline M.](#), 62 A.D.3d 483, 879 N.Y.S.2d 407 (1st Dept., 2009); [Matter of Corinthian Marie S.](#), 297 A.D.2d 382, 746 N.Y.S.2d 606 (2nd Dept., 2002). The Court further points out that New York State Statutory Law does not allow post-termination contact unless a parent surrenders his or her parental rights, citing [Matter of Gregory B.](#), 74 N.Y.2d 77, 544 N.Y.S.2d 535 (1989). The Court in *In Re: Imani W.*, reviewed other state jurisdictions with respect to what courts are required to consider with respect to post-termination contact and these cases have outlined best interest factors, including: (1) the child's age; (2) whether there is a potential adoptive resource and the emotional attachment between the resource and the child; (3) whether visitation would interfere with any potential adoptive resource; (4) whether a significant bond between the child and the biological parent exists; and (5) the history of parent-child visitation. In the *Imani* case, the Court denied the mother's request for post-termination contact but only because the Court, after a

hearing, determined that it was not in the best interest of the child to continue visitation with the mother whose rights were terminated due to her mental state and instability.

DIVERSITY OF OPINION AMONG THE FOUR APPELLATE DEPARTMENTS

In Re: Imani W., supra, points out the diversity among the Appellate Divisions with respect to the issue of post-termination parental visitation.

According to *In Re: Imani W.*, the Appellate Division, Fourth Department now requires courts to consider whether it is in the best interest of a child to continue to visit with a parent whose rights have been terminated on any grounds when such contact is requested by the parent or the child. The Appellate Division, First and Second Departments may order post-termination visitation but only when parental rights are terminated due to mental illness or retardation and such visitation is in the child's best interest. Lastly, the Court, *In Re: Imani W.*, supra, points out that the New York State Supreme Court Appellate Division, Third Department has held that post-termination contact cannot be court mandated under any circumstances citing *Matter of William W.*, 23 A.D.3d 735, 803 N.Y.S.2d 722 (App. Div., 3rd Dept. 2005) and *Matter of John K.K.*, 34 A.D.3d 1050, 825 N.Y.S.2d 793 (App. Div., 3rd Dept., 2006).

Since the Appellate Departments are in conflict with this issue, one would expect that the case will eventually reach the Court of Appeals for definitive determination.

PRACTICE COMMENTARIES

by Joseph R. Carrieri

The family court is a court of limited subject matter jurisdiction and derives all of its powers from the Family Court Act. Primarily, family court judges preside over family matters such as custody, guardianship and visitation. Family court also has subject matter jurisdiction over juvenile delinquency, persons in need of supervision, child support and family offenses. The family court has jurisdiction over proceedings to terminate parental rights, based upon:

1. Abandonment (SSL § 384-b(5));
2. Permanent neglect (SSL § 384-b(7)(a));

3. Mental retardation (SSL § 384-b(6));
4. Mental illness (SSL § 384(6));
5. Repeated abuse and neglect (SSL § 384-b(8)); Jurisdiction; and
6. Surrenders (SSL § 383-c).

Jurisdiction

Every New York family court has jurisdiction over proceedings to terminate parental rights of birth parents, thereby freeing the children for adoption. The appropriate venue in which to initiate the proceeding.

Proper Venue

Where a child was placed in foster care pursuant to an FCA Article, a proceeding to terminate parental rights must be originated in the family court in the county in which the proceeding pursuant to FCA Article 10 was last heard (SSL § 384-b(3)(c)); A proceeding may be originated in the county where either of the parents of the child reside at the time of the filing of the petition (SSL § 384-b(3)(c)); If it is not known where the parents of the child reside at the time the petition is originated, the petition shall be brought in the county in which the authorized agency has an office for the regular conduct of business (SSL § 384-b(3)(c)); and A proceeding may be brought in the county where the child resides at the time of the initiation of the proceeding (SSL § 384-b(3)(c)).

Authorized Agencies

In the first instance, the authorized foster care agency usually brings the proceeding to parental rights of the respondent parents. However, where there is a Court Order directing the agency to initiate proceedings to terminate parental rights and the authorized agency fails to do so then the foster parents may initiate a proceeding to terminate parental rights pursuant to [§ 384 of the Social Services Law](#). Likewise, both a Law Guardian and a Guardian Ad Litem of the child may initiate a proceeding to terminate parental rights of the respondent parents where the authorized agency fails to do so after a court order.

Proper Parties Entitled to Bring a Proceeding to Terminate Parental Rights:

1. Authorized foster care agency (SSL § 384-b(3)(b));
2. Foster parent;
3. Relative having the care and custody of the child (SSL § 384-b(3)(b));
4. Law guardian where the authorized agency ordered by the court to originate a proceeding fails to do so within the time fixed by the court; or
5. Guardian *ad litem* of the child on the court's direction (SSL § 384-b(3)(b)).

Guidelines to Initiate Proceeding to Terminate Parental Rights

Historically, foster children would languish in foster care for four, five or six years before being freed for adoption. Under new guidelines, an agency is penalized monetarily if the agency does not initiate a proceeding expeditiously. Basically, unless there are extenuating circumstances, an agency must bring a proceeding to terminate parental rights of the respondent parents where the child has been in care 15 months of the most recent 22 months. It is to be noted that an agency, however, cannot bring a proceeding to terminate parental rights of a birth parent based upon permanent neglect unless the child has been in care for twelve months. With respect to abandonment and severe or repeated abuse, the agency may bring a proceeding where the child is in care for six months.

Exceptions

1. Child is being cared for by a relative or relatives;
2. Agency has documented in the most recent case plan a copy of which has been made available to the court, the filing of the petition would not be in the best interest of the child;
3. Agency has not provided to parent(s) such services as it deems necessary for the safe return of the child to the parent(s), unless such services are not legally required (SSL § 384-b(3)(1)).

Proper Respondents

When the practitioner representing the authorized agency drafts the petition to terminate parental rights, he must determine who is to be a respondent. The birth mother must be named as a respondent. If the father is married to the mother or supports the child and has formed a relationship with the child then he must also be named as a respondent. Such a person is known as a consent father and his rights must be terminated in order to free the child for adoption. The unwed father who has not supported and formed a substantial relationship with the child need not be named as a respondent but merely given notice of the dispositional hearing and he may participate in the best interest hearing. If this “notice father” is not named in the proceeding and given an opportunity to be heard then he must be given notice of the adoption to give testimony as to the best interest of the child.

Notice or Consent Fathers

When filing a petition to terminate parental rights, the authorized foster care agency will include the birth mother in all proceedings to terminate parental rights freeing the child for adoption. The issue is whether a putative father should be named in the petition and allegations of either abandonment or abuse should be alleged against the putative father who has not married the birth mother. Many practitioners representing foster care agencies will not only have a cause of action against the birth mother but will also have a cause of action against the putative father and then an alternative action against the putative father alleging that he is not a consent father but only a notice father. Some judges in reviewing the petition would then not let the attorney for the foster care agency go forward against the putative father reasoning that the putative father's interest could be decided in the adoption proceeding where, if he were a notice father only, his rights were limited to notice of the proceeding and an opportunity to be heard concerning the children's best interest. In short, his consent was not needed to the adoption.

The practice was troublesome in that the rights of the father were held in abeyance until the adoption proceeding which could be months or years after the termination proceeding. Also, the adoptive parent(s) would be concerned that at the last minute and at the adoption stage, the court could hold that the putative father was a consent father and his rights were not terminated thereby frustrating the adoption proceedings. No more. The Appellate Division, in the case of *In Re Dominique P.*, 14 A.D.3d 319, 787 N.Y.S.2d 44, 2005 WL 15506 (N.Y.A.D. 1 Dept.), 2005 N.Y. Slip Op. 00017, had before it this very issue (i.e., the rights of a putative father to be adjudicated as either a notice father or a consent father at the termination proceeding itself). In this case, the agency pled a cause of action of permanent neglect against both the birth mother and the putative father but also added a third cause of action alleging that the putative father's consent was not required for the adoption pursuant to [Domestic Relations Law § 111\(1\)](#) and

that his rights were limited to notice of the proceeding and an opportunity to be heard concerning the children's best interest.

Prior to the fact finding hearing, the court adopted the agency's position that the putative father was a notice father only and not a consent father. The agency withdrew its permanent neglect claim against the putative father electing to proceed against the mother alone on that ground. After dispositional hearing, the court found that the children's best interest would be promoted by the plan of adoption, and granted the petitions. The appellate court held that the family court erred when, after permitting petitioner to proceed on the permanent neglect cause of action against the mother alone, it failed to conduct an evidentiary hearing to determine whether the putative father's consent to the adoption is required. The court remanded the case to the family court for a hearing on the putative father's parental status under [Domestic Relations Law § 111](#). The court went on to write that even though the foster care agency withdrew its claim against the putative father under Social Services Law § 384-b, it continued to bear the ultimate burden to establish the factual basis for dispensing with the putative father's consent.

It is clear, therefore, that the better practice is for the attorney for the foster care agency to plead a cause of action against the putative father and, in the alternative, to allege he is a notice father only. If the agency proves the cause of action in abandonment or permanent neglect against the putative father, it would be no longer necessary to determine his status as either a notice or consent father. If, on the other hand, the cause of action fails or there is no cause of action against the putative father, then the agency has the burden of proof to establish the status of the putative father. Briefly stated, if the father formed a substantial relationship with the child prior to the child going into foster care and supported the child to the best of his ability, the court may find that he is a consent father. On the other hand, if he did not form a substantial relationship with the child and did not support the child to the best of his ability, the court could find that he is not a consent father. If, however, he has any of the indicia of fatherhood such as being on the birth certificate, acknowledging paternity, holding himself out to be the father, being named by the birth mother in a sworn statement, obtaining an order of filiation, obtaining an order of custody, then the court can decide that he is a notice father and he will have an opportunity to present evidence as to the best interest of the child either in a dispositional hearing in a 384-b termination proceeding or at the adoption.

In Short, the following should be respondents in a Termination proceeding:

1. The birth mother;
2. The man married to the birth mother at the time of the birth of the child;

3. The putative father who is a notice father; and
4. The putative father who is a consent father (SSL § 384-b(4)).

The Summons

A summons must be served upon the respondents as prescribed by [FCA § 617](#) and when the proceeding is initiated in surrogate's court, service shall be made in accordance with the provisions of [SCPA § 307](#).

The Petition

The petition must be signed twice by the director of the agency, once at the end of the petition, and once verifying the petition and sworn to before a notary public.

Filing Summons and Petition in Family Court

Practice in the different courts vary but in family courts in the City of New York, the summons and petition is filed with the clerk of the court, the summons is signed by the chief clerk, and a conformed copy of the summons is returned to the attorney, to be served upon the parent of the child and upon the commissioner of social services.

Service of Summons and Petition

The summons and petition must be served personally upon the birth parent at least 20 days prior to the return date. [FCA § 617](#).

If, after reasonable efforts, personal service cannot be made upon the parent(s), the court may order, on good cause shown, substituted service of the summons by either nail and mail or publication in an approved newspaper. [FCA § 117](#).

Service by Publication

In termination proceedings filed in the Family Court, the respondent parents must be served personally with a copy of the summons and petition. The summons and petition must be served at least twenty (20) days before the return date in the Family Court. Under the new rules, the summons is returnable before the Family Court judge who originally

placed the child in foster care. This rule had been in effect since September, 1991 and has proved to be invaluable by providing consistency. Throughout the proceedings the case will be before the same judge and the same law guardian. Only when the petitioning agency cannot personally serve the respondent parents with a copy of the summons and petition may it apply for a court order directing service of the summons by publication in a newspaper calculated to give notice.

Judge Segal, Family Court, Kings County, in the case of *Matter of Tyhrone K.M.*, N.Y.L.J., 2/27/96 at p. 29, col. 5, in referring to the Commentary to this section writes that before service by publication can be authorized, the petitioner must establish to the satisfaction of the court that all reasonable efforts have been made to locate and personally serve the respondents. Judge Segal went on to write that in matters as serious as those involving the possible termination of parental rights these rules of diligent search are carefully applied to ensure that the respondent's due process protections are preserved. Specifically in the case of *Tyhrone*, the agency in support of the motion for service by publication submitted an affidavit by a private investigator, but the affidavit did not recount any written efforts to locate the respondent parent. The court acknowledged that the affidavit set forth the appropriate leads that were checked by the investigator, but this was all done orally with no written efforts to locate the parent. The court suggested that in order to ensure that a diligent search was performed, the supporting affidavit of the private investigator must set forth that written correspondence was sent and that the petitioner was nonetheless unsuccessful in its efforts to locate the parents. This case addressed the specific issue of whether the investigator's efforts, which were done verbally, were sufficient. The court answered in the negative and directed that written correspondence sent and written responses, if any, be attached as exhibits to the supporting affidavit. The rationale behind this direction is that in order for process servers or private investigators to be believed as to their diligent efforts at personal service they must maintain detailed written records of their efforts and insert them in the affidavit in support of the request for an Order of Service by Publication.

Other diligent efforts required by the courts (the following diligent search checklist was promulgated by the Bronx Family Court in April 1992) checked by the private investigator should include, but are not limited to, the following:

New York State Office of Mental Health 44 Holland Avenue Albany, New York 12229

New York State Department of Motor Vehicles Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12228

New York Department of Correctional Services State Office Building Campus Building No. 2
Albany, New York 12226

New York City Department of Corrections Inmate Information System 60 Hudson Street New
York, New York 10013 7th Floor

New York City Board of Elections--General Office 32 Broadway New York, New York 7th Floor

New York City Morgue 462 First Avenue New York, New York 10016

New York City Housing Authority 5 Park Place New York, New York 10007

New York City Department of Probation 115 Leonard Street New York, New York 10013

New York City Parole Board Records Department 314 West 40th Street New York, New York
10018

HRA Shelter Inquire 60 Hudson Street New York, New York 10013

Con Edison Company Four Irving Place New York, New York 10003

PCRE-RF Commander, US Army Enlisted Records and Evaluation Center Fort Benjamin
Harrison, Indiana 46249-5301 Attn: Worldwide Locator Service

Naval Military Personnel Command NMPC-0216, Room 2048 Washington, D.C. 20370

US Navy Department Headquarters--US Marine Corps NMRB-10, Building 2008 Quantico,
Virginia 22134

USAF Military Personnel Center Northeast Office Place 9504 IH 35 North San Antonio, Texas
78233-6636

Commandant US Coast Guard PIM-2 2100 Second Street, S.W. Washington D.C. 20593-0001

Bellevue Hospital Center 27th Street and First Avenue New York, New York 10016

Bronx Municipal Hospital Center Pelham Parkway and Eastchester Road Bronx, New York 10461

City Hospital Center at Elmhurst 79-01 Broadway Elmhurst, New York 11373

Coler Memorial Hospital Roosevelt Island New York, New York 10044

Coney Island Hospital 2601 Ocean Parkway Brooklyn, New York 11235

Goldwater Memorial Hospital Roosevelt Island New York, New York 10044

Gouverneur Hospital 227 Madison Street New York, New York 10002

Harlem Hospital Center 506 Lenox Avenue New York, New York 10037

Kings County Hospital 451 Clarkson Avenue Brooklyn, New York 11203

Lincoln Medical Center 234 East 149th Street Bronx, New York 10451

Metropolitan Hospital Center 1901 First Avenue New York, New York 10029

North Central Bronx Hospital 3424 Kossuth Avenue Bronx, New York 10467

Queens Hospital Center 82-68 164th Street Jamaica, New York 11432

Woodhull Hospital Center 760 Broadway Brooklyn, New York 11206

Columbia Presbyterian Hospital 622 West 168th Street New York, New York 10032

Mt. Sinai Medical Center 1 Gustave L. Levy Place New York, New York 10029

Putative Father Registry Clearance (required Form) 40 North Pearl Street Albany, New York 12243

Public Assistance Scanner

Relative(s) of Person Being Searched Person's last known address Person's last known place of business Person's friends Local telephone directories Foster parents Children at issue (if old enough) Siblings of children at issue (if old enough)

Veteran's Administration

U.S. Department of Corrections

U.S. Department of Parole

U.S. Postal Service

Assuming that the Order of Service by Publication is signed by the court, the next step is for the attorney representing the agency to have the summons published in the newspaper designated by the court in the order one time at least 28 days before the return date of the summons in court. See [Family Court Act § 617](#) and [CPLR 316](#). [Section 617 of the Family Court Act](#) provides that the notice (summons) need be published only one time in only one newspaper designated in the order. [CPLR 316](#) provides that it must be published at least 28 days before the return date.

In practice, the attorney representing the agency at the termination proceeding hearing will file the affidavit of publication with the court and the court will then mark jurisdiction complete as to that respondent who was served by publication.

I ABANDONMENT PROCEEDINGS

A proceeding based upon the abandonment of the child may be brought either in the Family Court or the Surrogate's Court, as both have concurrent jurisdiction. If the proceeding is brought in the Surrogate's Court, the Surrogate may, on the court's own motion, transfer the proceeding to the Family Court. See [Matter of V.S.](#), [90 Misc.2d 139](#), [394 N.Y.S.2d 128](#) (1977) (Surr.Ct., N.Y.Co.). A proceeding began in the Family Court may also be transferred on the court's own motion to any other county where the proceeding may have originated. [Brooklyn Home for Children v. Miller](#), [122 Misc.2d 925](#), [472 N.Y.S.2d 282](#) (1984).

Construction

Because abandonment proceedings were unknown at common law, Section 384-b must be strictly construed. See [Matter of Commitment of Madeline R](#), [117 Misc.2d 14](#), [457 N.Y.S.2d 714](#) (1982).

Citation and Petition

If the Petition for abandonment is brought in the Surrogate's Court, the agency's attorney drafts a Citation and Petition. The Petition is signed by the Executive Director of the agency and verified by him before a Notary Public. Petition and Citation are filed with the Clerk of the Court; the Citation is signed by the court and a conformed copy of the Citation is returned to the attorney to be served upon the parent of the child and upon the

Commissioner of Social Services at his office at 220 Church Street, New York City. The Citation must be served personally upon the parents of the child at least ten (10) days before the return date specified and serves the same purpose as a summons, i.e., to inform the parent that the agency is applying for a court order to have the child's legal custody committed to the agency and to give the agency the power to consent to an adoption without further notice to or consent of the parent. Section 384-b, subd. 3(e) provides that the Notice (either Summons in the Family Court or Citation in the Surrogate's Court) inform the respondent that he or she has a right to be represented by an attorney and if he or she cannot afford an attorney, one will be assigned free of charge.

In the Surrogate's Court, assuming that the parent's whereabouts are known and is served personally with the Citation ten (10) days prior to the return date, the Affidavit of Personal Service annexed to a copy of the Citation is filed with the Clerk of the Surrogate's Court two days before the return date.

If the Petition is brought in Family Court, the process is similar to that outlined above except that the Petition and Summons must be personally served on the parent of the child at least twenty (20) days prior to the specified return date. See Section 384-b, subd. 3(e) of the Social Services Law and [Section 611 of the Family Court Act](#).

On the return date, if the parent appears, the matter will be set for trial on a date certain. Assuming that the parent cannot afford an attorney, one will be appointed by the court free of charge. In both the Surrogate's Court and the Family Court, the attorney will be selected from the 18-B Panel and is compensated at the rate of \$75 per hour for office time and \$75 per hour for court time. The court will also appoint an attorney to protect the rights of the infant.

When Parents' Whereabouts are Unknown

If the parent's whereabouts are not known, then the agency must outline in an affidavit the diligent efforts made to locate the parent. The diligent efforts to locate the parent or parents must be sufficiently thorough to enable the judge to sign an Order dispensing with personal service of the Citation upon the parent and authorize service of the Citation by publication one time 28 days before the return date in a local newspaper.

Incarcerated Parents

The fact that a parent is incarcerated does not preclude termination of parental rights absent showing that the parent was prohibited from contacting agency or child. See

Matter of Stella B., 130 Misc.2d 148, 495 N.Y.S.2d 128 (1985) (In proceeding to terminate parental rights based on abandonment, hardship asserted by objecting parent must show at minimum that the hardship permeated the parent's life such that contact with the child or agency was not feasible.)

More Than One Child

If there is more than one child involved, a Petition should be filed for each child. It would be appropriate for the attorney for the agency to submit an Order of Consolidation for the judge's signature which permits one Citation to be served upon the parent and a consolidated trial. However, some courts, such as the Family Court, New York County, no longer require orders of consolidation in matters involving more than one child.

Definition of Abandonment

Section 384-b subdivision 5(a) of the Social Services Law defines an abandoned child as follows:

5. (a) For the purposes of this section, a child is “abandoned” by his parent if such parent evinces an intent to forego his or her parental rights and obligations as manifested by his or her failure to visit the child and communicate with the child or agency. In the absence of evidence to the contrary, such ability to visit and communicate shall be presumed.

No Need to Prove Diligent Efforts

In the case of *Matter of Anonymous*, (St. Christopher's Home) 40 N.Y.2d 96, 386 N.Y.S.2d 59, 351 N.E.2d 707 (1976) the Court of Appeals held that an authorized agency (foster care institution) need not allege nor prove that it used diligent efforts to encourage or strengthen the parental relationship when the agency attempts to gain legal custody of the child based upon abandonment of the child by the parents when the agency brings such a proceeding pursuant to Section 384-b. See also *Matter of Malik M.*, 40 N.Y.2d 840, 387 N.Y.S.2d 835, 356 N.E.2d 288 (1976) wherein the Court of Appeals affirmed the Appellate Division's findings of abandonment and held that the agency was not required to exercise diligent efforts to encourage and strengthen the parental relationship.

Good Reason for Failure to Visit or Communicate

The mere proof of failure to visit with the child or communicate with an agency by the birth parent for a period in excess of six months immediately prior to the filing of the Petition to terminate parental rights on the basis of abandonment must be accompanied by an inquiry into whether or not there was good reason for failure to visit or communicate. *Matter of Catholic Child Care Society of Diocese of Brooklyn*, 112 A.D.2d 1039, 492 N.Y.S.2d 831 (1985).

What Constitutes Good Reason for Failure to Visit or Communicate

The hardship asserted by an objecting parent in an abandonment proceeding as an obstacle to visiting or communicating with the child must be shown at a minimum to permeate the parent's life to such an extent that contact with the child or agency was not feasible. *Matter of Child Care Society of Diocese of Brooklyn*, 112 A.D.2d 1039, 492 N.Y.S.2d 831 (1985). The standard that must be met by an objecting parent is, therefore, quite high. See also *Matter of Trudell J.W.*, 119 A.D.2d 828, 501 N.Y.S.2d 453 (1986) (Court held that birth mother abandoned child in absence of sufficient evidence adduced by mother to establish that such failure to contact was the result of circumstances which made it impossible to do so).

Further, an unexplained absence of contact for the statutorily required period may be a sufficient predicate for the abandonment finding. *Matter of Vunk*, 127 Misc.2d 828, 487 N.Y.S.2d 490 (Fam.Ct., Suffolk County, 1985).

Excuse of Distance

The courts have not excused the parent not visiting the child due to distance when such distance is self-imposed and is not “good reason” for lack of visitation. See *In re Adoption of G.*, 79 Misc.2d 731, 360 N.Y.S.2d 789 (Surr.Ct., N.Y.Co., 1974). See also *In re Stephen B.*, 60 Misc.2d 662, 303 N.Y.S.2d 438 (Family Court, N.Y.Co., 1969).

In the case of “*Infant G.*”, Surrogate Millard L. Midonick held that commuting distances did not provide “good reason” for the birth mother's not visiting her child and the Surrogate stated at p. 793 that:

“not visiting one's child for three years when the only obstacle is commuting distance, does not constitute ‘good reason.’ ”

Parents Subjective Intent

The courts have also held that mere intention not to abandon is not sufficient to defeat a finding of abandonment. Section 384-b, subdivision 5(b) effective January 1, 1977, codifies the case law and provides: “the subjective intent of the parent whether expressed or otherwise, unsupported by evidence of the foregoing parental acts manifesting such intent, shall not preclude a determination that such parent has abandoned his or her child.” See *In re Vanessa F.*, 76 Misc.2d 617, 351 N.Y.S.2d 337 (Surr.Ct., N.Y.Co., 1974) stated:

Also, in *Vanessa F.*, *supra*, the court reasoned that parents who abandon their children are regarded as strangers and that the agency would be ill-advised to hazard the best interests of the child even if no foster home was available for adoption and would be in error to delay a final determination in order to give a mother more time to rehabilitate herself.

Insubstantial Contacts

Insubstantial contacts by the parent with the foster care agency during the relevant six month period do not necessarily rebut proof of abandonment. For example, in the case of *Matter of Unido R.*, 109 Misc.2d 1031, 441 N.Y.S.2d 325 (1981) the court held that statements made by the birth mother during telephone conversations with the agency involving threats of violence to either blow-up the agency or to kill the case worker, if the children were not returned to her was spontaneous emotional outburst rather than genuine communication with another person, fell under subdivision 5 of Section 384-b which provides that the subject of intent of the parent not supported by additional evidence does not preclude a determination that the parent has abandoned his or her child. In another recent case, *Matter of Starr L.B.*, 130 Misc.2d 599, 497 N.Y.S.2d 597 (1985), the court held that a single communication with a placement agency during the relevant six month period, is not in itself sufficient to rebut proof of abandonment.

Non-Jury Hearing

The hearing is held before the Surrogate or Family Court Judge without a jury. See *Matter of Sean B. W.*, 86 Misc.2d 16, 381 N.Y.S.2d 656 (Surr.Ct., Nassau Co., 1976) wherein Surrogate Bennett held there is no constitutional right to trial by jury in adoption proceedings.

Judicial Notice

The court may take judicial notice of its own records that relate to the proceedings before it. See *Guardianship of Denlow*, 87 Misc.2d 410, 384 N.Y.S.2d 621 (Fam.Ct., Kings Co., 1976).

Degree of Proof

Before parental rights may be terminated, proof offered must be “clear and convincing.” See *Matter of Rose Marie M.*, 94 A.D.2d 734, 462 N.Y.S.2d 483 (1983).

Burden of Proof

The agency has the burden of proof to show that the parent abandoned the child without good reason.

One court has written that it will not sit to accept a kind of “fait accompli” and apply the rubber stamp of approval policy. *Guardianship of Denlow*, 87 Misc.2d 410, 384 N.Y.S.2d 621 (Fam.Ct., Kings Co., 1976). See also, *Matter of Gross*, 102 Misc.2d 1073, 425 N.Y.S.2d 220 (1980), (“Burden of constitutional magnitude is placed on one who would terminate rights of birth parents through adoption.”).

Agency Records

The agency will usually have two witnesses--the case worker and case supervisor.

The case supervisor should identify the case records and testify that:

1. It is the regular course of the agency's business to keep records;
2. The records in issue were made in the regular course of business;
3. The entries contained in the records were made contemporaneously with the events described therein (See *In re Saffert*, 57 A.D.2d 758, 394 N.Y.S.2d 419, appeal denied 42 N.Y.2d 806, 398 N.Y.S.2d 1027, 367 N.E.2d 660, reargument denied 42 N.Y.2d 1015, 398 N.Y.S.2d 1033, 368 N.E.2d 289 (App.Div., 1st Dept. 1977) wherein the court, while affirming the Family Court, determination of permanent neglect states that it was error for the Family Court to admit into evidence the entire case record where portions were not made contemporaneously with the events described therein);
4. The records were kept under the supervision and control of the witness testifying; and

5. The person making the entries had a duty to so record the events in the records.

With this foundation laid the case record will be accepted into evidence and the court may consider the case record in deciding the case. When the records are received into evidence, the case supervisor may testify to events recorded in the records although he has no personal knowledge of the events.

The caseworker will testify to actual eyewitness events including conversations with the parents, observations of the parents themselves and their residence. The caseworker will testify as to lack of contact by the parent with the child. For example, the caseworker will testify that the parents:

1. did not visit the child,
2. did not support the child,
3. did not send the child presents, letters, cards,
4. did not contact the agency concerning the child for at least six months prior to filing the Petition for abandonment.

Although not necessary, the caseworker may also testify that he attempted to help the parent be reunited with the child. The caseworker may testify for example that he encouraged the parent to visit and, if visiting was difficult, that he provided money for transportation or even offered to bring the child to the parent's home.

On the other hand the birth parent will testify that:

1. there were visitations, or some contacts such as cards, letters and telephone calls or that a relative kept in touch with the child;
2. the parent did not visit because she was physically unable to visit;
3. the agency favored the foster parents over the birth parents;
4. the foster parents undermined the parental relationship; and
5. the birth parents were on welfare and could not support the child.

Law Guardians' Recommendations

The courts have held that the recommendations of the Law Guardian (now known as attorney for the child) appointed for the infant should be considered. See *Matter of Wesley L.*, 72 A.D.2d 137, 423 N.Y.S.2d 482 (1980).

After the hearing, the court may reserve decision and thereafter make a written decision, directing that an order be submitted for signature. *Guardianship of Denlow*, 87 Misc.2d 410, 384 N.Y.S.2d 621 (Fam.Ct., Kings Co., 1976), Judge Doran expressed the view that termination of parental rights cases are hardship cases with strong emotional appeal and no two cases are factually the same and each case must turn on its own particular facts and totality of circumstances. "There are no precedents of real value". If the court sustains the Petition, the Order of Guardianship will give legal custody to foster care agency with the power to consent to an adoption without further notice to or consent of the birth parent, subject to the customary approval of the appropriate court, i.e., either the Surrogate or Family Court. The Order of Commitment should provide that legal custody be placed in both the voluntary agency *and* the Commissioner of Social Services with the power of either to consent to the adoption of the infant. The attorney for the agency will draft the proposed Order with Notice of Settlement and serve the same upon the attorney for the parent, giving five days' notice with five extra days if the Order with Notice of Settlement is served by mail. After the Order is signed by the judge or surrogate, the Order with Notice of Entry is served upon the attorney for the parent and any other attorney, such as Law Guardian for the child and attorney for Department of Social Services, in order to start the time to appeal running. After receipt of the Order with Notice of Entry, the parent has 30 days within which to appeal the Order of Guardianship to the Appellate Division. If the Notice of Entry is served by mail, the parent has an extra five days to appeal to the Appellate Division.

II PERMANENT NEGLECT PROCEEDING

In addition to a written surrender and abandonment proceedings pursuant to Section 384-b, another method to free a child for adoption is to institute a proceeding pursuant to Article 6 of the Family Court Act and Section 384-b of the Social Services Law based upon the permanent neglect of the child by the parent or parents. In *Matter of Carl and Annette N.*, 91 Misc.2d 738, 398 N.Y.S.2d 613 (Fam.Ct., Schenectady, 1977), the respondent parents challenged the permanent neglect statute as unconstitutional on three grounds: (1) for vagueness in violation of the due process clause of the constitution clause; (2) as an infringement of their first amendments rights; and (3) that it denied them equal protection of the laws as guaranteed under the Fourteenth Amendment of the

Constitution. The court ruled against the respondents in all three areas. With respect to the due process clause, the court looked to an earlier case to hold that within the meaning of the statute the requirement “of the parent to substantially plan means not only to formulate but also to accomplish a feasible and realistic plan to restore the child to a permanent, stable home with the parent.” Id. at 617; *Matter of Steven B.*, 60 Misc.2d 662, 303 N.Y.S.2d 438 (1969); *Matter of Orzo*, 84 Misc.2d 482, 374 N.Y.S.2d 554 (1975); and *Matter of Orlando F.*, 40 N.Y.2d 103, 386 N.Y.S.2d 64, 351 N.E.2d 711 (1976). The court found these interpretations to be authoritative constructions of the statute and then held that the statute survived a challenge for vagueness based upon the well settled principal of constitutional law that an authoritative construction of a state statute by its courts must be considered and is binding in any attack on the statute for vagueness. *Matter of Carl and Annette N.*, 91 Misc.2d 738, 398 N.Y.S.2d, 617 (1977).

The court then dealt with the right to privacy issue, and held against the respondents noting that the right to privacy is not absolute “but must be balanced against legitimate state interests.” Id. at 618.

Finally, the court held that the statute did not violate the equal protection clause of the Fourteenth Amendment, noting that even if the strict scrutiny test were to be applied, that state had a compelling interest in providing for permanent and stable placement for foster children. Further, the court found the statute to be narrowly tailored to accomplish the goal and that there was no less restrictive alternative available. *Matter of Carl and Annette N.*, 91 Misc.2d 738, 398 N.Y.S.2d 620, 621, 622. For a detailed discussion of the constitutionality of the Permanent Neglect Statute, see *Matter of Carl and Annette N.*, 91 Misc.2d 738, 398 N.Y.S.2d 613 (Fam.Ct., Schenectady, 1977).

Definition of Permanent Neglect

Section 384-b, subdivision 7(a) of the Social Services Law effective January 1, 1977, defines a permanently neglected child as a child who is in the care of an authorized agency and whose parent or custodian has failed for a period of more than one year following the date such child came into the care of an authorized agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child, although physically and financially able to do so, notwithstanding the agency's diligent efforts to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child.

Presumption of Financial and Physical Ability

In the event that the parent defaults after due notice of a proceeding to determine such permanent neglect, such physical and financial ability of such parent may be presumed by the court.

Insubstantial Contact

Section 384-b, subdivision 7(b) further provides with respect to the effect of infrequent visitation:

“Evidence of insubstantial or infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law to preclude a determination that such child is a permanently neglected child. A visit or communication by a parent with the child which is such character as to overtly demonstrate a lack of affectionate and concerned parenthood shall not be deemed a substantial contact”.

Exclusive Jurisdiction

Only the Family Court has jurisdiction over a permanent neglect proceeding as well as proceedings based upon mental retardation and mental illness of the parent and proceedings involving severe or repeated abuse.

Petition

The proceeding to permanently terminate the parents' custody of the child on the ground of permanent neglect is originated by a Verified Petition which must allege:

A. that the child is under 18 years of age

B. that the child is in the care of an authorized agency (to permanently terminate a parent's custody the Petition must allege that the child is in the care of an authorized agency but the legality of the initial placement is irrelevant to a permanent neglect proceeding. *Matter of Amos H.H.*, 59 A.D.2d 795, 398 N.Y.S.2d 771 (App.Div. 3rd Dept. 1977)).

C. that the agency has made diligent efforts to encourage and strengthen the parental relationship and specifying the efforts made or that such efforts would be detrimental to the best interests of the child and specifying the reasons therefor.

D. that the parent, notwithstanding the agency's efforts, has failed for a period of more than one year following the date such child came into the care of the agency substantially and continuously or repeatedly to maintain contact with or plan for the future of the child although physically and financially able to do so, and

E. that the best interests of the child require that the custody of the child be committed to an authorized agency or foster family. See [Section 614 of the Family Court Act](#) as amended effective January 1, 1977.

Only an authorized agency, attorney for the child or Guardian *ad litem* or a foster parent authorized by a court order pursuant to [sections 392](#) or 384-b of the Social Services Law may originate a proceeding for permanent neglect. See [Section 615 of the Family Court Act](#).

Once the Petition is filed with the Clerk of the Family Court, the Clerk will cause to be issued a Summons, and both the Summons and Petition must be served upon the parent informing the parent that a Petition has been filed to permanently terminate the parent's rights to custody of the child and awarding custody of the child to the petitioner on the grounds that the child is permanently neglected and that the agency may consent to an adoption of the child without further notice or consent of the parent. [Section 616 of the Family Court Act](#).

The Summons and Petition must be served upon the parent or parents at least 20 days prior to the initial court appearance. If after reasonable effort personal service cannot be made upon the parent or parents, the court may order, on good cause shown, substituted service or service of the Summons by publication. [Section 617 of the Family Court Act](#).

In some family courts, such as those in New York County, the Summons is prepared by the attorney for the petitioner, who must see to the service of the Summons and Petition upon the defendant and also upon the Commissioner of Social Services At 220 Church Street, New York, New York. In the Family Court of Nassau County, the Summons is served by a Marshal or other court-related person and not the process server chosen by the attorney for the petitioner.

Court Appointed Lawyers

On the return date of the Summons, if the parent appears at the court without an attorney and cannot afford an attorney, the judge will appoint an attorney for the parent free of charge. The court will appoint an attorney for the child or children. See [Matter of Orlando](#), 40 N.Y.2d 103, 386 N.Y.S.2d 64, 351 N.E.2d 711 (1976) and *In the Matter of*

Karl S., 118 A.D.2d 1002, 500 N.Y.S.2d 209 (App. 3rd Dept. 1986) wherein the Court of Appeals stated that although no statute now so provides, the Family Court in a permanent neglect proceeding should appoint a Law Guardian to represent the child in order to protect and represent the rights and interests of the child so that the child will have the chance to focus on the question, “whether this parent belongs to me”. See *Matter of Carmen G. F.*, 63 A.D.2d 651, 404 N.Y.S.2d 381 (App.Div., 2nd Dept. 1978). See also *Matter of Tyease J.*, 83 Misc.2d 1044, 373 N.Y.S.2d 447 (1975) (Surr.Ct., N.Y.Co.). Also, only the child may waive the right to the representation of his or her counsel, and only when the child possesses the “requisite” knowledge and willingness. *In the Matter of Karl S.*, 118 A.D.2d 1002, 500 N.Y.S.2d 209, 210 (A.D.3d Dept. 1986). The court will also set the matter for a fact finding hearing, and the court must determine whether the allegations which are alleged in the Petition are supported by clear and convincing evidence. (Section 622 of the Family Court Act).

Prior to the return date of the fact finding hearing, the attorney representing the parent would do well to serve a notice of discovery and inspection upon the attorney for the agency to review the case records of the agency prior to the hearing. In this way, the attorney will be prepared to refute, if possible, the agency's allegation that it used diligent efforts to strengthen the parental ties.

Of course, if the attorney for the agency feels that the discovery and inspection will lead to the disclosure of confidential material which should not be disclosed, he or she should make a motion for a protective order limiting the scope of the disclosure of the agency's case records.

The Fact Finding Hearing

The attorney for the agency will usually call at least two witnesses: the agency case supervisor and the agency caseworker. Usually the supervisor will not be personally familiar with the everyday occurrences relating to the case.

The case supervisor may have had little or no contact with the parent or the child, whereas the agency caseworker would have had many contacts with the birth parents and the foster child. Some agencies divide casework responsibilities and designate one caseworker to work with the natural family and another caseworker to work with the foster family and foster child. In that event, the agency attorney will call at least three witnesses: the case supervisor, the natural family caseworker and the foster family and foster child caseworker.

Although the case supervisor may not be personally familiar with the interaction between the birth parent and child and the foster parent and the child, the supervisor will most certainly have read the entire case record, and, after the case record has been put into evidence, the case supervisor may testify from his remembrance of the case record by using the case record to refresh his recollection, or he may read from the case records.

The case records will be placed into evidence after a proper foundation has been laid by asking the case supervisor (1) if it was the duty and obligation of the agency to make records in its regular course of business, (2) whether these particular records were kept in the regular course of business, (3) whether the records were made contemporaneously with the events described therein and, (4) whether the records were kept under the supervision and control of said witness and (5) whether the person who made the entries had duty to make the entries. If the answers to the questions are yes, the records will be placed into evidence, and, as stated above, the case supervisor may testify from the records and the records themselves become evidence subject, of course, to cross examination of the witnesses by the attorney for the birth parent and by the Law Guardian for the child. The case supervisor will testify that the agency used its best efforts and were diligent in attempting to encourage and strengthen the parental ties but that despite the agency's efforts, the parent neglected to either visit or formulate a plan for the child's return. It should be noted, however, that the entire case records may not be received into evidence by the Judge presiding. In the case of *Matter of Leon RR*, 48 N.Y.2d 117, 421 N.Y.S.2d 863, 397 N.E.2d 374 (1979), the Court of Appeals reversed a finding of permanent neglect and held that it was an error to admit into evidence the child's entire case file as a business record of the agency where many of the entries consisted of statements, reports or even rumors made by persons under no business duty to report to the agency.

Diligent Efforts

The caseworker for the birth parent will testify that he or she was assigned to work with the birth parent with the ultimate goal of having the child returned to the parent. The caseworker will outline all the attempts made to encourage and strengthen the parental ties, such as mailing regular visiting notices to the birth parent, making monthly home visits to the parent or more frequent visits if indicated, encouraging the parent to visit the child, and, if the parent does not have sufficient car fare, supplying sufficient sums so that the parent may visit with the child and, if need be, bring the child to the parent's home. The caseworker should be able to testify that he assisted in other ways, such as aiding the parent in receiving welfare payments if indicated, assisting the parent in enrolling in a drug program, or Alcohol Anonymous if the parent has a drinking problem and, where needed, assisting in obtaining employment or larger living quarters.

In the *Matter of Sheila G.*, 61 N.Y.2d 368, 474 N.Y.S.2d 421, 462 N.E.2d 1139 (1984), the New York Court of Appeals redefined the form diligent efforts by the agency must take. The court held that agencies must make “affirmative, repeated and meaningful efforts to assist” a parent to overcome the obstacles preventing the return of the child. *Id.* at 430.

The Court also held that “proof by the child care agency that it has satisfied its statutory obligation is a threshold consideration ...” to any determination of permanent neglect. *Id.* at 430.

What Constitutes Diligent Efforts

Section 384-b, subdivision 7(a), of the Social Services Law as amended, effective January 1, 1977, provides that before a child can be declared to be permanently neglected, the agency must prove that it made “diligent efforts to encourage and strengthen the parental relationship...”

For the first time the Legislature has attempted to define “diligent efforts.” Section 384-b, subdivision 7(f) of the Social Services Law provides:

(f) As used in this subdivision, “diligent efforts” shall mean reasonable attempts by an authorized agency to assist, develop and encourage a meaningful relationship between the parent and child, including but not limited to:

- (1) consultation and cooperation with the parents in developing a plan for appropriate services to the child and his family;
- (2) making suitable arrangements for the parents to visit the child;
- (3) provisions of services and other assistance to the parents so that problems preventing the discharge of the child from care may be resolved or ameliorated; and
- (4) informing the parent at appropriate intervals of the child's progress, development and health.

The burden is on the agency to show, before the termination proceeding, that it made “some attempt” to assist parents with counseling, planning, visitation and the procurement of housing, employment where that is necessary, in order to help them

overcome the problems that separate them from their children“. *Matter of Jamie M.*, 63 N.Y.2d 388, 394, 395, 482 N.Y.S.2d 461, 472 N.E.2d 311.

What constitutes diligent efforts will depend on the peculiar facts of each individual case. Some guidelines can be gleaned from the cases. In the *Matter of Sydney's Guardianship*, 84 Misc.2d 932, 377 N.Y.S.2d 908 (Fam.Ct., Queens Co., 1975), Judge Shorter dismissed the agency's petition alleging the mother permanently neglected her child relying on his finding that the agency failed to use diligent efforts in working with the mother stating that the agency should have explored the maternal grandmother as a resource and should have worked harder with the birth mother knowing that (a) she had limitations, (b) she was emotionally upset, (c) the mother had cooperated in the past, (d) the mother had expressed a desire to have her child.

In the *Matter of Antonio G.*, 64 A.D.2d 983, 408 N.Y.S.2d 818 (App.Div., 2nd Dept. 1978), the court held that the agency failed to prove permanent neglect, and the court dismissed the Petition where the agency refused to discharge the child until a larger apartment was obtained but the mother could not get a larger apartment until she received the child, and the agency failed to use diligent efforts in enlisting support of other family members to help the mother and would not allow home visits, overnight visits and unsupervised visits.

For a discussion of the diligent efforts necessary in the case of a minor mother, see *In re Guardianship of Alexander*, 127 A.D.2d 517, 512 N.Y.S.2d 32 (A.D., 1st Dept. 1987), wherein the Appellate Division in the First Department held that the child care agency had incurred diligent efforts to help a sixteen (16) year old birth mother develop a parent-child relationship with her infant wherein: (1) agency was extremely patient with mother; (2) agency reviewed plans with mother; (3) agency called birth mother; (4) agency made extensive referrals for the birth mother; (5) agency attempted to help birth mother obtain housing and assistance; and (6) agency scheduled regular visits, but mother lacked commitment to plan for herself and the child and failed to follow through with agency efforts. *Id.* at 34-35.

What Constitutes Failure on the Part of the Parent to Substantially and Continuously or Repeatedly to Maintain Contact With or Plan for the Future of the Child

It has been held that the parent's failure to contact or plan is not confined to a one-year period immediately preceding the filing of the Petition, but may be any one-year period prior to the filing of the Petition. *In re Joyce Ann R.*, 82 Misc.2d 730, 371 N.Y.S.2d 607 (Fam.Ct., Kings Co., 1975); *In re Stephen B.*, 60 Misc.2d 662, 303 N.Y.S.2d 438 (Fam.Ct., N.Y.Co., 1969); *In re Jones*, 59 Misc.2d 69, 297 N.Y.S.2d 675 (Fam.Ct.,

N.Y.Co., 1969). See also *In the Matter of Santosky*, 89 Misc.2d 730, 393 N.Y.S.2d 486 (Fam.Ct., Ulster Co., 1977), wherein the court held that the period of neglect required to trigger the permanent neglect statute need not be the interval immediately prior to the filing of the neglect Petition, but may embrace earlier periods of time.

The most obvious failure on the part of a parent which could lead to a termination of parental rights is to have no contact with the child for a one-year period. *Matter of Com'r of Social Services*, 84 Misc.2d 253, 376 N.Y.S.2d 387 (Fam.Ct., Ulster Co., 1975). For example, if a parent neither writes, calls, makes payments nor visits the child during a one-year period, the parent would have “abandoned” the child and could lead to a complete severance of parental rights.

Prior to Section 384-b, subdivision 7(b) of the Social Services Law and [Section 611 of the Family Court Act](#), a few insubstantial contacts by the parent were sufficient to prevent the termination of parental rights. *Matter of W. v. G.*, 34 N.Y.2d 76, 356 N.Y.S.2d 34, 312 N.E.2d 171 (Court of Appeals of New York, 1974). This “flicker of interest” rule of *Matter of Susan W.*, *supra*, is no longer the law since Section 384-b, subd. 7(b) now provides that evidence of insubstantial and infrequent contacts by a parent with his or her child shall not, of itself, be sufficient as a matter of law “to preclude a finding that such parent has abandoned such child” and, in the case of [Section 611 of the Family Court Act](#), “to preclude a determination that such child is a permanently neglected child”.

When Would a Parent be Considered Physically and Financially Unable to Substantially and Continuously or Repeatedly Maintain Contact or Plan for the Future of the Child

If a parent fails to visit, maintain contact or plan for the future of the child because the parent is hospitalized, the court will not find that the child is permanently neglected based upon the theory that the parent is physically unable to maintain contact or plan for the child. See *In re Klug*, 32 A.D.2d 915, 302 N.Y.S.2d 418 (App.Div., 1st Dept. 1969), on remand 65 Misc.2d 323, 318 N.Y.S.2d 876.

Hospitalization because of mental illness is also considered physical inability but mental illness without hospitalization is not considered physical inability to contact and visit with the child. See *In the Matter of Stephen B.*, 60 Misc.2d 662, 303 N.Y.S.2d 438 (Fam.Ct., N.Y.Co., 1969).

Failure to visit because of a drug or alcoholic problem is not considered “good reason” or physical inability.

In *Matter of Santosky*, 89 Misc.2d 730, 393 N.Y.S.2d 486 (Fam.Ct., Ulster Co., 1976), the court refused to find permanent neglect where the parents received full public assistance, including food stamps and Medicare. The court held that such did not mean that the parents were “financially able” to plan the children's future. On the contrary, the court held that the parents' failure to plan was excused by their poverty.

See, however, *Matter of Karas*, 59 A.D.2d 1022, 399 N.Y.S.2d 758, (App.Div., 4th Dept. 1977), appeal denied 43 N.Y.2d 646, 402 N.Y.S.2d 1028, 373 N.E.2d 997, wherein the court affirmed a finding of permanent neglect even though the mother was on welfare, stating she could have arranged for visitation. See also *Matter of John W.*, 63 A.D.2d 750, 404 N.Y.S.2d 717 (App.Div., 3rd Dept. 1978).

When Would it be Considered Detrimental to the Best Interests of the Child to Make Diligent Efforts to Encourage and Strengthen the Parental Relationship?

An agency has the duty to make diligent efforts to strengthen the parental relationship.

There comes a time when for the good of the child such efforts must stop. For example, the parent is on hard drugs, constantly drunk, physically abusive to the child or leaves a young child alone at night.

The agency would, likewise, be excused from diligent efforts when the parent has an emotional disturbance or sociopathology. See *Guardianship of Denlow*, 87 Misc.2d 410, 384 N.Y.S.2d 621 (Family Ct., Kings Co., 1976).

In these cases, the agency should devote its energy to the future of the child with a view to an adoption and permanency. In *In re Ray A. M.*, 48 A.D.2d 161, 368 N.Y.S.2d 374, affirmed 37 N.Y.2d 619, 376 N.Y.S.2d 431, 339 N.E.2d 135 (App.Div., 2nd Dept. 1975).

Evidence of Diligent Efforts by Agency Not Required When Parent Fails for Period of Six Months to Keep Agency Apprised of His/Her Location

Pursuant to Section 384-b, subd. 7(e) of the Social Services Law, “evidence of diligent efforts by an agency to encourage and strengthen the parental relationship shall not be required when the parent has failed for a period of six months to keep the agency apprised of his/her location.” However, practitioners should note that this is a fairly narrow exception and will not excuse the agency from its diligent efforts obligation after the respondent parents' whereabouts become known to the agency. See *Matter of*

Guardianship of Antionette Francis G., 135 Misc.2d 1034, 517 N.Y.S.2d 680 (Fam.Ct., N.Y.Co., 1987).

Cross-Examination

The attorney for the birth parents will attempt to show on cross examination that the caseworker did not make diligent efforts to encourage and strengthen the parental relationship, but instead favored the foster parent over the birth parents.

Respondent's Testimony

The parent may testify to the fact that the agency caseworker from the inception talked about the birth parent or parents signing a Surrender freeing the child for adoption and did little or nothing to aid the birth parent except for possibly sending out monthly notices of visitation, but neither encouraging nor assisting in those visits. The parent may testify that he or she did not plan for the return of the child because the parent was financially unable to do so. There may have been a period when the parent was out of a job and could not find work. Welfare payments were perhaps insufficient or they ceased at a particular time.

The birth parent may also testify that she could not visit or plan because of some physical problem, such as being in a hospital, being out of town for a good reason or being pregnant and not able temporarily to plan for the return of the child.

If the agency has proved its case by clear and convincing evidence, and the Petition is sustained, then the court will hold a dispositional hearing to determine whether the interests of the child require that the parent's custody be terminated permanently and, if so, what Order of Disposition should be made. If the Petition is dismissed, the court can not return the child without further dispositional hearing inquiring into the best interests of the child. *In re Jonathan D.*, 62 A.D.2d 947, 403 N.Y.S.2d 750 (App.Div., 1st Dept. 1978), appeal denied 45 N.Y.2d 706, 408 N.Y.S.2d 1025, 380 N.E.2d 338.

Visitation During Pendency of Hearing

The Appellate Division affirmed an Order of the Family Court, Queens County, which authorized and directed weekend visiting between mother and child supervised by the Bureau of Child Welfare pending a final determination of the permanent neglect proceedings. *In the Matter of Ernestina H.*, 55 A.D.2d 647, 390 N.Y.S.2d 148 (App.Div., 2nd Dept. 1976).

Since the Appellate Division held that it was in the discretion of the Family Court to order visitation pending the determination of a permanent neglect proceeding, the opposite should be true, i.e., the court can suspend visitation during the pendency of the trial. In an unreported case, *In re M.*, (St. Christopher's Home), the Family Court, Suffolk County, did suspend visitation between the putative father and his three children during the pendency of a permanent neglect proceeding.

Dispositional Hearing

Section 623 of the Family Court as amended January 1, 1977, defines a dispositional hearing as a hearing to determine what order of disposition should be made in accordance with the best interests of the child.

Upon completion of the fact finding hearing, the dispositional hearing may commence immediately. Further, with the consent of all parties, the court may dispense with the dispositional hearing and make an order of disposition on the basis of competent evidence admitted at the fact finding hearing ([Section 625 of the Family Court Act](#), as amended effective January 1, 1977). However, the court may not on its own motion dispense with a dispositional hearing. To do so is reversible error. See *In re Roy Anthony A.*, 59 A.D.2d 662, 398 N.Y.S.2d 277 (App.Div., 1st Dept. 1977).

At the conclusion of the dispositional hearing, the court may enter any one of the following dispositions:

- A. dismiss the Petition;
- B. suspend judgment, but not for longer than one year;
- C. permanently terminate custody of the parent and award custody to the authorized agency.
- D. return the child to the parent.

The Order of Disposition must be made solely on the basis of the best interests of the child, and there is no presumption that such interests will be promoted by any particular disposition ([Section 631 of the Family Court Act](#), as amended, effective January 1, 1977).

Appeal

Any appeal is from the Dispositional Order. On appeal, the findings of the Family Court must be accorded the greatest respect. *In the Matter of Judy V.*, 60 A.D.2d 719, 400 N.Y.S.2d 916 (App.Div., 3rd Dept. 1977).

Default of Parent

In the case of *In re Yem*, 54 A.D.2d 673, 388 N.Y.S.2d 7 (App.Div., 1st Dept. 1976), on remand 92 Misc.2d 652, 401 N.Y.S.2d 383, the Appellate Division held that the Family Court Judge erred in failing to hold a hearing to ascertain whether mother's nonappearance was inadvertent or willful. See also *Matter of Jaclyn L.*, 52 A.D.2d 847, 382 N.Y.S.2d 568 (App.Div., 2nd Dept. 1976).

Present Law to Apply

If, subsequent to the Petition being filed, the law is changed, the trial court should apply the law as it exists at the time of the hearing. On appeal, the reviewing court will decide the case on the basis as it exists at the time of the decision. See *Matter of Ray A. M.*, 37 N.Y.2d 619, 376 N.Y.S.2d 431, 339 N.E.2d 135 (1975), wherein the Court of Appeals stated:

“This Court decides the case on the basis of the law as it exists today.”

III MENTAL ILLNESS

Another method to free a child for adoption is based upon mental illness pursuant to Section 384-b, subd. 4(c).

Section 384-b, subd. 6(e) provides that the Judge must take the testimony of a psychiatrist or a certified psychologist in the case of a parent alleged to be mentally retarded or a parent alleged to be mentally ill. Such physician, psychologist or psychiatrist shall be appointed by the court, and, in Family Court of the City of New York, the psychologist or psychiatrist is employed by the Bureau of Mental Health Services.

EXPERT TESTIMONY BY PSYCHIATRIST OR PSYCHOLOGIST

In order to terminate parental rights of a parent based upon mental illness or mental retardation, the statute requires that the judge shall order the parent to be examined by, and shall take the testimony of, a qualified psychiatrist or psychologist in a case of a person alleged to be mentally ill or retarded. The statute continues that if the parent refuses to submit to such court ordered examination, or if the parent renders himself unavailable therefore whether before or after the initiation of the proceeding under this section, by departing from the state or by concealing himself therein, the appointed psychologist or psychiatrist, upon the basis of other available information, including, but not limited to, agency, hospital or clinical records, may testify without an examination of such parent, provided that such other information afford the reasonable basis for his opinion.

In the case of *In the Matter of Shonica Ahaila S.*, 41 A.D.3d 606, 840 N.Y.S.2d 78, 2007 N.Y. Slip. Op. 05282, the Family Court, Kings County, Judge Danoff, terminated parental rights of the birth mother based upon mental illness. The Appellate Division reversed holding that in the present case, the psychology expert who testified to the mother's mental illness did not examine the mother, but based his testimony entirely upon examination of the agency and hospital records. The court directed that the matter be remitted to the Family Court, Kings County for a new hearing in accordance with the Appellate Division decision. The decision is somewhat unclear as the statute does permit the expert witness to testify based entirely upon examination of the agency and hospital records if the parent is unavailable. What the facts do not contain in the Appellate Division decision but was learned by conversation with the attorney handling the case for the agency was that the mother was examined by a psychologist but was not the psychologist who testified. The psychologist who testified was not the examining psychologist. Based upon that information, the decision is clear. The psychologist who evaluates a birth mother to determine whether she is mentally ill must be the psychologist who also testifies. It is not permissible for one psychologist to evaluate and another to testify. However, in a proper case as outlined in the statute, a psychologist or psychiatrist may testify entirely from agency, hospital or clinical records where the parent refuses to submit to the examination or the parent renders himself unavailable.

In the case of *Matter of Bradley U*, 55 A.D.2d 722, 389 N.Y.S.2d 431, appeal denied 41 N.Y.2d 803, 394 N.Y.S.2d 1025, 362 N.E.2d 1215 (App.Div.3rd Dept. 1976), the court held that the evidence warranted termination of the birth mother's parental rights on the ground that she was unable to care for the child by reason of mental illness.

Right to Attorney at Mental Examination

The Court of Appeals in the case of *Matter of Guardianship and Custody of Alexander L.*, 60 N.Y.2d 329, 469 N.Y.S.2d 626, 457 N.E.2d 731, motion denied 61 N.Y.2d 984, 475 N.Y.S.2d 282, 463 N.E.2d 623 (1983) held that the respondent parent who was to be evaluated by the court-appointed psychiatrist had the right to have his or her attorney present during the evaluation as a matter of right. The Court of Appeals cited [Section 262\(a\)\(IV\) of the Family Court Act](#), which provides the parent with the right to have the parent's counsel present from the time that the respondent parent appears in the termination of parental rights proceeding. The Court of Appeals, however, did not provide that the agency's attorney or the Law Guardian representing the child have a similar right, and the lower courts have not extended such right to the agency's attorney or the infant's attorney, i.e. the Law Guardian.

It is, therefore, important for the attorney for the respondent parent to make certain that the order obtained by the agency attorney provides that when the parent is examined by the court-appointed psychiatrist and/or psychologist that respondent's attorney be permitted as an observer to the examination.

Counsel for all parties must also remember that it is not the mental retardation or mental illness *per se* that establishes the statutory ground for termination of parental rights, but said conditions plus the inability to provide adequate care to the infant. This judgment is a legal one which must be supported by expert testimony including social work history and evaluation. See *Matter of Richard M.*, 110 Misc.2d 1031, 443 N.Y.S.2d 291 (Fam.Ct., N.Y.Co., 1981). Attorneys representing parents who are alleged to be mentally ill should not always accept the opinion of the court-appointed psychiatrist or psychologist if the finding is one of retardation or mental illness. The attorney may obtain a court order directing the City of New York to pay for the services of an independent psychiatrist or psychologist who may conclude that while the parent is retarded, such retardation is not so severe as to preclude caring for a child. In a recent case an independent psychologist testified that the respondent tested "retarded" but was suffering from a developmental language deficiency and not retardation and with special training could probably care for her children.

No Need for Diligent Efforts

In a proceeding to terminate parental rights based upon mental retardation or mental illness, it is not necessary for the agency to prove diligent efforts to strengthen the parental relationship or show that such efforts would have been detrimental to the children. See *Matter of Everett S.*, 62 A.D.2d 1069, 403 N.Y.S.2d 802, appeal denied 44 N.Y.2d 647, 407 N.Y.S.2d 1026, 379 N.E.2d 227 (App.Div., 3rd Dept. 1978).

Present Mental State

The Petition must allege and the agency must prove that the parent presently suffers from some mental illness. See *Matter of Kevin R*, 112 A.D.2d 462, 490 N.Y.S.2d 875, appeal denied 67 N.Y.2d 602, 499 N.Y.S.2d 1027, 490 N.E.2d 556 (3rd Dept. 1985).

Prior History of Parent

It is important for the agency to prove that the mental illness or mental retardation is of some duration and is chronic. One psychiatrist defined chronicity as the duration of the illness for at least two years. See *Matter of L. Children*, 131 Misc.2d 81, 499 N.Y.S.2d 587 (Fam.Ct., Kings County, 1986), wherein Judge George L. Jurow in dismissing the Petition wrote:

Ordinarily, the inference of future incapacity is drawn from a combination of factors, including an extensive prior history of incapacity; the severity of present incapacity; and the failure of remedial efforts to make any difference in adaptive functioning.

Future Mental State

In order to terminate parental rights of a parent over an infant, the agency must plead in the Petition and prove by competent medical testimony at the hearing that the parent cannot care for the infant for the foreseeable future. See *In re Susan F.*, 106 A.D.2d 282, 482 N.Y.S.2d 489 (A.D., 1st Dept. 1984).

A recent case that clearly sets out each of the above described factors in *In the Matter of Andre Jermaine R.*, 138 A.D.2d 380, 525 N.Y.S.2d 644 (A.D. 2nd Dept. 1988) where in reaching its holding with respect to the birth mother, the Court looked at six factors: (1) Psychotic acts of violence on the command of hallucinative voices; (2) lack of basic living skills; (3) lack of family support; (4) impaired judgment and insight; (5) continuing symptoms of mental illness; (6) discontinuing medication and follow-up therapy whenever released from in-patient hospital status. The Court then noted the additional factors of testimony by the social worker and documentary evidence in the form of agency records and the mother's hospital records before reaching its finding that the birth mother was unable to care properly and adequately for her child because of mental illness and "that this illness will continue for the foreseeable future." *Id.* at 665.

IV MENTAL RETARDATION

Proven in a manner similar to that of mental illness, another method of freeing a child for adoption is mental retardation, pursuant to Section 384-b, subd. 4(c) of the Social Services Law.

Mental retardation is defined by Section 384-b, subd. 6(b) of the Social Services Law as:

“Sub-average intellectual functioning which originates during the developmental period and is associated with impairment of adaptive behavior to such an extent that if such child were placed or returned to the custody of the parent, the child would be in danger of becoming a neglected child as defined in the Family Court Act.”

Section 384-b, subd. 6(c) provides for the testimony of either a psychiatrist or a certified psychologist. As with a mental illness case, the Court will appoint the psychiatrist or psychologist, and in Family Court of New York the psychologist and psychiatrist are appointed by the Bureau of Mental Health Services.

Best Interests Test

In the case of *Matter of Guardianship of Strausberg*, 92 Misc.2d 620, 400 N.Y.S.2d 1013 (Family Ct., Rockland Co., 1978), the Court held that the best interest test is applicable to a proceeding to free the infant for adoption based upon mental retardation of the parent pursuant to Section 384-b, subd. 4(c). In *Strausberg*, the respondent mother was found to be a borderline retarded person and the Court held that the infant should not be held in limbo for an indefinite period of time for the purpose of training the mother in the area of child care, without any guarantee of success and, if the infant were placed in the mother's custody, the infant would be in danger of becoming neglected.

Court Can Order Second Mental Examination of Parent

In *Catholic Child Care Society of Diocese of Brooklyn v. Evelyn F.*, 128 Misc.2d 1023, 492 N.Y.S.2d 338 (Fam.Ct., Kings County 1985), it was held that a Court may order a second mental examination of a parent in order to move forward with proceedings to terminate parental rights based on grounds of mental disability.

Constitutionality of Mental Illness and Mental Retardation Provisions

The New York Court of Appeals has upheld the constitutionality of Section 384-b, subd. 4(c) on due process and equal protection grounds. *In the Matter of Guardianship and Custody of Nereida S.*, 57 N.Y.2d 636, 454 N.Y.S.2d 61, 439 N.E.2d 870, reargument denied 57 N.Y.2d 775, 454 N.Y.S.2d 1033, 440 N.E.2d 1343. In *Nereida*, the Court reasoned that:

The statutes provide significant procedural safeguards for the birth parent's rights and authorize the termination of parental rights only when specific and definite criteria are met and when necessary in the best interest of the child. *Id.* at 62.

Failure to Provide Dispositional Hearing Does Not Violate Equal Protection

In the case of *In re Sylvia M.*, 82 A.D.2d 217, 83 A.D.2d 925, 443 N.Y.S.2d 214, affirmed 57 N.Y.2d 636, 454 N.Y.S.2d 61, 439 N.E.2d 870, reargument denied 454 N.Y.S.2d 1033, 440 N.E.2d 1343 (A.D. 1st Dept. 1981) the Court held that failure to provide a dispositional hearing in a mental illness situation does not violate equal protection. In reaching its conclusion, the court noted that:

“... (in a mental illness) situation, the impossibility of the child's return to the natural family is already decided once a finding of such mental illness is made, and a separate dispositional hearing is not required.” *Id.* at 224.

V SEVERE OR REPEATED ABUSE

In addition to freeing a child for adoption based upon a surrender, abandonment, permanent neglect, mental illness or mental retardation, a child may also be freed pursuant to Section 384-b, subd. 4(e) of the Social Services Law, where the agency proves by clear and convincing evidence that the infant was severely or repeatedly abused by the child's parent. The authorized agency must attempt to rehabilitate the parent but, if after one year the parent cannot or will not be rehabilitated, the agency may bring a proceeding pursuant to Section 384-b, subd. 8 of the Social Services Law to terminate the parental rights on the basis that the infant was severely or repeatedly abused. As in permanent neglect cases, the agency must show diligent efforts to encourage and strengthen the parental relationship, unless such efforts would be detrimental to the best interests of the child.

Severe Abuse

Subdivision 8 of Section 384-b of the Social Services Law defines the term “severely abused”.

Serious physical injury is defined by [subdivision 10 of Section 10.00 of the Penal Law](#) as “physical injury which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”

Repeated Abuse

Section 384-b, subd. 8(b) provides that a finding of repeated abuse may be made under two conditions. First, if the child has been found abused under paragraph (i) of [Family Court Act Section 1012, subdivision \(e\)](#).

Paragraph (i) refers to a parent or other person legally responsible for a child's care who “inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of the function of any bodily organ.”

[Subdivision 8\(b\) of Section 384\(b\)](#) also allows for a finding of repeated abuse if the child was found abused under the [Family Court Act Section 1012, subdivision \(e\)\(iii\)](#). However, there are two additional requirements if a finding is to be made based upon a prior finding of abuse under (e)(iii). First, the respondent parent must have committed, or knowingly allowed to be committed, a felony sex offense against the child as defined under one of the following Penal Law Sections:

130.25, Rape in the third degree;

130.30, Rape in the second degree;

130.35, Rape in the first degree;

130.40, Sodomy in the third degree;

130.45, Sodomy in the second degree;

130.50, Sodomy in the first degree;

130.65, Sexual abuse in the first degree;

130.70, Aggravated sexual abuse.

The child involved in the termination proceeding, or another child who was the legal responsibility of the parent, must have been previously found to be an abused child under paragraph (i) or (iii) of the [Family Court Act, Section 1012](#). Additionally the prior finding must have been made within five years of the initiation of the termination proceeding, and, if the prior finding of abuse was under the [Family Court Act, Section 1012, subdivision \(e\)\(iii\)](#), it must have been within one of the Penal Law categories listed above.

Finally, as with severe abuse, a finding of repeated abuse requires that “the agency has made diligent efforts to encourage and strengthen the parental relationship, including efforts to rehabilitate the respondent, when such efforts will not be detrimental to the best interests of the child, and such efforts have been unsuccessful and are likely to remain unsuccessful in the foreseeable future.” Social Services Law 384-b, subd. 8(b).

If the Court finds at a Fact-Finding Hearing by clear and convincing evidence, that the child was severely abused or repeatedly abused, the Court shall enter an Order of Disposition upon a further finding based upon clear and convincing competent, material, and relevant evidence introduced in the Dispositional Hearing that the best interests of the child require an Order of Commitment or a Suspension of Judgment.

This provision is rarely used because of the complicated procedural requirements. The new law became effective in October of 1981 and amends Article 10 of the Family Court Act and Section 384-b of the Social Service Law.

Special Warrant and Summons Requirements Upon Initial Allegations of Abuse

When there is an initial allegation of abuse against the parent in Family Court, the warrant and summons to be served upon the parent must contain a statement, clearly marked on its face that the initial abuse proceedings could lead to a proceeding to terminate parental rights and to commit guardianship and custody of the child to an authorized agency, thereby freeing the child for adoption. See [Family Court Act, Section 1036](#) and [Section 1037](#).

Only the Family Court has jurisdiction over these proceedings, and if the Family Court does find after the Fact-Finding Hearing that the allegations of the initial abuse are sustained, the Court may, after the Dispositional Hearing, place the infant with the Commissioner of Social Services of the City of New York for a period of eighteen months.

The Adoption Process

The legislature has added a new subdivision 10 to § 384-b in order to expedite the adoption process. Section 384-b and all of its subdivisions relate to the termination of parental rights, freeing the child for adoption. However, no subdivision of § 384-b interrelated the adoption process with the termination process. This section does exactly that. When the judge of the Family Court or the judge of the Surrogate's Court enters an order committing the guardianship of custody of a child pursuant to § 384-b thereby freeing the child for adoption, the court must now inquire whether or not the foster parents where the child resides, or any relative or other person, wishes to adopt the infant. If there is such a person who wishes to adopt, then such person, presumably the foster parents, may submit and the court must accept the petition for adoption, together with the agency home study. This section facilitates consistency as the judge who presided over the termination of parental rights proceeding will be the judge who presides over the adoption proceeding. This section mandates that this same judge establishes a schedule for completion of the adoption. This gives the judge complete control over the case from beginning to end, i.e. from abandonment to adoption. This section may prove to be especially beneficial to foster parents who wish to adopt a child but the authorized agency who has control and supervision over the case has some other couple in mind such as other foster parents or perhaps a grandparent. By not waiting and permitting the agency to start proceedings to remove the child, the foster parents may file the adoption petition and get immediate and initial approval of the judge who has just presided over the termination of parental rights proceeding. Presumably, more than one person may apply to the court to adopt a child. This may happen more now that the law favors that a child be placed with relatives. There may be cases where both the foster parents and grandparents apply to the court who just presided over the termination of rights proceeding, seeking permission to adopt. In that case it would appear that the court may hold a hearing to determine who should be permitted to adopt a child in the best interests of the child. It should be noted that this section is permissive and not mandatory and the foster parents may still apply to adopt a child in the county where the foster parents reside.

SUSPENDED JUDGMENT

At the conclusion of the fact finding and dispositional hearings in a permanent neglect case, the court must enter one of the following orders of disposition:

1. Dismiss the petition and permit the child to remain in foster care;

2. Dismiss the petition and return the child to the birth parent;
3. Commit the guardianship and custody of the child to an authorized agency;
4. Suspend judgment in accord with [Section 633 of the Family Court Act](#), which section permits a suspended judgment for a duration of one (1) year and a possible extension of the suspended judgment for an additional year where the court finds exceptional circumstances exist to extend the suspended judgment.

TERMS AND CONDITIONS OF ORDER OF SUSPENDED JUDGMENT

[Section 205.50 of the Uniform Rules](#) of the Family Court details the terms and conditions relating to suspended judgments authorized by [Section 633 of the Family Court Act](#).

The Order of Suspended Judgment must contain one of the following conditions requiring the birth parent to:

1. Maintain communication of a substantial nature with the child by letter or telephone at stated intervals;
2. Maintain consistent contact with the child including visits;
3. Participate with the authorized agency in developing and effectuating a plan for the future of the child;
4. Cooperate with the authorized agency's court approved plan for encouraging and strengthening the parental relationship;
5. Contribute towards the cost of maintaining the child if possessed of sufficient means or able to earn such means;
6. Seek to obtain and provide proper housing for the child;
7. Cooperate in seeking to obtain and accepting medical or psychiatric diagnosis or treatment, alcoholism or drug abuse treatment, employment of family counseling or child guidance, and permit information to be obtained by the court from any person or agency from whom the respondent is receiving or was directed to receive such services;

8. Satisfy such other reasonable terms and conditions as the court shall determine to be necessary or appropriate to ameliorate the acts or omissions which gave rise to the filing of the petition.

The Order of Suspended Judgment must set forth the duration, terms and conditions of the suspended judgment, and a copy of the suspended judgment must be furnished to the birth parent or other respondent. The Order of Suspended Judgment must also state that a failure to obey the Order may lead to its revocation and to the issuance of an order for the commitment of guardianship and custody of the child to an authorized agency. In short, if a birth parent violates the conditions of the suspended judgment, the birth parent could lose the child and have his or her parental rights terminated.

BIRTH PARENT'S FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF AN ORDER SUSPENDING JUDGMENT

If the birth parent fails to comply with the terms and conditions of the order of suspended judgment, the authorized agency may:

1. petition the court for the revocation of the order;
2. said petition shall contain a concise statement of the acts or omissions alleged to constitute non-compliance with the order;
3. serve a summons and copy of the petition as mandated by [Section 617 of the Family Court Act](#) which mandates that the summons and petition must be served upon the birth parent personally, twenty days before the return date.

If after a hearing the court is satisfied that the allegations of the petition have been established, the court may modify, revise or revoke the order of suspended judgment. Among its options the court may terminate parental rights, thereby freeing the child for adoption.

The use of an Order of Suspended Judgment had been increased in the last several years, which in effect gives the birth parent a second chance. Although the use of a suspended judgment is of recent vintage, the bench and the bar are fortunate that a detailed, well reasoned decision was written by the Hon. Paula J. Hepner, Judge of the Family Court, Kings County in the case of [Commissioner of Social Services v. Rufelle C.](#), 156 Misc.2d 410, 593 N.Y.S.2d 401 (1992). In the *Rufelle C.* case, *supra*, the birth parents and the agency entered into a Stipulation and with the consent of all the parties agreed to a suspended judgment for a six month period. The court directed petitioner's attorney to

submit an order of suspended judgment within 60 days on notice to all counsel. The attorney for the petitioner failed to do so and submitted the proposed order eight months after the stipulation of the terms of the suspended judgment in open court. The court returned the papers and directed the attorney for the petitioner to annex an affirmation to the order explaining why the order had not been submitted in 60 days as ordered by the court. After the attorney for the petitioner submitted the proposed order with an explanatory affirmation, the order of suspended judgment was signed. Thereafter, the respondent birth mother moved to have the termination petition dismissed, alleging that she complied with all of the terms and conditions of the suspended judgment. Judge Hepner made the following findings:

1. Stipulations made in open court are binding regardless of whether they are in writing or reduced to the form of an order and entered;
2. The failure of the attorney for the petitioner to enter an order within 60 days as ordered by the court did not deprive the court of authority to enter the order at a later date;
3. That upon a finding of permanent neglect, the court is required to hold a dispositional hearing and may make the following dispositions:
 - a. dismiss the petition;
 - b. suspend judgment; or
 - c. commit the guardianship and custody of the child to the agency;
4. A suspended judgment gives the parent one last chance to complete the goals necessary to be reunited with the child.
5. The rules of the Family Court at [22 N.Y.C.R.R., Section 205.50](#) specify the procedure to be followed in the event that the birth parent fails to comply with the terms and conditions of an order suspending judgment under [Family Court Act Section 631](#). Hence, a suspended judgment does not result in an automatic termination of parental rights without a hearing on the alleged violation.

The order to suspend judgment is not self-executing at the end of the suspended judgment. Unless there is language to the contrary contained in the order of suspended judgment, a hearing must be held as to whether the birth parent has complied with or violated the terms of the suspended judgment. After the hearing, the court may sign an order terminating parental rights, sign an order dismissing the petition leaving the child

in foster care, or sign an order dismissing the petition and return the child to the birth parent.

OPENING A JUDGMENT BY DEFAULT

From time to time, a birth parent will either be late or not appear at a 394-b proceeding to terminate parental rights. When the parent defaults for whatever reason, the judge may, in his or her discretion, direct that an inquest proceed. At an inquest, the attorney for the authorized agency will call a caseworker as a witness who will testify to the grounds for the termination based either upon the parent's abandonment of the child, permanent neglect of the child, or the parent's mental illness or mental retardation. In the cases of mental illness and mental retardation, the court must hear testimony from a psychiatrist or psychologist. In the type of cases where the parent defaults and the agency proceeds with an inquest, the attorney for the defaulting birth parent will normally stand mute so as not to participate on the merits, thereby preserving the birth parent's ability to make a motion to open up the default.

Although there is no Court of Appeals case on the subject, both the Appellate Division, First Department and Appellate Division, Second Department have made it clear that a defaulting party seeking to be relieved of the default must establish both a reasonable excuse for the default and the existence of a meritorious defense. Further, the courts have held that conclusory assertions contained in the moving papers, without more, are insufficient to justify vacating the default. In the *Matter of Shirley C.*, 145 A.D.2d 631, 536 N.Y.S.2d 156 (1988); *In re Male Jones*, 128 A.D.2d 403, 512 N.Y.S.2d 689 (1987); *Matter of Raymond Anthony A., Jr.*, 192 A.D.2d 529, 596 N.Y.S.2d 723 (1993).

TERMINATION OF PARENTAL RIGHTS OF INDIAN CHILDREN

[Section 1911\(a\) of 25 U.S.C.A.](#) defines an Indian child as one who is either (a) a member of an Indian tribe, or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

The federal Indian Child Welfare Act of 1978 (ICWA) was the product of rising concern in the mid-1970's over the consequences to Indian children, Indian families and Indian tribes of an inordinate high number of adoption of Indian children, resulting in the separation of a large number of Indian children from their families and tribes and usually through adoption in non-Indian homes. See *Mississippi Band of Choctaw Indians v. Holyfield*, 109 S.Ct. 1597, 490 U.S. 30, 104 L.Ed.2d 29 (1989).

FEDERAL LAW APPLIES

As federal law, the ICWA supplements complementary state laws concerning termination of parental rights, and preempts any contradictory or inconsistent state standards. Thus, under the ICWA, the jurisdiction of state courts is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority. In *Mississippi Band of Choctaw Indians v. Holyfield*, *supra*, the Supreme Court held that the ICWA definition of domicile preempted state law definitions of domicile. In this case, because the domicile of the mother had been, at all relevant times, on the Choctaw reservation, her children were also held to have the reservation as their domicile even though they were not born on the reservation, had never been present on the reservation and were voluntarily surrendered for adoption by their mother.

TRANSFER PROCEEDINGS TO TRIAL COURT

In any state court proceedings for the termination of parental rights to an Indian child not domiciled or residing within the reservation of the child's tribe, the state court, in the absence of good cause to the contrary, must transfer the proceeding to the jurisdiction of the tribe. See [25 U.S.C.A. Section 1911\(b\)](#).

BURDEN OF PROOF; BEYOND A REASONABLE DOUBT

In the termination of parental rights proceedings of non-Indian children, the State must prove its case by clear and convincing evidence.

Pursuant to the ICWA, parental rights cannot be terminated without proof beyond a reasonable doubt that “the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.”

The ICWA requires state courts to take testimony from “qualified expert witnesses” in a proceeding to terminate parental rights concerning an Indian child. The witnesses should be professionals with substantial education and experience in the area of his or her specialty, and should be familiar with Indian culture and childrearing practices. An Oregon court has ruled that “as a general proposition, an expert witness within the meaning of [[25 U.S.C.A. Section 1912\(f\)](#)] is a person with specialized knowledge of ”social and cultural aspects of Indian life.“ See *State ex rel. Juvenile Dept. of Multnomah County v. Woodruff*, 108 Or.App. 352, 816 P.2d 623 (1991). The Indiana Supreme Court

has struck down a termination order in part because the trial court failed to inquire of the expert witnesses as to their specific qualifications relating to the placement of Native American children. See *Matter of D.S.*, 577 N.E.2d 572 (Ind. 1991).

REUNIFICATION SERVICES

Under the ICWA, any party seeking to terminate parental rights to an Indian child under state law must “satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.”

INEFFECTIVE ASSISTANCE OF COUNSEL

Default Order of Disposition Terminating Parental Rights Vacated

It is now a well-settled law that a defaulting parent whose rights have been terminated must seek an Order to vacate the default and must show two things:

1. Reasonable Excuse for the default
2. Meritorious defense

However, there is an exception to this general rule and that is where the parent alleges and proves ineffective assistance of counsel. In the case of *Matter of James R., Jr.*, 238 A.D.2d 962, 661 N.Y.S.2d 160 (A.D. 4 Dept. 1997) the birth mother moved to vacate her default which resulted in a termination of her parental rights. The mother alleged ineffective assistance of counsel. The Court, in granting the mother's motion, recognized the general rule that a defaulting parent whose rights have been terminated must show reasonable excuse for the default and a meritorious defense. The Court went on to hold, however, that this showing of reasonable excuse and meritorious defense was unnecessary in this case because of ineffective assistance of assigned counsel. The Court noted that a parent in a permanent neglect proceeding does have the constitutional right to effective assistance of counsel. The Court defined what the parent must show to vacate the default: (1) she was deprived of meaningful representation of counsel and (2) she suffered actual prejudice as a result of the claimed deficiencies. In this case, the Court noted the following attorney client deficiencies:

1. Assigned counsel did not appear on a scheduled day for trial, and on another day, sent a different counsel to take her place.

2. At no time did assigned counsel ever meet with the mother.
3. On the trial date, when the mother's rights were terminated, her assigned counsel did not appear.
4. Although the mother did not appear on a trial date, it appeared that not only did assigned counsel not clear up the confusion and misunderstanding concerning the trial date, but may have contributed to the confusion.
5. Assigned counsel did not fulfill her promise to bring a motion to vacate the default.

Based upon the foregoing, the Court held not only was the mother deprived of effective counsel, but because she lost her parental rights, she had shown prejudice and vacated the default.

The Surrender

Termination of parental rights by surrender is the only voluntary method of freeing the child for adoption.

A surrender is defined as the relinquishing of rights by a birth parent of a child to an authorized foster care agency for the purpose of adoption ([SSL § 383-c\(3\)](#)). An infant under 18 years of age may surrender her baby. See *Skokas v. McCarthy*, 7 Misc.2d 963, 164 N.Y.S.2d 198 (Sup. Ct. New York County 1957).

Jurisdiction and Venue

A surrender may be executed either in the Family Court or the Surrogate's Court of the State of [New York](#). [SSL § 383-c\(3\)\(a\)](#).

The application to sign a surrender should be filed in the county where a present proceeding is pending. For example, if there is a present neglect or abuse proceeding or a permanency hearing in a particular county, then the application and surrender should be filed in that county and the clerk of the court will assign it to the judge already assigned to the case.

Judicial Surrenders and Extra-Judicial Surrenders

SSL § 383-c provides for two types of surrenders:

1. A judicial surrender executed before a judge of the Family Court; and
2. An extra-judicial surrender executed without initial court involvement.

Responsibility of Judge Prior to Signing Surrender

When the birth parent is before the judge prepared to sign the Judicial Surrender, the judge must make sure that the birth parent has received appropriate due process, including assignment of an attorney free of charge, an opportunity for counseling, informing the parent of the consequences of signing the Surrender, including the fact that the Surrender becomes final upon signing.

The judge must inform the parents that:

1. that the birth parent has the right to be represented by legal counsel and, if the birth parent cannot afford legal counsel, one will be assigned free of charge to the birth parent;
2. the birth parent has the opportunity to obtain supportive counseling;
3. to be informed of the consequences of signing the surrender (i.e., losing the right to custody of the child, to visit with, speak with, write to or learn about the child forever, unless the parties agree otherwise); and
4. the judge must inform the parent that the surrender is final and irrevocable immediately upon its execution and acknowledgment by the court.

The Surrender Instrument

The Surrender Instrument is a detailed instrument which is detailed and somewhat complicated especially to a birth parent who is involved in a proceeding to terminate parental rights. Therefore, the attorney representing the birth parent has an obligation to make sure that the birth parent fully understands the contents of the Judicial Surrender and its effect (i.e., to terminate parental rights).

Conditional Surrender

[SSL § 383-c](#) permits the parent to execute a conditional surrender which allows the birth parent to name the person who will adopt the infant and may also allow for visitation after the adoption. The birth parent should be aware, however, that the condition may be unenforceable. If the adoptive parent refuses visitation after the adoption, the birth parent must bring a proceeding to enforce the condition. The test, however, is the best interest of the infant, and the condition may be unenforceable. See *In re Alexander*, 157 Misc.2d 262, 596 N.Y.S.2d 958 (Fam. Ct. Queens County 1993). The new law, [FCA § 1055-a](#) outlines the procedure to follow where there is a substantial failure of a material condition of a surrender, which is executed pursuant [SSL § 383-c](#). The Court now possesses continuing jurisdiction to rehear the matter upon the filing of a petition by the authorized agency, the parent, or law guardian for the child whenever the court deems it necessary.

Where there is a material breach, the authorized agency shall notify the parent, the law guardian for the child, and the court that approved the surrender within 20 days of any substantial failure to comply with a material condition of the surrender prior to the finalization of the adoption of the child. If the agency fails to file the necessary petition, either the parent or the law guardian may file such a petition for a hearing with respect to any substantial failure of material breach of the surrender at any time up to 60 days after notification of the failure. Thereafter, the court shall hold a hearing and shall enter an order enforcing communication or contact pursuant to the terms and conditions of the agreement unless the court finds an enforcement would not be in the best interest of the child

Extra-Judicial Surrender

An Extra-Judicial Surrender involves the need for two witnesses, a notary public and one witness who must be an employee of an agency trained to conduct Extra-Judicial Surrenders and one witness must be either a certified social worker or an attorney.

Although the Extra-Judicial Surrender is taken outside of Court and involves two witnesses, a notary public and one of the witnesses being a certified social worker and the other witness trained in the area of taking Extra-Judicial Surrenders, thereafter there must be Court involvement. After the Judicial Surrender is signed by the birth parent, the agency must make an application to the Court no later than 15 days after the Surrender is signed to have the Court approve the Extra-Judicial Surrender.

With respect to Judicial Surrender the Court is involved initially. The Judicial Surrender is signed by the birth parent before the Judge and the Surrender becomes final when it is signed before the Judge. On the other hand, an Extra-Judicial Surrender is taken

outside of Court but it does not become final until there is Court approval. Therefore, the attorney for the agency must file a petition with the Family Court requesting the Court to approve the Extra-Judicial Surrender.

The foster care agency must file an application for approval of the Extra-Judicial Surrender with the court in which the adoption proceeding is expected to be filed, or if not known, in the family court or the surrogate's court in the county in which the agency has its principle office. The application must be filed no later than fifteen days after the execution of the surrender. The application must be accompanied by affidavits from both the employee or volunteer of the authorized agency and the non-employee volunteer, consultant, agent or attorney before whom the surrender was executed and acknowledged.

Supporting Affidavit to Be Filed with Court

The Affidavit must include the following:

1. the day, time and place where the surrender was executed and acknowledged;
2. that the parent was provided with a copy of the surrender;
3. that the surrender was read in full to the parent;
4. that the parent executed and acknowledged the surrender.

The Supportive Counseling Affidavit

The Affidavit must include the following:

1. when support counseling was offered to the parent;
2. when the parent accepted the offer of support counseling; and
3. if accepted, when support counseling was provided and the nature of such support counseling.

Court Approval Needed

The attorney for the agency that prepared the birth parent to sign the Extra-Judicial Surrender must file with the Court within 15 days a petition alleging that the birth parent signed an Extra-Judicial Consent and seeks approval by the Judge of the Family Court. While the Extra-Judicial Consent is signed outside of court, it still needs Court approval.

Notifying the Court

The agency to which a child is surrendered must promptly notify the court of any correspondence or communication received from the parent or anyone on the parent's behalf subsequent to the execution of the surrender and prior to a final order of adoption of the child, if such correspondence or communication could reasonably indicate the parent's wish to revoke the surrender.

Order of Court

The court shall enter an order either approving or disapproving the surrender. If the court approves the surrender, then the birth parent's rights have been terminated and the child is freed for adoption. If the judge or surrogate disapproves the surrender, the surrender shall be deemed a nullity.

Recording Surrender

The surrender must be recorded in the office of the county clerk in the county where the surrender is executed, or where the principle office of such authorized agency is located, in a book in which such county clerk shall provide and shall keep under seal. It is necessary for the surrender to be recorded in the appropriate county clerk's office because the adoption clerk will not accept the surrender unless there is evidence that the surrender was recorded stamped on the surrender itself by the county clerk.

Adoption Information Registry

[Section 383-c](#) was enacted to facilitate permanency of children in foster care through the procedure of the birth parents signing a surrender terminating their parental rights in lieu of a proceeding to terminate parental rights pursuant to Section 384-b of the Social Services Law. A petition to terminate parental rights based upon abandonment or permanent neglect pursuant to Section 384-b of the Social Services Law could take as long as a year to complete. Further, a petition to terminate parental rights may not be filed based upon abandonment until the child has been in care for six months. A petition

to terminate parental rights based upon permanent neglect may not be filed until the child is in foster care for one year. On the contrary, a judicial surrender may be signed by a birth parent at any time the child is in foster care. Chapter 435 of the Laws of 2008 took effect on November 3, 2008 which requires that an Adoption Information Registry Birth Parent Registration Consent form must be given to all birth parents whose consent to adoption is required and must be filed with all authorized agencies and private placement adoption petitions with respect to children born in New York State. The form once signed is used to register a birth parent's agreement or non-agreement to release of the birth parent's name and address by the Adoption Registry to the adoptee. The identifying information will be given to the adopted child only when the child reaches at least 18 years of age and voluntarily registers with the Adoption Registry. Of particular note is that the adoption agencies and the adoption attorneys must make sure that the birth parent must complete the Adoption Information Registry form at the time the birth parent is either executing or acknowledging a consent to adoption pursuant to [Section 115-b of the Domestic Relations Law](#) or is executing a surrender instrument pursuant to [Section 383-c or 384 of the Social Services Law](#). The completed Adoption Information Registry Form must be filed with the adoption clerk with the consent of the birth parent and the instrument of surrender signed by the birth parent. After the adoption is completed, the adoption clerk must send the completed Adoption Information Registry Form to the New York City Department of Health and Mental Hygiene along with the Report of Adoption where the child is born in New York City and must send the Registry Form along with a Notification of Order of Adoption to the New York State Department of Health where the child is born in New York State but not in New York City. Thereafter, copies of the Adoption Information Registry Forms along with the Notice of Order of Adoption, the original birth certificate and the amended birth certificate are sent to the New York State Department of Health, Adoption Information Registry, P.O. Box 2602, Albany, New York 12220-2602. Once all of the above has been followed, a birth parent is enrolled in the Adoption Information Registry maintained by the New York State Department of Health pursuant to [Public Health Law Section 4138-c](#). Thereafter, once the child reaches the age 18, he or she may register with the Registry to receive identifying information about the birth parent. However, the birth parent's consent is revocable at any time and a revocation by one birth parent automatically revokes the consent of the other parent. Lastly, failure of a birth parent to complete the Registry Form has no effect on the finality of the consent to adoption.

[Notes of Decisions \(2737\)](#)

Footnotes

1 So in original (“(A)” inadvertently omitted).

McKinney's Social Services Law § 384-b, NY SOC SERV § 384-b
Current through L.2013, chapters 1 to 340.

End of Document

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File #:	Int 0725-2011	Version: A	Name:	Using a vehicle licensed by the taxi and limousine commission to facilitate sex trafficking.
Type:	Introduction		Status:	Enacted
			Committee:	Committee on Transportation
On agenda:	12/8/2011		Final action:	6/22/2012
Enactment date:	6/22/2012		Law number:	2012/036

Title: A Local Law to amend the administrative code of the city of New York, in relation to using a vehicle licensed by the taxi and limousine commission to facilitate sex trafficking.

Sponsors: [Julissa Ferreras](#), [James Vacca](#), [Charles Barron](#), [Gale A. Brewer](#), [Fernando Cabrera](#), [Leroy G. Comrie, Jr.](#), [Inez E. Dickens](#), [Lewis A. Fidler](#), [Helen D. Foster](#), [Letitia James](#), [Karen Koslowitz](#), [Brad S. Lander](#), [Stephen T. Levin](#), [Melissa Mark-Viverito](#), [Annabel Palma](#), [Domenic M. Recchia, Jr.](#), [Diana Reyna](#), [Deborah L. Rose](#), [James Sanders, Jr.](#), [James G. Van Bramer](#), [Jumaane D. Williams](#), [Ruben Wills](#), [Robert Jackson](#), [Jessica S. Lappin](#), [Peter F. Vallone, Jr.](#), [Ydanis A. Rodriguez](#), [Daniel Dromm](#), [Daniel R. Garodnick](#), [Margaret S. Chin](#), [Maria Del Carmen Arroyo](#), [G. Oliver Koppell](#), [Peter A. Koo](#), [James F. Gennaro](#), [Darlene Mealy](#), [Eric A. Ulrich](#)

Attachments: [1. Int. No. 725 - 12/8/11](#), [2. Committee Report 12/14/11](#), [3. Hearing Testimony 12/14/11](#), [4. Hearing Transcript 12/14/11](#), [5. Committee Report 6/12/12](#), [6. Hearing Transcript 6/12/12](#), [7. Fiscal Impact Statement](#), [8. Mayor's Letter](#), [9. Hearing Transcript - Stated Meeting 6-13-12](#), [10. Local Law 36](#)

[History \(14\)](#) [Text](#)

Int. No. 725-A

By Council Members Ferreras, Vacca, Barron, Brewer, Cabrera, Comrie, Dickens, Fidler, Foster, James, Koslowitz, Lander, Levin, Mark-Viverito, Palma, Recchia, Reyna, Rose, Sanders Jr., Van Bramer, Williams, Wills, Jackson, Lappin, Vallone, Rodriguez, Dromm, Garodnick, Chin, Arroyo, Koppell, Koo, Gennaro, Mealy and Ulrich

A Local Law to amend the administrative code of the city of New York, in relation to using a vehicle

licensed by the taxi and limousine commission to facilitate sex trafficking.

Be it enacted by the Council as follows:

Section 1. Legislative Intent. The Council finds that sex trafficking is a problem in New York City, and that some drivers in the City, including some who are licensed by the Taxi and Limousine Commission (TLC), knowingly use TLC licensed vehicles to facilitate sex trafficking. More specifically, some drivers knowingly engage in a business of transporting individuals to patrons for purposes of prostitution, procuring and/or soliciting patrons for the prostitution, and receiving proceeds from such business in collaboration with traffickers and pimps. It is therefore necessary to combat this activity by establishing penalties against those who are misusing TLC licenses in this manner and by requiring those who hold or are obtaining TLC licenses to become informed about the laws governing sex trafficking and promoting prostitution. It is not the Council's intent to penalize TLC-licensed drivers for lawfully accepting a fare or for failing to investigate illegal activities that may be occurring within their vehicle without their knowledge.

§ 2. Section 19-502 of the administrative code of the city of New York is amended by adding a new subdivision y to read as follows:

y. "Facilitate sex trafficking with a vehicle" shall mean (1) committing any of the following crimes set forth in the penal law, as evidenced by conviction of such crime: promoting prostitution in the third degree; promoting prostitution in the second degree; promoting prostitution in the first degree; sex trafficking; or compelling prostitution and (2) using a vehicle licensed by the commission to commit such crime.

§ 3. Section 19-505 of the administrative code of the city of New York is amended by adding a new subdivision q to read as follows:

q. Not more than one hundred eighty days following the enactment of this subdivision, the commission shall develop and commence a program to notify drivers of all vehicles licensed by the commission that facilitating sex trafficking with a vehicle is illegal. Such program shall inform such drivers of the specific laws defining and proscribing such facilitation, including the provisions of this section and section 19-507 of this chapter, and of article 230 of the penal law, and shall inform such

drivers of the civil and criminal penalties associated with such facilitation, including but not limited to monetary penalties, license revocation and incarceration. Such program shall also provide information to such drivers about the resources available to assist victims of sex trafficking. Such program shall also inform such drivers that they may not refuse fares solely based on the appearance of an individual and that it is unlawful to refuse a fare based upon an individual's actual or perceived sexual orientation or gender, whether or not an individual's gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the legal sex assigned to an individual at birth, as set forth in chapter one of title eight of this code. Such program may be presented through live instruction, video or an interactive computer course, and shall be updated regularly to reflect changes in law or other relevant circumstances. Completion of such program shall be a requirement for initial licensure and subsequent license renewal for such drivers, except that any driver who has completed such program at least once may subsequently satisfy the requirements of this subdivision, at the discretion of the commission, by reviewing written materials, to be developed by the commission, that contain the information in such program. All drivers licensed by the commission shall be required to certify that they have completed such program or received and reviewed such written materials.

§ 4. Subdivision b of section 19-507 of the administrative code of the city of New York is amended by adding new paragraph 3 to read as follows:

3. Any driver or vehicle owner of a vehicle licensed by the commission or base station licensee who facilitates sex trafficking with a vehicle shall be liable for a civil penalty of ten thousand dollars, and the commission shall revoke the license of such driver, the license of the vehicle used to commit such facilitation when the person who facilitated sex trafficking is the owner of such vehicle, and the license of the base station licensee when such base station licensee committed such facilitation and the vehicle used to commit such facilitation was affiliated with the base station licensed by such licensee at the time such offense was committed.

§ 5. This local law shall take effect ninety days after its enactment into law, except that the taxi and limousine commission shall take all necessary action, including the promulgation of rules, prior to such effective date.

LS#2335 and 2671
LF/TM
6/5/12 3:44 p.m.

West's Annotated California Codes
Civil Code (Refs & Annos)
Division 1. Persons (Refs & Annos)
Part 2. Personal Rights (Refs & Annos)

West's Ann.Cal.Civ.Code § 52.5

§ 52.5. Civil action for damages to victims of human trafficking

Effective: January 1, 2006

[Currentness](#)

(a) A victim of human trafficking, as defined in [Section 236.1 of the Penal Code](#), may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

(b) In addition to the remedies specified herein, in any action under subdivision (a), the plaintiff may be awarded up to three times his or her actual damages or ten thousand dollars (\$10,000), whichever is greater. In addition, punitive damages may also be awarded upon proof of the defendant's malice, oppression, fraud, or duress in committing the act of human trafficking.

(c) An action brought pursuant to this section shall be commenced within five years of the date on which the trafficking victim was freed from the trafficking situation, or if the victim was a minor when the act of human trafficking against the victim occurred, within eight years after the date the plaintiff attains the age of majority.

(d) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability will toll the running of the statute of limitation for this action.

(1) Disability includes being a minor, insanity, imprisonment, or other incapacity or incompetence.

(2) The statute of limitations shall not run against an incompetent or minor plaintiff simply because a guardian ad litem has been appointed. A guardian ad litem's failure to bring a plaintiff's action within the applicable limitation period will not prejudice the plaintiff's right to do so after his or her disability ceases.

(3) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action, or due to threats made by the defendant causing duress upon the plaintiff.

(4) The suspension of the statute of limitations due to disability, lack of knowledge, or estoppel applies to all other related claims arising out of the trafficking situation.

(5) The running of the statute of limitations is postponed during the pendency of any criminal proceedings against the victim.

(e) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(f) A prevailing plaintiff may also be awarded reasonable attorney's fees and litigation costs including, but not limited to, expert witness fees and expenses as part of the costs.

(g) Any restitution paid by the defendant to the victim shall be credited against any judgment, award, or settlement obtained pursuant to this section. Any judgment, award, or settlement obtained pursuant to an action under this section shall be subject to the provisions of [Section 13963 of the Government Code](#).

(h) Any civil action filed under this section shall be stayed during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim. As used in this section, a "criminal action" includes investigation and prosecution, and is pending until a final adjudication in the trial court, or dismissal.

Credits

(Added by [Stats.2005, c. 240 \(A.B.22\), § 2.](#))

West's Ann. Cal. Civ. Code § 52.5, CA CIVIL § 52.5

Current with urgency legislation through Ch. 800 of 2013 Reg.Sess., all 2013-2014 1st Ex.Sess. laws, and Res. Ch. 123

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West's Annotated California Codes
Civil Code (Refs & Annos)
Division 3. Obligations (Refs & Annos)
Part 3. Obligations Imposed by Law

West's Ann.Cal.Civ.Code § 1714.43

§ 1714.43. Retailers to disclose efforts to eradicate slavery and human trafficking from direct supply chain for tangible goods; definitions; posting on Internet Website; contents; injunctive relief for violation

Effective: January 1, 2012

[Currentness](#)

(a)(1) Every retail seller and manufacturer doing business in this state and having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000) shall disclose, as set forth in subdivision (c), its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.

(2) For the purposes of this section, the following definitions shall apply:

(A) “Doing business in this state” shall have the same meaning as set forth in [Section 23101 of the Revenue and Taxation Code](#).

(B) “Gross receipts” shall have the same meaning as set forth in [Section 25120 of the Revenue and Taxation Code](#).

(C) “Manufacturer” means a business entity with manufacturing as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with [Section 18401](#)) of Division 2 of the Revenue and Taxation Code.

(D) “Retail seller” means a business entity with retail trade as its principal business activity code, as reported on the entity's tax return filed under Part 10.2 (commencing with [Section 18401](#)) of Division 2 of the Revenue and Taxation Code.

(b) The disclosure described in subdivision (a) shall be posted on the retail seller's or manufacturer's Internet Web site with a conspicuous and easily understood link to the required information placed on the business' homepage. In the event the retail seller or manufacturer does not have an Internet Web site, consumers shall be provided the written disclosure within 30 days of receiving a written request for the disclosure from a consumer.

(c) The disclosure described in subdivision (a) shall, at a minimum, disclose to what extent, if any, that the retail seller or manufacturer does each of the following:

(1) Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.

(2) Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.

(3) Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.

(4) Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.

(5) Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.

(d) The exclusive remedy for a violation of this section shall be an action brought by the Attorney General for injunctive relief. Nothing in this section shall limit remedies available for a violation of any other state or federal law.

(e) The provisions of this section shall take effect on January 1, 2012.

Credits

(Added by [Stats.2010, c. 556 \(S.B.657\)](#), § 3, operative Jan. 1, 2012.)

West's Ann. Cal. Civ. Code § 1714.43, CA CIVIL § 1714.43

Current with urgency legislation through Ch. 800 of 2013 Reg.Sess., all 2013-2014 1st Ex.Sess. laws, and Res. Ch. 123

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APPENDIX E

Cases

People v. Gonzalez, 927 N.Y.S.2d 567 (N.Y. Crim. Ct. 2011)

People v. Doe, 935 N.Y.S.2d 481 (N.Y. Sup. Ct. 2011)

People v. Samatha R., 2011 WL 6303402 (N.Y. Crim. Ct. 2011)

People v. S.S., 948 N.Y.S.2d 520 (N.Y. Crim. Ct. 2012)

People v. A.B., 953 N.Y.S.2d 552 (N.Y. Crim. Ct. 2012)

People v. L.G., 2013 WL 4402830 (N.Y. Crim. Ct. 2013)

KeyCite Yellow Flag - Negative Treatment **Distinguished by** [People v. L.G.](#), N.Y.City
Crim.Ct., July 12, 2013

32 Misc.3d 831, 927 N.Y.S.2d
567, 2011 N.Y. Slip Op. 21235

The People of the State of New York, Plaintiff

v

Silvia Gonzalez, Also Known as Rosana Marques,
et al., Defendant.

Criminal Court of the City of
New York, New York County
July 11, 2011

CITE TITLE AS: *People v Gonzalez* **HEADNOTE**

Crimes

Vacatur of Judgment of Conviction

Defendant Sex Trafficking Victim

Defendant's motion pursuant to CPL 440.10 (1) (i) to vacate numerous convictions for prostitution and loitering for the purpose of engaging in prostitution was granted where defendant demonstrated through her hearing testimony that her participation in each of the prostitution or prostitution-related offenses was a result of her being a victim of sex trafficking. Defendant was a credible witness, testifying in detail about being an immigrant who had been blackmailed into committing the offenses. During the three-year period over 15 years ago when defendant had been committing the offenses, she was unfamiliar with American law, her command of English was nonexistent and she was scared about her immigration status. Defendant's large number of convictions were the result of her frequently asking the police to arrest her in order so as to not have to prostitute herself, and she has had no further contact with the criminal justice system. Although defendant offered no corroboration for her story, the court has the discretion to weigh a witness's credibility and found defendant to be credible. The Legislature did not require any specific corroborating facts or other evidence to support an application pursuant to CPL 440.10 (1) (i), and CPL 440.10 (1) (i) (ii) provides that the absence of a finding by a governmental organization that a

defendant is a victim of sex trafficking is not a bar to relief thereunder.

[Am Jur 2d, Criminal Law § 858](#); [Am Jur 2d, Involuntary Servitude and Peonage § 19](#); [Am Jur 2d, Prostitution §§ 1, 3](#).

[Carmody-Wait 2d, Postjudgment Motions §§ 205:7, 205:85](#).

[LaFave, et al., Criminal Procedure \(3d ed\) § 28.3](#).

[McKinney's, CPL 440.10 \(1\)](#).

[NY Jur 2d, Criminal Law: Procedure §§ 3373, 3379](#).

ANNOTATION REFERENCE

See ALR Index under Involuntary Servitude and Peonage; Prostitution; Vacation and Modification of Judgment or Verdict.

FIND SIMILAR CASES ON WESTLAW

Database: NY-ORCS

Query: vacat! /s convict! & victim /s sex /3 traffic!

*832 APPEARANCES OF COUNSEL

Wayne Charles Bodden, Brooklyn, for defendant. *Cyrus R. Vance, Jr.*, *District Attorney*, New York City (*John Temple* of counsel), for plaintiff.

OPINION OF THE COURT

Lynn R. Kotler, J.

Under a recent amendment to CPL article 440, the defendant moves to vacate 87 convictions she accrued over the course of three years which stem from acts of prostitution or are otherwise related thereto ([CPL 440.10 \[1\] \[i\]](#)). She now claims that she is the victim of sex trafficking. The People oppose the motion in its entirety.

The motions are hereby consolidated for the court's consideration and decision in this single decision/order.

On May 11, 2011, the court held a testimonial hearing on the motion. The defendant testified on her own behalf at the hearing. Although her native language is Portuguese, the defendant waived her right to an interpreter, because she felt

RESEARCH REFERENCES

comfortable conversing in English. No other witnesses were called.

Findings of Fact

The defendant is a Brazilian citizen. In or about 1986, she entered the United States on a tourist visa. At that time, she resided with her mother at 140 Broad Street, New York, New York. She overstayed her visa, and began working in the United States. In or about 1992, the defendant claims she had obtained work authorization and a Social Security card. This work authorization allegedly entitled her to work in the United States for a one-year period. The defendant claims that her immigration documents were based upon "lies." As an example of these lies, the defendant said that her employment history listed Tavern on the Green as an employer; however, she claims that she never worked at Tavern on the Green. The defendant states that she was terrified about her immigration status in the United States because of the fraudulent immigration documents.

In or about 1992, the defendant was working in a diner in the Bronx, and was living with her mother at 166th and Park in the Bronx. While working at the diner, she became acquainted with a woman named Marisol, a customer. Marisol would come to the diner approximately two times a week for about a year. At some point during that time, Marisol told the defendant that she could help her with her immigration issues. The defendant thereafter met with Marisol a few times, in several different apartments. The defendant testified that she didn't know where these apartments were in part because she wasn't familiar with the area of the Bronx that these apartments were located in. Eventually, the defendant trusted her immigration documents, including her passport, work authorization and Social Security card, to Marisol. The defendant claims that Marisol was going to help her get a "green card" and obtain permanent resident status in the United States.

Instead, Marisol blackmailed her; she demanded payment for her assistance. The defendant indicated that she did not have enough money to meet Marisol's demands. At that point, Marisol told the defendant that she would have to "sleep with men in the street" in order to get her immigration documents back. Although the defendant initially refused to do such work, she felt she had no choice but to do what Marisol said. At the time, the defendant did not speak English and was scared about what might happen if she didn't comply with Marisol's demands.

Over the course of the next 21 years, the defendant was convicted 86 times for either prostitution (Penal Law § 230.00) or loitering for the purpose of engaging in a prostitution offense (Penal Law § 240.37). She was also arrested for prostitution

offenses outside New York's jurisdiction (New Jersey and Boston) during this time period. The defendant stated that she never used illegal drugs, but did smoke tobacco cigarettes and occasionally drank alcohol.

The defendant described her life working as a prostitute in some detail. She was moved around a lot. Her captors drove her to locations where she was watched and otherwise directed to work. She gave all the money that she received for her services to her captors. She described the first man that forced her to work as her "pimp." His name was Chino. After about six or seven months (approximately July-August 1993), Chino was replaced by Anthony Gordon. Anthony Gordon continued as her pimp until sometime before June 1995. When asked about the sheer volume of the arrests/ convictions she incurred over the course of 21 years, the defendant explained that sometimes she would just go up to police officers and ask them to take her in. She stated that it seemed like a good idea at the time—that being in jail was preferable to working on the street.

After her last arrest in June 1995, the defendant managed to get her immigration documents back from Marisol's associates. She then moved in with her aunt. Her mother was in New Jersey by that time. The defendant did not report her captivity to the authorities, and did not tell any friends or family members about it.

Now, the defendant works as a house cleaner. She lives with her mother, who she takes care of. Her mother is a United States citizen, so the defendant applied as her daughter for an adjustment of status here in the United States. The status of the defendant's current immigration application is unclear to the court, but it is apparent that the instant convictions are an obstacle to her proposed adjustment of status. Conclusions of Law

CPL 440.10 (1) (i), which became effective August 13, 2010, allows a defendant victim of sex trafficking to bring a motion to vacate a conviction and dismiss an accusatory instrument where the arresting charge was loitering for the purpose of engaging in a prostitution offense (Penal Law § 240.37) or prostitution (Penal Law § 230.00). In order to prevail on this motion, the defendant must show that her "participation in the offense[s] was a result of having been

a victim of sex trafficking under [section 230.34 of the penal law](#) or trafficking in persons under the Trafficking Victims Protection Act ([\[22 USC § 7101 et seq.\]](#))" ([CPL 440.10 \[1\] \[i\]](#)).

The defendant must make such motion

"with due diligence, after the defendant has ceased to be a victim of such trafficking or has sought services for victims of such trafficking, ****3** subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph" ([CPL 440.10 \[1\] \[i\] \[i\]](#)).

Official documentation from a governmental body of the defendant's status as a victim of sex trafficking creates a presumption in the defendant's favor that his/her "participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons," but is not required ([CPL 440.10 \[1\] \[i\] \[ii\]](#)).

Under [Penal Law § 230.34 \(3\)](#), a person is guilty of sex trafficking if he or she "intentionally advances or profits from prostitution" by "withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document ***835** of another person with intent to impair said person's freedom of movement."

Under the Trafficking Victims Protection Act (TVPA), sex trafficking is defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act" ([22 USC § 7102 \[9\]](#)). Under the TVPA, a victim of sex trafficking is defined as a person who engaged in "a commercial sex act [that] is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" ([22 USC § 7102 \[8\] \[A\]; \[13\]](#)).

At the outset, the defendant's request for relief as to docket number 94N007114 must be denied. The underlying offense, resisting arrest ([Penal Law § 205.30](#)), is not a prostitution-related offense, and the defendant's attorney voluntarily withdrew this request for relief. Accordingly, the defendant's motion is denied as to this docket only.

Otherwise, the court is convinced that the defendant has demonstrated that her participation in each of the prostitution and/or prostitution-related offenses was as a result of her being a

victim of sex trafficking. The court finds that the defendant was credible. She testified as to what she could remember, gave answers that appeared to be truthful, and admitted to acts that caused her to cry and be embarrassed. She has described in significant detail the events that led her to prostitute herself, as well as the people who acted as her captors and withheld her immigration documents. At the time, the defendant's familiarity with United States law was minimal at best, her command of English was nonexistent, and she was scared about her immigration status and did not want to be deported from the United States.

The defendant's testimony that she would ask the police to arrest her just so she could get off the street and not have to have sex with anyone those nights explains the very high number of convictions in such a short period. It is remarkable that since 1995, the defendant has not had another contact with the criminal justice system. Overall, the defendant's story was consistent with the generally accepted notion that victims of human trafficking are often too wary of authorities or too traumatized by their experiences to be able or willing to timely report their victimization (*see* Jill Laurie Goodman, *Lawyer's Manual on Human Trafficking*, ch 1 *et seq.* [Jill Laurie Goodman & Dorchen A. Leidholdt eds., 1st ed 2011]).

The bulk of the People's opposition to the defendant's motion is that she is unable to corroborate her story. However, the ***836** court does not find this argument persuasive. It is not atypical for pimps and captors to not use full names, or any names at all. Moreover, the defendant did not speak English during the relevant times, was not familiar with New York City, and ****4** did not have a substantial support network upon which to rely, having just moved to the United States only a few years prior to the commencement of her captivity.

The People warn that granting this motion will "open the flood gates" of prior prostitution convictions insofar as those defendants can just come into court and claim that they were the victims of sex trafficking without any further corroboration and have their convictions vacated. The court finds this argument to be dogmatic and unpersuasive. [CPL 440.10](#) gives a court the discretion to weigh the credibility of a defendant and make its determinations based thereupon. The floodgates will not open by granting this defendant the relief she seeks.

By granting this defendant's motion, the court has not merely rubber stamped the defendant's application, but rather granted

the relief requested after a thorough testimonial hearing where the defendant established that she was credible. Further, even if the floodgates open by granting this motion, the courts can easily deny frivolous motions under this new provision of CPL article 440. The defendant's ability to continue putting her life back together after the horrendous ordeal that she experienced from 1993-1995 heavily outweighs any increased motion practice that may result hereafter.

Furthermore, the legislature did not require any specific corroborating facts or other evidence which would support a defendant's application pursuant to [CPL 440.10](#) (1) (i). By avoiding bright-line rules and formulaic determinations, the legislature squarely gave the courts the discretion to grant relief pursuant to [CPL 440.10](#) (1) (i) when a defendant could show by a preponderance of the evidence that he or she was a sex trafficking victim. Moreover, [CPL 440.10](#) (1) (i) (ii) provides that the absence of a finding by a governmental organization that a defendant is a victim of sex trafficking is not a bar to relief thereunder.

Accordingly, the defendant's motion to vacate each of her remaining convictions is hereby granted.

Conclusion

In accordance herewith, it is hereby ordered that the defendant's motion to vacate her conviction with respect to docket *837 94N007114 is denied; and it is further ordered that the defendant's motion to vacate her

Any requests for relief not expressly addressed herein have nonetheless been considered and are hereby denied.

End of Document

remaining convictions is granted and each of the accusatory instruments with respect to dockets 93N022568, 93N023779,

93N025469,	93N027349,	93N029719,	93N030314,
93N031081,	93N032469,	93N036038,	93N036921,
93N037344,	93N039670,	93N041917,	93N043925,
93N047283,	93N047732,	93N048014,	93N049302,
93N049948,	93N050389,	93N051596,	93N052531,
93N054307,	93N054982,	94C006149,	94N034868,
94C006548,	94C007613,	94C007856,	94C007998,
94C008395,	94C008826,	94C009275,	94N053759,
94N057838,	94C011050,	94C011962,	94N075513,
94C012866,	94N001806,	94N002384,	94N002719,
94N004562,	94N005119,	94C001225,	94C001596,
94N010141,	94N010256,	94C001942,	94C002211,
94C002266,	94C002501,	94N017486,	94N017898,
94C002980,	94C003284,	94C003494,	94C004056,
94C004483,	94N027430,	94C005159,	94C006053,
94N082519,	94C014111,	94C014210,	94C014730,
94N093236,	94C016371,	94C017232,	94C017357,
95C002278,	95C000314,	95C000654,	95C001047,
95C001161,	95N005954,	95N016723,	95N019468,
95C002789,	95N014127,	95C004691,	95N024074,

95N026419, 95C009076, 95C009293, and 95N047829 are hereby dismissed. **5

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34 Misc.3d 237, 935 N.Y.S.2d
481, 2011 N.Y. Slip Op. 21411

The People of the State of New York, Plaintiff

v

Jane Doe, Defendant.¹

Supreme Court, Bronx County November 22,
2011

CITE TITLE AS: People v Doe

HEADNOTE

Crimes

Vacatur of Judgment of Conviction

Defendant Sex Trafficking Victim

Defendant's motion pursuant to CPL 440.10 (1) (i) and (6) to vacate her loitering for the purpose of engaging in prostitution convictions was granted, as defendant's motion papers established that her participation in the offenses, which occurred when she was 17 years old and was being controlled and physically abused by her former pimp, was a result of sex trafficking. After defendant was able to break the cycle of violence and abuse and escape from her pimp she voluntarily provided information regarding her pimp and other aspects of prostitution to law enforcement. Moreover, she has been gainfully employed, undergone career training, and was reunited with her family. The cumulative effect of New York and federal law in this area is a strong expression that those engaging in prostitution, or commercial sex, under the age of 18 are to be viewed as victims of trafficking, rather than perpetrators of crime. Defendant was precisely the type of victim intended to be protected under both state and federal law.

RESEARCH REFERENCES

[Am Jur 2d, Criminal Law § 858](#); [Am Jur 2d, Prostitution § 12](#).

[Carmody-Wait 2d, Postjudgment Motions §§ 205:7, 205:9, 205:33](#).

[LaFave, et al., Criminal Procedure \(3d ed\) § 24.11. McKinney's](#),

[CPL 440.10 \(1\) \(i\); \(6\)](#).

[NY Jur 2d, Criminal Law: Procedure §§ 3379, 3381](#),

[3403](#); [NY Jur 2d, Criminal Law: Substantive Principles and Offenses §§ 1788, 1789](#).

ANNOTATION REFERENCE

See ALR Index under Criminal Procedure Rules; Prostitution.

FIND SIMILAR CASES ON WESTLAW

Database: NY-ORCS

Query: vacat! /4 conviction & prostitution /s sex /2 trafficking

*238 APPEARANCES OF COUNSEL

Legal Aid Society, New York City (Kate Mogulescu of counsel), for defendant. *Robert T. Johnson, District Attorney, Bronx (Cassandra Abodeely of counsel)*, for plaintiff.

OPINION OF THE COURT

Megan Tallmer, J.

This opinion elaborates upon an oral decision granting defendant's motion to vacate her convictions pursuant to [CPL 440.10 \(1\) \(i\) and \(6\)](#). On July 11, 2011, defense counsel submitted a motion to vacate three of defendant's prior convictions. Although one of the convictions was before another judge, this court agreed to hear all three motions in the interest of judicial economy.

Upon reviewing defendant's moving papers, the court determined that defendant's ****2** application appeared to

have merit. With the consent of defense counsel, the court contacted the Office of the District Attorney and asked the People to consider consenting to defendant's motion. After careful consideration of the facts unique to defendant, the People did agree that defendant's motion to vacate her convictions should be granted.

Findings of Fact

The People having consented to defendant's motion, the court accepts as true the following facts set out in defendant's moving papers:

Defendant was born on December 18, 1988. On September 13, 2006, September 17, 2006 and October 8, 2006, she was convicted of loitering for the purpose of engaging in prostitution ([Penal Law § 240.37](#)). At the time of these

convictions, she was only 17 years old and working for D.B. Although defendant gave her correct age the first time she was arrested, on her second and third arrests, she told the police she was 18 and 19, respectively. D.B. furnished defendant with false identification and instructed her not to acknowledge his existence if arrested.

*239 Besides prostituting her and taking all the proceeds, D.B. used physical violence, degradation and other coercive tactics to control defendant. Prior to working for D.B., defendant was in a series of other abusive, violent relationships in which she was prostituted by different traffickers. This pattern began soon after defendant ran away from home at 13.

After defendant's 2006 Bronx arrests, D.B. left New York and prostituted defendant in Washington, D.C., Virginia and Florida. While in Washington, D.C., defendant was gang raped and assaulted but D.B. would not allow her to go to the hospital because he did not want to draw attention to the fact that she was a prostitute. When defendant told D.B. that she wanted to return to her family in New York, D.B. forced defendant to have his nickname tattooed on her forearm so that even if she left, everyone would know she belonged to him.

In early 2008, defendant finally was able to break the cycle of violence and abuse and escape from D.B. ⁴ Since then, she has relocated from New York to another state. Defendant has **3 been employed in the food service industry for over nine months and is enrolled in a training program to become a medical assistant. Defendant now resides with her young daughter and is working on establishing a positive relationship with her older child, who lives with defendant's mother.

In 2010, defendant voluntarily provided information regarding D.B. and other aspects of prostitution to law enforcement in New York County. An affidavit from a New York County Assistant District Attorney attesting to defendant's cooperation is attached to her moving papers.

The Law

In the last decade, both the federal and New York State legislatures have adopted laws designed to address the growing phenomenon of sex trafficking of minors. ⁵ Thus, in 2000, Congress enacted the Trafficking Victims Protection Act (TVPA) *240 (22 USC § 7101 *et seq.*). Although the

TVPA prohibits all forms of sex trafficking, it imposes greater penalties where a child under 18 is induced to perform a commercial sex act (22 USC § 7102 [8] [A]).

On June 23, 2008, the New York State Legislature passed the Safe Harbour for Exploited Children Act (L 2008, ch 569, codified at Family Ct Act §§ 311.4, 712 [a]; § 732 [a]; Social Services Law §§ 447-a, 447-b). The law seeks to provide support and services to youths who are victims of sexual exploitation. (Assembly Mem in Support, Bill Jacket, L 2008, ch 569, at 13.) In 2010, the Legislature amended CPL 440.10 to add a provision allowing a judgment to be vacated where defendant was arrested for loitering for the purposes of prostitution or engaging in prostitution and defendant's participation in the offense was a result of sex trafficking under Penal Law § 230.34 or the TVPA (CPL 440.10 [1] [i]).

As counsel correctly observes in her memorandum of law, "[t]he cumulative effect of New York and Federal law in this area is a strong expression that those engaging in prostitution, or commercial sex, under the age of eighteen are to be viewed as victims of trafficking, rather than perpetrators of crime." The People concur in the court's determination that defendant is precisely the type of victim intended to be protected under both state and federal law. At oral argument, Assistant District Attorney Abodeely made the following record:

"The People have had the opportunity to review the defendant's 440 motion and to speak with [defendant] at great length, and review supporting documentation corroborating [defendant's] assertions. **4

"We appreciate Miss Mogulescu's assistance in facilitating those meetings. While every motion of this type is viewed on its own merit, we are confident that [defendant] has been forthcoming with us in all aspects of her personal history that *241 she was, indeed, the victim of human trafficking dating back to a young age, and that in spite of a very challenging set of circumstances, and in some instance grave danger, she has fought diligently, and successfully to overcome those challenges to educate herself, and to be a strong and committed mother to her young child.

"Again, each case is viewed on its own merit; as such, the People are exercising our discretion, under the exceptional circumstances presented in this one, each of the convictions for which [defendant] seeks relief are crimes covered by CPL 440.10.

"In light of the foregoing, the People do not oppose ^{wld served by relieving defendant of the stigma and negative} defendant's motion. Rather we ask that this Court ^{consequences of a criminal history. The court, with the} consent of the People, accordingly grants defendant's motion grant it, and we wish [defendant] all the best going _{forward} " to vacate the judgments on docket numbers 2006BX048415, 2006BX049106 and 2006BX053091 and to dismiss and seal

The court agrees with the People's assessment. The horror ^{aSI records of those dockets.} of defendant's sexual exploitation and physical abuse when she was a minor is detailed exhaustively in counsel's moving ^{FOOTNOTES} papers. D.B.'s role in defendant's subjugation is not disputed, nor is defendant's voluntary cooperation with the prosecution. The purposes of New York's law against sex trafficking are

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Footnotes

- 1 To further the purposes of CPL 440.10 (1) (i), defendant's name is not used in this decision. Similarly, defendant's former pimp is referred to by his initials, "D.B."
- 2 At the time of its oral decision, the court commended defense counsel for submitting a remarkably persuasive set of moving papers. The court also expressed its appreciation for the District Attorney's willingness to consent to defendant's motion upon determining that defendant's particular circumstances warranted relief under the law.
- 3 As a consequence of granting defendant's motion, the records of defendant's prior convictions were sealed (CPL 160.50 [3] [f]). The parties agreed, however, that one copy of the court's minutes would be retained by the court solely for purposes of preparing this written decision.
- 4 D.B. was subsequently arrested and prosecuted by the United States Attorney's Office for the Southern District of Florida. In 2008, D.B. pleaded guilty to Social Security fraud (42 USC § 408 [a] [7] [B]) and aggravated identity theft (18 USC § 1028 [a] [1]). The presentence report submitted to the federal court by the government documented D.B.'s extensive activities as a pimp.
- 5 A thorough discussion of the legislative history of both the federal and New York State laws addressing sex trafficking and the interplay between them is set out in *People v G.M.* (32 Misc 3d 274 [Crim Ct, Queens County, 2011, Serita, J.]). (See also *People v Gonzalez*, 32 Misc 3d 831 [Crim Ct, NY County 2011, Kotler, J.]; *Matter of Bobby P.*, 28 Misc 3d 959, 966-969 [Fam Ct, Queens County 2010, Hunt, J.]). According to the New York Law Journal, Judge Serita's decision was the first to apply the provisions of CPL 440.10 (1) (i). (See Keshner, *Prostitution Conviction is Vacated Under New Law*, NYLJ, May 9, 2011.) The defendant in that case was not a United States citizen. The New York Daily News reported on September 22, 2011, that the instant case is the first in which a United States citizen obtained relief pursuant to CPL 440.10 (1) (i). (See Deutsch, *Women Forced into Sex Trade Has Prostitution Convictions Thrown Out under New Sex-Trafficking Law*.)

End of Document

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Unreported Disposition 33 Misc.3d 1235(A), 941
N.Y.S.2d 540 (Table), 2011 WL 6303402 (N.Y.City
Crim.Ct.), 2011 N.Y. Slip Op. 52245(U)

**This opinion is uncorrected and will not be published in the
printed Official Reports.**

The People of the State of New York, v.
Samatha R., Defendant.

2011KN092555 Criminal Court of the City of New York,
Kings County Decided on December 16, 2011

CITE TITLE AS: People v Samatha R.

ABSTRACT

Crimes
Prostitution
Safe Harbour Act—Loitering-for-Prostitution Case of 16 Year Old
Dismissed in Interests of Justice

People v Samatha R., 2011 NY Slip Op 52245(U). Crimes—
Prostitution—Safe Harbour Act—Loitering-for-Prostitution Case
of 16 Year Old Dismissed in Interests of Justice. (Crim Ct, Kings
County, Dec. 16, 2011, Hecht, J.)

APPEARANCES OF COUNSEL

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For the People: Hon. Charles J. Hynes
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OPINION OF THE COURT

John T. Hecht, J.

The defendant is a 16-year old with no criminal history who is
charged with the offense of loitering for the purpose of
prostitution. The charge is a non-criminal violation punishable by
no more than fifteen days jail. When she appeared before me in the

arraignment part she was also the subject of a warrant that had
issued out of Family Court.

The accusatory instrument pertinently alleges that Police Officer
Albert Q. Dodson:

observed the defendant remain in or wander about a public place
for twenty minutes, during which defendant repeatedly beckoned to
passers-by and stopped two passers-by, engaging in conversation
with said passers-by; stop only male passers-by and defendant did
not beckon to or converse with female passers-by who passed by
during the same period standing in the middle of the road while
beckoning to motorists....

[D]efendant stated, in substance, "I was coming from a party with
my cousin."

At defendant's arraignment, I addressed *sua sponte* whether I
should dismiss this prosecution both as an exercise of my interests-
of-justice power and in light of the recently enacted Safe Harbour
for Exploited Children Act (the "Safe Harbour Act") (as added by
L 2008, ch 569 [eff Apr. 1, 2010]), which I read to express the
intent of the Legislature that 16- and 17-year-olds who are charged
with prostitution offenses should be referred to Family Court rather
than prosecuted criminally. The People requested an opportunity to
address my proposed dismissal in writing, even though I noted that
the legislative sponsors of the Safe Harbour Act believed that the
mere pendency of criminal charges against these children was itself
harmful:

[A]rresting, prosecuting and incarcerating victimized youth serves
to re-traumatize them and to increase their feelings of low self-
esteem. This only makes the process of recovery more *2 difficult.
Appropriate services for sexually exploited youth do not exist in
the juvenile justice system and both federal and international law
recognize that sexually exploited youth are the victims of crime
and should be treated as such. Therefore, *sexually exploited youth
should not be prosecuted under the Penal Law for acts of
prostitution*. Instead services should be created to meet the needs of
these youth outside of the justice system. Sexually exploited youth
deserve the protection and services of the family court through
processes in place for persons in need of supervision, including
diversion, crisis intervention, counseling, and emergency and long
term housing services.

(Sponsor's Mem, Bill Jacket, Safe Harbour Act, L 2008, ch 569 [emphasis supplied]).

Ultimately, I afforded the People and the defense an opportunity to respond to the proposed dismissal, not only in fairness to the People (*see People v Clayton*, 41 AD2d 204, 208 [2nd Dep't 1973]), but also to assure that any decision I made would be based on a consideration of all appropriate arguments.

Now, on a record that includes a submission by the People, I conclude that this prosecution should be dismissed in the interests of justice.

A court may dismiss a prosecution on its own motion (*see CPL 170.40* [2]; *People v. Wingard*, 33 NY2d 192 [1973]). My review of the factors relevant to such a dismissal is informed by recent legislative enactments that reveal an understanding that the victim of a prostitution offense may be the prostitute herself. In fact, if the prostitute or, as here, alleged would-be prostitute, is 16- or 17-years-old, the Legislature defines her as a "sexually exploited child" who may obtain child welfare services for sexually exploited children (*see Social Services Law 447-a* [1] [b]; [d]; 447-b).

The Legislature passed the Safe Harbour Act, among other things, to make the Family Court's services available to sexually exploited children up to the age of 18. It amended the definition of a "person in need of supervision" ("PINS"), with regard to whom a Family Court proceeding may be originated, to include a child under 18 charged with prostitution (*see Family Ct Act 712* [a]) or loitering for the purpose of prostitution (*see Family Ct Act 712* [a];

Social Services Law 447-a [1] [d]).¹ As a Family Court judge has observed, the Safe Harbour Act "expresses a preference that children who have been sexually exploited be spared criminal prosecution ... in favor of receiving rehabilitative services." (*Matter of Bobby P.*, 28 Misc 3d 959, 969 [Fam Ct Queens County 2010]; *see also* Sobie, Practice Commentaries, McKinney's Cons Laws of NY, *Family Ct Act 732* ["The intent is to immunize most children who have committed sexual offenses from criminal prosecution substituting PINS adjudication and services."]).

The Safe Harbour Act came into effect against the backdrop of the federal Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. § 7101 *et seq.*, as added by Pub L 106-386, 114 US Stat 1464), which defined the crimes of forced labor and sex trafficking, provided support for trafficking victims, and established a system for monitoring worldwide anti-trafficking efforts (*see* Hon. Betty Weinberg Ellerin, *Introduction*, *Lawyers Manual on Human Trafficking* ("Lawyers Manual"), Supreme Court of the State of

New York, Appellate Division, First Department and the New York State Judicial Committee on Women in the Courts, xx [2011]). Under federal law, if a 16- or 17-year-old has been induced to be a prostitute, she is considered to be a victim of a "severe form[] of trafficking in persons" (*see* Victims of Trafficking and Violence Protection Act of 2000, § 103 [8] [22 USC 7102 [8] [a]]). In 2000, Congress also provided avenues of immigration relief for children under 18 who are victims of a *3 severe form of trafficking, i.e., prostitution, through "T" and "U" visas (*see Slocum, Immigration Remedies for Victims of Human Trafficking, Lawyers Manual*, at 209, 215).

The Safe Harbour Act added to the protections put in place by New York's Anti-Human Trafficking Act of 2006 (as added by L 2007, ch 74, sec 2 [eff Nov. 1, 2007]), which created the new offense of sex trafficking (*see Penal Law 230.34*). In passing this act, New York joined 29 states and the federal government in an effort not only "to prosecute the traffickers" but also to "provide[] these unique victims with the social services they need to break the ties with their traffickers and the opportunity to live healthy and productive lives" (*see* Letter from Mayor Michael R. Bloomberg, June 4, 2007, at 22, Bill Jacket, L 2007, ch 74; *see also* Letter from Michael E. Bongiorno, President, District Attorneys Association of the State of New York, May 31, 2007, at 24, Bill Jacket, L 2007, ch 74 [Act "addresses the abhorrent act of human trafficking by going after the traffickers and aiding their victims"]).

More recently, the Criminal Procedure Law was amended to provide that a victim of sex trafficking may seek vacatur of judgments of conviction for loitering (the charge here) and prostitution (*see CPL 440.10* [i] [eff Aug.13, 2010]). As a result, courts have vacated convictions of individuals who had engaged in prostitution as a result of their having been trafficking victims (*see People v Gonzalez*, 32 Misc 3d 831 [Crim Ct, NY County 2011]; *People v. G.M.*, 32 Misc 3d 274 [Crim Ct, Queens County 2011]), including at least one who was first convicted of prostitution when she was 17, and who had been prostituted from as young as 13 (*see People v. Jane Doe*, __ Misc 3d __, 2011 NY Slip op 21411, 2011 WL 5865295 [Sup Ct, Bronx County 2011]).

In connection with the passage of the Safe Harbour Act, many graphic details of the situation of, and consequences to,

the children involved in child prostitution came into public focus. For example, a report prepared for the New York State Office of Children and Family Services determined that, in this state, the overwhelming majority of children who were identified as having been subjected to commercial sexual exploitation, including prostitution, had prior child-welfare involvement through child abuse and neglect investigations and/or foster care placement. In New York City, almost half had been adjudicated PINS, and over half had a prior juvenile justice placement. Demographically, they were identified predominantly as female (85 %), black (67 %), and 16- or 17-years-old (59 %) (see Gragg, Petta, Bernstein, Eisen and Quinn, *New York Prevalence Study of Commercially Sexually Exploited Children, Final Report*, at 42, 86 [NYS Office of Children and Family Services, Apr. 18, 2007 ("OCFS Report")]).

The OCFS Report estimated that the commercial sexual exploitation of children affects 2,500 children in New York State each year, although it suggested that many more such children are "hidden" because they are runaways or homeless or, out of shame or embarrassment, do not disclose their sexual exploitation. Many of these children have been the victims of sexual and other physical abuse; many suffer from learning disabilities and limitations; many engage in what has been called "survival sex." They are at risk for HIV infection, post-traumatic stress disorder and other forms of mental illness and violence (*id.* at 3-5, 8, 25).

The Safe Harbour Act did not amend the Penal Law and provide a defense of infancy to a 16- or 17-year-old charged

with a prostitution offense. Yet a Penal Law prosecution of such an *4 individual, whom the Legislature elsewhere defines as a "sexually exploited child," whom the legislative materials reviewed above depict as vulnerable and likely already known to Family Court, and who may qualify as a "victim" under both federal and state anti-trafficking laws and therefore for vacatur of any conviction here, is inconsistent with the ameliorative intent of the Safe Harbour Act and other statutes cited.

Further, as the Chief Judge of this State has recently pointed out, New York is out of step with virtually every other jurisdiction in this country (48 states and the District of Columbia) with regard to the age of criminal responsibility (*see* Chief Judge Jonathan Lippman, *Remarks to Citizens Crime Commission of New York City* [Sept. 1, 2011], available at <http://www.nycourts.gov/ip/sentencing/CJLippmansRemarksCitizensCrimeCommission>). He has queried whether 16- and 17-year-olds charged with nonviolent offenses

should continue to be prosecuted in criminal court rather than have their alleged offenses adjudicated in Family Court:

Do we really want these teenagers to be processed in an adult criminal justice system focused on punishment and incarceration? ... where rehabilitative options are limited ... where they may be jailed ... where they may be victimized ... and where they may be burdened with a criminal record that bars them from future employment and educational opportunities?

Or do we as a state want these young people to go through a family court system that is equipped to intervene meaningfully in their lives, before their troubles escalate into more serious criminality, and without exposing them to a criminal record? ... a system that is focused on rehabilitation and getting children back on the right track, that offers supervision, mental health treatment, remedial education and other services and programs ... a system where judges are obligated by law to act in the "best interests" of the children who come before them - a mandate that does not exist in criminal court.

Id.

The Chief Judge's questions are particularly relevant in the context of this case. The Safe Harbour Act specifically addresses the conduct charged here and provides for its non-punitive, non-criminal adjudication in Family Court. The other recently enacted state and federal laws previously mentioned would strongly suggest that criminal prosecution of a 16- or 17-year-old for a prostitution offense is inappropriate, and that the right response of law enforcement would be to bring the child before Family Court.

But I do not need to rule that this prosecution is barred under the Safe Harbour Act, *5 because my interests-of-justice authority allows and, I believe, encourages me to achieve the same result - dismissal - on the narrower grounds present in this case.

The factors set forth in [CPL 170.40](#) clearly demonstrate to me that the prosecution of this defendant would constitute injustice.

Before enumerating these factors, I wish to observe that the District Attorney offered the defendant the Saving Teens

at Risk ("STAR") program, which is part of his office's own initiative to address prostitution by offenders under the age of 22 with counseling rather than incarceration. The program is free. If a defendant completes it, she will receive an Adjournment in Contemplation of Dismissal. No plea is required in order for her to participate in this program. Clearly the District Attorney, by offering the defendant the STAR program, is not seeking to punish but to help her. Nonetheless, no matter how truly laudable are the District Attorney's efforts to provide a treatment option to defendant and others like her, I cannot ignore the fact that the court retains the power to sentence the defendant to up to fifteen days in jail if she should ultimately fail to finish the STAR program and is then convicted of the charged offense, and that as a consequence of any such conviction she would have a potentially life-long criminal record, albeit for a violation. Nor can I ignore that her continued prosecution in criminal court may traumatize her to a greater extent than the prosecution of an adult defendant would affect an adult. These concerns counsel against continuing a prosecution, no matter how sensitively handled by the District Attorney, of an individual whom the law alternately regards as a child and an adult or quasi-adult (see n.3 *supra*), and whom the law also calls an "exploited child" and possibly a "victim," particularly where another appropriate forum may address the circumstances of her alleged offense.⁴

I turn now to the statutory factors set forth in [CPL 170.40](#).

First, the seriousness and circumstances of the offense alleged here are as minimally serious as can be. The charged offense, [Penal Law 240.37](#), is a violation, which is not even a "crime" under the Penal Law's classification scheme (see [Penal Law 10.00](#) [3]; [4]). The circumstances of the offense are likewise minimally serious: the defendant is alleged to have engaged in the proscribed conduct - loitering in the middle of the street -for a total of twenty minutes and to have stopped two passers-by to engage them in "conversation."

Second, the extent of harm caused by the offense is likewise minimal. Although I recognize, as Judge Richard Weinberg of Midtown Community Court reasoned when he denied a motion similar to the present (see *People v. Lewis*, 2010NY03560, NYLJ, decided July 12, 2011, at *1 [Crim Ct, NY County, Weinberg, J.]), that prostitution may negatively impact all participants as well as the neighborhoods where it occurs, the harm of the violation charged here is minimal. More importantly, I am persuaded that the harm to defendant's own physical and mental welfare from the alleged conduct is greater than any other societal harm that I can see in this particular case.

Third, I will assume that evidence of guilt is strong. Further, I am aware of no misconduct in the investigation, arrest and prosecution of defendant. To the contrary, the District Attorney is prosecuting this case with a focus on rehabilitative, rather than punitive, concerns. But even so, the absence of these factors does not dissuade me from my conclusion that dismissal *6 is appropriate.

Fourth, the history, character and condition of defendant as revealed in this record are a 16-year-old who has no prior involvement with the criminal justice system, who has lived her entire life with her grandmother in New York City, who has completed the 11th grade, and who attends school.

Fifth, I find that there would be little purpose in imposing a sentence on defendant and that the effect of any sentence would do more harm than good.

The sentencing options in Criminal Court are limited. The likely sentence in a case such as this would not involve jail. Even if the sentence were a conditional discharge with required attendance at a counseling program, I see no purpose in imposing such a sentence when the options available in Family Court, as suggested by the Chief Judge, are likely superior because of the statutory mandate of considering the child's "best interests."

On the other hand, the effect of a conviction in this case would be seriously and inappropriately detrimental to the defendant. If convicted and sentenced, she would have a record, albeit for a non-criminal offense. Such a record - unlike that for a conviction of virtually any other violation - would not be subject to sealing pursuant to the general sealing statute (see [CPL 160.55](#) [1]). And, as a result of another legal anomaly that arises from the definition of "youth" in the Criminal Procedure Law (see [CPL 720.10](#) [1] [a "youth" is a person 16- to 18-years-old charged with a "crime"]), a conviction of this offense would not be subject to replacement by a youthful offender adjudication and sealing under the youthful offender law (see *People v Caruso*, 92 Misc 2d 559 [Onandaga County Ct 1977]). By contrast, any other adolescent with no prior record would be entitled to have her first *misdemeanor* conviction replaced by a youthful offender finding (see [CPL 720.20](#) [1] [b] [court must find eligible youth to be a youthful offender upon her first conviction in criminal court]) - even though a misdemeanor is a more serious offense than the one

charged here. Indeed, an adolescent convicted of a *felony* may be eligible to have her first felony conviction replaced by a youthful offender adjudication (see [CPL 720.20](#) [1] [a]), leaving that adolescent with no public record of conviction. In sum, defendant here may have a life-long record of conviction of a stigmatizing offense (unless it were subsequently vacated

pursuant to [CPL 440.10](#) [i] or some other provision of law),⁵ when other adolescents whose cases were resolved in more unfavorable circumstances (i.e., conviction of a misdemeanor or felony) or adults similarly situated (i.e., convicted of a violation other than [Penal Law 240.37](#)) would not suffer that same detriment.

Sixth, I do not believe that dismissal will impact the safety or welfare of the community. Although prostitution may have negative collateral effects on the community, attributing such effects to the alleged conduct of this particular defendant would surely be an exaggeration.

I further surmise that the District Attorney may find that maintaining a prosecution against an alleged teen prostitute might give law enforcement a tool with which to fight trafficking. Yet I doubt whether any public interest in this regard cannot equally be achieved if this case were handled in Family rather than Criminal Court. That is, the venue of the adjudication should not preclude a District Attorney from investigating the allegation that a teenager has been prostituted. More importantly, I would find it hard to justify refusing to dismiss the case against a teenager only so that prosecutors might prove that she is the victim of the crime with which she is charged (*cf.* [Penal Law 230.36](#) ["In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or ... profited ... shall not be deemed to be an accomplice"]).

Seventh, I believe that the public's confidence in the criminal justice system will be *7 enhanced by a dismissal here.

Footnotes

- 1 Although [sections 712 \[a\]](#) and [732 \[b\]](#) of the [Family Court Act](#) appear to require the consent of the 16- or 17-year-old in order for a loitering allegation to form the basis of a PINS petition, [section 732 \[a\] \[i\]](#) of the Act does not and it applies to loitering by referencing [Social Services Law 447-a \[1\] \[d\]](#). (See Sobie, Practice Commentaries, McKinney's Cons Laws of NY, [Family Ct Act 732 \[Section 732 \[a\]](#) "paints with a far broader brush than" [Section 712 \[a\]](#).)
- 2 I note that [Social Services Law 447-b \[2\]](#) provides that "[a]ll of the services created under this title may, to the extent possible provided by law, be available to all sexually exploited children whether they are accessed voluntarily, [or] as a condition of an adjournment in contemplation of dismissal issued in criminal court...." Although this reference to criminal court might be read as contemplating that sexually exploited children will continue to be prosecuted for prostitution offenses, I read this language otherwise. It emphasizes that the intent of the Safe Harbour Act is to make social services available to all sexually exploited children, including those who may

The criminal justice system is not always the best venue for addressing societal problems. Here, the alleged offense -which is not a crime - involves someone who, according to the Penal Law, is barely an adult, if even that (see n.3 *supra*), and who, according to the Social Services Law, is a "sexually exploited child." In these circumstances, the purposes of the Penal Law, which include providing "an appropriate public response to particular offenses" (*see* [Penal Law 1.05 \[5\]](#)), favor an exercise of the criminal justice system's mercy-dispensing power to dismiss this prosecution. I believe that as a result of a dismissal here, the public will be confident that our laws are not inflexible or unduly harsh and that they do not operate in isolation of a growing awareness that, in the appropriate case, the lessened culpability of a 16-year-old *visa-vis* an adult, as well as the recognition that she is exploited if not also victimized, may require that the allegations against her be addressed outside criminal court.

For these reasons, this matter is dismissed. Sealing is stayed 30 days to allow the People an opportunity to seek Family Court adjudication of this matter and to appeal.

The foregoing constitutes the decision and order of the court.

Dated: December 16, 2011

Brooklyn, New York

_____/s/ _____

John T. Hecht

J.C.C.

FOOTNOTES

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have matters, of whatever nature, pending in criminal court. In other words, this section of the Social Services Law, which pertains to the availability of social services to exploited children, says nothing about jurisdiction. To the extent that the Safe Harbour Act does address jurisdiction, as discussed above, it expands Family Court's PINS jurisdiction in preference to that of criminal court for sexually exploited children charged with prostitution offenses.

- 3 Another inconsistency that arises from prosecuting a 16-year-old child, such as defendant here, lies within the Penal Law itself, which provides that a 16-year-old cannot legally consent to engage in sexual intercourse (*see Penal Law 130.05* [3]), and is a rape victim if she engages in intercourse with someone who is 21 or older (*see Penal Law 130.25* [2]; 130.40 [2]); yet at the same time she is a criminal if she consents to have intercourse for money. The Penal Law's provisions in this regard can more easily be reconciled if a 16-year-old were considered to be incapable of consenting to intercourse, whether or not money is involved, for if she is incapable of consenting to intercourse, that incapacity does not change because she also agrees to accept money. While I do not need to resolve this inconsistency, I note that it demonstrates another legislative indication that, for certain purposes at least, the Penal Law does not treat 16-year-olds as adults.
- 4 To the extent that the Family Court Act may require the consent of the child to commence a PINS proceeding based on an allegation (as here) that a 16-year-old has engaged in loitering (*see n.1 supra*), it is possible that the Family Court might not ultimately adjudicate the offense set forth in this complaint. Nonetheless, I do not believe that that possibility outweighs all the other reasons that favor dismissal. In particular, this defendant is already involved in Family Court proceedings; accordingly, all appropriate Family Court services will presumably be made available to her there. I note as well that a court order is not necessary for a sexually exploited child, such as defendant, to access child welfare services, because the Safe Harbour Act also makes them available on a voluntary basis (*see Social Services Law 447-b* [2]).
- 5 *See* Letter from Danielle Grant, Girls Educational and Mentoring Services, July 3, 2008, at 82, Bill Jacket, Safe Harbour Act, L 2008, ch 569 [their "records have been tarnished, so that now as adults they can't do the basic things, like getting a real job and anything else that requires background checks"].

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36 Misc.3d 610, 948 N.Y.S.2d
520, 2012 N.Y. Slip Op. 22166

The People of the State of New York, Plaintiff

v

S.S., Defendant.

Criminal Court of the City of
New York, New York County
January 10, 2012

CITE TITLE AS: People v S.S. HEADNOTE

Crimes

Vacatur of Judgment of Conviction
Defendant Sex Trafficking Victim

A judgment convicting defendant of prostitution was vacated pursuant to CPL 440.10 (1) (i), which provides for the vacatur of judgment in cases where a defendant's participation in a prostitution offense was a result of having been a victim of sex trafficking, where defendant established that she had been a victim of sex trafficking under Penal Law § 230.34 (5) and of a severe form of sex trafficking under 22 USC § 7102 (8) (A). Defendant had at least 15 prior arrests for prostitution and provided the court with an exhaustive history of her experiences of being coerced into, and remaining in, a life of prostitution through exploitation and manipulation by her pimps, her resulting depression and attempts at suicide, and her successful efforts to escape from her pimps and from her former life. After being sentenced to a one-year conditional discharge defendant successfully completed her mandated sessions with counseling and support groups, reunited with her family, completed her education, and became gainfully employed. Defendant rehabilitated herself and was on her way to a truly productive, law-abiding life, presenting precisely the situation which CPL 440.10 (1) (i) was enacted to address.

RESEARCH REFERENCES

Am Jur 2d, Prostitution §§ 1, 4.

Carmody-Wait 2d, Postjudgment Motions §§ 205:7, 205:9, 205:33.
McKinney's, CPL 440.10 (1) (i); Penal Law § 230.34 (5).

NY Jur 2d, Criminal Law: Procedure §§ 3379, 3381,
3403; NY Jur 2d, Criminal Law: Substantive Principles and

Offenses § 1788.

22 USCA § 7102 (8) (A).

ANNOTATION REFERENCE

See ALR Index under Prostitution.

FIND SIMILAR CASES ON WESTLAW

Database: NY-ORCS

Query: vacat! /s prostitution /s sex /2 trafficking

APPEARANCES OF COUNSEL

Legal Aid Society, New York City (*Kate Mogulescu* of counsel), for defendant. *Cyrus R. Vance, Jr.*, *District Attorney*, New York City (*John Temple* of counsel), for plaintiff.

*611 OPINION OF THE COURT

Richard M. Weinberg, J.

Defendant pleaded guilty to one count of prostitution ([Penal Law § 230.00](#)) on November 9, 2010 at Midtown Community Court. She received a one-year conditional discharge with a mandate to complete 10 sessions of individual counseling with the Midtown Community Court clinical staff and a 10-day program with GEMS (Girls Education and Mentoring Services). This court was kept apprised of defendant's progress through frequent updates from the Midtown clinical staff. Defendant successfully completed her mandate.

Defendant now moves for an order vacating judgment pursuant to [Criminal Procedure Law § 440.10 \(1\) \(i\)](#) on the ground that she was a victim of a severe form of sex trafficking pursuant to the Trafficking Victims Protection Act ([22 USC § 7101 et seq.](#)) and a victim of sex trafficking under [Penal Law § 230.34](#).

[Criminal Procedure Law § 440.10](#) was amended in 2010 to provide for the vacating of judgment in cases where defendant's participation in a prostitution offense was a result of having been a victim of sex trafficking under [Penal Law § 230.34](#) or trafficking in persons under the Trafficking Victims Protection Act (*supra*).

Penal Law § 230.34 (5) (a) and (c) defines sex trafficking, in part, as

"using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will . . .

"cause physical injury, serious physical injury, or death to a person; or . . .

"engage in other conduct constituting a felony **2 or unlawful imprisonment in the second degree in violation of [Penal Law § 135.05]."

22 USC § 7102 (9), in relevant part, defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." It defines severe forms of trafficking in persons as "sex trafficking in which a commercial sex act is induced by force, fraud or coercion . . ." (22 USC § 7102 [8] [A].)

Defense counsel has provided the court with an exhaustive history of defendant's experiences of being coerced into, and *612 remaining in, a life of prostitution through exploitation and manipulation by her pimps, her resulting depression and

attempts at suicide, and her successful efforts to escape from her pimps and from her former life. Defendant had at least 15 prior arrests for prostitution when she was arrested on this case and began working with the Midtown Community Court clinical staff and her defense counsel to successfully complete her mandate and leave her former life. She has been reunited with her family, has earned her high school diploma and has completed course work to become a certified nursing aid. She has also been gainfully employed and has been participating in the Leadership Institute at GEMS. Following completion of her court mandate, defendant continued her therapy at Midtown on a voluntary basis.

Defendant clearly meets the New York State statutory definition of a victim of sex trafficking and the federal statutory definition of a victim of a severe form of sex trafficking. Through tremendous efforts on her part, the Midtown clinical staff and defense counsel, defendant is well on her way to a truly productive, law-abiding life. This defendant presents precisely the type of case that the 2010 amendment to Criminal Procedure Law § 440.10 was enacted to address.

Accordingly, defendant's motion is granted, the accusatory instrument is dismissed and the record is sealed.

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Unreported Disposition 35 Misc.3d 1243(A), 953
N.Y.S.2d 552 (Table), 2012 WL 2360942 (N.Y.City
Crim.Ct.), 2012 N.Y. Slip Op. 51134(U)

**This opinion is uncorrected and will not be published in the
printed Official Reports.**

The People of the State of New York, Plaintiff, v.
A.B., Defendant.

2005CN007113 Criminal
Court of the City of New York,
New York County Decided on
January 10, 2012

CITE TITLE AS: People v A.B.

ABSTRACT

Crimes

Vacatur of Judgment of Conviction Sex
Trafficking Victim

People v A.B., 2012 NY Slip Op 51134(U). Crimes— Vacatur of
Judgment of Conviction—Sex Trafficking Victim. Criminal
Procedure Law—§ 440.10 (1) (Motion to vacate judgment;
improper and prejudicial conduct). (Crim Ct, NY County, Jan. 10,
2012, Weinberg, J.)

APPEARANCES OF COUNSEL

For the People: Office of the New York County District Attorney
by ADA John Temple, One Hogan Place, NY, NY 10013, (212)
335-9000.

For Defendant: Legal Aid Society by Kate Mogulescu, Esq., 49
Thomas St., NY, NY 10013, (212) 298-5029.

OPINION OF THE COURT

Richard M. Weinberg, J.

Defendant was convicted of Loitering for the Purpose of Engaging
in a Prostitution Offense (Penal Law § 240.37) on January 31,
2006. She now moves for an order vacating judgment pursuant to
Criminal Procedure Law § 440.10 (1) (i) on the ground that she was
a victim of a severe form of sex trafficking pursuant to the

Trafficking Victims Protection Act, 22 USC § 7101 *et seq.*, and a
victim of sex trafficking
under Penal Law § 230.34.

Criminal Procedure Law 440.10 was amended in 2010 to provide
for the vacating of judgment in cases where defendant's
participation in a prostitution offense was a result of having been a
victim of sex trafficking under Penal Law § 230.34 or trafficking in
persons under the Trafficking Victims Protection Act, *supra*.

Penal Law § 230.34 (5) defines sex trafficking, in part, as

using force or engaging in any scheme, plan or pattern to compel or
induce the person being patronized to engage in or continue to
engage in prostitution activity by means of instilling a fear in the
person being patronized that, if the demand is not complied with,
the actor or another will...cause physical injury, serious physical
injury, or death to a person...or engage in conduct constituting a
felony or unlawful imprisonment in the second degree in violation
of
[Penal Law § 135.05].

22 USC § 7102, in relevant part, defines sex trafficking as "the
recruitment, harboring, transportation, provision, or obtaining of a
person for the purpose of a commercial sex act". It defines severe
forms of trafficking in persons as "sex trafficking in which a
commercial sex act *2 is induced by force, fraud or coercion...".

Defense Counsel has provided the Court with an exhaustive history
of defendant's experiences of being coerced into a life of
prostitution. Defendant's traffickers fraudulently induced defendant
to come to the United States from her home country. Once here,
she was forced to engage in prostitution by her traffickers in order
to repay them for having arranged her entry into the United States.
Her traffickers subjected her to rape and other forms of abuse,
instilled in her fear for her life and the lives of her family members,
threatened her with blackmail, withheld her immigration
documents and held her in debt bondage.

Defendant has been found by the Federal Government to have been
a victim of a severe form of trafficking and, as a result of this
finding, she now holds a T-Visa. Her application for this special
visa was supported by the Office of the New York County District
Attorney. This finding creates a statutory presumption under CPL
§ 440.10 (i) that defendant's

participation in the charged offence was a result of having been a victim of sex trafficking.

Even without this presumption, defendant clearly meets the New York State statutory definition of a victim of sex trafficking and the Federal statutory definition of a victim of a severe form of sex trafficking. Defendant has rebuilt her life and is now well on her way to being a truly productive, law-abiding person. This defendant presents precisely the type of case that the 2010 amendment to [Criminal Procedure Law § 440.10](#) was enacted to address.

End of Document

Accordingly, defendant's motion is granted, the accusatory instrument is dismissed and the record is sealed.

This constitutes the decision and order of the Court.

Dated: _____

New York, New York Richard M. Weinberg

Judge of the Criminal Court

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2013 WL 4402830 Criminal Court,
City of New York, Queens County.

The PEOPLE of the State of New York v.

L.G., Defendant. No. 2000QN056893. | July

12, 2013. Synopsis

Background: Defendant was convicted in the Criminal Court of the City of New York, Queens County of disorderly conduct and criminal possession of a weapon in the fourth degree, and was sentenced to a term of probation. Defendant moved to vacate judgment based on her alleged status as sex trafficking victim.

Holdings: The Criminal Court, *Toko Serita*, J., held that:

[1] defendant was victim of sex trafficking, and

[2] defendant's participation in offense which led to weapon conviction was direct result of her actions as sex trafficking victim.

Duress, Compulsion, or Necessity

Judgments of conviction vacated.

West Headnotes (6)

[1] **Criminal Law**

Duress, Compulsion, or Necessity

In order to obtain relief under the statute which allows defendants to vacate convictions which resulted from their experiences as victims of human trafficking, the movant must establish that (1) she was a trafficking victim at the time of her arrest, and (2) her conduct or "participation in the offense" leading to her arrest resulted from her being trafficked. McKinney's CPL § 440.10(1)(i).

[4] **Criminal Law**

[2] **Criminal Law**

Although New York, unlike federal law, does not have a definition of what constitutes a sex trafficking victim, within meaning of statute authorizing vacatur of conviction, it necessarily follows that any person who is a victim of the statutory crime of sex trafficking would meet this definition. McKinney's Penal Law § 230.34; McKinney's CPL § 440.10(1)(i).

[3] **Criminal Law**

Duress, Compulsion, or Necessity

Defendant was victim of sex trafficking under both federal and New York state standards, as required to support her motion to vacate convictions for disorderly conduct and criminal possession of a weapon which allegedly resulted from her experiences as victim of human trafficking; defendant's traffickers used force and fear to compel her participation in prostitution, and defendant was induced into commercial sex while under 18 years of age. 22 U.S.C.A. § 7102(8)(A); McKinney's CPL § 440.10(1)(i); McKinney's Penal Law §§ 230.34, 240.20, 265.01.

Duress, Compulsion, or Necessity

Defendant's participation in offense which led to her conviction for criminal possession of a weapon was direct result of her actions as sex trafficking victim forced into street prostitution by her pimp/trafficker, supporting her motion to vacate conviction based on her status as trafficking victim, even though conviction for weapons possession was not prostitution offense; defendant was minor victim at time of her arrest, under coercive control of her trafficker, and she possessed a pocket knife to protect herself on streets where she was forced to work under dangerous conditions because she had been raped and kidnapped in past. 22 U.S.C.A. § 7102(8)(A); McKinney's CPL § 440.10(1)(i); McKinney's Penal Law §§ 230.34, 265.01.

[5] Criminal Law

Time for Proceedings

Defendant filed motion to vacate her convictions based on her status as sex trafficking victim with due diligence after she ceased to be a victim of sex trafficking; statutory provision under which defendant sought relief was not enacted until two years after she stopped fearing that her trafficker would harm her, and defendant filed her motion, which required significant amount of effort, barely one year after provision was enacted. McKinney's CPL § 440.10(1)(i).

[6] Infants

i= Responsibility for Offense or Violation

Disorderly conduct was not among crimes for which a person less than 16 years old could be held criminally responsible, and thus count charging 14-year-old defendant with that crime was a nullity and would be dismissed.

Attorneys and Law Firms

Assistant District Attorney [Roni Piplani](#), Office of the Queens County District Attorney, Kew Gardens.

Melissa Sontag Broudo, Esq., Staff Attorney, New York, Attorney for the Defendant.

Opinion

TOKO SERITA, J.

*1 Defendant moves to vacate her plea of guilty to disorderly conduct (Penal Law [PL] § 240.20) under Docket number 2000QN056893 and the judgment of conviction and sentence rendered on November 14, 2000, and her plea of guilty to criminal possession of a weapon in the fourth degree (PL § 265.01) under Docket number 2003QN050066 and the judgment of conviction

The Parties' Contentions

Defendant asserts that her prior convictions are directly related to her arrests for prostitution offenses, and that because she is a victim of human trafficking, those convictions must be vacated and the cases dismissed. Defendant also argues that she was denied effective assistance of counsel when she pleaded guilty in each case.

The People do not contest the factual allegations presented by defendant. Rather, they argue that her second conviction for criminal possession of a weapon should not be vacated because it is not a prostitution-related charge, and as a matter of public policy, CPL 440 should not grant greater protection to human trafficking victims in weapons cases. They also assert that defendant failed to seek relief under CPL 440 with due diligence because she filed her motion three years after she ceased to fear her trafficker in 2008, and a year after CPL 440 was amended in 2010 to allow relief for human trafficking victims (*see* CPL 440.10[1][i]).

and sentence rendered on November 7, 2003, pursuant to [Criminal Procedure Law \(CPL\) 440.10\(1\)\(h\) and \(i\)](#).

Procedural History

Defendant [LG](#)¹ was arraigned on November 14, 2000 under Docket number 2000QN056893 under an alias and charged with prostitution (PL § 230.00). Defendant pleaded guilty on that date to disorderly conduct (PL § 240.20) and was sentenced to a conditional discharge.

Subsequently, on November 7, 2003 defendant was arraigned under Docket number 2003QN05006, again, under an alias and charged with loitering for the purpose of engaging in a prostitution offense (PL § 240.37[3]), criminal possession of a weapon in the fourth degree (PL § 265.01[1]) and disorderly conduct (PL § 240.20[5]). On November 7, 2003 defendant pleaded guilty to criminal possession of a weapon in the fourth degree and was sentenced to three years of probation. Thereafter, on May 5, 2004, defendant was declared delinquent for violating the conditions of her probation. On November 28, 2006 defendant was convicted of violation of probation and sentenced to ten days' imprisonment.

I. Factual Background

The People do not contest defendant's factual averments. Accordingly, the court accepts as true the following facts set out in defendant's moving papers:

Defendant, "**LG**," was forced into prostitution when she was only 12 years old. She was born in 1986 in Brooklyn, New York, and lived with her grandmother until she was eight years old. While living with her grandmother, **LG** was sexually abused by an uncle, but she never received any medical attention even though ACS was involved and informed about the abuse. Following her grandmother's death, **LG** was placed into foster care and over the next few years, she was bounced around different foster homes until she was 12 years-old, when something happened that changed her life. There was a strip club across the street from where she lived with a foster family in Brownsville, Brooklyn. One day

she was approached by a man in his thirties, "A." He took her to a house where six other underage girls were living. Each of these girls had a bed in a different room, and "A," who was very nice to her at first, told her that if she stayed with him, she would not have to go back to her foster family. He kept her there and would not permit her to return to her foster home.

He explained the rules of the "game" ⁴ to her, and although she didn't understand it at the time, "A" was preparing her to become a prostitute.

*2 After several weeks, "A" sent her out to a "track" ⁵ on Pennsylvania Avenue in Brooklyn, accompanied by the other girls, who were there to make sure she did not get snatched by other pimps. Thereafter, he took her to that track repeatedly so that she could earn money for him through prostitution. **LG** was scared to leave "A" because he severely beat the other girls just for speaking with other men. He also beat them with hangers because he thought they were a bad influence on defendant. Later, at the encouragement of some girls she met on the track, defendant started working for another pimp, named "B," in Crown Heights, because she felt safer with him. Although he was also nice to her on the first day they were together, the next day he forced her to go out and make money for him through commercial sex. "B" also intimidated her with physical violence and was very strict with his girls, whom he forced to work daily from 7 p.m. to 8 a.m.

When **LG** was about thirteen years old, she started working for "C." She was required to give him the money she made in exchange for her own room. She did not enjoy her life being prostituted: "[i]t wasn't like I wanted to be out there, but being in foster care, going from home to home, I felt like nobody cared about me. It made me feel so miserable."

After about six months, **LG** met another pimp called "D" who took her to Atlantic City, New Jersey. In 2000, "D" sent her by bus to Washington, D.C., and then to Miami, Florida. In Florida, defendant, who was 14 years old at the

time, attempted to leave "the life" ⁶ by calling her brother's father who lived in Ft. Lauderdale. He came to get her, and she lived with him and her brother for about two weeks. A friend bought her a ticket back to New York, where she resumed foster care placement. However, the family she was placed with did not support her.

She then met a girl who introduced her to a manipulative pimp called "E" in Coney Island. **LG** was 14 years old at the time and he was about 30. He was very violent and would severely beat the girls who worked for him, including **LG**, who was afraid that he would kill her if she ever tried to leave him. She recalled that "some girls left once they realized he was so scary, but "E" would find them and beat them up. If a girl made a lot of money, he would put fear in her heart not to leave." He beat the defendant often, sometimes violently, for not making enough money or for threatening to leave, and would use a belt, or an iron, or any other handy object. Once he beat her so badly about the face that she was unable to leave the house for two weeks, primarily because "E" was afraid she might attract the attention of the police. He also forced her, as well as all his other girls, to have sex regularly with him. During the time she was with him she worked the tracks in Brooklyn, Queens, the Bronx, New Jersey, and other states. "E" instructed **LG** to use a false name and age if she was ever arrested. She was with "E" for about three and a half years.

*3 Defendant was first arrested in Queens County for prostitution on November 14, 2000 when she was 14 years old. In accordance with her pimp's instructions, she provided a false name and birth date to the police to appear older. Defendant was next arrested on November 2, 2003 for loitering for purposes of prostitution, disorderly conduct, and criminal possession of a weapon in the fourth-degree for allegedly carrying a knife. She was 17 years old at the time. **LG** admits that she carried a small pocketknife "no bigger than [her] forefingers," which had been given to her by her pimp, who instructed her to carry it with her for protection when she was on the street. "Johns" had raped, assaulted and threatened **LG** with weapons many times while she was forced to work as a prostitute. Defendant explained that "[a]t the time of my second arrest, I had heard that there was a guy out there who pretended to be a client, but would then rape girls and beat them up. It felt like every time I turned

around, some girl was missing. Another girl I knew was raped and beaten up by a trick. She ended up in the hospital. I had already been raped by clients and was terrified of it happening again. Every time I went out I was scared of being raped or killed."

The night she was arrested, **LG** was working in a dark and very scary area near a bus stop when she was stopped by a police officer, who requested her identification, inspected her purse and discovered the pocketknife. **LG** thought that she was being arrested for prostitution, not for possession of a weapon. In any event, she pleaded guilty to the weapons charge and was sentenced to probation for three years, which she eventually violated. According to her, she only discovered years later that there was a warrant for her arrest when she applied for a certificate of disposition so that she could get a job as a home health aide. Because she had failed to comply with probation, she was sentenced to ten days' incarceration on November 28, 2006.

In 2004, **LG** was 18 years old when she was finally able to leave "the life." Her pimp, "E," had been arrested, which gave her a chance to escape. She returned to a foster care placement agency, and for the first time in her life, disclosed what had happened to her as a child. They placed her with a family on Staten Island to keep her away from Brooklyn, where she did not feel safe because she had been informed that her pimp was looking for her. She went back to school and stayed with her foster family in Staten Island for a year before she was able to get a subsidized apartment right before her 21st birthday.

LG had been previously mandated by the family court to participate in the GEMS program back in 2001 when she was 14 years old. As a result, she received support and counseling from them. After leaving prostitution in 2004 she reconnected with GEMS and became an active member, participating in their educational initiative program and in various therapy groups before starting school again. She received a home health aide degree in February 2007 and was working in that capacity during most of 2007, until the New York City Department of Health ran a background check and informed her that she could no longer work because of her past convictions. She received her GED in 2010 and subsequently qualified for a certificate as a medical assistant. More recently, **LG** was questioned about her ability to be a fit guardian when she petitioned for custody of her nephew— because of her convictions.

*4 In 2008, defendant received a message from her pimp in which he stated that he was not coming after her. However, she still feared

him and therefore did not report him as her trafficker. In her affidavit in support of her motion, she stated that "[o]ne of my family members was recently murdered by her pimp. He beat her to death. Even though it's been many years since I was trafficked, hearing about this was so emotionally difficult. It touches me every day. I remember how fearful I felt when I left. I was always afraid that "E" was going to come and hurt me. It's only recently that I just got that fear out of my heart."

Defendant is currently a student at Medgar Evers College, and expects to graduate in 2014 with a bachelors degree in public administration and social work. She avers that she wants "to vacate my convictions so that I can move forward with my life and career without being held back by my past."

II. Analysis

Defendant **LG's** odyssey as a victim of human trafficking began when she was only twelve years old; she was picked up off the streets of New York City and forced into prostitution for the next several years by a succession of exploitative men who already had other underage girls working for them. Having endured physical and sexual violence at the hands of her pimps, johns, and family members, defendant's childhood and adolescence were marked by rapes, sexual assaults, kidnapping, enslavement, and threats of death. Before she was 18 years old, **LG** had been arrested twice for prostitution-related offenses in Queens, resulting in a conviction for disorderly conduct when she was 14 years old after the first arrest, and another for criminal possession of a weapon three years later, when she was 17 years old. In both instances, however, she was charged and convicted as an adult in local criminal court. As noted earlier, the facts are undisputed in this case. At issue here is whether [Criminal Procedure Law 440.10\(1\)\(i\)](#) empowers the court to dismiss non-prostitution convictions which directly resulted from defendant's victimization as a trafficked person or whether the statute's scope must be narrowly applied to vacate only convictions for prostitution-related offenses.

Amendment of CPL 440.10 Vacatur Statute

In 2010, New York became the first state in the country to pass a law which allows defendants to vacate their prior

convictions which resulted from their experiences as victims of human trafficking (CPL 440.10[1][i]).⁹ It did so by amending CPL 440 to create a new form of post-conviction relief which affords victims of sex trafficking the remedy of vacating their convictions if they can establish that "the judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense ...) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law [New York's sex trafficking statute], or trafficking in persons under the [federal] Trafficking Victims Protection Act (United States Code, title 22, chapter 78) ... "(*Id.*).¹⁰

***5 [1] [2]** Thus, in order to obtain the requested relief, the movant must establish that (1) she was a trafficking victim at the time of her arrest, and (2) her conduct or "participation in the offense" leading to her arrest resulted from her being trafficked. Although New York, unlike federal law, does not have a definition of what constitutes a sex trafficking victim, it necessarily follows that any person who is a victim of the statutory crime of sex trafficking would meet this definition. A person is guilty of sex trafficking under Penal Law 230.34 if he or she "intentionally advances or profits from prostitution" by engaging in any one of several types of conduct, such as taking or keeping an individual's passport or immigration documents to induce a victim to become involved in or to remain in prostitution (PL § 230.34[3]), or by using different methods of force or coercion to instill a fear in the trafficked victim to compel her to engage in or continue to engage in prostitution (PL § 230.34[5][a-h]).

On the federal level, the Trafficking Victims Protection Act specifically mentioned in CPL 440.10(1)(i) defines "severe forms of trafficking in persons" to include sex trafficking either in which the victim is induced to engage in a commercial sex act through force, fraud or coercion, or where the victim induced to engage in a commercial sex act has not attained the age of 18 (22 USC § 7102[8][A]). Severe forms of trafficking in persons also include "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" (*id.* at § 7102[8][B]).

[3] This court finds that LG was clearly a victim of sex trafficking under both federal *and* New York state standards.

LG has demonstrated that she was clearly a victim of sex trafficking under the relevant state sex trafficking statute because of her traffickers' use of force and fear to compel her participation in prostitution (PL § 230.35[5]). Defendant also meets the requirements under the federal TVPA as a victim of a "severe" form of trafficking because she was

induced into commercial sex while under 18 years of age¹¹ (22 USC § 7102[8][A]; *People v. G.M.*, 32 Misc.3d 274, 280, 922 N.Y.S.2d 761 [Crim Ct, Queens County 2011]; *see also People v. Doe*, 34 Misc.3d 237, 935 N.Y.S.2d 481 [Sup Ct, Bronx County 2011]).

More to the point, LG's participation in the offences which led to her two convictions was the direct result of her actions as a trafficking victim forced into street prostitution by her pimp/trafficker. The People do not contest either defendant's status or the circumstances surrounding both of her arrests; only that her second conviction should not be subject to vacatur under this statute. Thus, the only disputed issue in this case is whether defendant's conviction for a non-prostitution offense which was the direct result of her having been forced into sex trafficking may be vacated under CPL 440.10(1)(i). LG argues that while her second conviction for weapons possession is admittedly not a prostitution offense, it should nevertheless be dismissed because it resulted from her forced involvement in trafficking activity by her pimp when he required her to engage in street prostitution. To support the connection between the weapons conviction and defendant's coerced prostitution activities, defense counsel notes that LG possessed a pocketknife to protect herself against unpredictable and potentially violent situations involving "johns," and was told to do so by her trafficker

***6** For the reasons explained below, this court holds that LG's conviction for possession of a weapon in the fourth degree falls within the ambit of the vacatur statute because her participation in that offense was undeniably connected to the coerced trafficking activity which led to her arrest on prostitution-related charges and should therefore be vacated.

***Vacatur Not Limited to the Arresting Charge Under
CPL 440.10(1)(i)***

The New York legislature passed the new vacatur law, codified at CPL 440.10(1)(i), based upon a recognition of the continuing harm done to trafficking victims who are burdened with criminal convictions as a result of their victimization

in the commercial sex trade. While New York recognized "the severity of the crime of sex trafficking" by passing the sex trafficking statute in 2007 (PL § 230.34),¹² one of the sponsors of the this new vacatur statute acknowledged that "gaps remain in our ability to provide justice to the victims" (Sponsor's Letter in Support, July 20, 2010 at 10, Bill Jacket, L 2010, ch 332, §§ 1-5).

Victims of trafficking into commercial sex are frequently arrested for prostitution-related offenses and are then saddled with the criminal record for life, long after they may be freed from exploitation. This record may prevent them from obtaining gainful employment and impair their ability to access or stay in public or private housing, advance their education, or participate in other important aspects of life. Trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion (Id.). This new legislation was thus intended to "give victims of human trafficking a desperately needed second chance they deserve" (Sponsor's Mem in Support, Bill Jacket, L 2010, ch 332, §§ 1-5 at 13 [NY Assembly Bill A7670]; see *People v. G.M.*, 32 Misc.3d at 279, 922 N.Y.S.2d 761; *People v. Doe*, 34 Misc.3d at 237, 935 N.Y.S.2d 481 [new legislation designed to assist minor trafficking victims]).

Central to the issue raised by the instant motion is determining what is meant by the term "arresting charge" in CPL 440.10(1)(i), and whether eligibility for relief is confined only to prostitution and loitering offenses. The statutory language of subdivision (1)(i) specifies that the court may grant vacatur if "[t]he judgment is a conviction where the arresting charge was under" either of the offenses for loitering for the purpose of engaging in a prostitution offense (PL § 240.37), or prostitution (PL § 230.00) (CPL 440.10[1][i]).

Indeed, human trafficking victims are frequently arrested and charged for a variety of offenses based on actions which the victims were unwillingly coerced into committing by their traffickers. Any interpretation of CPL 440(1)(i) that would narrow the definition of "arresting charge" to include *only* prostitution offenses as being entitled to post-conviction relief would certainly neither address the coercive forces confronting trafficking victims nor comport with the ameliorative legislative purposes of providing "relief and justice ... to sex trafficking victims" (Governor's Approval Mem, Bill Jacket, L 2010, ch 332 at 6). Rather, this new law is premised upon the profound understanding that "trafficked persons should not suffer ongoing punishment for acts they committed unwillingly under coercion [of a trafficker]" (Sponsor's Letter in

Support, July 20, 2010 at 10, Bill Jacket, L 2010, ch 332, §§ 1-5), in which they are "presumably not criminally liable for the offense" (Peter Preiser, Supp Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 440.10, 2013 Pocket Part at 99).

*7 The insertion of the term "arresting charge" in CPL 440(1)(i) was deliberate on the part of the legislature. As the bill's sponsors observed, "[t]he bill is keyed to the arresting charge' because it is common for a person arrested on prostitution-related charges to plead guilty to some other lower-level offense such as disorderly conduct; the bill's remedy should be available to such a person" (Sponsor's Mem, Bill Jacket, L 2010, ch 332 at 12 [NY Assembly Bill A7670]). Similarly, the governor's approval memorandum recognized that a defendant could be arrested for prostitution but convicted of another offense, and seek vacatur of that conviction under the statute (Governor's Approval Mem, Bill Jacket, L 2010, ch 332 at 5-6 [NY Assembly Bill A7670]). Thus, the legislative history of CPL 440.10(1)(i) shows that the legislature anticipated that a victim of human trafficking arrested on prostitution-related charges may ultimately plead guilty to an alternate count. It necessarily follows that where, as here, one of the arresting charges was loitering for the purpose of engaging in prostitution, and the defendant pleaded guilty to a related non-prostitution crime, then that conviction must be regarded as having *resulted* from defendant's having been a victim of sex trafficking. Consequently, that charge may be vacated under CPL 440 .10(1)(i).

[4] In the instant case, LG's second arrest charged her with a variety of crimes other than simply loitering for the purpose of engaging in prostitution. Affording her the remedy of vacatur for those offenses which were also committed under force and coercion by an underage victim of sex trafficking is consistent with the legislature's intent. There is no dispute that she was clearly a minor victim at the time of her arrest, under the coercive control of her trafficker, and that she possessed a pocket knife to protect herself on the streets where she was forced to work under dangerous conditions because she had been raped and kidnapped in the past. Her conviction for criminal weapons-possession was clearly the result of her having been trafficked and therefore the arrest charge could be considered a prostitution-related offense.

*Judicial Discretion Limits Vacatur to
Trafficking Related Offenses*

Another significant feature of this new law is that the amended statute contemplates the exercise of judicial discretion because it states that the court "may" vacate the judgment of conviction if certain criteria are met. As the Governor's approval memorandum notes, this also includes the discretion to limit the over-inclusive application of the statute to avoid vacating convictions for more serious crimes. "By allowing a court to deny a motion, even though the defendant committed a crime as a result of his or her victimization, the bill properly permits judicial consideration of the nature or seriousness of the crime" (Governor's Approval Mem, Bill Jacket, L 2010, ch 332 at 6 [NY Assembly Bill A7670]). Thus, the statute grants to the court discretion to consider non-prostitution crimes for vacatur, but in exercising that discretion, the court must ensure that serious crimes are not vacated merely because the defendant happened to be a victim of trafficking. Additionally, under subdivision 6 of CPL 440.10, the statute specifically contemplates the use of judicial discretion to "take such additional action as is appropriate in the circumstances ."¹³

*8 Previously, this court, in *People v. G.M.* (32 Misc.3d 274, 922 N.Y.S.2d 761), vacated a trafficking victim's convictions for two violations stemming from drug charges (disorderly conduct [PL § 240.20]), and four B misdemeanor convictions, two for criminal trespass in the third degree

(PL § 140.10), and two for prostitution (PL § 230.00).¹⁴ In that case, the People consented to the dismissal of all six of the defendant's convictions, including those that did not involve prostitution charges, because they agreed that the defendant was clearly a victim of sex trafficking during each

of her arrests.¹⁵ In carefully reviewing the specific facts of this case, the court finds no difference between defendant's status as a victim of sex trafficking and that of the defendant G.M. Accordingly, there is no discernible distinction between both cases except for the fact that LG pleaded guilty to the crime of fourth-degree criminal possession of a weapon, an A misdemeanor.

In *People v. G.M.*, this court left open the question whether CPL 440.10(1)(i) could be applied to non-prostitution offenses where the People have not consented to vacatur of the resulting conviction(s). It is now evident from the foregoing analysis of the legislative history behind the statute, that the legislature's goal in amending the statute was to avoid punishing the victims of human trafficking by saddling them with a criminal record. It is also apparent that the

legislature fully expected the statute to provide relief to trafficking victims who were not only arrested for prostitution or loitering for the purpose of prostitution, but were also convicted of other charges. Finally, the legislature noted that discretion remains with the court to determine which convictions should be vacated.

[5] Additionally, this court rejects the People's argument that defendant failed to file this motion with due diligence after she ceased to be a victim of sex trafficking, as required under CPL 440.10(1)(i). According to defendant's uncontested factual averments, she escaped her trafficker in 2004, but feared until 2008 that he would track her down and harm her. The statutory provision under which defendant now seeks relief was not enacted until August, 2010 and defendant filed her motion in September, 2011. Considering the significant amount of effort required to prepare the instant motion, and the fact that CPL 440.10(1)(i) had only been in effect for barely one year when defendant filed her motion, this court finds that defendant made her motion with necessary due diligence as required under CPL 440.10(1)(i) (i).

Accordingly, in order for the court to exercise its discretion to consider vacatur of each of defendant's judgments of conviction, the court must examine the unique factual circumstances pertaining to each conviction.

*Motion to Vacate Judgment Under
Docket Number 2000QN056893*

Defendant was arraigned on November 14, 2000 under Docket number 2000QN056893 and charged with prostitution (PL § 230.00). Defendant pleaded guilty on that date to disorderly conduct (PL § 240.20) and was sentenced to a conditional discharge. This conviction precisely fits the pattern anticipated under CPL 440.10(1)(i) for permitting the judgment to be vacated.

*9 [6] Additionally, the court notes that based upon LG's uncontroverted factual averments, she was only 14 years old at the time of her conviction for disorderly conduct. Because disorderly conduct is an offense for which criminal responsibility is not imposed on a minor under age 16 (PL § 30.00[2]), the conviction on that charge is a nullity and should

be dismissed (PL § 30.00 [1]; *People v. Lebron*, 197 A.D.2d 416, 602 N.Y.S.2d 602 [2d Dept], *app denied*, 82 N.Y.2d 898 [1993]; *People v. McFadden*, 194 A.D.2d 566, 598 N.Y.S.2d 567 [2d Dept], *lv denied*, 82 N.Y.2d 722 [1993]).

Accordingly, the judgment convicting defendant of disorderly conduct was ordered vacated, and the accusatory instrument dismissed by this court.

***Motion to Vacate Judgment Under
Docket Number 2003QN050066***

On November 7, 2003 defendant was arraigned under Docket number 2003QN050066 and charged with loitering for the purpose of engaging in a prostitution offense (PL § 240.37[3]), criminal possession of a weapon in the fourth degree (PL § 265.01[1]) and disorderly conduct (PL § 240.20[5]). Defendant pleaded guilty to criminal possession of a weapon in the fourth degree and received a sentence of three years' probation. It is apparent both from defendant's factual averments, and the factual allegations contained in the complaint filed in the case, that the knife at issue which gave

Conclusion

rise to the weapons possession charge, was recovered incident to defendant's prostitution-related activity, and that she was a victim of trafficking at the time of her arrest. Accordingly, the judgment convicting defendant of criminal possession of a weapon in the fourth degree was ordered vacated and the accusatory instrument dismissed by this court.

Based upon the foregoing, this court vacated the judgments of conviction entered under Docket number 2000QN056893 and Docket number 2003QN050066 pursuant to CPL 440.10(1) (i) and dismissed the accusatory instruments in each of these cases by Order dated January 2, 2013. The court further ordered that the records of defendant's convictions be sealed under CPL 160.50(1), (3)(f).

This opinion constitutes the decision and order of the court.

Parallel Citations

2013 N.Y. Slip Op. 23276

Footnotes

- 1 The decision has been edited for publication. Defendant's true name is withheld because the records of conviction were vacated by this court and are sealed under CPL 160.50(1) & (3)(f).
- 2 The aliases which defendant used at time of arrest have been redacted for publication at defense counsel's request.
- 3 At the request of defense counsel, the street names of defendant's traffickers have been denoted with consecutive letters in order to safeguard LG's identity.
- 4 "Pimps call themselves players' and their profession the game" ' (Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life*, 8 Violence Against Women 1074, 1078 [Sept 2002]).
- 5 The "track" refers to a public location where prostitutes are forced by their traffickers to present themselves to prospective consumers (see Shoshana Walter, *Fighting Prostitution One Motel at a Time*, Dec. 9, 2010 § A at 25A, available at [http:// www.nytimes.com/2010/12/10/us/10bclodge.html](http://www.nytimes.com/2010/12/10/us/10bclodge.html)).
- 6 Another slang term for prostitution (Williamson & Cluse-Tolar, *supra* note 2 at 1074).
- 7 "Johns" *i.e.*, slang term for buyers of commercial sex (see, Marihug Cedeno, *Pimps, Johns, and Juvenile Prostitutes: Is New York Doing Enough to Combat the Commercial Sexual Exploitation of Children?*, 22 Cornell J L & Pub Pol'y 153, 161 [Fall 2012]; see also PL § 230.02).
- 8 GEMS—Girls Educational Mentoring Services is an organization that provides services for young women and girls who have been victims of commercial sexual exploitation, domestic trafficking, and violence.
- 9 Press Release, Urban Justice Center, Governor Patterson Signs First in the Nation Bill Allowing Survivors of Sex Trafficking to Clear Prostitution Convictions (Aug. 16, 2010), available at [http:// www.sexworkersproject .org/press/releases/swp-press-release-20100816.html](http://www.sexworkersproject.org/press/releases/swp-press-release-20100816.html).
- 10 The Trafficking Victims Protection Act (TVPA) of 2000 was subsequently reauthorized by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub L 108-193, 117 U.S. Stat 2875 [2003]), the Trafficking Victims Protection Reauthorization Act of 2005 (Pub L 109-164, 119 U.S. Stat 3558 [2005]), the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Pub L 110-157, 122 U.S. Stat 5044 [2008]), and the Violence Against Women Reauthorization Act 2013 (Pub L 113-1, 127 U.S. Stat 54 [2013]); see generally Pamela Chen & Monica Ryan, *Federal Prosecution of Human Traffickers*, in *Lawyer's Manual on Human Trafficking: Pursuing Justice for Victims* 271, 271 [Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011] ["With

each reauthorization and amendment of the TVPA in legislation known as the Trafficking Victims Protection Reauthorization Act [TVPRA], Congress has strengthened and fine-tuned its provisions, as well as extended the reach of its criminal statutes."]).

11 One of the noticeable differences between the state and federal laws is that force, fraud or coercion need not be established under federal law to find anyone under 18 years of age to be a victim a "severe" form of trafficking if they have been induced to perform commercial sex.

12 New York did so alongside the passage of the labor trafficking statute (PL § 135.35) which created a D felony offense for the crime of exploiting someone's labor through a number of specified means similar to the statutory framework of sex trafficking.

13 "If the court grants a motion under paragraph (i) of subdivision one of this section, it must vacate the judgment and dismiss the accusatory instrument, and may take such additional action as is appropriate in the circumstances." (CPL 440.10[6]).

14 The charges for which defendant G.M. was convicted were omitted from the reported decision. However, they were included in this court's original filed decision.

15 Accepted for Miscellaneous Reports Publication

In the few reported cases which have so far granted relief under CPL 440.10(1)(i), trial courts have vacated human trafficking victim's convictions for loitering for the purpose of prostitution (PL § 240.37) and prostitution (PL § 230.00) (see *People v. Doe*, 34 Misc.3d at 237, 935 N.Y.S.2d 481 [vacating convictions for PL § 240.37 and PL § 230 .00]); as well as for non-prostitution offenses (see *People v. G.M.*, 32 Misc.3d 274, 922 N.Y.S.2d 761)(but see *People v. Gonzalez*: 32 Misc.3d 831, 835, 927 N.Y.S.2d 567 [Crim Ct, New York County 2011][while court vacated 86 convictions for prostitution or loitering, it nevertheless declined to vacate a conviction for resisting arrest (PL § 205.30), finding that the underlying offense in that case was not a prostitution-related offense]).

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APPENDIX F

Secondary Sources

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Hofstra University in partnership with Lifeway Network, *Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area: Assessment and Recommendations*, at 4 (2011).

New York State Office of Children and Family Services, *New York Prevalence Study of Commercially Sexually Exploited Children*, April 18, 2007.

Toko Serita, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 37 N.Y.U. Rev. L. & Soc. Change, 648-652 (2013).



TRAFFICKING IN PERSONS REPORT

JUNE 2013







Dear Reader:

Throughout my career—as a prosecutor, a United States Senator, and now as Secretary of State—I have dedicated myself to ensuring victims of exploitation and abuse are treated with dignity and respect before the law, so that they may see their abusers brought to justice and begin the process of healing. Last year, I chaired the first-ever hearing on human trafficking in the Senate Committee on Foreign Relations, where we heard about the challenges trafficking victims face in getting out of harm’s way and getting their lives back on track. As Secretary of State, I am committed to making sure that survivors’ voices continue to be heard, because their experiences and knowledge help shape our laws and policies as well as the way we implement them.

Ending modern slavery must remain a foreign policy priority. Fighting this crime wherever it exists is in our national interest. Human trafficking undermines the rule of law and creates instability. It tears apart families and communities. It damages the environment and corrupts the global supply chains and labor markets that keep the world’s economies thriving.

We also have a moral obligation to meet this challenge head-on. Human trafficking is an assault on our most dearly held values of freedom and basic human dignity. American leadership means protecting those values at home and working to advance them around the world.

We will continue to do so through our diplomacy and development efforts. We will continue to do so by supporting those who are working to prevent trafficking, who come to the aid of victims, and who work to bring traffickers to justice. We will continue to do so by bringing together an array of stakeholders—from civil society and the faith community to the private sector and government leaders—to forge partnerships aimed at spurring innovation and improving collaboration.

And we will continue to do so through our *Trafficking in Persons Report*. Governments bear primary responsibility for responding to this crime, and this annual *Report* is the gold standard in assessing how well governments—including our own—are meeting that responsibility. This year, 188 countries and territories are included, and we have taken a hard look at one of the biggest problems we face in combating modern slavery: the challenge of accurate, effective victim identification. Only through vigorous victim identification can we ensure that trafficking survivors get the services they need, can participate in legal proceedings, and can have their voices heard.

This *Report* is not about pointing fingers. Rather, it provides a thorough account of a problem that affects all countries. It also lays out ways that every government can do better. In the year ahead, we will use this *Report* to help guide our engagement on this issue. We hope it will be a resource for anyone who shares the vision of a world free from slavery.

Sincerely,

A handwritten signature in black ink that reads "John F. Kerry".

John F. Kerry
Secretary of State



Dear Reader:

Sometimes it makes sense to look at an issue by the numbers. In the last year of the global fight against modern slavery, hundreds of new partners—from law firms and local governments to foundations and tech companies—have enlisted in the effort. Dozens of modern anti-trafficking laws have been passed, within the United States and around the world. And millions of dollars have been pledged to this worthy cause.

Impressive figures, but the number that best characterizes the progress of the anti-trafficking movement is sadly still very small. Because reporting is uneven, we can't say for certain how many victims of trafficking are identified each year. This *Report* estimates that, based on the information governments have provided, only around 40,000 victims have been identified in the last year. In contrast, social scientists estimate that as many as 27 million men, women, and children are trafficking victims at any given time. That means we're bringing to light only a mere fraction of those who are exploited in modern slavery. That number, and the millions who remain unidentified, are the numbers that deserve our focus.

So as this movement grows and gains momentum, the reality is that most of this crime still occurs in the shadows, unseen and beyond the reach of law; that millions of victims aren't getting the support and services they need; that too few traffickers are being put out of business and behind bars; and that their victims are not moving on with the lives they choose for themselves as empowered survivors.

While the anti-trafficking movement races forward with new innovations and partnerships, new buzzwords and standards, we mustn't lose sight of the basic idea that underpins this struggle: human trafficking is a crime, and governments are responsible for fighting it in a way that restores victims and deters those who would steal another's freedom. Those are the underpinnings of the Trafficking Victim Protection Act's minimum standards and the U.N. Protocol's "3P" approach. Successful victim identification is the starting point to stopping this crime, and for meeting those international standards.

That's why the 2013 *Report* focuses on the importance of effective victim identification, and on those approaches and policies that have succeeded in bringing victims out of the darkness of exploitation. The *Report* outlines specific steps officials should take—from legislators and judges to police officers and border guards—to make sure the victims of this crime don't go unrecognized. And it illustrates why identifying victims by itself is not enough—they need to be given a true voice in the process.

As this *Report* shows, no government has perfected victim identification. As we work to improve our own response to this crime, the United States will continue to partner with any government working to address this challenge. Because when we do look at this issue by the numbers, our successes must be measured by the number of lives restored—the number of men, women, and children who can live without the fear of exploitation and with the freedom to choose their own futures.

Sincerely,

A handwritten signature in blue ink that reads "Luis CdeBaca".

Luis CdeBaca

Ambassador-at-Large to Monitor and
Combat Trafficking in Persons





The hands of an Indian bonded child laborer rescued during a raid by members from Bachpan Bachao Andolan, or Save the Childhood Movement, at a garment factory in New Delhi, India, June 2012.

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This Report and subsequent updates are available at www.state.gov/j/tip

VICTIMS' STORIES

The victims' testimonies included in this *Report* are meant to be illustrative only and do not reflect all forms of trafficking that occur. These stories could take place anywhere in the world. They illustrate the many forms of trafficking and the wide variety of places in which they occur. Many of the victims' names have been changed in this *Report*. Most uncaptioned photographs are not images of confirmed trafficking victims. Still, they illustrate the myriad forms of exploitation that comprise trafficking and the variety of situations in which trafficking victims are found.



THE 2013 TRAFFICKING IN PERSONS (TIP) REPORT

“It ought to concern every person, because it’s a debasement of our common humanity. It ought to concern every community, because it tears at the social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I’m talking about the injustice, the outrage, of human trafficking, which must be called by its true name – modern slavery.”

President Barack Obama
September 25, 2012

VICTIM IDENTIFICATION: THE FIRST STEP IN STOPPING MODERN SLAVERY

In September 2012, President Barack Obama delivered a speech reaffirming the commitment of the United States to fight modern slavery, known also as trafficking in persons. The President instructed the U.S. government to step up its efforts—to develop new innovations and use effective tools, including this annual *Trafficking in Persons Report*, to confront this crime wherever it exists.

Around the world, governments are demonstrating their own commitment. In the year 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). The Palermo Protocol, anchored in core principles of the protection of freedom rather than in the regulation of the movement of people, defined the crime for the first time in a treaty and established the “three P paradigm” of Prevention, Protection, and Prosecution to guide government action in combating trafficking in persons. Since then, more than 150 countries have become parties to the protocol, and more than 140 have criminalized sex and labor trafficking.

Yet as President Obama pointed out, the work to eradicate modern slavery remains an uphill struggle. This *Report* estimates that, based on the information governments have provided, only around 40,000

victims have been identified in the last year. In contrast, social scientists estimate that as many as 27 million men, women, and children are trafficking victims at any given time. This shows that a mere fraction of the more than 26 million men, women, and children who are estimated to suffer in modern slavery have been recognized by governments as such and are eligible to receive the protection and support they are owed.



Presidents Clinton and Obama with survivors Ima Matul and Sheila White at the Clinton Global Initiative, September 2012.

The lack of support and protection that results from inadequate victim identification tells only part of the story. Another consequence of the limited

HUMAN TRAFFICKING DEFINED

The TVPA defines “severe forms of trafficking in persons” as:

- a. sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or
- b. the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

A victim need *not* be physically transported from one location to another in order for the crime to fall within these definitions. ♦



Hoping to escape their impoverished circumstances and provide for their families, Central Asian migrants flock to Russia for jobs in construction, manufacturing, and agriculture. Human Rights Watch reported generally harsh labor conditions and indicators of forced labor, such as long working hours, crowded living quarters, allegations of withholding travel documents, and non-payment of wages.

number of victims identified is that the traffickers who enslave and exploit millions are operating with impunity, beyond the reach of the law. It means that modern anti-trafficking laws and structures go unused, existing as theoretical instruments of justice. It also stymies research and data collection critical to understanding trafficking’s root causes. Weak victim identification efforts also undercut the Palermo Protocol and hinder the victim-centered 3P approach that has become the international standard. In the past generation, the closely related fight against domestic violence and sexual assault has proven that meaningful participation of survivors in anti-trafficking efforts—whether during an investigation or prosecution or in the broader policy realm—not only gives them a long-denied voice but also makes justice systems more effective. The tools that have worked in that context—victim/witness coordinators, dedicated prosecution units, and cross-cutting trainings—can and will work in the fight against modern slavery, but only if victims are identified.

This *Trafficking in Persons Report* focuses on victim identification as a top priority in the global movement to combat trafficking in persons. It details training and techniques that make identification efforts successful, as well as the pitfalls of inadequate identification. It also highlights new innovations and partnerships within and beyond government that will enhance identification efforts. If successfully implemented, these innovations will enable more effective delivery of services to survivors and an accumulation and analysis of data to improve the overall response to trafficking.

RISK FACTORS FOR VICTIMIZATION AND CHALLENGES OF IDENTIFICATION

As the movement to combat modern slavery has evolved, so too has the understanding of what constitutes a trafficking victim. In the first few years after the Palermo Protocol was adopted, nearly all of the trafficking cases prosecuted by governments were sex trafficking cases; identified victims were nearly all women and girls. Though today’s estimates suggest that the majority of trafficking victims are indeed women and girls, it is now clear that trafficking victims are subjected to both sex and labor trafficking, and a significant percentage of trafficking victims are men and boys.

Despite a growing body of knowledge about victims and their needs, finding them remains a tremendous challenge. Part of this difficulty stems from the very nature of the crime. Traffickers constantly adapt their tactics to evade detection and operate in zones of impunity. They prey on excluded populations—many trafficking victims come from backgrounds that make them reluctant to seek help from authorities or are otherwise particularly vulnerable—marginalized

ethnic minorities, undocumented immigrants, the indigenous, the poor, persons with disabilities—whose experiences often make them reluctant to seek help from authorities. Awareness materials dated as far back as the 1890s reveal that promises of greater opportunity, a better life, or a loving and supportive relationship have long lured victims into exploitation. As technology and globalization make the world more interconnected, traffickers' ability to recruit and exploit their victims has also intensified. Victims of forced labor have been found in nearly every job setting or industry imaginable, including private homes, factories, restaurants, elder care and medical facilities, hotels, housekeeping, child-rearing, agriculture, construction and landscaping, food processing, meat-packing, and cleaning services. Domestic work settings continue to have little or no government oversight or regulation in most countries. And though by definition human trafficking does not require the crossing of borders, migrant workers—including many women who seek new opportunities—remain especially at risk. Even though some challenges to victim identification can be attributed to the nature of the crime, its perpetrators, or its victims, governments have a responsibility to identify victims of this crime. In every region, governments that a decade ago insisted there was no trafficking in their jurisdiction are now aggressively identifying and assisting victims and convicting traffickers. These governments are adopting modern anti-trafficking structures and sustaining the political will to vigorously apply them.

WHAT VICTIM IDENTIFICATION MEANS: ANOTHER ASPECT OF GOVERNMENT RESPONSIBILITY

Being identified as a victim of human trafficking means more than simply being named as the complainant in a prosecution. When adequate anti-trafficking laws are enforced, identification of a person as a victim must begin with a process that respects their rights, provides them protection, and enables them to access services to recover from the trauma inflicted by traffickers. However, when authorities misclassify or fail to identify victims the victims lose access to justice. Even worse, when authorities misidentify trafficking victims as illegal migrants or criminals deserving punishment, those victims can be unfairly subjected to additional harm, trauma, and even punishment such as arrest, detention, deportation, or prosecution. These failures occur too often, and when they do, they reinforce what traffickers around the world commonly threaten their victims: law enforcement will incarcerate or deport victims if they seek help.



Traffickers prey on victims' hopes for a better life, a technique that was understood even a century ago in texts such as Ernest Bell's 1910 book, *FIGHTING THE TRAFFIC OF YOUNG GIRLS*.

This backward outcome is why victim identification and care in policies must be borne out in practice. If a government commits to a modern comprehensive anti-trafficking law or an international standard for victim care, the government must guarantee victims their rights and protection. Passing laws is only a first step for governments that take victim identification seriously. The success of victim identification will often depend on who that trafficking victim first encounters—whether a police officer, immigration agent, or labor inspector.

UNITED STATES

Mauri was only 16 years old when she was prostituted on the streets of Honolulu, Hawaii. For her, there was no escape; her pimp threatened to kill her family if she did not go out on the street night after night to make him money. If Mauri tried to use some of the money to buy food, she was severely beaten. Mauri finally escaped when she was picked up by law enforcement. She is now in a rehabilitation program and has reunited with her parents, but her road to recovery has been long and difficult. She suffers from terrible flashbacks and severe depression, and has even attempted suicide. Mauri says she was lucky to get out alive: "The longer you stay the less hope you have."

Unfortunately, this *Report* is replete with examples of how government officials unevenly apply anti-trafficking laws. Additionally, it highlights how few relevant government officials have the training they need to proactively identify victims, and as a result, wait in vain for victims to self-identify. To make matters worse, even when trafficking victims are able to escape and seek help, some governments punish victims or condition care on the high burdens of proof that should apply to defendants rather than victims. Case after case has emerged in which government officials come in contact with a trafficking victim and fail to recognize the characteristics of the crime. Officials often fail to recognize male victims of forced labor, even when they describe the severe exploitation they endured, because the officials assume that trafficking only happens to women. Labor inspectors or immigration officers sometimes are confronted with indicators of human trafficking but fail to recognize the indicators as such or don't see trafficking as falling under their authority. Maritime officials focus on whether the condition of a fishing vessel and its equipment complies with environmental or safety regulations and miss the gross abuses inflicted on the crew. Vice squads and judges may see people in commercial sex as irredeemable and fail to look beneath the surface or acknowledge their suffering.

To prevent such lapses, government efforts to identify victims must go well beyond laws guaranteeing certain mechanisms, rights, or status. Governments need to seek to implement proactive systematic identification strategies designed to fit the wide range of settings and circumstances in which victims have been or might be found.

Formal anti-trafficking training is essential to ensure that law enforcement, prosecutors, the judiciary, first responders, and other government officials have a common understanding of the elements of trafficking crimes, the evidence necessary for a conviction, and factors for special consideration such as trauma and dependency. Protocols and training curricula should align with this shared understanding. Training efforts should be based on policies and procedures that provide trainees with clear guidance for action: what to do when encountering an individual who may be the victim of human trafficking or a situation characterized by indicators of trafficking.

Also essential is collaboration among agencies with overlapping areas of responsibility and with social services agencies, non-governmental organizations (NGOs), and international organizations (IOs) that provide assistance to victims. Sound policies on victim identification must include planning for access to comprehensive services.

EL SALVADOR – MEXICO

Liliana was unemployed and unable to find a job in El Salvador when she decided to leave El Salvador in search of work. A family friend promised to take Liliana to the United States, but instead took her to Mexico. When Liliana discovered that she had been tricked, she ran away and ended up in an area where other migrants like herself waited to go back to El Salvador. One day a group of men invited her and the others to join their organization, the Zetas, a notorious drug cartel. They said they would give her work and feed her. When she joined them, she was forced into prostitution, tricked for the second time. Liliana was drugged the first day and woke up with a “Z” tattoo, branded for life. She was forced to ingest drugs and was never allowed to travel unaccompanied. After three months, her aunt in El Salvador paid for her freedom and she was freed. With Liliana’s help, her traffickers were brought to court but were acquitted. Liliana will not testify again.

Law Enforcement: On the Front Lines of Victim Identification

Human trafficking is first and foremost a crime, so it is appropriate that law enforcement agencies lead most trafficking interventions. Victim identification efforts are enhanced through the support of high-ranking officers, protocols, and targeted training. Law enforcement officers are also better able to identify victims when they adopt proactive methods to detect and investigate trafficking. Given the complexity of trafficking cases, specialized anti-trafficking units have proven effective because they allow investigators to receive and apply in-depth training, and to learn from experience with multiple cases. These specialized units are most effective when they have broad authority to investigate trafficking cases. For example, trafficking units located within vice units are limited to or focused primarily on, vice crimes and, while they may be able to identify sex trafficking cases, are unlikely to find cases of forced labor.

While specialized units are important, anti-trafficking responsibilities cannot be limited to a single unit’s jurisdiction alone. Human trafficking victims and offenders are more likely to come in contact with local, non-specialized officers, so it is important for such front line officers and their supervisors to be able to recognize trafficking crimes and understand the basics of responding. Continuous targeted training on the characteristics of a crime improves police officers’ ability to recognize and report the crime; conversely inadequate training cripples law enforcement efforts and timely and accurate victim identification.

WHO CAN IDENTIFY TRAFFICKING VICTIMS?

For reasons discussed throughout the *Report*, it is important for a variety of government officials, private sector professionals, community workers, and others who may encounter trafficking victims to be trained, legally empowered, and given incentives to identify victims. Individuals who may be particularly well placed to identify trafficking victims include:

Government officials who inspect or have access to establishments where trafficking may occur are uniquely positioned to identify trafficking victims: labor inspectors, port inspectors, factory inspectors, food industry inspectors, consular officers, agricultural inspectors, housing inspectors, tax authorities, and postal workers.

Private sector employees who may encounter trafficking victims in the places in which they work—employees of hotels, restaurants, bars, beauty parlors, and grocery stores.

Law enforcement officers who are on the front lines of crime and are often those who have primary contact with trafficking victims—all police (sometimes trafficking victims are identified through investigations of non-trafficking crimes), immigration officers, and border guards.

Health care professionals who often encounter trafficking victims—emergency room personnel, health clinics, doctors, nurses, dentists, OB/GYNs, and practitioners at family planning clinics and HIV/AIDS clinics.

Transportation professionals who often encounter trafficking victims either being transported or otherwise exploited—truck, taxi, and bus drivers; train attendants; flight attendants; and employees at truck and rest stops.

Education officials who are uniquely positioned to identify children who are being exploited—principals, guidance counselors, teachers, and school nurses.

Trafficking victims may seek assistance from institutions for related matters. Those well positioned to identify human trafficking victims can include religious leaders; officials in organizations that work with immigrants, children, the homeless, refugees, and other vulnerable populations; social workers; and employees and volunteers in shelters for victims of domestic violence or sexual assault, runaway youth, or the homeless. ♦

In October of 2012, the Coalition of Immokalee Workers signed a Fair Food Agreement with Chipotle Mexican Grill, ensuring that the fast food chain would participate in the Fair Food Program by paying a penny-per-pound premium to increase workers' wages, and only buying from growers who enforce a new human rights-based code of conduct for farmworkers.



“I ask my brothers and sisters in faith and all men and women of good will for a decisive choice to combat trafficking in persons, which includes ‘slave labor’.”

-His Holiness Pope Francis (2013)

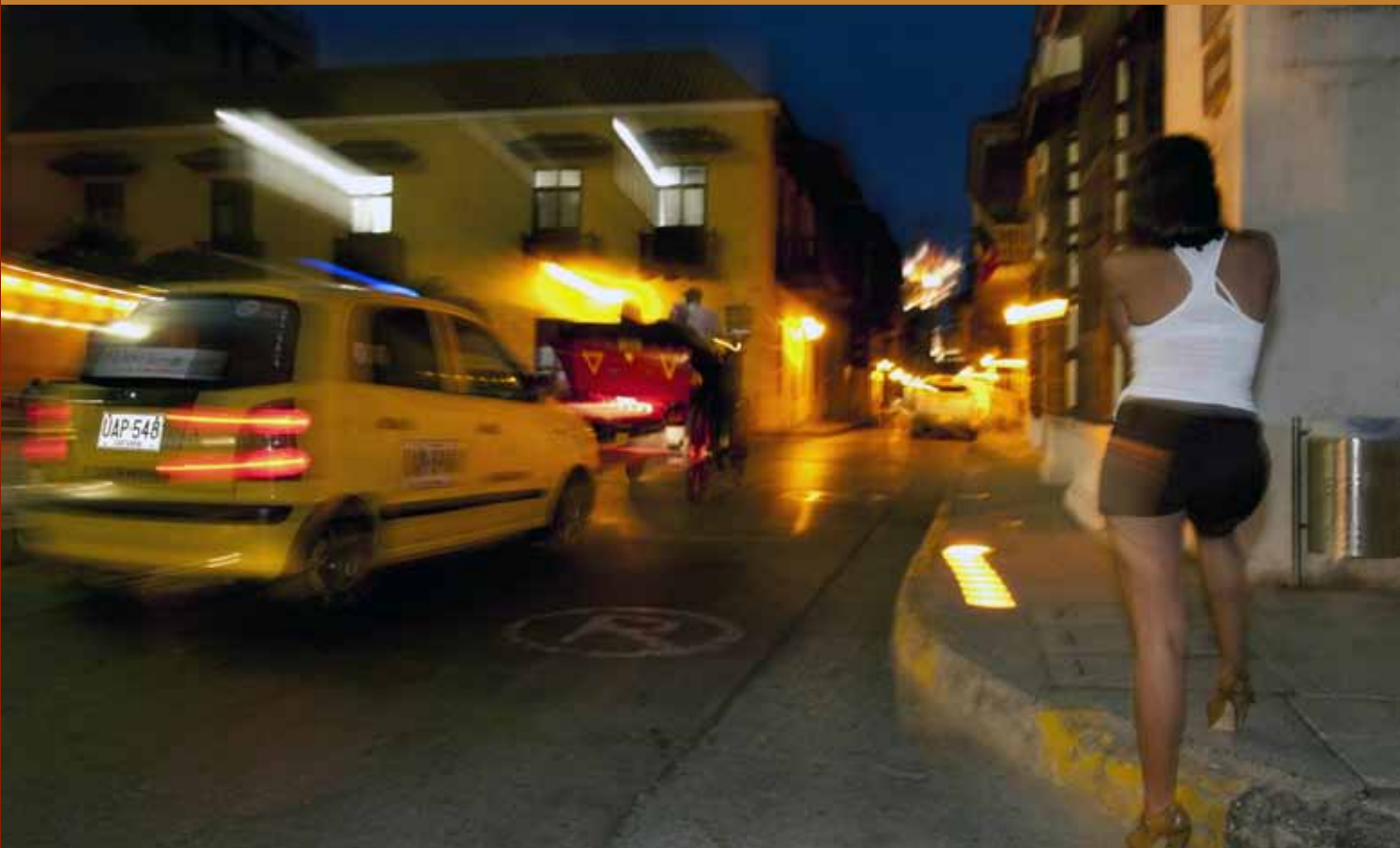
Training is an ongoing challenge for law enforcement agencies because of changes in personnel due to rotations, promotions, and turnover. To overcome these challenges some governments have institutionalized anti-trafficking training and offered it on an ongoing basis, with different levels of training depending on the role and level of experience of the specific group of trainees. Considering the complexity of this issue, effective anti-trafficking training includes case problem-solving, hands-on experience, and opportunities for expert consultation on casework. Measuring the effectiveness and impact of training by gathering metrics about cases investigated and prosecuted by those attending the training has also proven essential to assessing whether modifications to training curriculum are needed. Another good practice is evaluating training based on whether it produces

results and is accompanied by an expectation on the part of commanders that enforcement activities should reflect the practices and knowledge conveyed in such training.

Collaboration Across Government: A Cross-cutting Approach

Agencies other than law enforcement also play an important role in identifying human trafficking. Officials working on immigration, labor, social welfare, health, education, maritime, and other issues may come into contact with victims in the course of their work, but might not recognize them as trafficking victims because of inadequate victim identification procedures. Each relevant agency should therefore assess its mission to see where victims might be encountered, and adopt appropriate protocols and procedures designed to deal with such a situation. While trafficking can occur in any number of areas, screening protocols generally are designed, at a minimum, to address populations especially vulnerable to trafficking, such as irregular migrants, asylum seekers, and deportees; along with areas in which traffickers have long operated, including manufacturing, agriculture and fishing, as well as the commercial sex trade. Approaches to victim identification by government agencies are more effective when backed by strong

Women from Colombia are subjected to sex trafficking within Colombia, Asia, the Caribbean, Latin America, and Western Europe. Victims suffer psychological and physical abuse—some at the hands of organized crime and gangs who use threats and debt bondage to force their victims into prostitution.



political will and when they do not overlook less frequently identified populations such as male victims, forced labor victims, and victims of internal trafficking.

Systematic screening and information sessions in countries of origin and screening upon arrival in destination countries, return, or both can help identify migrant victims of trafficking. A robust example of proactive systematic screening in Taiwan, where screening is done at airports, encourages workers to complete an online survey to identify potential labor trafficking, labor abuse, or withheld wages. Additionally, assistance is offered when potential victims are identified through the survey. Foreign workers are also screened at detention centers for indicators of trafficking. If individuals are identified as potential trafficking victims, they are offered services in a shelter and a day-long reflection period to decide whether they want to come forward as a trafficking victim. If they do self-identify and are confirmed by Taiwan authorities as trafficking victims, they remain at the shelter and receive comprehensive services, including help obtaining employment outside of the shelter and long-term immigration status. This combination of screening, follow-up, and victim care that allows work and freedom of movement is a best practice worthy of adoption in other jurisdictions.

While labor inspectors are responsible for enforcement of labor laws, which may include detection of labor abuses, such responsibility often does not extend to criminal offenses such as human trafficking. Most labor inspectors are often authorized to issue only civil or administrative penalties such as fines, and most labor inspectors do not have authority to arrest suspects. But, among government officials, labor inspectors often have the greatest access to worksites where trafficking occurs. Inspections that mainly focus on wage issues and living conditions can make it seem that a garment factory is free of forced labor, but if the inspectors do not confront large debts, fraud, or passport confiscation, the larger issues go unaddressed and the abusive employer simply shrugs off any fine as the cost of doing business. When advance notice of inspections, whether done by governments or social auditing companies, is provided to employers, they are able to hide trafficking by keeping children at home, returning passports, and coaching workers on what to say about their working conditions.

Identification and investigation of human trafficking in regulated places of work requires coordination between labor inspectors, law enforcement, and NGOs that provide victim assistance services. If labor inspectors have adequate government support, are trained to recognize signs of modern slavery, and have protocols to follow when human trafficking violations are recognized, the inspectors can play

a critical role in identifying victims of forced labor. While carrying out their mandates related to occupational safety and health, wage and work hours, and illegal employment, labor inspectors have an opportunity to review documentation of pay and hours, speak to workers, and observe the conditions in which they work and live. This information may reveal problems that governments should investigate further, and labor inspectors must be trained to recognize the characteristics of forced labor.

BURMA – THAILAND

Kyi and Mya, both 16 years old, were promised work as domestic helpers in Thailand. With the help of five different local brokers, they traveled from Burma walking all day and night through a forest, crossing a river in a small boat, and spending a few nights in various homes along the way. Once they arrived, they were placed in a meat-processing factory and forced to work from 4 a.m. to 11 p.m. Kyi and Maya complained to the factory manager of the hard work and long working hours, and told him this was not what they were told they would be doing in Thailand. The factory manager told the girls they owed him for their “traveling expenses” from Burma to Thailand and could not leave until it was paid off. He continued to subtract their “debt” from what little income they received. Eventually the girls were able to contact one of their relatives in Burma who then contacted an NGO; the organization arranged their safe removal from the factory. They are now in a Thai government shelter in Bangkok, receiving counseling while waiting for repatriation.

Adequate training is critical in other fields too. Because children and adolescents who are enrolled in school may be victims of sex trafficking or forced labor, teachers, school counselors, and administrators also need anti-trafficking training. Social workers and counselors also need to be informed, because children who have been abused at home, have run away, are alcohol- or drug-dependent, or are in the care of child-welfare agencies are at high risk for human trafficking. Traffickers will bring their victims to health-care facilities for a variety of problems, including sexually transmitted diseases, injuries, respiratory, or other systemic illnesses. In these cases, traffickers often exert control over the victim and the situation by speaking directly to the health-care provider, completing the paperwork, and hovering close to the victim during treatment. Doctors, nurses, and technicians need training and protocols to recognize and act in the best interest of the victim.

HUMAN TRAFFICKING AND TECHNOLOGY

“We’re going to harness technology to stop them ... [by] encouraging tech companies and advocates and law enforcement ... to develop tools that our young people can use to stay safe online and on their smart phones.”

– President Barack Obama, September 25, 2012

In the fight against modern slavery, technology can be a double-edged sword. Traffickers use technology to advertise their services widely and develop new methods to recruit, manipulate, and lure potential victims. Meanwhile, governments, anti-trafficking advocates, and technology companies are collaborating to leverage technological tools to turn the tables on the traffickers.

- ❖ Innovations in prevention include mobile and SMS technologies that allow users to send alerts about human trafficking or allow payments to workers to be traced so that they are less vulnerable to the threat of bonded labor. Social media platforms can be used to engage the public at large and raise awareness of this crime worldwide.
- ❖ Technology can also help protect victims. Mobile devices and SMS technologies may also enable survivors of human trafficking to more readily reach out to service providers and seek help. Victim identification by law enforcement is made easier through facial-recognition software that is able to locate the images of minors who are being exploited online—even when copies of the image have been digitally altered.
- ❖ Prosecuting human traffickers requires evidence; technology makes the crime more traceable. The cell phones and computers of traffickers and victims alike contain archives of text messages, voicemails, geo-tagged data, and web browsing history, all of which can be “evidentiary gold mines” for law enforcement. Pattern recognition and data analysis used to detect money laundering can also help expose human trafficking schemes.

Some technology giants have joined the fight against human trafficking. These are but a few examples of how corporations have leveraged their own resources and technology to help eliminate modern slavery:

- ❖ Google funded a new global data sharing collaboration by granting \$3 million to anti-trafficking organizations Polaris Project, Liberty Asia, and La Strada International to connect anti-trafficking helplines to help identify illicit patterns and provide victims more effective support.
- ❖ Palantir Technologies, a major software company, initiated a partnership in 2012 to provide the analytical platform and engineering, training, and support resources to the National Human Trafficking Resource Center to enable the study and application of data derived from its call records.
- ❖ Microsoft Digital Crimes Unit and Microsoft Research collaborated to support researchers in 2012 to highlight the harmful role that technology plays in the commercial sexual exploitation of children.
- ❖ LexisNexis established the Human Trafficking Awareness Index, a tool that tracks and analyzes the volume of published news articles related to human trafficking produced by 6,000 of the most influential news sources from more than 120 countries.
- ❖ The NGO Thorn convinced tech companies to better identify and share evidence of child exploitation and to reduce demand by micro-targeting internet users who may visit suspect sites. ♦

However, owing to different bureaucratic cultures, many officials have little experience working collaboratively with law enforcement to confront modern slavery. Interagency task forces are one possible solution to this challenge. If well-structured, such task forces can combine the resources of relevant agencies to help ensure that enforcement efforts are collaborative and comprehensive, accounting for a wide range of factors, whether planning for the conduct of a raid, screening of possible victims, or developing provisions to protect survivors after they have been taken out of harm's way.

Anti-trafficking training for government officials and targeted professionals should go beyond awareness raising. Clear guidelines on how to proceed when someone suspects a case of trafficking, including whether and how to approach a possible victim, and what to expect if a case goes forward, greatly improve the effectiveness of victim identification efforts. While holding regular interministerial meetings are an important step, governments must also achieve measurable results, including in numbers of victims helped and traffickers brought to justice. That means not only developing anti-trafficking mechanism, but also meeting expectations and producing positive outcomes. Both a whole-of-government approach, and whole-of-government commitment are essential.

Enhancing Government Efforts Through Partnerships

While governments are ultimately responsible for identifying victims, protecting their rights, and providing support and services to survivors, NGOs and IOs are experts in victim protection and provide comprehensive trafficking victim assistance services. That's why partnerships between government entities involved in victim identification, especially law enforcement and immigration agencies, and IOs, NGOs, and civil society groups are so important.

Many groups outside government have developed and implemented training that is essential for effective government action. Others operate national hotlines, usually in partnership with government agencies, to receive information about possible cases of human trafficking and relay that information to law enforcement. Additionally, governments often partner with NGOs that offer a safe place for victims to begin recovery, provide critical services, and help victims understand their rights and available options. This type of support is essential for victim recovery and also aids efforts to investigate and prosecute trafficking cases: when victims feel that their needs and concerns are addressed, they are more likely to cooperate with police and prosecutors.

Cyrus Cooper, a teacher from a NGO in Liberia, explains to a class of trafficking survivors how to use a computer during their after school computer lab. The school has no electricity, so Cyrus carries a small generator on a motorcycle to the school during computer lab days to power the computers.





Governments can enhance their efforts by ensuring such partnerships exist at all stages of victim protection.

Partnerships, however, need not be limited to civil society groups. Indeed, partnerships with survivors themselves can prove invaluable in designing, implementing, and assessing responses to human trafficking. Though survivors should not be required to do so, they can provide much-needed information about their experiences and input about the ideal interactions between government agencies and NGO service providers. Such input from survivors has led to a broader understanding of many of the crime's complexities; from the way male victims are often overlooked by authorities, to how traumatizing a law enforcement raid can be for a victim of sex trafficking, to why some victims decline assistance. These details underscore the importance of tailoring the response to human trafficking violations to each specific victim of trafficking, beginning at identification and following through to the steps to offer protection and assistance.

“As foreigners we know nothing about [the United States]. We don’t even know [about the emergency number] 911. . . . We need [a] lot of services and education to prepare ourselves to [live] independently, [without] always asking for help. . . . I am looking forward to connecting with more survivors and to help[ing] them realize that they deserve more.”

– Ima Matul, Human Trafficking Survivor, CAST Survivor Organizer, 2012-2013

Several anti-trafficking NGOs have adopted mechanisms to ensure that survivors have regular opportunities to provide input into the organization's operation and oversight. Many female survivors of human trafficking have become activists and advocates and are recognized as leaders in the worldwide abolitionist movement. Trafficking survivors often attract significant media attention and help the public understand how people are victimized, how victims can obtain help, and what individuals and communities can do to combat this crime. In many countries, survivors have become

UGANDA – KENYA

Latulo was desperate to find a job to pay for his university school tuition. While in town one day, Latulo met a man who said he needed people to work for him at a factory in Kenya. Hoping this job would help pay for his tuition, Latulo agreed to accompany the man to Kenya and met with him the very next day to travel. Other men and women also met them to travel to Kenya. Eventually they arrived at their final destination in Kenya at a huge house. The man, who had earlier been kind to them all, suddenly became rude and ordered them to give him their identification and phones. They were shown a video of a man who had been suffocated with a bag because he attempted to escape. They were all told that they would not be working at a factory, but rather would be working as sex slaves. Every room had a camera and they were recorded while they were forced to have sex with strangers. After a month and half of captivity, Latulo was allowed to accompany his captors into town. When they stopped to have lunch, he ran away. Law enforcement officials in Kenya opened an investigation and Latulo was able to return to Uganda and received medical attention.

articulate spokespersons at public hearings where governments consider their response to trafficking. More recently, male survivors of forced labor have also been recognized for their contribution to bringing attention to this crime. Many have dedicated themselves to helping other migrant laborers to know and understand their rights and to know where to turn if they experience exploitation.

Survivor advocacy highlights another key partner in this struggle: the public. Today, an Internet search for the term “human trafficking” yields more than 47 million references, including one of the most far-reaching public awareness campaigns, *SlaveryFootprint.org*. SlaveryFootprint, now expanded to include its companion NGO, *MadeInAFreeWorld.org*, has educated millions of people around the world about modern forms of slavery and how an individual's lifestyle and consumer choices contribute to maintaining modern slavery. Such efforts are essential to increasing the public's knowledge and understanding of how to recognize human trafficking as well as what to do if they see the “red flags” that may indicate a trafficking situation.

While public awareness campaigns alone are not a comprehensive anti-trafficking strategy, governments have an interest in raising awareness of this crime. Increased awareness can prevent some people from becoming victims and build community support for government action to address it. Effective public awareness activities are targeted: they deliver a message designed for a

specific audience, using the medium that will reach that audience, and convey a call to action—helping the public to know what to do.

Raising public awareness about human trafficking also helps enhance victim identification. Traffickers maintain control over victims through violence and coercion, threats of harm to them or their families, false promises of future pay for work already done, threats of arrest or deportation with no pay and crippling debt, and manipulation of an individual's disability or alcohol or drug dependency. Victims are often kept hidden away behind locked doors or chained fences, but they also sometimes come into contact with the public when they are exploited in less confined settings, such as begging on the street or laboring in fields, restaurants, hotels, or construction sites. When the public is aware of the indicators of human trafficking and whom to contact if they see such indicators, victims can more readily be identified and helped. Countless survivors in many countries have been discovered because an interested person recognized their circumstances and contacted authorities. This person can be a neighbor, a school official, or a store owner. And as unsettling as it may be, sex trafficking victims have been helped to leave brothels and strip clubs because a client saw an anti-trafficking message and decided to do the right thing. Public awareness can help break the information monopoly that helps traffickers keep their victims isolated and enslaved.

THAILAND

Tola was seven years old when she was lured away from her parents by a couple who owned the field her family worked. While enslaved, she was forced to take care of cats and dogs for the couple's pet grooming shop. For five years, Tola's parents hoped to see her again, never knowing how she disappeared or where she might be. They never imagined that Tola was close, enduring torture and abuse. If Tola did not do her job properly, she was kicked, slapped, and beaten with a broom. Sometimes the couple locked her in a cage and poured boiling hot water over her. On one occasion, the traffickers cut off her ear lobe with a pair of scissors. One day, she climbed a concrete fence of the house while chasing a cat and realized she was free. A neighbor called the police and she was taken to a nearby shelter where her mother identified her. The couple was arrested and charged with various charges, including torture, detaining a person against their will, enslavement, and kidnapping. The couple posted bail and escaped. As for Tola, injuries on her arms affected her muscles; she can no longer move her left arm. For now, she is safe with her family and is beginning her mental, emotional, and physical journey to recovery.



After being enslaved as a domestic servant from the age of seven and horribly abused for five years, this young survivor was displayed to the news media by the police. Released on bail, her traffickers have absconded and are currently fugitives from justice.



Many of Haiti's trafficking cases are the estimated 150,000 – 500,000 children in forced domestic service. Through the Restavek Freedom Foundation, trafficking survivor Magdala has found refuge in the organization's transitional home where she is learning life skills and getting an education. She is rebuilding her life and maintaining an income by making and selling jewelry.

statutes and, in those that do not, victims can still be assisted. Rather than leading to fraudulent claims, a robust system of victim protection and immigration benefits appears to bring trafficking victims out of the shadows, and improve law enforcement outcomes.

EFFECTIVE VICTIM IDENTIFICATION IN PRACTICE: THE VICTIM-CENTERED APPROACH

Even after governments have enacted anti-trafficking laws; established protocols, structures, and institutions to implement these laws; and built partnerships to identify victims, they face the challenge of making victim identification successful in practice. That success requires incorporating victim identification into an anti-trafficking strategy in which the plight of victims is recognized, patterns and tactics of traffickers are understood, and victims are offered and ensured protection and assistance. This can only be accomplished if police, labor inspectors, immigration personnel, and others who may come into contact with victims of trafficking are well trained on the characteristics of the crime, its impact on victims, and victim-centered responses. They need to know precisely what steps to take when they recognize modern slavery, and those specific methods and procedures should follow the victim-centered approach that guides all effective anti-trafficking efforts in accordance with the 3P paradigm.

Placing the victim at the center of the prosecution means considering the rights, needs, and requests of the person who has been trafficked before, during, and after an investigation and prosecution. In practice, this approach gains the trust and cooperation of the victim. It begins when a victim is identified and continues through initial steps to establish physical safety and meet the victim's immediate needs. The victim-centered approach helps prevent secondary victimization that can occur when individuals or agencies do not treat the victim with appropriate sensitivity or, even worse, behave in a heavy-handed manner that resembles the coercive methods of traffickers, risking re-traumatization.

Myths About Victim Identification

In recent years, some government officials have voiced concern that stepped-up efforts to identify victims of trafficking will have negative consequences. For example, if more victims are identified, it will be interpreted as an upswing in the amount of trafficking in the country or a sign that the government is not doing enough to address it. An increase in the number of victims identified, however, is often considered a measure of progress in efforts to identify trafficking victims, rather than a measure of an increase in trafficking. Efforts to enforce trafficking laws in many countries are quite new and, with training and experience, responsible agencies will identify more cases and successfully investigate and prosecute traffickers and assist victims.

Another concern is that offering a package of protection and assistance to victims of trafficking will promote fraudulent claims that will overwhelm government resources. Countries such as the United States, Belgium, and Italy, which offer comprehensive victim support packages including a reflection period, temporary residence, or even long-term permanent status, have not found false claims to be a problem. Rather, these countries have found that investigations prompted by identification of victims typically result in charges under trafficking

COMMON DREAMS LEAD TO COMMON ABUSES

Around the world, domestic work provides jobs to millions of people—mostly women and girls, and mostly in private homes. The promise of steady employment and good pay as a domestic worker often draws people away from communities and conditions where opportunities are scarce.

Yet even with so many people pursuing better lives in this industry, domestic work remains largely unregulated and beyond the reach of law. Rather than workers in a recognized service sector, domestic workers are often viewed more as informal help. At the same time, domestic work usually takes place behind closed doors, where workers are isolated. Because of these factors, domestic workers—especially migrants—face a particular vulnerability to trafficking.

For example, domestic workers may find themselves at risk of trafficking before they even enter employment. If a recruiter charges an applicant an up-front fee for placing her in a job, that worker may find herself owing a burdensome debt from day one. In other cases, domestic workers have reported arriving at a promised job only to be subjected to brutal conditions, ranging from exhausting hours with no days off, to horrific physical and sexual abuse. Yet because of the isolation—sometimes amounting to forced confinement—inherent in the domestic work setting, victims often struggle to escape their situation or inform someone in a position to help.

Aspirations for a better life will continue driving women and men around the world to seek new opportunities. Traffickers will continue seeking zones of impunity where lax regulation and poor oversight make workers vulnerable. And so long as domestic workers remain outside the protections governing other industries, the risk of trafficking will continue to plague this sector. ♦

Prospective domestic workers who pay an up-front recruiting fee may find themselves trapped in a job struggling to pay off an insurmountable debt to an unscrupulous recruiter.



Om Sai Run
Indonesian maids now on SALE!!!
 Fast & Easy Application!!
 Now your housework and cooking come easy.
 40% DISCOUNT
 You can rest and relax,
 Deposit only RM 3,500!
 Price RM 7,500 nett
 Call **012-2617817 / 012-6045245**
 P.O. No. 1, Jalan Selayang, 504, No. 76, 1st Floor, Jalan Bangsar, Southern Part, Kuala Lumpur.

A newspaper advertises cheap domestic help, suggesting not a market of potential employees, but rather discounted property waiting to be purchased.

I ARRIVED IN HK LAST 13-11-2012 TO WORK FOR THE EMPLOYER. BUT I WAS SURPRISED, SHOCKED & SCARED BECAUSE MY FEMALE EMPLOYER PHYSICALLY ABUSED ME ON NOVEMBER 15 + NOVEMBER 16. BECAUSE OF THIS, I AM AFRAID TO CONTINUE WORKING FOR THEM. I RUN-AWAY ON 16 NOVEMBER 2012 EVENING FEARING MY FEMALE EMPLOYER WILL HURT ME AGAIN. I DO NOT WISH TO BE HURT AGAIN OR SHE MIGHT DO WORSE THAN HITTING MY FACE AND ARM AND THIGH LIKE SHE DID TO ME EARLIER. I WORKED BEFORE IN TAIWAN AND I NEVER EXPERIENCE PHYSICAL ABUSED.
 PLEASE HELP ME CLAIM FOR THE TERMINAL FEES THE EMPLOYER OWE ME ^{AS STIPULATED IN OUR P.H. CONTRACT.} THANK YOU. I ALSO HAVE REPORTED THE INCIDENTS TO THE POLICE WHO BROUGHT ME TO THE HOSPITAL.

A domestic worker, subjected to exploitation but fortunate to escape her situation, reports the abuse she endured to authorities and demands what she is owed.

From the fight against domestic violence and sexual abuse over the last 35 years, we have learned much about the effect of long-term victimization and dependency, and the lessons of those efforts have enabled us to understand the needs of trafficking victims and how to incorporate survivors into the process. The physical and emotional injuries that many trafficking victims endure are likely to affect their ability to concentrate, to make sound decisions, to recall events, and to respond to questions about

their experiences. It is important that government officials take these factors into consideration when designing and implementing trafficking victim identification protocols. Time to recover in a safe, comfortable place is essential. Victims should also be able to communicate in their own language and be given written information about rights and available services.

“Here and around the world, trafficking in persons destroys lives. It threatens communities. It creates instability. It undermines the rule of law. And it is a horrendous assault on our most dearly held values of freedom and basic human dignity. We, along with every nation, bear the responsibility to confront modern slavery by punishing traffickers and helping survivors get their lives back on track.”

– Secretary of State John F. Kerry
White House Forum to Combat Human Trafficking, 2013

Home to over 75,000 people, West Point, near the heart of Monrovia, Liberia, is one of the world’s poorest neighborhoods. The NGO More Than Me works with community leaders in West Point to identify girls in sex trafficking and girls who are at the highest risk of being trafficked to ensure that education and opportunity, not exploitation and poverty, define their lives. Beatrice, pictured here, is currently enrolled in the More Than Me program and thriving. The organization pays her school tuition and provides school lunch while working with her family to make certain she continues to excel.



COMMENDABLE INITIATIVES IN VICTIM IDENTIFICATION: ADDITIONAL OPPORTUNITIES FOR VICTIMS TO SEEK ASSISTANCE

Trafficking victims may have periodic contact with police, immigration officials, hospital staff, and other authorities, for years before being identified and freed from enslavement. A progressive approach to victim identification involves a basic, underlying assumption that “the more you look the more you find,” and that periodically identifying trafficking victims can be an indicator of progress, rather than failure. A growing understanding of coercion and debt bondage has led governments to develop more innovative, holistic ways to uncover trafficking victims. It is governments’ responsibility to create more opportunities for victims to escape and come forward. While no country’s response is perfect and most governments can do more to attain a truly comprehensive response to this crime, below are some good examples of some effective victim identification approaches for governments:

Empowering front line responders beyond just the police to identify victims: Many trafficking victims actively avoid law enforcement. Creative approaches to identify trafficking victims involve social workers, religious institutions, and other community leaders because of their ability to build trust within local communities. For example, the Belgian government has a cooperation project with hospitals to improve detection of potential trafficking victims seeking medical care. Preliminary findings from the pilot project verified that trafficking victims are more willing to talk to medical staff than police.

Recognizing that offenders can be victims: Unidentified trafficking victims are often punished for crimes committed while under coercion. Some countries recognizing this protection need have developed laws or policies to allow courts to forgive trafficking victims for unlawful acts they have committed during the course of their trafficking experience. In the United States, for example, some states have passed “safe harbor” statutes to ensure children are treated as victims and provided services rather than being prosecuted for prostitution, or enacted laws to allow victims to petition the court to vacate prostitution-related criminal convictions that result from human trafficking.

Establishing regulations, agreements, or standard operating procedures with NGOs to identify victims: In Taiwan, foreign workers are screened at detention centers for indicators of trafficking. If individuals are identified as potential trafficking victims, they are offered services in a shelter and a reflection period to come forward as a victim. If they report their trafficking experience by the end of the reflection period and are confirmed by Taiwan authorities to be victims of trafficking, they are entitled to remain at the shelter and receive comprehensive services including help obtaining employment. In Scotland, local law enforcement officials facilitate better victim identification by taking children from cannabis farms to safe houses instead of into detention centers.



Overseas Filipino Workers (OFWs), most of whom are young women who worked in domestic service fleeing the civil war in Syria, fill out immigration forms at the Ninoy Aquino International Airport in Manila, the Philippines, upon arrival via a chartered flight by the International Organization for Migration (IOM).

Employing a taskforce model or multidisciplinary approach: By encouraging collaboration in victim identification, governments ensure stakeholders can find victims between potential front line responders and NGOs. In the Netherlands, the “barrier-model” views trafficking as a business model, with different barriers to be overcome before traffickers can start making money (entry, identification, housing, work, and financial situation) and attacks trafficking at these stages: local governments may detect trafficking through housing inspections, and tax or fire protection inspectors may find irregularities that can trigger a law enforcement investigation into trafficking. ♦

COUNTRIES THAT ARE NOT STATES PARTIES TO THE PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

**AFGHANISTAN
ANDORRA
ANGOLA
BANGLADESH
BARBADOS
BHUTAN
BRUNEI
COMOROS
CONGO, REPUBLIC OF
CZECH REPUBLIC**

**ERITREA
IRAN
JAPAN
KOREA (DPRK)
KOREA, REPUBLIC OF
MALDIVES
NEPAL
PAKISTAN
ST. LUCIA
SIERRA LEONE**

**SINGAPORE
SOMALIA
SOUTH SUDAN
SRI LANKA
SUDAN
THAILAND
UGANDA
YEMEN
ZIMBABWE**

Sex trafficking survivor, Nicole Campbell, was “branded” with a horseshoe-shaped tattoo to show she belonged to her trafficker. With the help of Chris Baker, of Oswego, Illinois, the Founder of INK 180, she plans to have the tattoo covered up. INK 180 provides free tattoo cover-ups and tattoo removals to remove the constant visual reminders of a trafficking survivor’s experience. To date, INK 180 has provided 118 cover-ups or removals for trafficking victims.





A poster located just inside Thailand near the border with Burma at Mae Sai warns the public about human trafficking. The majority of the trafficking victims within Thailand are migrants from neighboring countries who are forced, coerced, or defrauded into labor or commercial sexual exploitation.

Interviewing Victims

The determination of whether someone is a victim of human trafficking is usually based on the individual's account of what happened. Victims, however, often do not provide information about their trafficking experience immediately following law enforcement intervention. In fact, victims who are rescued in a police raid—even in a raid that is carried out well—often suffer from shock and confusion. Trauma may impair their ability to process information and make choices. The threats traffickers used to maintain control may be foremost in their minds. These difficulties often persist through the first few hours, days—even weeks, months, and years—after being freed or escaping, as victims adjust to being outside of their traffickers' control and reintegrate into society.

Initial high-stakes victim identification by law enforcement is often stymied by months or years of traffickers conditioning victims for that exact moment. Traffickers often coach their victims to lie to the authorities, and convince them that police will arrest them for breaking immigration, prostitution, or labor laws. To victims, a rescue and a raid may actually look like what their traffickers have taught them to expect and their fears combined with the shock of a law enforcement intervention

ZAMBIA – SOUTH AFRICA

Chewazi was offered a better life in South Africa working for an organization that ran a Boy Scouts group. Excited about the job, he left Zimbabwe for South Africa. Instead of receiving the job he was promised, he was forced to work every day on a farm for a piece of bread and some water. For six months, Chewazi was transported between farms in Zambia and South Africa, enduring physical and other abuses, dreaming of the day he would escape. When Chewazi and a friend finally did escape, they made their way to Cape Town; a security guard on the street found them and helped them to safety. Through the Department of Social Development, they were taken to an NGO, which helped provide support and services to them both. Chewazi suffers from post-traumatic stress, but decided to stay in South Africa, hopeful that he will still find that better life that led him away from home.

NARROWING THE SCOPE OF TRAFFICKING: “BUYING OR SELLING” PROVISIONS

Many countries have trafficking laws that require proof of a person “buying or selling” a trafficking victim to convict the person of human trafficking. Other countries’ courts have read a “buying or selling” requirement into their interpretation of national trafficking laws. Such a practice, however, risks missing the vast majority of trafficking victims in the world today, because they are never bought or sold. These requirements also exceed the proof required under the definition of human trafficking in international law. While the Palermo Protocol definition does include payment as one of the means to achieve control over a victim—specifically, “the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”—the full definition in Article 3(a) is much broader. The recruitment, transport, receipt, or harboring of a victim for the purpose of exploitation through “*the use of force or other forms of coercion,*” for example, suffices to prove a case of trafficking in the absence of a proof of sale. Thus a factory owner whose employees came willingly and were never bought or sold should be found guilty of human trafficking when he holds them through passport confiscation and threats; so should a man who kidnaps a girl from the street and forces her into domestic servitude in his house. The mistaken emphasis on transactions frequently results in acquittals in trafficking cases where the defendants have allegedly coerced victims into forced labor or forced prostitution through threats, force, or abuse of power, but have not exchanged money with a third party. “Buying or selling” provisions in statutes inappropriately narrow the scope of human trafficking and reduce accountability for this serious crime. ♦

In Peru’s jungles, the extraction of gold has contributed to the sex trafficking of women and girls, who travel to towns near gold mines in response to the promise of legitimate employment only to be exploited in nightclubs, bars, and brothels.



may well lead victims to provide false or misleading information in hopes that by so doing, they are protecting themselves or their families.

Law enforcement, immigration, and other officials who interview victims of trafficking must understand the traumatic impact of being trafficked and factors that influence what a victim may say in response to questioning. It is optimal for this reason that cases are built, whenever possible, on a variety of sources of evidence to take some of the pressure off victims.

More than a decade of experience has revealed effective practices for establishing rapport and conducting interviews with people who may have been victims of trafficking:

- » Victims need to feel safe before they will discuss what happened to them, and most victims disclose more details of their experiences over time. Thus, it is important that victims be allowed time to recover from physical, sexual, and psychological injuries in a safe and comfortable place with access to support services. Neither detention with the threat of deportation nor being charged with a crime is conducive to a victim's disclosure of the trafficking experience.
- » Interviews conducted in a safe, private, and comfortable place—not where the exploitation took place and not in the presence of other victims or suspected traffickers—are most effective. An interpreter should be provided, if needed, and victims should be given the opportunity to speak with a victim advocate as soon as possible.
- » Interviewers should work to build the trust of the victim. This can be difficult if there is artificial time pressure, as traffickers use fear of authorities as a tactic to maintain control over their victims; victims of trafficking rarely view police as a source of assistance. The interviewer should dress in civilian clothes and make sure any guns or other weapons are hidden from view.
- » At the beginning the interviewer should be up-front about who he or she is, what the victim should expect during the interview, what is expected of the victim, whether an interpreter will be used, and the likely duration of the interview. The interviewer should answer the victim's questions, and provide any other information needed to clarify how the interview will be conducted. The interviewer should ensure that the victim can rely on what the interviewer says.
- » Active listening techniques, such as being non-judgmental and non-confrontational, showing

empathy, giving the individual time to answer, and not interrupting are helpful.

- » Interviewers should provide opportunities for victims to tell their story in their own words, pausing to give them time to formulate their answers, and using a sensitive and caring tone of voice.

LOOKING FORWARD

With the relatively small number of victims identified around the world, it will be critical in the years ahead for governments to focus on identification as a critical part of their anti-trafficking efforts. But the approaches described in this *Report* should not be expected to eliminate trafficking on their own. The techniques described here, when applied effectively, show results. But victim identification is just the *first* step in a long process of survivor protection. An effective government response must follow through by helping survivors restore the lives they choose.

At the same time, because so much of human trafficking remains hidden in the shadows—so many millions toil unseen—the need for further innovation is clear. In the years ahead, governments and their partners should therefore keep doing what works, but also dedicate themselves to developing and supporting new approaches and practices that will help shine a brighter light on this phenomenon. Part of government's responsibility in effectively identifying victims—in carrying out all aspects of the fight against modern slavery—is to learn as much as possible about modern slavery and to fill in the vast gaps in knowledge and research about this crime. Those next steps require dedicated leadership and political will at all levels of government—the commitment to move forward with this struggle. With such leadership, the movement to eradicate modern slavery will only continue to gain momentum. ♦

“Even the police sometimes pay for sex. There is no protection there for anyone. There is no one you can trust. . . . We are like ghosts. We are literally shadows on the highway.”

– “Frida,” Nigerian Sex Trafficking Survivor, Italy, 2013

PREVENTION: FIGHTING SEX TRAFFICKING BY CURBING DEMAND FOR COMMERCIAL SEX ACTS

If there were no demand for commercial sex, sex trafficking would not exist in the form it does today. This reality underscores the need for continued strong efforts to enact policies and promote cultural norms that disallow paying for sex. Too often, trafficking victims are wrongly discounted as “consenting” adults. The use of violence to enslave trafficking victims is pervasive, but there are other—more subtle—forms of fraud and coercion that also prevent a person from escaping compelled servitude.

A number of other factors that may lead to a person being overlooked as a victim by authorities are a sex trafficking victims’ initial consent, the belief that they are in love with their trafficker, not self-identifying as a victim, or being away from a pimp’s physical control with what seems to be ample opportunity to ask for help or flee. None of these factors, taken alone or in sum, mean that someone is not a victim of a severe form of trafficking. Dispelling these myths should be an essential part of training for every government employee and everyone who does business with or on behalf of a government.



Government Policies to Address Demand for Commercial Sex

Zero-tolerance policies for employees, uniformed service members, and contractors paying for sex—even if legal in the country where these individuals work—and commensurate training for such individuals can help raise awareness regarding the subtle and brutal nature of sex trafficking and how individuals subjected to this crime are victimized through coercion. Moreover, by implementing these policies in procurement activities, governments can have an impact on a wide range of private-sector actors as well.

Beyond Government: Cultural Leadership in Addressing Demand

Rejecting long-held notions such as “boys will be boys” and sending the clear message that buying sex is wrong is not just a task for governments, but will require partnerships throughout society, including the faith and business communities. Business leaders can adopt codes of conduct that prohibit purchasing sex. And leaders in civil society—from teachers to parents to ministers—must foster the belief that it is everyone’s responsibility to do their part to reduce the demand for commercial sex. It is especially important to reach young men with a strong message of demand reduction to help them understand the exploitation that permeates the commercial sex trade.

It is every person’s individual responsibility to think about how their actions may contribute to human trafficking. Laws and policies, partnerships and activism will continue to be critical to this struggle, but it will also be the day-to-day decisions of individual men and women to reject exploitation that will bring an end to modern slavery. ♦



*“People want their food to be cheap.
Without a fair price will there ever be fair working conditions?”*

“Lowest on the Foodchain,” image by Kay Chernush © ArtWorks for Freedom

DEFINITIONS AND METHODOLOGY

WHAT IS TRAFFICKING IN PERSONS?

“Trafficking in persons” and “human trafficking” have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. The Trafficking Victims Protection Act (TVPA) of 2000 (Pub. L. 106-386), as amended, and the Palermo Protocol describe this compelled service using a number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labor.

Human trafficking can include but does not require movement. People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers’ goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so.

“In one hotel I know in Amman, you can find Russian, Tunisian, and Moroccan women that are forced to work and stay here until their contracts end because their passports are taken from them and they are threatened and beaten. But this only happens to foreign women, not Jordanians. Their contract does not state that they have to provide sexual services but they must know what they were coming to do here. They did not think they were coming here to pray, did they?”

– Sex Trafficker, Jordan (quoted in “Tricked and Trapped: Human Trafficking in the Middle East.” (ILO, April 2013))

PHILIPPINES – QATAR

Dalisay signed a contract with an employment agency in the Philippines to work as a housemaid in Qatar for \$400 a month, plus room and board. But when she arrived, her employer said he would pay her only \$250 a month. She knew her family back in the Philippines depended on her earnings and felt she had no choice but to stay to help her family. She quickly realized that her low pay was not the only unexpected condition of her work situation. She was fed one meal a day, leftovers from the family’s lunch: “If no leftovers, I didn’t eat.” She worked seven days a week. When she was finished working in her employers’ house, she was forced to clean his mother-in-law’s house, and then his sister’s without any additional pay. After eight months, Dalisay tried to leave but her boss just laughed and said “You can’t quit.” As a domestic worker not covered under the labor law, Dalisay was subject only to the restrictive *kafala*, or sponsorship system, meaning that she could not resign without her employer’s permission, change jobs, leave the country, get a driver’s license, or open a checking account without the permission of her employer. She also learned that her employer could withdraw sponsorship at any time and send her back home, so she fled and joined 56 other women who sought shelter at the Philippines Overseas Labor Office.

THE FACE OF MODERN SLAVERY

Sex Trafficking

When an adult is coerced, forced, or deceived into prostitution—or maintained in prostitution through one of these means after initially consenting—that person is a victim of trafficking. Under such circumstances, perpetrators involved in recruiting, harboring, transporting, providing, or obtaining a person for that purpose are responsible for trafficking crimes. Sex trafficking also may occur within debt bondage, as women and girls are forced to continue in prostitution through the use of unlawful “debt” purportedly incurred through their transportation, recruitment, or even their crude “sale”—which exploiters insist they must pay off before they can be free. A person’s initial consent to participate in prostitution is not legally determinative: if one is thereafter held in service through psychological manipulation or physical force, he or she is a trafficking victim and should receive benefits outlined in the Palermo Protocol and applicable domestic laws.

MISPERCEPTIONS LEAD TO MISSED OPPORTUNITIES TO IDENTIFY VICTIMS

Dispelling misperceptions about human trafficking is imperative to proactively identify victims and to counter the isolation on which traffickers rely to keep people in servitude.

“Trafficking doesn’t happen here.” Approaching human trafficking as a crime that occurs only in far off places ignores situations of forced labor or sex trafficking that may be happening closer to home. Human trafficking is not a problem that involves only foreigners or migrants, but one faced in nearly every corner of the world involving citizens who may be exploited without ever leaving their hometown.

“She’s a criminal.” Many victims of trafficking first come to the attention of authorities due to an arrest for immigration violations, prostitution, or petty theft. Screening vulnerable populations—even if first encountered as potential defendants—for signs of force, fraud, or coercion used against them is imperative to identify human trafficking properly, to ensure that victims are not punished for acts committed as a result of being subjected to trafficking, and to effectively prevent victims from being returned to an exploitive situation.

“It’s cultural.” Holding a person in servitude is not a cultural practice; it is a crime. Some victims are subjected to trafficking by members of their own family or ethnic group. Misperceptions that this is a shared value among an ethnic group ignore the methods of force and coercion used by individual traffickers, and can create a zone of impunity in an ethnic community, with the result that victims in that group will never see their abusers brought to justice. These prejudices fail to reduce victims’ vulnerability to exploitation and often obscure the true demographics of who is subjected to certain types of trafficking.

“He agreed to do this.” Whether or not a person agreed to a certain type of employment, to migrate for a better job, or to work off a debt is irrelevant once that person’s free will has been compromised. A person who faces threats or harm should they choose to change their employment is in a situation of servitude. Often, traffickers use the initial consent of victims to stigmatize them for their choice, telling victims they will be deported, arrested, or ostracized if they seek help.

“She’s free to come and go.” Popular images of human trafficking include dramatic kidnappings and people held under lock and key. More common, but less visible, methods of control include psychological coercion, debt bondage, withholding of documents and wages, and threats of harm. As in domestic abuse cases, observing a person out in public or taking public transportation does not mean that she is free from the effective control of her trafficker.

“He didn’t complain.” The duty to identify human trafficking must not be left solely to those in servitude. A victim has valid reasons for not accusing his exploiters of trafficking. He may fear physical or financial harm, shame, or repercussions for his family. He may assess that the assistance he could access from coming forward does not offer the needed protection to merit taking this risk. He may be unaware of his rights, or lack trust in authorities to enforce those rights.

“Trafficking doesn’t happen where prostitution is legal.” The occurrence of trafficking does not depend on the legality of prostitution; it exists whether prostitution is legal, illegal, or decriminalized. It is the obligation of every government, regardless of the legal status of prostitution, to look closely for victims of trafficking and to ensure their protection.

“There’s nothing I can do about it.” Everyone can learn the signs of human trafficking and take action to alert authorities of possible crimes as appropriate. Citizens can learn about organizations that assist victims of trafficking in their hometowns and how to safely refer potential victims for help. They can spread awareness of, and dispel common misperceptions about, human trafficking. ♦

Child Sex Trafficking

When a child (under 18 years of age) is induced to perform a commercial sex act, proving force, fraud, or coercion against their pimp is not necessary for the offense to be characterized as human trafficking. There are no exceptions to this rule: no cultural or socioeconomic rationalizations should prevent the rescue of children from sexual servitude. The use of children in the commercial sex trade is prohibited both under U.S. law and by statute in most countries around the world. Sex trafficking has devastating consequences for minors, including long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and even death.

Forced Labor

Forced labor, sometimes also referred to as labor trafficking, encompasses the range of activities—recruiting, harboring, transporting, providing, or obtaining—involved when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive

means to compel someone to work. Once a person's labor is exploited by such means, the person's previous consent or effort to obtain employment with the trafficker becomes irrelevant. Migrants are particularly vulnerable to this form of human trafficking, but individuals also may be forced into labor in their own countries. Female victims of forced or bonded labor, especially women and girls in domestic servitude, are often sexually exploited as well.

INDIA

Naveen was 14 years old when a placement agency found him a job as a domestic worker for a couple with two children. For the two years he served the family, Naveen was confined to the house, never allowed to leave. He was beaten regularly for trivial matters and, on several occasions, branded with hot tongs. Unable to endure his situation anymore, he ran away. Naveen is living in a children's home and receiving counseling. The couple, meanwhile, have been charged and are out on bail awaiting a court date.

At a traffic light in Nehru Place, India—an upscale computer and electronics market in South Delhi—children who are trafficked for the purpose of begging work late into the night. Children are forced to beg for long hours, commonly beaten by their bosses, and suffer abuse from individuals they encounter as they beg.



HUMAN TRAFFICKING AND ARMED CONFLICT

In armed conflicts across the world, governments and armed groups commit war crimes and human rights abuses and attack civilian populations. Armed conflict leaves local populations, including men, women, and children vulnerable to violence, abuse, exploitation, forced prostitution, forced labor, and the unlawful recruitment of children as soldiers by government forces and armed groups. Likewise, refugees and internally displaced persons (IDPs) struggle to survive in precarious situations that make them highly vulnerable to exploitation, including trafficking. Women and girls bear enormous hardship during and after armed conflict, and they are particularly vulnerable to sexual slavery.

Current global conflicts have placed populations at serious risk of trafficking. For example, in Somalia, the militant group al-Shabaab has forcibly recruited Somali children to be child soldiers or has forced them into prostitution; some children who flee Somalia to seek refuge in neighboring countries such as Kenya are forced into prostitution and forced labor as herders. In Rwanda, women and children in refugee camps are vulnerable to being lured into forced prostitution in the capital or other countries in the region through false promises of work or schooling opportunities. In Syria, some foreign migrant workers and Iraqi refugees may be trafficking victims and are susceptible to violence, abuse, and arrest by government and opposition forces. Syrian refugees are also vulnerable to trafficking in the countries to which they have fled. ♦

Bonded Labor Or Debt Bondage

One form of coercion is the use of a bond or debt. U.S. law prohibits the use of a debt or other threats of financial harm as a form of coercion and the Palermo Protocol requires its criminalization as a form of trafficking in persons. Some workers inherit debt; for example, in South Asia it is estimated that there are millions of trafficking victims working to pay off their ancestors' debts. Others fall victim to traffickers or recruiters who unlawfully exploit an initial debt assumed as a term of employment.

Debt bondage of migrant laborers in their countries of origin, often with the support of labor agencies and employers in the destination country, can also contribute to a situation of debt bondage. Such circumstances may occur in the context of employment-based temporary work programs when a worker's legal status in the country is tied to the employer and workers fear seeking redress.

“While I was inside the rice mill I was not aware that I was so courageous. Now I don't even hesitate to speak up and talk to government officials. Whatever I learn, I would like to share it with others. I do not want anyone to be enslaved. I want my people to be free”

– “Suguna,” Human Trafficking Survivor and Mother, India, 2012



Mewael, an Eritrean refugee, was forcibly taken by criminal groups in Sudan and transported to Egypt's Sinai Peninsula where he was held for months and tortured by his captors, losing both of his hands. His story is not unlike thousands of other highly vulnerable African migrants, refugees, and asylum seekers—some of whom are trafficking victims—who have been kidnapped along the Eritrea-Sudan border or within Sudan, and subsequently subjected to abuses in Egypt.



^ Migrant domestic workers hold banners demanding basic labor rights during a march in Beirut, Lebanon. More than 200,000 workers—mostly women from Asia and Africa—work as maids in a country of 4 million people; the majority are from Sri Lanka, the Philippines, Ethiopia, and Eritrea, but many also come from Madagascar and Nepal. Arabic on the placard at center reads, “migrant workers rights are human rights,” and at left, “put an end today to modern slavery.”



^ Pracedes Salas, Coalition of Immokalee Workers (CIW) member and trafficking survivor of a recent human trafficking case in Florida, marches in the CIW’s 200-mile March for Rights, Respect and Fair Food.

Representatives from NGOs such as World Vision, Kick for Life, and the Red Cross, as well as government officials participate in a walk organized by World Vision Lesotho to raise awareness on the trafficking of women and girls. v



Filipino activists shout slogans during a rally in Manila, the Philippines. The Philippines is one of the largest source countries of men and women who become victims of trafficking abroad, in other Asian countries and throughout the Middle East. v



Involuntary Domestic Servitude

Involuntary domestic servitude is a form of human trafficking found in unique circumstances—in informal work in a private residence—these circumstances create unique vulnerabilities for victims. Domestic workplaces are informal, connected to off-duty living quarters, and often not shared with other workers. Such an environment, which can isolate domestic workers, is conducive to exploitation because authorities cannot inspect homes as easily as they can compared to formal workplaces. Investigators and service providers report many cases of untreated illnesses and, tragically, widespread sexual abuse, which in some cases may be symptoms of a situation of involuntary servitude.

Forced Child Labor

Although children may legally engage in certain forms of work, forms of slavery or slavery-like practices continue to exist as manifestations of human trafficking, despite legal prohibitions and widespread condemnation. A child can be a victim of human trafficking regardless of the location of that nonconsensual exploitation. Some indicators of possible forced labor of a child include situations in which the child appears to be in the custody of a non-family member who requires the child to perform work that financially benefits someone outside the child's family and does not offer the child the option of leaving. Anti-trafficking responses should

UNITED STATES

For over 20 years, the owners and staff of a turkey-processing plant subjected 32 men with intellectual disabilities to severe verbal and physical abuse. The company housed the workers in a “bunkhouse” with inadequate heating, dirty mattresses, and a roof in such disrepair that buckets were put out to catch rainwater; the infestation of insects was so serious the men swatted cockroaches away as they ate. Although the men were as productive as other workers, the company paid them only \$15 a week (41 cents an hour) for labor that legally should have been compensated at \$11-12 an hour. The employers hit, kicked, and generally subjected the men to abuse, forcing some of the men to carry heavy weights as punishment and in at least one case handcuffed a man to a bed. Supervisors dismissed complaints of injuries or pain, denied the men recreation, cellphones, and health care. The U.S. government filed an abuse and discrimination case against the company for damages under the Americans with Disabilities Act. During the trial, the attorney representing the men said: “The evidence is these men were treated like property...these men are people. They are individuals.” A jury awarded the men a total of approximately \$3,000,000, the largest jury verdict in the history of U.S. Equal Employment Opportunity Commission.



Graphic journalist Dan Archer uses sketches, illustrated reportage, and comics to tell the stories of human trafficking survivors. His visual narratives from Nepal, Ukraine, and United States preserve the identity of those telling their stories while ensuring their voices are heard so that those most at risk—children and young adults in low-literacy areas—do not fall prey to human trafficking.

MALE VICTIMS OF TRAFFICKING

There is a growing awareness that men and boys are also victims of labor and sex trafficking and that women and girls are also subjected to forced labor. But identification and adequate service provision remains a challenge around the world for male victims.



This *Report* documents male forced labor victims who have been identified in a variety of countries and sectors: Central Asian men exploited in forced labor in Russia; West African boys forced to beg for corrupt religious teachers in Koranic schools; boys in forced labor in illegal drug production and transportation in the United Kingdom and Mexico. In South Asia, entire families are enslaved in debt bondage in agriculture, brick kilns, rice mills, and stone quarries. In South America and Africa, male victims of trafficking are exploited in agriculture, construction, mining and logging, among other industries. The forced labor of men and boys from Burma, and Cambodia on Asian fishing vessels has been the topic of increased press coverage over the last year.

The sex trafficking of boys is often hidden, reflecting cultural taboos in many parts of the world. In Afghanistan and coastal Sri Lanka, boys are more likely than girls to be subjected to prostitution; in Mexico and Central America, boy migrants are vulnerable to commercial sexual exploitation *en route* to the United States; boys in Southeast Asia are exploited in prostitution; to a lesser extent, men are victims of sex trafficking; in recent years, Brazilian men were identified in forced prostitution in Spain and men were identified as sex trafficking victims in the United States.

Trafficking victim identification is a challenge across the board; however, to the degree authorities are trained to identify human trafficking at all, far too many look primarily for female victims and often miss male victims they encounter. When male victims are not identified, they risk being treated as irregular migrants instead of exploited individuals and are vulnerable to deportation or being charged with crimes committed as a result of being trafficked, such as visa violations. Likewise, cases involving male victims are often dismissed as labor infractions instead of investigated as criminal cases.

In implementing anti-trafficking programs, it is important that governments ensure medical, psychological, and legal assistance is sensitive to the needs of all victims, regardless of gender. Assistance could include shelter, medical assistance, vocational training, repatriation, and other aid. Governments may need to adapt some methodologies to better serve men, such as by creating drop-in centers. The goal is that governments ensure that *all* trafficking victims are adequately protected. ♦

“A worrying perception . . . is that adult male victims of labor trafficking are either not in need of assistance or do not want it. There are clear indications in many countries, however, that men do indeed need assistance and will accept it if it is structured to meet their needs.”

Trafficking of Adult Men in the Europe and Eurasia Region, USAID (2010)

NON-CRIMINALIZATION OF VICTIMS FOR CRIMES COMMITTED IN THE COURSE OF BEING TRAFFICKED

Trafficking victims are often compelled to commit crimes, which can blind authorities to the victim behind the “criminal” they first encountered. A 14-year-old sex trafficking victim, for example, may be charged with prostitution-related charges. Foreign domestic workers who have fled domestic servitude maybe in violation of immigration laws. Should an uninformed or untrained official come across any of these individuals, or if the government lacks standardized identification procedures, these trafficking victims are likely to face arrest, penalization, incarceration, or deportation.

The U.S. anti-trafficking legislation, the Trafficking Victims Protection Act, requires the protection of trafficking victims and requires the Department of State to take into account, as part of its assessment of foreign government actions for this *Report*, whether foreign governments are ensuring that trafficking victims are not inappropriately incarcerated. Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the United Nations Office of the High Commissioner for Human Rights provides that “[t]rafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”

As governments around the world work to improve their anti-trafficking efforts, it is critical that officials—including police, immigration, and social services staff—be able to distinguish trafficking victims from criminals. Through a process of appropriately questioning the victim and observing his or her situation—often referred to as a standard identification or screening process—officials are empowered to make an informed determination. Officials should be trained on trafficking indicators: for example, does the person appear to be or report being controlled by someone else? Does he or she show signs of abuse? Does he or she appear fearful?



A plainclothes policeman grabs for a woman in prostitution during a raid in Fujian province, China. Despite being sex trafficking victims, some are often arrested and convicted of prostitution and related offenses.

Identifying the victim is critical to understanding and prosecuting the true crime that has taken place, and ensuring adequate care and support to trafficking victims facilitates their ability to provide testimony in the prosecution of offenders. Treated as criminals, victims can be traumatized by placement in jail and will be less effective witnesses. Further, if victims are treated as criminal and deported they will be unable to support the investigation. This all-too-common practice suppresses the best evidence of trafficking and gets rid of the evidence—undermining prosecutions and often fatally compromising the government’s ability to prosecute a case successfully. Treating victims as what they are, not as criminals, is at the heart of the victim-centered approach to combating trafficking. In the United States, one effort to ensure the non-criminalization and protection of trafficking victims is “safe harbor legislation,” recently enacted by several states, which protects minor sex trafficking victims by providing them immunity from prosecution. ♦



"However long it would take...I knew I had to be smarter than them to survive this prison."

— Russian woman trafficked in the Netherlands

"Counting Down," image by Kay Chernush © ArtWorks for Freedom

supplement, not replace, traditional actions against child labor, such as remediation and education. When children are enslaved, however, their abusers should not escape criminal punishment by taking weaker administrative responses to child labor practices.

Unlawful Recruitment and Use of Child Soldiers

Child soldiering is a manifestation of human trafficking when it involves the unlawful recruitment or use of children—through force, fraud, or coercion—by armed forces as combatants or other forms of labor. Some child soldiers are also sexually exploited by armed groups. Perpetrators may be government armed forces, paramilitary organizations, or rebel groups. Many children are forcibly abducted to be used as combatants. Others are unlawfully made to work as porters, cooks, guards, servants, messengers, or spies. Young girls can be forced to marry or have sex with male combatants. Both male and female child soldiers are often sexually abused and are at high risk of contracting sexually transmitted diseases.

BOUGHT & SOLD: VOICES OF HUMAN TRAFFICKING

"Bought & Sold: Voices of Human Trafficking" is a large-scale outdoor photography exhibit, one example of how ArtWorks for Freedom (AWFF) is using the power of art in the global fight against modern slavery. Through its alliance of artist-activists in diverse fields, AWFF mounts public awareness campaigns nationally and internationally designed to change public attitudes and plant the seeds that can transform the moral landscape in much the same way that *Uncle Tom's Cabin* did more than 150 years ago. ♦

CHILD SOLDIERS

The Child Soldiers Prevention Act of 2008 (CSPA) was signed into law on December 23, 2008 (Title IV of Pub. L. 110-457) and took effect on June 21, 2009. The CSPA requires publication in the annual TIP Report of a list of foreign governments identified during the previous year as having governmental armed forces or government-supported armed groups that recruit and use child soldiers, as defined in the Act. These determinations cover the reporting period beginning April 1, 2012 and ending March 31, 2013.

For the purpose of the CSPA, and generally consistent with the provisions of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the term “child soldier” means:

- (i) any person under 18 years of age who takes a direct part in hostilities as a member of governmental armed forces;
- (ii) any person under 18 years of age who has been compulsorily recruited into governmental armed forces;
- (iii) any person under 15 years of age who has been voluntarily recruited into governmental armed forces; or
- (iv) any person under 18 years of age who has been recruited or used in hostilities by armed forces distinct from the armed forces of a state.

The term “child soldier” includes any person described in clauses (ii), (iii), or (iv) who is serving in any capacity, including in a support role such as a cook, porter, messenger, medic, guard, or “sex slave”.



A Burmese soldier gives national identity cards to demobilized child soldiers during a ceremony in Yangon where the children were reunified with their families. Burma has signed an action plan with the UN on the identification, release, and rehabilitation of children in the Burmese military.

Governments identified on the list are subject to restrictions, in the following fiscal year, on certain security assistance and commercial licensing of military equipment. The CSPA, as amended, prohibits assistance to governments that are identified in the list under the following authorities: International Military Education and Training, Foreign Military Financing, Excess Defense Articles, and Peacekeeping Operations, with exceptions for some programs undertaken pursuant to the Peacekeeping Operations authority. The CSPA also prohibits the issuance of licenses for direct commercial sales of military equipment to such governments. Beginning October 1, 2013 and effective throughout FY 2014, these restrictions will apply to the listed countries, absent a presidential national interest waiver, applicable exception, or reinstatement of assistance pursuant to the terms of the CSPA. The determination to include a government in the CSPA list is informed by a range of sources, including first-hand observation by U.S. government personnel and research and reporting from various United Nations entities, international organizations, local and international NGOs, and international media outlets.

The 2013 CSPA List includes governments in the following countries:

1. Burma
2. Central African Republic (CAR)
3. Chad
4. Democratic Republic of Congo (DRC)
5. Rwanda
6. Somalia
7. South Sudan
8. Sudan
9. Syria
10. Yemen

The CSPA list includes countries that recruited or used child soldiers as defined in the Act, in governmental armed forces or government-supported armed groups during the reporting period. But this represents only some of the countries in the world where children have been unlawfully recruited or used. Separately, there are reports of non-government supported groups using child soldiers in additional countries in Asia, Latin America, Africa, and the Middle East. Some infamous non-state armed groups, such as the Lord's Resistance Army operating in Central Africa or the rebel militias Abu Sayyaf, the New People's Army, and the Moro Islamic Liberation Front in the Philippines, have been recruiting or using child soldiers for many years. Some groups alleged to use child soldiers disbanded or were integrated into state security forces during the year, and in some countries there was progress toward peace agreements that could lead to the demobilization of children.

An alarming trend emerged during the year, however, of numerous non-state armed groups abducting, recruiting, and exploiting children as combatants, porters, spies, and for sex in conflicts that erupted in Africa and in the Middle East. In northern Mali, there were reports of large-scale recruitment of children into separatist groups including Ansar al-Dine, Movement for Unity and Jihad in West Africa, and Al Qaeda in the Islamic Maghreb. Syrian opposition armed groups recruited and used children under 18 years old—some as young as 14—in combat and military support roles. Some anti-government armed groups used children in combat and other roles, making them transport weapons and supplies or serve as guards. A Syrian-based organization also documented the deaths of at least 17 children who fought for the Free Syrian Army. During its rebellion against the government of the Central African Republic, the Seleka coalition—an amalgamation of numerous armed groups known to use child soldiers—recruited and used children in the front lines of combat, some of whom were killed during fighting in March 2013. In the Democratic Republic of the Congo (DRC), several hundred former members of a militia group notorious for its use of child soldiers defected from the Congolese military (FARDC) and formed the M23, a Rwanda-backed armed group that forcibly recruited children in DRC and Rwanda to fight the FARDC for control of eastern DRC. Some progress was made to end impunity for the worst offenders of unlawful child soldier recruitment and use. Bosco Ntaganda, a former FARDC commander who is the subject of two arrest warrants by the International Criminal Court (ICC) for crimes against humanity and war crimes, including the recruitment and use of children under the age of 15. In March, after nearly seven years as a fugitive from justice, Ntaganda voluntarily surrendered to the ICC. He made his first appearance in front of the court in March 2013. ♦



METHODOLOGY

The Department of State prepared this Report using information from U.S. embassies, government officials, nongovernmental and international organizations, published reports, news articles, academic studies, research trips to every region of the world, and information submitted to tipreport@state.gov. This email address provides a means by which organizations and individuals can share information with the Department of State on government progress in addressing trafficking.

U.S. diplomatic posts and domestic agencies reported on the trafficking situation and governmental action to fight trafficking based on thorough research that included meetings with a wide variety of government officials, local and international NGO representatives, officials of international organizations, journalists, academics, and survivors. U.S. missions overseas are dedicated to covering human trafficking issues.

“People work, they don’t get paid, and leave. Then a bus comes and unloads a fresh group of workers to repeat the cycle.”

– “Maxim,” A migrant worker at the construction site of the 2014 Winter Olympics in Sochi, Russia (quoted in “Race to the Bottom” (Human Rights Watch, February 2013))

TIER PLACEMENT

The Department places each country in the 2013 TIP Report onto one of four tiers, as mandated by the TVPA. This placement is based more on the extent of government action to combat trafficking than on the size of the problem. The analyses are based on the extent of governments’ efforts to reach compliance with the TVPA’s minimum standards for the elimination of human trafficking (see page 412), which are consistent with the Palermo Protocol.

While Tier 1 is the highest ranking, it does not mean that a country has no human trafficking problem. Rather, a Tier 1 ranking indicates that a government has acknowledged the existence of human trafficking, has made efforts to address the problem, and meets the TVPA’s minimum standards. Each year, governments need to demonstrate appreciable progress in combating trafficking to maintain a Tier 1 ranking. Indeed, Tier 1 represents a responsibility rather than a reprieve. A country is never finished with the job of fighting trafficking.

WEST AFRICA – EGYPT

Sussan was only 10 when her father sold her to an Egyptian family to serve as a domestic worker. Despite her protests, Sussan accompanied the family back to Egypt. Once there, she was forced to work excessive hours, never received compensation, and her passport was confiscated. She was locked in the house where she was physically and emotionally abused daily. During her six years of enslavement, she was not allowed to speak to her family; when her relatives tried to reach her by phone, Sussan’s employer would hang up the phone. One day, she summoned the courage to escape. She was arrested shortly after her escape for immigration violations, but with the cooperation of an international NGO and Egyptian authorities, she was released from detention and recognized as a trafficking victim. While staying at a government shelter in Egypt, the international NGO arranged for Sussan’s return to her country in West Africa. Once there, UNICEF and the child protection police arranged for her to stay in a designated shelter for trafficking victims while her family was located. After three weeks, she was reunited with her family and given the chance to enroll in vocational training as part of her reintegration process. Sussan looks to brighter days now and hopes to open an Egyptian restaurant in her town.



Women, girls, boys, and transgender youth from Central America have been identified as victims of sex trafficking. Some are exploited in their home communities while others are exploited in neighboring countries or the United States.

UZBEKISTAN – RUSSIA

Ayauly and Bibihul were among 12 migrants from Kazakhstan and Uzbekistan, including three children, who were held captive for 10 years in a supermarket after being promised employment in Russia. In Russia, they were beaten and forced to work without pay by the couple who owned the supermarket. Their passports were confiscated by their traffickers who said they needed the documents to officially register them as workers with authorities. The passports were never returned. Side by side with 10 others, Ayauly and Bibihul lifted heavy goods in and out of the shop every day. The couple used threats of violence, beatings, and sexual violence to demand subservience. Based on a tip from Ayauly's mother, two Russian civic activists rescued Ayauly and Bibihul as well the other workers found at the supermarket. While a criminal investigation was opened it was closed shortly thereafter. Prosecutors claimed there was no evidence of a crime. Ayauly and Bibihul are now facing deportation for residing in Russia illegally.

Tier rankings and narratives in the 2013 TIP Report reflect an assessment of the following:

- » enactment of laws prohibiting severe forms of trafficking in persons, as defined by the TVPA, and provision of criminal punishments for trafficking offenses;
- » criminal penalties prescribed for human trafficking offenses with a maximum of at least four years' deprivation of liberty, or a more severe penalty;
- » implementation of human trafficking laws through vigorous prosecution of the prevalent forms of trafficking in the country;
- » proactive victim identification measures with systematic procedures to guide law enforcement and other government-supported front-line responders in the process of victim identification;
- » government funding and partnerships with NGOs to provide victims with access to primary health care, counseling, and shelter, allowing them to recount their trafficking experiences to trained social counselors and law enforcement in an environment of minimal pressure;

Some workers assembling electronic devices in factories in China are subjected to forced labor. According to these workers, labor advocates, and companies trying to address the situation, harsh working conditions include forcing excessive overtime hours; maintaining high daily production quotas; implementing subtle discrimination practices by hiring only the youngest and healthiest candidates; punishing workers for small mistakes and verbally harassing workers; and making workers live in crowded dorms.





A young boy sews beads and sequins in intricate patterns onto saris and shawls at a zari (embroidery) factory. Boys in Nepal and India often work long hours seven days a week year-round, and are routinely subjected to physical abuse.

- » victim protection efforts that include access to services and shelter without detention and with legal alternatives to removal to countries in which victims would face retribution or hardship;
- » the extent to which a government ensures victims are provided with legal and other assistance and that, consistent with domestic law, proceedings are not prejudicial to victims' rights, dignity, or psychological well being;
- » the extent to which a government ensures the safe, humane, and to the extent possible, voluntary repatriation and reintegration of victims; and
- » governmental measures to prevent human trafficking, including efforts to curb practices identified as contributing factors to human trafficking, such as employers' confiscation of foreign workers' passports and allowing labor recruiters to charge prospective migrants recruitment or placement fees.

“They have suicidal thoughts. They believe they can’t trust anyone. They know that people are not playing around, they know that the assailant will carry out their threats. They have anxiety disorders, insomnia, loss of appetite.”

– Siliva Saravia, Psychologist
El Salvador, 2012

Withelma ‘T’ Ortiz Walker Pettigrew, a 22 year-old survivor of sex trafficking, speaks to Rep. Karen Bass (D-CA) at a press conference on Foster Youth Shadow Day during which she accompanied the congresswoman on her daily schedule.



“My definition of freedom is deeper than most. For so long my freedom was nonexistent. My every move was watched, my every conversation was observed. My clothing and food portions and options were at the mercy of another. Living in fear and terror, I had no ability to make or understand decisions and my physical self seemed to belong to everyone but me.”

– Withelma “T” Ortiz Walker Pettigrew, Human Trafficking Survivor, Advocate, and Activist, 2012

Tier rankings and narratives are NOT affected by the following:

- » efforts, however laudable, undertaken exclusively by non-governmental actors in the country;
- » general public awareness events—government-sponsored or otherwise—lacking concrete ties to the prosecution of traffickers, protection of victims, or prevention of trafficking; and
- » broad-based law enforcement or developmental initiatives.

A GUIDE TO THE TIERS

Tier 1

Countries whose governments fully comply with the TVPA’s minimum standards for the elimination of trafficking.

Tier 2

Countries whose governments do not fully comply with the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.

Tier 2 Watch List

Countries where governments do not fully comply with the TVPA’s minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and

- a) the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing;
- b) there is a failure to provide evidence of *increasing efforts* to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and

TRADITIONAL PRACTICES GONE WRONG

History and cultural practices help define a country or society's DNA. Some of these practices are based in a child's passage into adulthood or a child's informal education and vocational training. Others involve traditional religious practices to ward off evil, or the code by which strangers to the community are treated. Unfortunately, sometimes these practices are abused to facilitate modern slavery.

For example, in the *devdasi* or *jogini* traditions in some parts of India, girls are "dedicated" to a temple in which they become symbolic wives and perform chores to support the temple. While the original practice was intended to honor the religious institution and revere its influence, in modern times it has become corrupted as a mechanism by which to induce girls into prostitution.

The cultural practices of dowries and bride price are also abused in many parts of the world. Both are charges paid to another tribe or family in advance of a marriage as sign of good faith—a pact between two families or communities. Sometimes, however, these payments can give rise to exploitation. In Papua New Guinea, for example, which faces an increase of foreign workers in logging and mining camps, parents sell their daughters to these foreign workers. These girls often are victims of sex trafficking.

Another example is *kafala*, or sponsorship, in many wealthy Middle Eastern countries. *Kafala* has become an oppressive, non-transferable visa regime. Under this system, the foreign worker can only work for the employer who sponsored his/her visa and is then trapped in that employment. When abuses occur, these workers may be vulnerable to arrest for violation of the sponsorship laws if they leave without their employers' permission.



The early marriage of girls in Afghanistan is entrenched in cultural practice. Kinah, who was forced into marriage at 15, was kept in a basement by her in-laws for six months in an attempt to force her into prostitution. They ripped her fingernails out, severely abused her with hot irons, and broke her fingers. In May 2013, Kinah's mother-in-law, sister-in-law, and husband in absentia were sentenced to 10 years in prison for torture, abuse, and human rights violations. An arrest warrant has been issued for her husband, but he has not yet been found.

In some African and Latin American countries, traditional witchcraft plays a role in facilitating modern slavery. *Juju* oaths—once used to protect individuals about to undertake a new challenge or journey—are now abused by traffickers to tie victims to silence and obedience. Before the victims leave their home, a *Juju* priest conducts a ceremony to bind the victims to unconditional obedience to the traffickers; the victims are warned that if they disobey the oath they will suffer the wrath of spirit world through nightmares, madness, or death. Even when these trafficking victims are identified by law enforcement, they fear the consequences if they testify against their traffickers.

Ingrained societal support for these traditional practices can pose difficulties to combating trafficking. Key to defeating the impact of these corruptions of spiritual or traditional practices is awareness among those who are deceived—whether it be parents, the intending emigrant, or the bride. Policymakers can address this by recognizing that these forms of psychological coercion can be used by traffickers, mounting education campaigns aimed at the vulnerable populations, and prosecuting and punishing those who use this form of coercion to traffic people. ♦

decreasing evidence of complicity in severe forms of trafficking by government officials; or

- c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take *additional steps over the next year*.

Tier 3

Countries whose governments do not fully comply with the TVPA's minimum standards and are not making significant efforts to do so.

The TVPA lists additional factors to determine whether a country should be on Tier 2 (or Tier 2 Watch List) versus Tier 3. First, the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking. Second, the extent to which the country's government does not comply with the TVPA's minimum standards and, in particular, the extent to which officials or government employees have been complicit in severe forms of trafficking. And third, reasonable measures required to bring the government into compliance with the minimum standards in light of the government's resources and capabilities to address and eliminate severe forms of trafficking in persons.

NIGERIA – FRANCE

Since her parents passed away, Ogochukwu had been struggling to care for her younger brothers. An acquaintance offered to take her abroad and find her a job. Ogochukwu was ecstatic; she accepted his offer, believing that she would now be able to help her family in Nigeria. Before setting off to Europe, she was taken to a juju priest to seal the deal with local magic. During the ceremony, she vowed she would obey her boss in Europe and pay back her travel expenses. The "spell" called for death if she failed to fulfill her oath. It was not too long before she realized that something was wrong, she had joined about 30 other women in an open-back truck headed toward the Sahara Desert. They finally reached their destination and were met by a "madam" in France who told her she owed travel expenses for her passage to Europe and would be forced to pay it back by selling her body. She worked the streets as many as 20 hours a day and was forced to pay for her own food and clothes as well as for rent. Despite the juju oath, she was encouraged by a man she befriended to go to the police. Once at the police station, she explained her situation. Her traffickers were arrested but so was she, for being in France illegally. Before her deportation, workers at the detention center gave her money out of good will for her safe return to Nigeria. She is now building her life again and says, "I am very much stronger than juju."

GLOBAL LAW ENFORCEMENT DATA

The Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003 added to the original law a new requirement that foreign governments provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to be considered in full compliance with the TVPA's minimum standards for the elimination of trafficking (Tier 1). The 2004 TIP Report collected this data for the first time. The 2007 TIP Report showed for the first time a breakout of the number of total prosecutions and convictions that related to labor trafficking, placed in parentheses.

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2005	6,178	4,379		40
2006	5,808	3,160		21
2007	5,682 (490)	3,427 (326)		28
2008	5,212 (312)	2,983 (104)	30,961	26
2009	5,606 (432)	4,166 (335)	49,105	33
2010	6,017 (607)	3,619 (237)	33,113	17
2011	7,206 (508)	4,239 (320)	41,210	15
2012	7,705 (1,153)	4,746 (518)	46,570	21

The numbers in parentheses are those of labor trafficking prosecutions, convictions and victims identified.

A 2008 amendment to the TVPA provides that any country that has been ranked Tier 2 Watch List for two consecutive years and that would otherwise be ranked Tier 2 Watch List for the next year will instead be ranked Tier 3 in that third year. This automatic downgrade provision came into effect for the first time in last year's report. The Secretary of State is authorized to waive the automatic downgrade based on credible evidence that a waiver is justified because the government has a written plan that, if implemented, would constitute making significant efforts to comply with the TVPA's minimum standards for the elimination of trafficking and is devoting sufficient resources to implement the plan. The Secretary can only issue this waiver for two consecutive years. After the third year, a country must either go up to Tier 2, or down to Tier 3. Governments subject to the automatic downgrade provision are noted as such in the country narratives.

Penalties for Tier 3 Countries

Pursuant to the TVPA, governments of countries on Tier 3 may be subject to certain sanctions, whereby the U.S. government may withhold or withdraw nonhumanitarian, non-trade-related

foreign assistance. In addition, countries on Tier 3 may not receive funding for government employees' participation in educational and cultural exchange programs. Consistent with the TVPA, governments subject to sanctions would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund and the World Bank.

Imposed sanctions will take effect upon the beginning of the U.S. government's next Fiscal Year—October 1, 2013—however, all or part of the TVPA's sanctions can be waived if the President determines that the provision of such assistance to the government would promote the purposes of the statute or is otherwise in the United States' national interest. The TVPA also provides for a waiver of sanctions if necessary to avoid significant adverse effects on vulnerable populations, including women and children.

No tier ranking is permanent. Each country, including the United States, can do more. All countries must maintain and increase efforts to combat trafficking.

Human trafficking survivors and other members of Maiti Nepal act out a story about human trafficking in the village of Nangle Bhare, Nepal. The organization uses music, dance, and drama to engage illiterate audiences.



2013 TIP REPORT HEROES

Each year, the Department of State honors individuals around the world who have devoted their lives to the fight against human trafficking. These individuals are NGO workers, lawmakers, police officers, and concerned citizens who are committed to ending modern slavery. They are recognized for their tireless efforts—despite resistance, opposition, and threats to their lives—to protect victims, punish offenders, and raise awareness of ongoing criminal practices in their countries and abroad.

LAURA ANYOLA TUFON

Cameroon



In her 10 years as the Northwest Regional Coordinator of the Justice and Peace Commission, Laura Anyola Tufon has been relentless in her commitment to fight child trafficking and forced labor in Cameroon. Despite a challenging environment where poverty, culture, and tradition converge to create vulnerabilities that facilitate trafficking in persons, Ms. Anyola is directly involved in the identification of, and delivery of assistance to, victims of human trafficking. In 2012, she identified 80 trafficking victims, and provided assistance to over 100 such individuals.

Ms. Anyola's leadership has transformed her organization into a model for Central Africa. In 2009, the Justice and Peace Commission created the first community-based protection system in Cameroon to identify at-risk children and to protect victims from being re-trafficked. Additionally, Ms. Anyola has worked within the appropriate legal systems to compel traffickers to compensate survivors and their families, leading to nearly 300 victims and their families receiving reintegration assistance and education.

Ms. Anyola continues to call for the government to enforce its human trafficking legislation by regularly prosecuting traffickers and ensuring that victims receive the protection they need.

KATRIN GLUIC

Croatia



Katrin Gluic has spearheaded Croatian Police efforts to combat human trafficking since January 2010. She is frequently identified as a driving force for creating necessary changes on anti-trafficking efforts, including those related to Croatia's EU accession.

As a chief police inspector within the National Police Office for the Suppression of Corruption and Organized Crime (PNUSKOK), Ms. Gluic coordinates trafficking investigations in Croatia. She oversees initial assistance to victims as a leader of Croatia's highly effective and innovative mobile teams, which she helped to create. These teams consist of specialized government, Red Cross, and NGO personnel, and rapidly deploy in order to handle initial care and placement of victims in suspected trafficking cases. She also designed and executed an extensive anti-trafficking training program involving several branches of the Ministry of Interior, including the border police, police academy, and virtually all police precincts.

Ms. Gluic has been pivotal in Croatia's international cooperation in the fight against trafficking. In 2012, she coordinated efforts to shut down an international forced prostitution and narcotics ring, creating joint initiatives with counterparts in Spain, Serbia, Hungary, and Slovenia. She ensured that victims returning to Croatia received the assistance they needed in the difficult process of reintegration.

SIMONA BROOMES*Guyana*

Simona Broomes is a courageous leader in assisting human trafficking victims and raising awareness about human trafficking in Guyana. After 25 years as a miner, in 2012 she established the Guyana Women Miners Organization (GWMO), a volunteer membership and advocacy organization, to empower women miners and address the economic discrimination and physical intimidation that women miners face. The GWMO is the first organization of its kind in Guyana comprising women miners advocating on a cross-section of social and economic issues. Ms. Broomes has worked relentlessly to engage the government, the international community, and the media to raise public awareness about human trafficking, identify traffickers, promote access to victim care in remote mining communities, improve the law enforcement response, and increase job training for women in mining.

In April, Ms. Broomes was physically assaulted by traffickers while rescuing victims. Despite the dangers of retaliation, however, she has assisted several victims, and GWMO members have temporarily housed survivors before transporting them from remote areas to government care and law enforcement officials in the capital. Under her dynamic leadership, the GWMO and its 440 members have become undeniably powerful anti-trafficking advocates and a recognized force in combating human trafficking while promoting equality and economic opportunities for women in Guyana.

MOHAMMED BASSAM AL-NASSERI*Iraq*

Mohammed Bassam Al-Nasseri has played a critical role in the development, passage, and implementation of Iraq's comprehensive 2012 anti-trafficking legislation. As a capacity building officer at the International Organization for Migration, Mr. Al-Nasseri has provided superior leadership and unflagging support to the International Trafficking in Persons Working Group in Iraq, a forum for Iraq's Central Committee to Combat Trafficking in Persons, to coordinate with the international community to fight human trafficking.

Mr. Al-Nasseri also served as a tireless advocate for 35 stranded Ukrainian and Bulgarian construction workers in Iraq. During daily visits to the construction site where the workers were living in crowded, dark, dirty, and unventilated conditions without electricity, money, or water, Mr. Al-Nasseri delivered essential medical assistance, potable water, and hot food, and assisted the workers so they could call home. Mr. Al-Nasseri worked closely with various government ministries on the workers' case. Through his advocacy efforts, the workers were spared from even more dire circumstances and were repatriated back to their home countries, where they continue to participate in legal proceedings against their former employer. Mr. Al-Nasseri's heroic and continuing involvement in this case is just one example of his exceptional commitment to fighting human trafficking.

JAVIER ANTONIO MORAZÁN*Nicaragua***JUAN VICTORIANO RUÍZ***Nicaragua*

The partnership that Javier Antonio Morazán and Juan Victoriano Ruíz have forged in their efforts to combat human trafficking has been one of the most important law enforcement advances in Nicaragua.

Mr. Morazán, the Head of the Public Prosecutor's Anti-Corruption and Anti-Organized Crime Unit, is one of the Nicaraguan government's most knowledgeable officials on human trafficking. Since 2009, he has been personally responsible for the vast majority of convictions against traffickers, and under his leadership, the number of human trafficking prosecutions went from zero to a record-high of 35 in 2012.

But Nicaragua's progress in prosecutions is not due solely to Mr. Morazán's work in the Public Prosecutor's office. Without Lieutenant Ruíz and his team's efforts to collect evidence against traffickers and shut down human trafficking rings, none of the success of Mr. Morazán's unit would have been possible. As the head of the Nicaraguan National Police's Anti-TIP Unit (NNP), Lieutenant Ruíz leads a small but dedicated group of officers responsible for investigating human trafficking cases throughout Nicaragua. Over the three years since Mr. Ruíz assumed leadership, the NNP has investigated an average of 24 cases a year, compared to an average of 11 cases a year over the two years before Mr. Ruíz's unit was created.

Each of these officials is extraordinary in his own right; however, what is truly remarkable is the partnership they have formed. Their work together, and the level of coordination and trust they have developed, has been key to advancing Nicaragua's success in the fight against human trafficking.

IPPEI TORII*Japan*

Ippei Torii has been a forceful leader in anti-trafficking efforts as the secretary general for Solidarity Network with Migrants Japan (SMJ), which has provided shelter and assistance to more than 4,000 foreign workers in Japan who have escaped from exploitative conditions or sought help recovering unpaid wages. SMJ has offered advice and assistance by telephone to more than 1,200 foreign workers in Japan's Industrial Trainee and Technical Intern Program (TTIP), a government-run program that recruits unskilled labor to work at factories and farms in Japan. Awareness of Mr. Torii's network has spread by word of mouth by foreign workers, who distribute mobile phone numbers of SMJ staff to those in need of assistance.

The organization has also engaged in public awareness and lobbying campaigns both domestically and abroad to raise concerns about how traffickers exploit the TTIP to coerce foreign workers into conditions of forced labor. Mr. Torii meets regularly with various ministries that are responsible for oversight of the program, and he has provided guidance to the UN Special Rapporteur on the Human Rights of Migrants. His persistence has kept this issue squarely before the press and on the political agenda in Japan.

SUSAN OPLE*The Philippines*

Susan "Toots" Ople is founder and president of the Blas F. Ople Policy Center and Training Institute, a Philippine non-profit organization dedicated to helping distressed Overseas Filipino Workers (OFWs) with labor and migration issues. The Ople Center provides free legal assistance to survivors of human trafficking, as well as other free reintegration services. It represents the OFW sector on the Inter-Agency Council Against Trafficking (IACAT), a successful multi-agency government body that, with the help of the private sector, civil society, and international partners, combats all forms of human trafficking. With an estimated 10 million Filipinos working abroad, the Ople Center has been a leader in calling for an increased focus on combating labor trafficking.

Ms. Ople works tirelessly to reintegrate trafficking victims into Philippine society, believing that skills training combined with good job placement will empower these workers to secure safer employment. Through her leadership, the Ople Center has entered into partnerships with hotels, private sector companies, and legislative offices to secure jobs and training for trafficking survivors. One woman trained at the center, a former domestic worker in Libya, now heads the housekeeping unit of a major resort hotel in Cebu, while another trafficking survivor works as an employee of IACAT.

PAUL HOLMES*United Kingdom*

Paul Holmes is an internationally-renowned expert in combating human trafficking. His expertise is founded upon a long and successful career as an operational officer and criminal investigator with New Scotland Yard. For the past 10 years he has provided anti-trafficking expertise across six continents, primarily in the design and delivery of specialized training for practitioners and performing technical capacity assessments for national governments.

With a focus on a victim-first, human rights-based approach to criminal justice responses to trafficking, his interactive training program encompasses the full range of reactive and pro-active investigative techniques. Within the training sphere, his uniquely practical and effective style has secured his reputation as one of the world's foremost trainers on the subject. He has developed and published wide-ranging investigative "good practice" manuals for a number of national governments and international organizations such as the United Nations, the International Organization for Migration, the Organization for Security and Cooperation in Europe, and Interpol. Additionally, he has held various advisory roles in the international arena and currently serves as a member of the UN Office on Drugs and Crime Expert Group on the Palermo Protocol.

**IN MEMORIAM***Eunice Kisembo, Uganda*

2012 saw the tragic loss of Eunice Kisembo, the former Head of the Counter Trafficking in Persons Office of the Government of Uganda. Her trailblazing efforts were critical in addressing human trafficking in Uganda, assisting Ugandan victims of trafficking around the world by aggressively investigating potential trafficking crimes, and establishing Uganda's National Task Force against Human Trafficking.

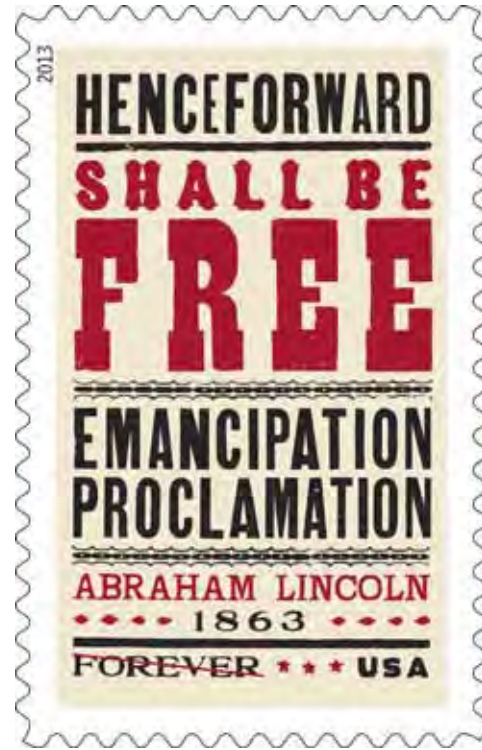


A report published by UNODC and the Brazilian government in 2013 highlighted that, between 2005 and 2011, most of the Brazilian trafficking victims identified by consular officials abroad were Brazilian women exploited in sex trafficking in Europe. However, many Brazilian sex trafficking victims—children and adults, male, female, and transgender—are also exploited within the country.



“[A]s we review our pledge to erase modern forms of slavery from the face of this earth, let us also draw strength from the monuments of the past. . . .”

– President Barack Obama
December 31, 2012



In January 2013, the United States Postal Service issued a stamp commemorating the 150th Anniversary of the Emancipation Proclamation, a promise that continues to drive United States Government anti-trafficking activities.



Gold has increasingly become a source of income for armed groups operating in eastern Congo. According to a report published on October 25, 2012, by the Enough Project, this gold has ended up in jewelry stores around the world. Artisanal gold miners—and those who mine other minerals as well—work in exploitative conditions and are often subjected to debt bondage.



THE TIERS

TIER 1

Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards.

TIER 2

Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

TIER 2 WATCH LIST

Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards AND:

- a) The **absolute number of victims** of severe forms of trafficking is very significant or is significantly increasing;
- b) There is a **failure to provide evidence of increasing efforts** to combat severe forms of trafficking in persons from the previous year; or
- c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on **commitments by the country to take additional future steps over the next year.**

TIER 3

Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.

TIER PLACEMENTS

AFGHANISTAN	2WL
ALBANIA	2WL
ALGERIA	3
ANGOLA	2WL
ANTIGUA & BARBUDA	2
ARGENTINA	2
ARMENIA	1
ARUBA	2
AUSTRALIA	1
AUSTRIA	1
AZERBAIJAN	2
THE BAHAMAS	2
BAHRAIN	2WL
BANGLADESH	2
BARBADOS	2WL
BELARUS	2WL
BELGIUM	1
BELIZE	2
BENIN	2
BHUTAN	2
BOLIVIA	2
BOSNIA & HERZEGOVINA	2
BOTSWANA	2
BRAZIL	2
BRUNEI	2
BULGARIA	2
BURKINA FASO	2
BURMA	2WL
BURUNDI	2WL
CAMBODIA	2WL
CAMEROON	2
CANADA	1
CAPE VERDE	2
CENTRAL AFRICAN REP.	3
CHAD	2WL
CHILE	2
CHINA (PRC)	3*
COLOMBIA	1
COMOROS	2WL
CONGO (DRC)	3
CONGO, REPUBLIC OF	2
COSTA RICA	2
COTE D'IVOIRE	2
CROATIA	2
CUBA	3
CURACAO	2
CYPRUS	2
CZECH REPUBLIC	1
DENMARK	1
DJIBOUTI	2WL
DOMINICAN REPUBLIC	2
ECUADOR	2
EGYPT	2
EL SALVADOR	2
EQUATORIAL GUINEA	3
ERITREA	3
ESTONIA	2
ETHIOPIA	2
FIJI	2
FINLAND	1
FRANCE	1
GABON	2

THE GAMBIA	2WL
GEORGIA	2
GERMANY	1
GHANA	2
GREECE	2
GUATEMALA	2
GUINEA	2WL
GUINEA-BISSAU	3
GUYANA	2WL
HAITI	2WL
HONDURAS	2WL
HONG KONG	2
HUNGARY	2
ICELAND	1
INDIA	2
INDONESIA	2
IRAN	3
IRAQ	2
IRELAND	1
ISRAEL	1
ITALY	1
JAMAICA	2
JAPAN	2
JORDAN	2
KAZAKHSTAN	2
KENYA	2WL
KIRIBATI	2
KOREA, NORTH	3
KOREA, SOUTH	1
KOSOVO	2
KUWAIT	3
KYRGYZ REPUBLIC	2
LAOS	2
LATVIA	2
LEBANON	2WL
LESOTHO	2WL
LIBERIA	2WL
LIBYA	3
LITHUANIA	2
LUXEMBOURG	1
MACAU	2
MACEDONIA	1
MADAGASCAR	2WL
MALAWI	2
MALAYSIA	2WL
MALDIVES	2WL
MALI	2WL
MALTA	2
MARSHALL ISLANDS	2WL
MAURITANIA	3
MAURITIUS	2
MEXICO	2
MICRONESIA	2WL
MOLDOVA	2
MONGOLIA	2
MONTENEGRO	2
MOROCCO	2WL
MOZAMBIQUE	2
NAMIBIA	2WL
NEPAL	2
NETHERLANDS	1
NEW ZEALAND	1

NICARAGUA	1
NIGER	2
NIGERIA	2
NORWAY	1
OMAN	2
PAKISTAN	2
PALAU	2
PANAMA	2
PAPUA NEW GUINEA	3
PARAGUAY	2
PERU	2
PHILIPPINES	2
POLAND	1
PORTUGAL	2
QATAR	2
ROMANIA	2
RUSSIA	3*
RWANDA	2WL
ST. LUCIA	2WL
ST. MAARTEN	2
ST. VINCENT & THE GREN.	2
SAUDI ARABIA	3
SENEGAL	2
SERBIA	2
SEYCHELLES	2WL
SIERRA LEONE	2
SINGAPORE	2
SLOVAK REPUBLIC	1
SLOVENIA	1
SOLOMON ISLANDS	2WL
SOUTH AFRICA	2
SOUTH SUDAN	2WL
SPAIN	1
SRI LANKA	2WL
SUDAN	3
SURINAME	2WL
SWAZILAND	2
SWEDEN	1
SWITZERLAND	2
SYRIA	3
TAIWAN	1
TAJIKISTAN	2
TANZANIA	2WL
THAILAND	2WL
TIMOR-LESTE	2
TOGO	2
TONGA	2
TRINIDAD & TOBAGO	2WL
TUNISIA	2WL
TURKEY	2
TURKMENISTAN	2WL
UGANDA	2
UKRAINE	2WL
UNITED ARAB EMIRATES	2
UNITED KINGDOM	1
UNITED STATES OF AMERICA	1
URUGUAY	2WL
UZBEKISTAN	3*
VENEZUELA	2WL
VIETNAM	2
YEMEN	3
ZAMBIA	2
ZIMBABWE	3

* Auto downgrade from Tier 2 Watch List

SOMALIA

Special Case



YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	170	51		3
2007	123 (28)	63 (26)		5
2008	109 (18)	90 (20)	7,799	10
2009	325 (47)	117 (30)	10,861	8
2010	272 (168)	163 (113)	9,626	5
2011	257 (99)	218 (116)	10,094	2
2012	493 (273)	252 (177)	10,043	4

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)
- Special Cases



EAST ASIA & PACIFIC

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	1,321	763		3
2007	1,047 (7)	651 (7)		4
2008	1,083 (106)	643 (35)	3,374	2
2009	357 (113)	256 (72)	5,238	3
2010	427 (53)	177 (9)	2,597	0
2011	1,581 (55)	1,213 (55)	5,357	4
2012	1,682 (115)	1,251 (103)	8,521	4

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)



EUROPE

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	2,950	1,821		7
2007	2,820 (111)	1,941 (80)		7
2008	2,808 (83)	1,721 (16)	8,981	1
2009	2,208 (160)	1,733 (149)	14,650	14
2010	2,803 (47)	1,850 (38)	8,548	4
2011	3,162 (271)	1,601 (81)	10,185	2
2012	3,161 (361)	1,818 (112)	11,905	3

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

* As part of the Kingdom of the Netherlands, Aruba and Curacao are covered by the State Department's Bureau of European Affairs.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)



NEAR EAST

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	295	187		2
2007	415 (181)	361 (179)		1
2008	120 (56)	26 (2)	688	6
2009	80 (9)	57 (8)	1,011	6
2010	323 (63)	68 (10)	1,304	1
2011	209 (17)	60 (5)	1,831	2
2012	249 (29)	149 (15)	4,047	1

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)



SOUTH & CENTRAL ASIA

YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	629	275		0
2007	824 (162)	298 (33)		4
2008	644 (7)	342 (7)	3,510	2
2009	1,989 (56)	1,450 (10)	8,325	1
2010	1,460 (196)	1,068 (11)	4,357	1
2011	974 (24)	829 (11)	3,907	2
2012	1,043 (6)	874 (4)	4,415	1

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)

WESTERN HEMISPHERE



YEAR	PROSECUTIONS	CONVICTIONS	VICTIMS IDENTIFIED	NEW OR AMENDED LEGISLATION
2006	443	63		6
2007	426 (1)	113 (1)		7
2008	448 (42)	161 (24)	6,609	5
2009	647 (47)	553 (66)	9,020	1
2010	732 (80)	293 (65)	6,681	6
2011	1,023 (42)	318 (52)	9,836	3
2012	1,077 (369)	402 (107)	7,639	8

The numbers in parentheses are those of labor trafficking prosecutions, convictions, and victims identified.

Tier Placements

- Tier 1
- Tier 2
- Tier 2 Watch List
- Tier 3
- Tier 3 (Auto downgrade)



In Brazil, men subjected to forced labor in rural areas live where they work, often in remote areas. They produce charcoal, log trees, and clear jungle for cattle pastures. Many spend their nights in shelter they make from plastic sheeting they throw over branches, in places open to rain and snakes. They may drink contaminated water from stagnant pools shared with cattle or eat rancid scraps of meat along with rice, beans or watery stews. Their bathrooms often are open holes they dig in the earth.

How to Read a Country Narrative

This page shows a sample country narrative. The Prosecution, Protection, and Prevention sections of each country narrative describe how a government has or has not addressed the relevant TVPA minimum standards (see page 388), during the reporting period. This truncated narrative gives a few examples.

The country's tier ranking is based on the government's efforts against trafficking as measured by the TVPA minimum standards.

COUNTRY X (Tier 2 Watch List)

Profile of human trafficking in recent years.

Country X is a transit and destination country for men and women subjected to forced labor and, to a much lesser extent, forced prostitution. Men and women from South and Southeast Asia, East Africa, and the Middle East voluntarily travel to Country X as laborers and domestic servants, but some subsequently face conditions indicative of involuntary servitude. These conditions include threats of serious harm, including threats of legal action and deportation; withholding of pay; restrictions on freedom of movement, including the confiscation of passports and travel documents and physical, mental, and sexual abuse. In some cases, arriving migrant workers have found that the terms of employment in Country X are wholly different from those they agreed to in their home countries. Individuals employed as domestic servants are particularly vulnerable to trafficking since they are not covered under the provisions of the labor law. Country X is also a destination for women who migrate and become involved in prostitution, but the extent to which these women are subjected to forced prostitution is unknown.

Synopsis of government efforts.

The Government of Country X shows evidence of overall increasing efforts. The government has not yet enacted necessary trafficking legislation, during the reporting period it reaffirmed its commitment to this goal over the next year. Despite these efforts, the government did not show evidence of overall progress in prosecuting and punishing trafficking offenders and identifying victims of trafficking; therefore, Country X is placed on Tier 2 Watch List.

Guidance on how the government can improve its performance and obtain a better tier ranking.

Recommendations for Country X: Enact the draft comprehensive anti-trafficking legislation. Significantly increase efforts to investigate and prosecute trafficking offenses and convict and punish trafficking offenders. Consistently apply formal procedures to identify victims of trafficking among vulnerable groups. Increase efforts for immigration violations or disaggregate, analyze and disseminate trafficking law enforcement data.

Summary of the government's legal structure and law enforcement efforts against human trafficking.

Prosecution
The Government of Country X made minimal efforts to investigate and prosecute trafficking offenses during the reporting period. Country X does not prohibit all acts of trafficking, but it criminalizes slavery under Section 321 and forced labor under Section 322 of its criminal law. The prescribed penalty for forced labor – up to six months' imprisonment – is not sufficiently stringent. Article 297 prohibits forced or coerced prostitution, and the prostitution of a child below age 15 even if there was no compulsion or redress; the prescribed penalty is up to 15 years' imprisonment, which is commensurate with penalties prescribed for other serious crimes, such as rape. Draft revisions to the penal code have not yet been enacted. An unconfirmed report indicates that four traffickers were charged with fraudulently issuing visas to workers who they then exploited. Two were reportedly deported, and two were reportedly convicted. The government did not confirm nor deny the existence of this case. The government did not report any investigations, prosecutions, convictions, or sentences for trafficking complicity of public officials.

Protection

Country X made minimal progress in protecting victims of trafficking during the reporting period. Although the government reportedly refer suspected abuse cases to the government anti-trafficking shelter for investigation, the government continues to lack a systematic procedure for law enforcement to identify victims of trafficking among vulnerable populations, such as foreign workers awaiting deportation and women arrested for prostitution; as a result, victims may be punished and automatically deported without being identified as victims or offered protection. The government reported that the MOI has a process by which it refers victims to the trafficking shelter; however, this process is underutilized in practice. The trafficking shelter assisted 24 individuals during the reporting period and provided them with a wide range of services, including full medical treatment and legal and job assistance. Country X commonly fines and detains potential trafficking victims for unlawful acts committed as a direct result of being trafficked, such as immigration violations and running away from their sponsors, without determining whether the individuals are victims of trafficking.

Country X sometimes offers temporary relief from deportation so that victims can testify as witnesses against their employers. However, victims were generally not permitted to leave the country if there is a pending case. The government did not routinely encourage victims to assist in trafficking investigations or consistently offer victims alternatives to removal to countries where they may face retribution or hardship.

Prevention

Country X made modest progress in preventing trafficking in persons during the reporting period. In March, Country X hosted a two-day regional workshop meant to establish dialogue between scholars, government officials, and stakeholders to discuss regional and international efforts to combat TIP and how to help victims. While the government made no apparent effort to amend provisions of Country X's sponsorship law – enacted in March 2009 – to help prevent the forced labor of migrant workers, the government did start to enforce other parts of the law to the benefit of migrant workers. One provision in the sponsorship law continues to require foreign workers to request exit permits from their sponsors in order to leave Country X. Although this may increase migrant workers' vulnerability to forced labor, the law created a new process through which a laborer who was not granted an exit permit due to a sponsor's refusal or other circumstances can seek one by other means. The government has a national plan of action to address trafficking in persons, but did not publicly disseminate the plan or take steps to implement it during the reporting period. The government did not take any public awareness campaigns aimed at reducing the demand for commercial sex acts in Country X, but the government undertook public awareness campaigns, but the government convicted two of its nationals for soliciting children for sex in other countries and sentenced them to 10 years' imprisonment.

TVPA Minimum Standard 4(2) – whether the government adequately protects victims of trafficking by identifying them and ensuring they have access to necessary services.

Summary of the government's efforts to ensure that trafficking victims are identified and provided adequate protection.

TVPA Minimum Standard 4(10) – whether the government shows evidence of overall increasing efforts.

TVPA Minimum Standards 1-3 – whether the government prohibits all forms of trafficking and prescribes adequate criminal punishments.

TVPA Minimum Standard 4(3) – whether the government is making adequate efforts to prevent human trafficking.

Summary of the government's efforts to prevent human trafficking.

TVPA Minimum Standard 4(1) – whether the government vigorously investigates and prosecutes trafficking offenses and convicts and punishes trafficking offenders and provides data on these actions.

TVPA Minimum Standard 4(7) – whether the government has made adequate efforts to address the involvement in or facilitation of human trafficking by government employees.

TVPA Minimum Standard 4(11) – whether the government has made efforts to reduce the demand for commercial sex acts, and, if applicable, participation in international sex tourism by its nationals.

Meeting the Service Needs of Human Trafficking Survivors in the New York City Metropolitan Area: Assessment and Recommendations

2011

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PUBLIC POLICY PROGRAM, HOFSTRA UNIVERSITY

In partnership with

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LIFEWAY NETWORK



COLLABORATING TO COMBAT HUMAN TRAFFICKING

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We also thank the following individuals and service providers for taking the time and effort to fill out our rather detailed survey instrument: Suzanne Tomatore, City Bar Justice Center—Immigrant Women and Children Project; Sister Teresita Hinnegan, Dawn's Place; Lauren Burke, the Door Legal Services Center; Renan Salgado, Farmworker Legal Services of NY, Inc.; Lauren Pessa, My Sisters' Place; and Faith Huckel, Restore NYC, Inc. In addition, we extend our appreciation to several other service providers who have requested that their identities remain confidential. It is our hope and desire that this report benefits each organization in your vital work to protect, respect, and promote the rights of the survivors of human trafficking.

Lastly, we thank Catherine Fisher, Manager of Academic Operations for Faculty Computer Services at Hofstra University for helping us to work our ways through various technical difficulties that arose in administering our online survey.

EXECUTIVE SUMMARY

Human trafficking is a modern form of slavery prevalent domestically and abroad, including in the New York City metropolitan area.¹ Accompanied with the violations of human rights, trafficking is an affront to the personal dignity of its victims. Furthermore, trafficking is in violation of both domestic and international law. Survivors require a variety of health, legal, and social services after they are identified in order to transition successfully to life outside of trafficking. A failure to provide for these service needs increases the likelihood of several negative biographical consequences, including being re-trafficked, physical complications, psychological complications, social isolation, substance abuse, unemployment, poverty, and suicide.

Between May and December of 2010, LifeWay Network and the Department of Sociology at Hofstra University conducted a survey of area private service providers along with in-depth interviews with representatives from funding and coordinating agencies (both public and private), service providers (both public and private), and law enforcement agencies.² The study aims to shed light on a variety of issues associated with trafficking; in particular the need for and availability of social services. We also set out to ascertain challenges in identifying survivors and connecting survivors to service providers.

Based upon data from our survey, we estimate that private service providers in the New York City metropolitan area have interacted with at least 11,268 survivors between 2000 and 2010. Our estimate considerably exceeds previously released official estimates for reasons discussed in the full report. It is important to note the likelihood that some trafficking victims have not interacted with private service providers, further underscoring that a large population exists locally.

After case assessment of trafficking survivors, private service providers have determined that there is a great need for long-term housing. Unfortunately major gaps exist in meeting this need. Our survey data indicates that a greater number of survivors would benefit more from either long-term housing (86.6%) or transitional housing (74.5%) than from emergency housing (64.9%). Unfortunately, the survey data indicate that despite the need, safe, affordable long-term housing is virtually non-existent, with only 3.9% of clients needing long-term housing actually receiving it. The majority of service providers responding to our survey assessed both the duration and suitability of emergency housing (the main form of housing currently available) as somewhat or highly unsatisfactory. Both survey respondents and key informants that we interviewed stated that trafficking survivors needed the sustained provision of multiple services by highly trained staff in a closed, secure environment.

A gap also exists in meeting several other service needs. While demand for a handful of the 30 services assessed was largely met, 11 of the services fall below a 20% rate of serviced demand. In particular, high rates of demand for the following services were

1 For the purposes of this study, we define the New York City metropolitan area as counties included in the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area as defined by the Office of Management and Budget.

2 See Appendix for a detailed discussion of the methodology used in this study.

largely unmet: medical care, telephone services, formal/general education, and volunteer programs for survivors. Furthermore, respondents indicated that sub-groups of survivors are frequently underserved, including male survivors, transgender survivors, domestic-born survivors, survivors under the age of 18, and female labor trafficking survivors. The reasons for these exclusions range from restrictive rules of eligibility to service providers indicating an inability to serve certain sub-populations.

Based upon these findings coupled with our review of the relevant literature, we make 20 recommendations to funding and coordinating agencies (both public and private), service providers (both public and private), and law enforcement agencies for ways to increase the identification of trafficked persons, to fill gaps in service provision, and to further cooperation between law enforcement agencies and service providers:

Increasing the Identification of Trafficked Persons

1. Expand trainings targeting: (1) leadership in law enforcement agencies that do not view trafficking as a local problem; and (2) less recently graduated patrol officers and precinct officers.
2. Expand trainings for the staff of agencies currently providing services to survivors and the staff of agencies that have the potential to provide services but have yet to knowingly interact with survivors (especially domestic violence-focused providers and health care providers).
3. Increase outreach efforts utilizing communications technologies most likely to be available to victims; in particular publicity through radio programs, television programs, newspapers, and magazines. We further recommend contacting media outlets using languages most frequently spoken by survivors.
4. Utilize advocates to distribute literature in locations identified as experiencing trafficking.
5. Extensively publicize one hotline that focuses solely upon trafficking victims

Filling Gaps in Service Provision

6. Prioritize the creation of long-term, safe housing programs that offer a comprehensive set of services to survivors.
7. Create new and in-depth service programs that assist survivors with medical care, telephones, formal/general education, and volunteer programs for survivors.
8. Increase the provision of foster care or permanent placement to survivors under the age of 18. Develop family counseling and parenting classes for survivors with children.
9. Increase the provision of services to male survivors, transgender survivors, domestic-born survivors, survivors under 18 years of age, and female labor trafficking survivors.
10. Increase the number of bilingual staff and English language courses to facilitate communication with ESL survivors.

11. Develop strong case management systems that include a comprehensive initial assessment, awareness of referral opportunities, and a commitment to working with survivors to gain access to available services.
12. Develop and maintain a detailed, centralized, and shared database of actual and potential service providers in the New York City metropolitan area.

Furthering Cooperation between Law Enforcement Agencies and Service Providers:

13. Ensure that both the New York State Interagency Taskforce on Trafficking and the New York City Anti-Trafficking Taskforce are inclusive of NGOs and have regular attendance by all members;
14. Schedule ongoing meet-and-greets to connect providers with law enforcement agencies to expand stakeholder networks and to build trust.
15. Expand and, where applicable, redefine Victim Assistance positions at law enforcement agencies to ensure that: (a) interviews with survivors are conducted in a respectful manner, and (b) survivors are immediately provided with safe housing in non-incarceration settings, medical care, and other services determined to be urgently needed.
16. Advocate for statutory changes (where needed) to enable judges to waive grand juries in cases of human trafficking.
17. Fund new staff positions at service providers to serve as liaisons to law enforcement agencies during days and times that law enforcement are most likely to encounter victims;
18. Develop joint intake protocols articulated through memoranda of understanding, whereby law enforcement and service agency representatives work together to ensure that the survivor's immediate needs are met and rights are respected while assisting law enforcement to the fullest extent possible in taking action against traffickers.
19. Expand trainings of law enforcement officials focusing upon: (a) protocols regarding the questioning of possible trafficking victims; (b) the immediate service needs of survivors; and (c) resources available to meet those needs, including safe emergency housing.
20. Expand trainings of current and potential service providers focusing upon: (a) understanding criminal investigative procedures and judicial proceedings as they pertain to trafficking cases; (b) cross-cultural competence, and (c) the legal needs of survivors.

INTRODUCTION

Willingly no one chooses the yoke of slavery – Aeschylus (525–456 B.C.)

Slavery is not simply ancient history. It remains with us today and has reached transnational proportions, encompassing poor and affluent societies alike. The US Department of State Trafficking in Persons Report (TIP)(2010: 7) defines human trafficking simply as “activities involved when one person obtains or holds another person in compelled service.” International, national, and state laws provide definitions of human trafficking that generally emphasize the exploitation of individuals in the form of sexual, labor, or other services for monetary or personal gain by means of coercion, fraud, threat or use of force, and/or abuse of power or a position of vulnerability [e.g., United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children Supplementing the Convention Against Transnational Organized Crime (approved in 2000; entered into force 2003); United States Trafficking Victims Protection Act (2000; reauthorized in 2003, 2005, and 2008), and the New York State Anti-Trafficking Law (2007)]. All of these laws make it clear that those under 18 years of age engaged in sexual acts are victims of sex trafficking regardless of consent.

Human trafficking is widely reported, infringing upon the human rights of millions of people. The United States Department of State (2010) estimates that 12.3 million persons have been trafficked internationally. Among the human rights frequently violated, either in the process of trafficking or as a consequence of trafficking, are liberty and security of person, protection against slavery, freedom of movement, freedom of opinion and expression, just and favorable conditions of work, rest and leisure, education, and adequate standard of living. It is the responsibility of all members of the international community, including governmental and nongovernmental organizations, to work together to not only prevent trafficking from taking place, but also to work with the survivors of trafficking to restore their dignity, to build new lives, to ensure justice, and to organize against trafficking.

A body of laws at the international, national, and local level helps to guide, support, and structure service responses to human trafficking. Section 2, Article 6 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children calls upon States to cooperate with nongovernmental organizations in order to “provide for the physical, psychological and social recovery of victims.” In particular, the Protocol calls for the provision of “(a) appropriate housing; (b) counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) medical, psychological and material assistance; and (d) employment, educational and training opportunities.”

In 2000, U.S. Congress passed the Trafficking Victims Protection Act to protect and assist foreign-born victims of human trafficking living in the United States. The law made housing, education, health care, job training and other federally-funded social service programs available through the U.S. Department of Health and Human Services. The Act also created T visas for victims in the context of prosecuting their traffickers. The TVPA Reauthorization Act of 2005 established a grant program to “establish, develop, expand, and strengthen assistance programs.” Title II of the 2008 Reauthorization Act

expands funding for these assistance programs and extends service eligibility to include U.S. citizens or resident aliens subjected to trafficking. .

The New York State Anti-Trafficking Law of 2007 also follows the familiar “3Ps” approach of prevention, prosecution, and protection. It defines forms of labor trafficking and sex trafficking. The Act authorizes the New York State Office of Temporary and Disability Assistance (OTDA) and the Division of Criminal Justice Services (DCJS) to determine the status of a victim referred under the law and service eligibility. The law amends the Social Services Law, adding Article 10-D entitled “Services for Victims of Human Trafficking.” Section 483-BB provides a non-exhaustive list of the types of services that can be provided. The list includes “case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States.”

The following year (2008), the Safe Harbor for Exploited Children Act was passed by Albany and signed by Governor Paterson. The law avoids the misclassification of minors as criminals by defining sexually exploited persons under the age of 16 as severely trafficked persons as well as by changing the way these minors are handled in the judicial system. Local social services districts are mandated to provide short-term safe housing facilities that offer 24-hour crisis intervention, medical care, and other services to sex trafficked minors living in the district (Polaris Project 2008). To meet these mandates, service districts are permitted to coordinate services with other districts in the region and to utilize, where appropriate “respite beds or runaway and homeless youth programs” (ibid). The act also requires planning for the different service needs of girls, boys, and transgender minors. In addition, the law requires the Office of Children and Family Services (OCFS) to “contract with an agency with experience working with sexually exploited youth to provide at least one safe house for longer-term care, in a geographic area that would meet the needs of sexually exploited youth and that cannot be readily accessed by perpetrators of sexual exploitation” (ibid).

Preventing trafficking, remedying specific cases, and restoring the human rights of human trafficking survivors requires active, sustained commitment and collaboration among funding and coordinating agencies (public and private), service providers (public and private), and law enforcement agencies. During his address to the Department of Justice’s National Human Trafficking Conference in May of 2010, Luis C. deBaca, Ambassador-at-Large for the Office to Monitor and Combat Trafficking in Persons acknowledged that some of the same issues faced prior to the passage of the TVPA remain with us today; in particular “detentions and deportations” as well as a “lack of shelters and services.” The inability to deliver services promised under international, federal, and state laws has long-term negative physical, psychological, and social consequences for the survivors of trafficking, their families, and their communities. With more than a decade elapsing since the passage of the Trafficking Victims Protection Act in 2000, the time has come to systematically and critically assess not only what is being

done to provide for the needs of the survivors of human trafficking, but also what more can be done.

A coalition of religious organizations formed in 2006, LifeWay Network's mission is to provide safe housing for survivors of human trafficking in the New York City metropolitan area. As a relative newcomer, the coalition wanted to make sure that our focus on providing safe housing is appropriate as well as to both learn from and connect with funding and coordinating agencies (both public and private), law enforcement agencies, and service providers (both public and private) already interacting extensively with trafficking survivors. Accordingly, LifeWay Network wanted to answer the following five sets of research questions:

- (1) What is the need for and availability of housing for the survivors of trafficking in the New York City metropolitan area? Can we say that there is a need for housing in New York? If so, what is the extent of the need?;
- (2) Does existing housing meet the needs of survivors? In particular, is the housing sufficient in its duration, in its level of safety, and/or in the in-house services provided?;
- (3) Who is providing what services to which types of trafficked persons?;
- (4) What are the main challenges to organizations providing services to survivors? What will help service providers to meet these challenges?; and
- (5) How do service providers connect with trafficking victims? Are there any gaps in communication and coordination between law enforcement agencies and service providers?

To answer these questions, LifeWay Network contacted Dr. Gregory M. Maney, an Associate Professor of Sociology at Hofstra University, about working together on a community-based research initiative. Dr. Maney agreed enthusiastically, enlisting support from graduate students enrolled in the Masters of Applied Social Research and Public Policy Program.³ Working closely with LifeWay Network, the academic research team conducted an online survey of area private service providers as well as key informant interviews with representatives from funding and coordinating agencies (both public and private), law enforcement agencies, and service providers (both public and private).

Statistical and content analyses of these data sources show that most trafficking survivors need long-term, safe housing coupled with the provision of a wide array of services. Unfortunately, these service needs are frequently not being met, particularly for specific sub-populations of survivors. Both law enforcement agencies and service providers face major challenges in meeting survivors' needs, including the challenge of working effectively with one another. Fortunately, the findings from our research coupled with a review of the academic and practitioner literatures, suggest a number of concrete steps that might be taken to further accomplish our shared goal of empowering survivors. We begin by presenting academic and practitioner research on identifying and providing services to human trafficking victims. We then present our findings from our survey of

3 Five of the authors of this report—Tineka Brown, Taylor Gregory, Rafia Mallick, Steven Simoneschi, Charisse Wheby, and Nicole Wiktor—either were or currently are graduate students in the Masters of Applied Social Research and Policy Program at Hofstra University.

service providers and interviews with representatives from funders, law enforcement agencies, and service providers. Based upon these findings, we discuss the policy and practice implications specifically for funding and coordinating agencies (both public and private), service providers (both public and private), and law enforcement agencies.

REVIEW OF LITERATURE ON SERVICE PROVISION TO TRAFFICKING SURVIVORS

Human trafficking strikes at the very heart of human dignity. Often lured with false promises, trafficking victims become entrapped and unable to escape captors. Human trafficking is not a fairy tale where someone is whisked away, suffers through its ordeals, and emerges without repercussions. Trafficked victims often discover that their new-found freedom is accompanied by long-lasting mental, physical, and financial challenges. Survivors frequently fear that their traffickers will return, or that they will become entangled in complex immigration proceedings, or that they will find needed services unavailable to them— all the while trying to come to terms with what they have experienced. Though it is difficult to mend completely the wounds of a trafficked victim, service providers can certainly help survivors to restore their dignity, to build new lives, and to organize to ensure justice for themselves and other survivors.

Failure to meet the service needs of survivors increases the likelihood of several negative biographical consequences, including (1) experiencing additional human rights abuses, including being trafficked again; (2) physical complications, including chronic pain and/or eventual death as a result of failure to identify and treat STDs, tuberculosis, vision and hearing impairments, lung disease, cancer from exposure to industrial toxins, dental problems, stunted growth, fatigue, headaches, dizzy spells, sexual health problems, back pain, memory problems and other cognitive impairments; (3) psychological complications, including heightened anxiety, depression, hostility, alienation, disorientation, extreme sadness, sense of worthlessness, shame, and of hopelessness; (4) social isolation; (5) substance abuse; (6) unemployment; (7) poverty; and (8) suicide (Zimmerman et al. 2003; Shkurkin 2004; Zimmerman et al. 2006; Clawson and Dutch 2008; O'Donnell and Hansell 2008; UNODC 2008; Nack 2010). Most academic research focuses on either the causes of human trafficking or assessing the efficacy of prevention responses. As a result, there are only a handful of studies on service providers and the services they offer to survivors, underscoring the need for further research. This section reviews studies on social service provisions to the survivors of human trafficking. While we focus the review primarily upon research conducted by academic researchers, we also refer to methodologically rigorous studies conducted by both governmental agencies and non-governmental organizations. We begin our review with findings regarding the identification of trafficking victims.

Identifying Victims

Identification of trafficking victims is critical to ensuring the prosecution of traffickers and the connection of needed social services for survivors. In a report released in 2004, the U.S. Department of Justice stated (2004: 22) “The greatest challenge for the immediate future is locating and identifying victims.” There are a growing number of state and federally funded and administered training programs designed to assist in the identification of human trafficking victims. For instance, the New York State Division of Criminal Justice Services, the New York State Office of Temporary and Disability Assistance, the U.S. Office for Victims of Crime, and U.S. Immigration and Customs

Enforcement offer trainings on identifying victims. Moreover, prominent service providers in the New York City metropolitan area offer similar trainings. Despite these positive gains, more can be done in order to aid in the identification of trafficked victims.

Several academic studies have noted the challenges and difficulties facing both law enforcement agencies and service providers in identifying victims of human trafficking. Hughes (2003) finds that many victims are socially isolated and unable to escape their traffickers. Jahic and Finckenaue (2005) note that different and restrictive definitions of trafficking get in the way of developing a universal, uniform protocol for identifying victims and providing them with social services (also see Musto 2009). Tyldum (2010) attributes identification difficulties not only to a lack of an explicit operational definition of trafficking, but also to the frequent refusal of victims to see themselves as trafficked persons. Bernat and Zhilina (2010) argue that victims often hide from the police either as a result of their immigration status or from fear of being punished by traffickers. They also assert that the labeling of trafficked persons as homeless or prostitutes by law enforcement officers results in many survivors falling through the cracks (also see Butkus 2007; Ditmore 2009). Other studies attribute under-identification to trauma that impedes the ability of survivors to discuss what they have experienced (Hopper 2004; Ditmore 2009).

In a study analyzing survey responses from a national sample of police agencies in the U.S., Farrell, McDevitt, and Fahy (2010) found that less than 10% of police agencies identified human trafficking cases between 2000 and 2006 (also see Fahy 2009). Gozdzia and MacDeonnell (2007) maintain that child victims are particularly unlikely to be identified and gain access to services. Moreover, Chuang (2010) argues that a focus upon sex trafficking by law enforcement agencies, advocates, service providers, and the media has resulted in the under-identification of the victims of labor trafficking. Farrell, McDevitt, and Fahy (2010) point toward a failure of leadership to see trafficking as a local problem coupled with a lack of training to assist police officers in identifying and responding to cases of trafficking (also see Heiges 2009). Other scholars maintain that the media needs to push awareness of trafficking into the forefront to facilitate identification. Coonan (2004), Hogan (2008), and Nack (2010) all suggest that limited access to victims in public venues and the failure to use foreign language radio, television, and print to publicize hotlines delays identification of victims by law enforcement and service providers.

Based upon this research, some scholars have put forward recommendations for ways to increase the identification of trafficking victims. MacDonald (2009) recommends a multi-pronged approach. Law enforcement, service providers, and even members of the general public should be trained to take active roles in identifying possible victims (Nack 2010). We can ask victims if they are working in the job that they thought they would when they set out for the United States, if they are free to leave their place of work, and if they receive all of their earnings directly. Asking about contact with friends and families is also a way of identifying victims as most victims are living under highly controlled circumstances. U.S. Department of Homeland Security (2010) lists several additional questions to help assess whether or not a foreign-born person may be trafficked, including but not limited to: (1) Is the person in possession of identification

and travel documents?; (2) Is the person forced to perform sexual acts or is a minor engaged in commercial sex?; (3) Has the person or their family been threatened with harm, deportation, or law enforcement action if they attempt to leave?; (4) Has the person been harmed or deprived of food, water, sleep, medical care or other life necessities; (5) Can the person freely move about, socialize, and attend religious services?

Fahy (2009) finds that training officers, developing protocols, and designating specialized personnel increases the identification of trafficking victims. Other studies recommend greater educational training for health care professionals on identifying victims; particularly professionals in hospital emergency rooms, health clinics, and abortion clinics (Hughes 2003; Miller, Decker, Silverman, and Raj 2007; Nack 2010). Based upon 127 in depth interviews, Small (2007) suggests that community partnerships can be helpful in identifying victims and connecting victims to services.

Service Needs of Survivors

Law enforcement agencies and service providers must not only identify trafficking victims, but they must also be aware of their service needs. The available research underscores the importance of providing for the health, housing, and legal needs of survivors.

Health Needs— Stewart and Gajic-Veljanoski (2005) compiled a list of physical and psychological health risks facing trafficking victims. These risks include food and sleep deprivation; sexual abuse and related issues (e.g., sexually transmitted diseases, unwanted pregnancies, abortions); and post-traumatic stress disorder (e.g., anxiety, depression, body aches). Hossain et al. (2010) similarly conclude that victims of human trafficking who have endured mental and physical violence are likely to suffer from depression, anxiety and post-traumatic stress disorder (PTSD). Clawson and Dutch (2008) find that domestic minor victims are in particular need of anger management, conflict resolution, and family counseling. Service providers also note the need for substance abuse counseling, particularly among domestic victims (ibid.)

The short-term capacities and long-term well being of survivors hinge greatly upon the immediate provision of quality health services. In a study involving a series of three interviews over time of 207 female trafficking survivors across Europe, Zimmerman et al. (2006) document reductions in levels of anxiety, depression, hostility, and PTSD symptoms over time. The authors conclude (p. 22) that “immediate assistance and crisis intervention is of benefit to women, and second, that ongoing support, particularly psychological counseling, is important and necessary.” Given that encounters with law enforcement can be traumatic to trafficking victims and the memory loss that often accompanies PTSD, Zimmerman et al. (2003), O’Donnell and Hansell (2008), Ditmore (2009), and Nack (2010) emphasize prioritizing the delivery of health and social services over criminal investigations, receiving legal services, or entering legal proceedings.

Strotts, Jr. and Ramey (2009) found that there is a lack of skilled training of counselors who may miss these signs and symptoms. Accordingly, Bernat and Winkeller (2010) recommend the training of service providers to help better meet the mental and emotional needs of survivors. Additionally, Miller, Decker, Silverman, and Raj (2007) point out the particular importance of educating and training health care professionals.

While research has clearly identified a myriad of health needs associated with trafficking victims, we are attempting to discern whether these needs are met by service providers. Here, research is far more limited, presenting a gap that we have set out to help fill with our study.

Housing Needs—Nack (2010: 839-40) interviewed prosecutors actively involved in anti-trafficking proceedings and concluded that “finding emergency shelters for victims is a huge problem in New York City.” A 2008 report by the New York State Interagency Task Force on Human Trafficking emphasizes that because “human trafficking victims can be vulnerable to re-victimization; they require safe housing that protects their person, confidentiality, and privacy” (O’Donnell and Hansell 2008:19; also see FCADV 2004; Coonan 2004). Unfortunately, housing of any type is often unavailable. Domestic violence shelters frequently have restrictions that can prevent sex trafficking victims from seeking their shelter (e.g., proving status as victim of domestic partner abuse). A lack of housing for male trafficking victims is noted in particular (ibid). Moreover, the housing that is most likely to be available is often not safe housing. In a national survey, responding service providers reported instances of sex trafficking survivors experiencing humiliation and isolation in domestic violence shelters (Clawson and Dutch 2008).

In September of 2004, the Florida Coalition against Domestic Violence released a human trafficking manual for domestic violence centers. The report states that trafficking victims typically need a longer length of stay than domestic violence victims. Clawson and Dutch (2008) find a shortage of transitional and permanent housing, particularly for “domestic minors with felony convictions and victims with mental health or substance abuse issues.” Unfortunately, domestic minors need long-term housing to “allow providers enough time to establish relationships with victims” and to provide “adequate services to meet their longer-term needs” (p.8). The FCDV report also calls for efforts by housing providers to integrate survivors into the community given that many have never freely experienced U.S. society. Furthermore, it stresses the need for interpreters— a vital resource that is often lacking.

Legal Service Needs—Immigration and deportation proceedings are a key issue facing human trafficking victims who are out of legal status. Brennan (2010) examined trafficking victims’ access to and use of T-visas in the United States. She points out that (2010: 1589) “it has been a challenge finding individuals in forced labor in the United States who would qualify for T visas,” suggesting that major deportation risks to trafficked victims continue to exist. Similarly, Pollock and Holier (2010) report that since the T-visa program began in 2000, approximately 1,300 visas have been granted despite the legislation allowing for 5,000 being granted each year. Only in 2009 were T-visa holders able to apply for permanent residency at the end of the visa’s 3-year time period. Survivors who are unwilling or unable to cooperate with law enforcement can also be assisted in applying for U-visas which are more plentiful than T-visas. Collecting identification documents is an important part of securing visas, and using public services (Clawson and Dutch 2008).

Based upon a survey of service providers, Clawson and Dutch (2008:2) also note the need for legal assistance and advocacy to assist survivors in “navigating the different

U.S. systems, including criminal justice, child welfare, immigration, human services, transportation, etc.”

Life Skill Needs— Clawson and Dutch (2008: 2) also emphasize survivors’ needs for services that will assist them in attaining independent living status. Among these services are child care, education, life skills training, job training, employment location assistance (especially pressing for international victims), and financial management.

Effective Service Delivery

Busch, Fong, and Williamson (2004) have suggested structuring service provisions to trafficking survivors in ways similar to domestic violence service organizations, emphasizing cross-cultural competence in service delivery, the creation of community support, and staff and client education on human trafficking (also see Clawson and Dutch 2009). Bernat and Winkeller (2010) stress the need for training service providers to facilitate victim cooperation with law enforcement. The 2010 U.S. Department of State Trafficking in Persons Report indicates three core principles for shelter programs. The principles are as follows: “(1) rebuilding the victim’s sense of empowerment, trust and community; (2) providing a combination of services such as psychological, medical, legal, educational, or life skills (including vocational and translation/interpretation); and (3) tailoring any service to each individual victim, as not all require the same services.”

Clawson and Dutch (2008:5) point out that a “lack of knowledge and understanding of what services are available is a barrier for service providers...Many service providers report great confusion regarding what services their clients are eligible for and can access, which highlights the need for effective case management...” Additionally, the study argues that international victims face crises early on, particularly in terms of being identified and securing documentation. The authors call for a consistent, central case manager to better prioritize and organize service provision efforts, noting that staff turnover and a lack of funding often thwart this objective.

We are confident that our study helps to fill in gaps in the literature on both the need for and the availability of social services for survivors of human trafficking in the New York City metropolitan area. Responding effectively to human trafficking requires a multi-pronged effort of funding and coordinating agencies (both public and private), law enforcement agencies, and social service providers (both public and private). Increasing the quantity and quality of services available for trafficked victims can complement the important work already underway to prevent human trafficking.

RESEARCH FINDINGS

Overview of Private Service Providers and Clients in the New York City Metropolitan Area

Between May and December of 2010, we conducted an online survey of private service providers having interacted with at least one unique trafficked person living in the New York City metropolitan area (see Appendix for a detailed discussion of our methods). On average, providers completing our survey have worked with survivors for six years. Overall, the amount of time that service providers have worked with survivors ranged from less than half a year to eleven years.

Based upon client numbers provided by survey respondents, we calculated estimates on the number of survivors interacting with all private service providers in the New York City metropolitan area. Overall, we estimate that area private service providers have interacted with at least 11,268 survivors between 2000 and 2010.⁴ In the twelve months prior to their completion of our survey, we estimate that service providers interacted with at least 1,606 survivors. The number of unique individual survivors that providers responding to our survey worked with varied, mainly depending on the type of organization and the amount of time that the organization has worked with survivors.⁵ Long-standing, established service providers focusing upon either the sex trafficking of domestic minors or the labor trafficking of immigrants tended to report interacting with larger numbers of survivors.

These estimates considerably exceed previously released figures. The New York State Interagency Task Force on Human Trafficking reported 36 victims confirmed by DCJS and OTDA as of July 3, 2008. Most (28) of these victims were trafficked upstate and, therefore, outside of the New York City metropolitan area. The United States Conference of Catholic Bishops (USCCB) reported that, in 2009, 55 survivors in New York State were served as clients through the HHS-USCCB per capita contract program. A representative from a federal agency (name withheld) estimated that the agency had encountered approximately 80 trafficking victims in the New York City metropolitan area since January of 2009.

4 Our estimates were calculated using the following procedure. To avoid double counting the same client, we subtracted the number of clients referred to a responding service provider by other agencies from the number of unique individual trafficked persons that the responding service provider reported interacting with overall and during the past twelve months. After controlling for cross-agency referrals, we summed the number of clients reported by all responding service providers. We then used the average of conservative and liberal estimates of the total number of service providers interacting with trafficking survivors living in the New York City metropolitan area to estimate the survey response rate (see the Appendix for further discussion of these estimates). Lastly, we divided the total number of unique individual clients reported by all respondents by the estimated survey response rate.

5 It should be noted that one respondent indicated that they had interacted with trafficked persons, but did not keep systematic records, and thus, did not provide an estimate of the number of survivors the respondent had interacted with. For our analysis, a value of 1 was assigned to this provider. The actual number of survivors interacted with, however, is likely to be higher. In response to open-ended survey questions, other providers indicated that they believed that they were working with more trafficking survivors than they had either confirmed or reported to us in the survey.

We attribute the wide disparity in estimates, in part, to the fact that the organizations providing the alternative estimates work with a handful of area service providers and/or work with limited sub-set of survivors eligible to receive their assistance. The gap in estimates highlights the need for wider and deeper connections between funders and law enforcement agencies, on the one hand, and service providers on the other. It also underscores the advantages of using service providers as sources of data. In this context, we encourage service providers to keep systematic records on interacting with trafficking survivors to improve future estimates.

The survey not only helped us to estimate the size of the survivor client population, but also their demographic characteristics. On average, respondents reported that of all the unique individual trafficked person that their organization have interacted with, a large majority (71.5%) were victims of sex trafficking.⁶ A further 21.5% were victims of labor trafficking. The remaining 7.0% were victims of a combination of sex and labor trafficking. Our survey respondents indicated that, on average, 87.6% of the survivors that they interacted with are female; 58.4% are under the age of 18; and 20.5% are out-of-status immigrants. Respondents indicated the following places of origin: North America (72.9%), Asia (7.9%), South America (5.4%), Caribbean (4.6%), Central America (4.5%), Europe (2.1%), Africa (1.7%), and Other/Unknown (0.9%).⁷ The large number of victims born in the United States (65.6%) contrasts with the emphasis (until recently) upon providing services to foreign-born victims.

How Private Service Providers Connect with Survivors

Identifying survivors of trafficking is one of the major challenges encountered by private service providers. As Table 1 indicates, about 1 in 3 referrals of survivors to private service providers comes from other service providers (34.4% of referrals). Non-law enforcement agencies at the federal, state, county, and local levels) made almost twice as many referrals to service providers than law enforcement authorities (at the federal, state, and county levels, including courts), indicating that connections with law enforcement agencies are in need of further development.⁸ After referrals from law enforcement agencies, connections were most likely to be established as a result of outreach efforts by private service providers (13.5%), followed by unsolicited self-referrals by trafficked individuals (5.5%). One representative from a federal law enforcement agency (identity withheld) indicated that New York City area hotlines set up primarily for domestic violence victims are generally not helpful in linking trafficking survivors to service providers.

Less than 5% of referrals of survivors to private service providers came from hospitals, clinics, or immigration attorneys, underscoring the need to train staff at these locations to determine who is a survivor. Anonymous tips also appear to be a rarity (0.1% of all referrals), suggesting that members of the general public either are not

6 The following percentages control for cross-agency referrals and differences in the number of clients served by respondents.

7 Ibid.

8 All of the survey respondents were private agencies.

adequately aware of the indicators of trafficking or do not reach out to private service providers when coming into contact with an individual whom they suspect is being trafficked.

Table 1: Establishment of Connections with Survivors (%)

Referrals from other private social service providers	34.4
Referrals by non-law enforcement government agencies	27.0
Referrals from law enforcement authorities	14.1
Contact initiated as a result of outreach by provider	13.5
Self-referrals	5.5
Referrals by hospitals or clinics	3.6
Referrals by immigration attorneys	1.0
Other	0.8
Anonymous tip	0.1
Total	100.0

SURVIVORS' HOUSING NEEDS AND HOUSING AVAILABILITY

A large gap exists between the need for housing of survivors of human trafficking in the New York City metropolitan area, on the one hand, and its availability on the other hand (see Table 2).⁹ The importance of the duration can be seen in that providers determined, after case assessment, that a larger number of survivors would benefit from either long-term housing (86.6%), or transitional housing (74.5%) compared to emergency housing (64.9%).¹⁰ Reflecting the emphasis upon providing daily and ongoing staff and peer support for survivors, respondents reported that rent and/or utilities assistance for independent housing was needed least (22.2%).

Unfortunately, the placement of survivors in long-term housing in the area is virtually non-existent. Providers reported that although over 86% of survivors would benefit from long-term housing, less than 4% of these clients have actually received long-term housing through referrals from providers. None of the respondents directly provided long-term housing. Only 28.7% percent of clients who would benefit from transitional housing received this housing either directly from the provider or through referrals.

⁹ The following percentages control for cross-agency referrals and differences in the number of clients served by respondents.

¹⁰ Emergency housing is housing provided for up to 3 months. Transitional housing is provided for up to 6 months. Long-term housing is provided for more than 6 months.

Even the demand for emergency housing is not being fully met. While survey respondents indicated that 64.9% of their clients who were trafficked would benefit from emergency housing, slightly more than one-third of them (35.9%) actually received emergency housing directly from the provider or through referrals.

Table 2: Survivors’ Housing Needs and Serviced Demand

Type of Housing	Service Needed (% Clients)	Serviced Demand (% Clients)
Emergency Housing	64.9	35.9
Transitional Housing	74.5	28.7
Long-Term Housing	86.6	3.9
Independent Housing	22.2	3.9

Comments made during interviews with key informants are consistent with these findings. One survey respondent (identity withheld) stated that housing is “difficult to access and [there is a] lack of shelters.” Christa Stewart, Anti-Trafficking Program Coordinator for the Office of Temporary and Disability Assistance, similarly stated, “The availability of housing depends upon whether the request comes in at peak time. It’s all ad hoc. Lack of housing is easily one of the biggest issues in terms of service provision.” A representative of a federal agency working on human trafficking summed up this consensus by stating “Whether affiliated with law enforcement agencies or NGOs, we all agree that there is a huge need for housing.”

In response to open-ended questions, multiple survey respondents stressed the need for longer-term housing. A representative of one provider (identity withheld) indicated that the need for longer term housing extends to all sub-populations of survivors: “Transitional and permanent, affordable housing options are sorely lacking in general for all victim types.” We now examine why there is a high level of need for longer-term housing.

Duration of Housing

Even when service organizations are successful in either providing or locating housing, the duration is generally too short to meet the needs of trafficking survivors. Of providers responding to our survey, 84.6% rated the duration of available housing as either somewhat or highly unsatisfactory in terms of meeting the needs of survivors. None of the respondents indicated that the duration of available housing is either highly satisfactory or even somewhat satisfactory.

Service providers working with out-of-status survivors indicated that they could not effectively meet the service needs of their clients in the absence of longer-term housing. One survey respondent (identity withheld) indicated that, “Emergency shelter doesn’t last long enough (only 3 months) given the instability and time taken to process work authorization. What we need is to extend emergency shelter and/or provide transitional and long-term housing.” Another survey respondent (identity withheld) similarly stated, “Many times law enforcement may take a while to process the work authorization or for

the victim to receive the certification letter from HHS. The longer this takes the pressure is on us because our budgets are too limited to continue providing services on a long-term basis.” This lack of financial assistance for long-term housing coupled with long waiting lists for public housing are likely to also contribute to the absence of long-term housing for domestic survivors.

However, it is important to note that not all survivors desire to stay for the full length of time for which housing is available to them. As Nyssa Parampil, Associate Director US Conference of Catholic Bishops/Migration and Refugee Services’ Anti-Trafficking Program, pointed out during our interview: “Sometimes a client wants to stay for less time than what’s available to them. Thus, one can’t assume that a short duration reflects a lack of financial assistance or time restrictions by a housing provider.” Early departure from housing could signal a hostile, unsafe environment and/or that the services offered are not adequate in providing what a survivor requires.

Suitability

The majority (61.6%) of providers rated emergency housing as either somewhat or highly unsuitable for the survivors of trafficking. Only 15.4% of providers rated this type of housing as either somewhat or highly suitable. Beyond its limited duration, survey respondents and key informants who were interviewed expressed concerns related to safety, service provision, and staff training at emergency housing programs. Sergeant Minca, NYPD Vice Enforcement Division Major Case Team, highlighted the importance of safety of the survivors and indicated that he reluctantly has had to place some survivors in lock-down facilities because of the lack of security at emergency shelters: “We can place victims in the facility and within 20 minutes they can walk right out and be recruited by traffickers. Traffickers know this and go right to the shelter and pick back up the victims. Those who escaped fall right back into being victimized.” Another key informant (identity withheld) similarly stated that homeless shelters are not appropriate due to the fact that they most likely provide an open environment that lacks adequate safety measures.

Staff at emergency shelters are often not sufficiently trained to assess the specific service needs of survivors let alone to provide for these needs either directly or through referral. The fact that training is lacking is not missed by either service providers or funders. Lauren Burke, Staff Attorney and Skadden Fellow of The Door Legal Services Center, noted that the Center has worked with “children in ACS facilities who have been treated horribly by staff who do not understand trafficking in persons.” Another respondent (identity withheld) indicated that, “There are limited options for survivors nationwide. Additionally, those service providers who do come in contact with victims are in significant need of training.” Mary Atlas-Terry, Victim Justice Program Specialist at the Office for Victims of Crime states:

We acknowledge that a great deal of capacity building and training needs to occur within the ‘traditional’ victim services field to bring service providers up to speed to identify human trafficking in all of its forms and provide services appropriate to meet their needs. For instance, child advocacy centers are experts in investigating and addressing service needs for victims

of child abuse, including child sexual abuse... However, they may not be able to easily adapt their skill set and services to address the needs of a young person who has limited family support, who may be a runaway, who may have been engaged in prostitution for some time, and who may still have a significant bond with her trafficker.

Survivors' Needs for Other Services and their Availability

Survivors require more than just housing. Our survey assessed 30 additional types of social services, ranging from legal assistance, counseling, and employment training and placement assistance to benefits, educational classes, and life skills. Providers identified 10 services needed by more than 75% of their trafficked clients (see Table 3). Almost all survivors need direct cash and case management beyond the initial assessment. More than three-quarters of all survivors were reported to be in need of transportation, trauma counseling, support groups, document collection, life skill training, medical care, clothing, and telephone services.

For each service, we also estimated serviced demand—the percentage of clients needing the service that actually received the service either directly through the reporting provider or through referral to a housing program offering the service. Our estimates do not take into account referrals beyond housing program providers. As a result, they are likely to underestimate serviced demand, particularly in the areas of medical care, legal services, and English language classes. In two instances—supportive counseling and reunification/repatriation services—the service needs of survivors were fully met. In several instances, the demand for frequently needed services was largely met. Over 95% of clients requiring transportation, food, and clothing received these services. Most clients requiring case management beyond the initial assessment (94.8%) and legal services related to immigration status (93.7%) received these services. Demand was largely but not completely satisfied for seven other services. Between 70% and 90% of survivors in need of the following services received them: peer-to-peer mentoring (88.4%), public benefits (83.4%), document collection (81.1%), support groups (79.8%), trauma counseling (79.7%), direct cash (79.0%), and life skill training (72.0%).

No services had a serviced demand rate between 50% and 69%. There appears to be little middle ground— either demand is largely met or it is largely unmet. Five services have a rate of serviced demand that falls between 20% and 49%. Eleven out of twenty-nine services fall below a 20% rate of serviced demand. They are as follows: employment placement (18.8%), telephone services (15.3%), family counseling (6.4%), volunteer programs for trafficking survivors (5.7%), childcare and child-related expenses (4.3%), English language classes (6.2%), medical care (2.2%), formal/general education (0.3%), community building and advocacy workshops (0.0%), parenting classes (0.0%), and foster care or permanent placement of minors (0.0%).

Most of these services are promised under Federal law and New York State law. Furthermore, each is frequently of critical restorative importance. The possible lack of medical care reinforces the message that strong connections with health care providers are needed given the serious physical injuries that frequently result from being trafficked

Table 3: Types of Services Needed by and Provided to Survivors*

Type of Service	Service Needed (%)	Service Provided (%)	Serviced Demand (%)
Direct Cash	98.4	77.7	79.0
Case Management Beyond the Initial Assessment	98.6	93.5	94.8
Transportation	94.8	91.0	96.0
Counseling—Trauma	94.3	75.2	79.7
Support Groups	89.5	71.4	79.8
Document Collection	82.6	67.0	81.1
Life Skills Training	83.2	59.9	72.0
Medical Care (including Dental and Vision Care)	80.9	1.8	2.2
Clothing	79.0	76.7	97.1
Telephone Services (e.g., calling card, pre-paid cell)	75.4	11.5	15.3
Formal/General Education	74.8	0.2	0.3
Volunteer Programs for Trafficking Survivors	74.0	4.2	5.7
Public Benefits	68.5	57.1	83.4
Employment- Related Education/Training	67.7	18.9	27.9
Food	68.1	65.4	96.0
Employment Placement	68.0	12.8	18.8
Counseling—Supportive	66.1	74.3	100.0
Peer to Peer Mentoring	59.4	52.5	88.4
Counseling—Family	59.3	3.8	6.4
Legal Services—Civil/Family Court Proceedings	38.8	14.4	37.1
Legal Services—Victim Advocacy	38.7	15.6	40.3
Child Care and Child-related expenses	34.8	1.5	4.3
Parenting Classes	32.0	0.0	0.0
Legal Services—Immigration (e.g., U & T Visas)	22.2	20.8	93.7
English Language Classes	20.9	1.3	6.2
Reunification/Repatriation Services	20.7	24.3	100.0
Interpretation/Translation	19.2	8.5	44.3
Counseling—Substance Abuse	12.4	4.3	34.7
Community Building and Advocacy Workshops	1.0	0.0	0.0
Foster Care or Permanent Placement of Minors	0.3	0.0	0.0

* Either directly or via referral to housing programs providing services. The following percentages control for cross-agency referrals and differences in the number of clients seen by responding providers.

(see p. 11). Formal/general education, English language classes, and employment placement all can play key roles in reducing the vulnerability of survivors to being re-trafficked. To go beyond the rhetoric of empowerment, service providers need to offer both individual and collective opportunities for survivors to contribute to their communities as well as to organize against human trafficking. Few providers offer volunteer programs or community building and advocacy workshops and generally do not see a need for such programs. One representative of a federal agency (identity withheld) highlighted the utility of telephone services in supporting survivors: “We try to find a way to stay in touch with these victims. Agents try to find funding for cell phones. We give them our cell phone numbers. Many of them call. Most of the young women I work are pretty good in calling us if they need help.” The same key informant highlighted the importance of family counseling and legal services: “Most of the victims have a child. So there are issues in working with the victim to make sure that Administration for Children’s Services doesn’t get involved...Some of the girls who’ve been here a long time need legal advice regarding full custody. We want to make sure they have full access to these services.”

Services needed by sizeable minorities of survivors were sometimes largely unavailable. About one-third of the survivors would benefit from childcare and assistance with child-related expenses, but only 1.5% of survivors received these services. The situation is even worse for parenting classes. Respondents reported that 32% of the survivors interacted with would benefit, yet none of the providers actually provided these classes either directly or through referral to a housing program provider. While slightly more than 20% of clients needed English language classes, slightly more than 1% of clients actually received this service for a serviced demand rate of 6.2%.

Eligibility Restrictions

Not all survivors of human trafficking in the New York City metropolitan area are equally likely to receive services. Overall, respondents indicated that three sub-groups of survivors are most likely to be underserved: transgender survivors, male survivors, and survivors under the age of 18. The finding reflects an orientation towards providing services to adults; in particular victim services for women through domestic violence shelters and rape crisis centers. Extensive regulation contributes to fewer providers offering services to children. Access to specific services also frequently depends upon additional factors such as the interaction between the survivor’s gender and the form of trafficking that she or he has experienced. As Christa Stewart, Anti-Trafficking Program Coordinator for the Office of Temporary and Disability Assistance, aptly puts it, “No one agency serves survivors across the demographic spectrum.”

Eligibility for Housing—The survivor’s gender has an important affect upon access to housing (see Table 4). Males and transmales (female to male) were less likely to receive housing than females and transfemales (male to female). At the same time, females received greater access to housing compared to transfemales. While all respondents providing housing reported that female victims of sex trafficking were eligible, slightly over half (55.6%) reported that transfemale victims of sex trafficking were eligible. Eligibility for housing drops for female survivors who are the victims of labor trafficking.

Legal status also has a slight effect on a victims' eligibility for housing services. Out-of-status immigrants were somewhat less likely to be eligible for housing than U.S. citizens and permanent residents.

Age is the strongest predictor as to whether or not a survivor will be eligible for housing. Minors are the least likely sub-population to be eligible for housing services, with two-thirds of housing providers reporting that survivors under the age of 18 are ineligible for their programs. Only 18.1% of foreign-born survivors under the age of 18 were supplied emergency housing—the form of housing most readily available but least suited to trafficking survivors as discussed above. Sergeant Minca, NYPD Vice Enforcement Division Major Case Team, stated, “The biggest problem right now in the City is finding housing, especially for underage survivors. There’s no place to house under fourteens or fifteens.” The finding underscores the importance of rapidly implementing the Safe Harbor for Exploited Children Act. The frequent exclusion of transgender minors from housing programs highlights the importance of the Act’s provision for greater planning to meet the service needs of girls, boys, and transgender minors.

Table 4: Eligibility for HOUSING by Survivor Characteristics

Gender & Type of Trafficking	% of Providers Reporting Eligible
Females, Sex Trafficking	100.0
Females, Labor Trafficking	88.9
Transfemales, Sex Trafficking	55.6
Transfemales, Labor Trafficking	55.6
Males, Sex Trafficking	44.4
Males, Labor Trafficking	44.4
Transmales, Sex Trafficking	44.4
Transmales, Labor Trafficking	44.4
Legal Status	
U.S. Citizens and Permanent Residents	88.9
Immigrants (Out-of-Status)	77.8
Age	
0–17	33.0
18–24	100.0
25+	88.9

Full Eligibility for Services—Full eligibility for all services provided directly by survey respondents is affected by the same demographic characteristics, although the access effects of these characteristics are occasionally different. As Table 5 shows, the following

sub-populations were most likely to be declared ineligible for some of the services offered by providers: male survivors, transmale labor trafficking survivors, and survivors under 18 years of age. Roughly half of the responding providers indicated that each of these sub-populations would be ineligible for at least one of their services. Full eligibility increases slightly for transmale sex trafficking survivors and transfemale labor trafficking survivors (61.5% respectively). Eligibility increases further for transfemale sex trafficking survivors and U.S. citizens and permanent residents (69.2% respectively). Female sex trafficking survivors and survivors between the ages of 18 and 24 had the highest full eligibility rates (92.3% respectively).

Eligibility restrictions do not necessarily reflect a lack of capacity to provide for the needs of a sub-population of survivors. Nevertheless, analysis of our interviews and survey responses suggest that a range of demographic characteristics bear heavily on the type of services that providers feel capable of providing to a trafficking survivor (see Table 6). Almost half (47.1%) of survey respondents reported feeling incapable of providing services to transgender individuals if they are survivors of labor trafficking. A large number of respondents (41.2%) also reported feeling incapable of providing

Table 5: Eligibility for ALL SERVICES by Survivor Characteristics

Gender & Form of Trafficking	% Fully Eligible
Females, Sex Trafficking	92.3
Females, Labor Trafficking	76.9
Males, Sex Trafficking	46.2
Males, Labor Trafficking	46.2
Transfemales, Sex Trafficking	69.2
Transfemales, Labor Trafficking	61.5
Transmales, Sex Trafficking	61.5
Transmales, Labor Trafficking	53.8

Citizen Status	%
U.S. Citizens and Permanent Residents	69.2
Immigrants (Out-of-Status)	84.6

Age	%
0–17*	53.8
18–24	92.3
25+	84.6

* Two of the respondents indicated that they would provide services to survivors age 17 and younger if they were accompanied by an adult guardian, which is rarely the case with trafficked minors.

services to transgender individuals if they are survivors of sex trafficking. Looking at non-transgender survivors, survey respondents feel less capable of providing male survivors with services compared to female survivors.

With regard to age, survey respondents feel less capable of providing minors (29.4% incapable) with services compared to 18-24 year olds (5.9% incapable) and survivors over 25 (11.8% incapable). Furthermore, survey respondents feel less capable of providing services to citizens (35.3% incapable) than to out-of-status immigrants (17.6% incapable).

These findings from our survey are echoed in comments made by key informants we interviewed. More providers see themselves as capable of providing services to out-of-status immigrants than to U.S. citizens and permanent residents. As Mary Atlas-Terry, Victim Justice Program Specialist at the Office for Victims of Crime, pointed out, “Until recently, all grants were geared towards international survivors. Last year (2009) was the first time that OVC’s grants focused upon domestic minors.” Underage survivors (i.e., those under 18 years of age) are also perceived to be underserved. Lauren Burke, Staff Attorney and Skadden Fellow of The Door Legal Services Center, exclaimed, “There are

Table 6: Provider Capability to Supply Services by Survivor Characteristics.
(% of Providers Indicating Incapable of Providing Services)

Gender & Type of Trafficking	Incapable (%)
Transfemales, Labor Trafficking	47.1
Transmales, Labor Trafficking	47.1
Transfemales, Sex Trafficking	41.2
Transmales, Sex Trafficking	41.2
Males, Labor Trafficking	35.3
Males, Sex Trafficking	29.4
Females, Labor Trafficking	11.8
Females, Sex Trafficking	0.0

Citizen Status	%
U.S. Citizens and Permanent Residents	35.3
Immigrants (Out of Status)	17.6

Age	%
0–17	29.4
25+	11.8
18–24	5.9

not enough services for youth!” However, youths are not the only ones underserved. One respondent (identity withheld) stated, “This [their services] doesn’t address the needs of men, boys, and transgender persons. There are huge gaps for those populations.” Having examined what services providers believe they are capable of offering to different sub-populations of survivors, we now turn our attention to the main challenges facing both service providers and law enforcement agencies.

Main Challenges Facing Service Providers and Law Enforcement Agencies

Our research has identified several challenges that complicate the process of providing services to survivors of human trafficking. One of the most important challenges remains identifying survivors. Service providers and law enforcement agencies reported having difficulty identifying trafficked persons because of coerced victim silence, victim denial, language barriers, and/or cultural differences. A lack of understanding of human trafficking and training to identify the signs of someone being trafficked also contribute to the problem. According to one service provider representative responding to our survey (identity withheld), “Law enforcement are rarely trained to identify victims, which makes the default mechanism to be the criminal justice system—a system that continues to criminalize victims.” Mistrust of law enforcement also impedes identification. Another survey respondent (identity withheld) reported, “Because we deal mostly with criminalized undocumented rural workers, the police either do not play a role or they actually are being used by traffickers as a means of threat and coercion.”

Service providers also face challenges in identifying trafficking victims and providing appropriate services. Faith Huckel, Executive Director of Restore NYC, states: “There is a huge problem with identification of survivors due to shame, fear, and a lack of education about the issue.” Accordingly, in her interview with us, Mary Atlas-Terry, Victim Justice Program Specialist with the U.S. Department of Justice Office for Victims of Crime highlighted the need for improvements to the identification process so as to ensure the effective provision of services.

Beyond obstacles to identifying survivors, service providers pointed toward several other challenges that they face. Funding-based restrictions on service eligibility often impeded service providers from meeting the needs of specific clients. A lack of funding and staff in general also has hampered the provision of multiple services needed by large numbers of survivors, in particular long-term housing and accessible transportation. Those receiving training for working with trafficking survivors often are frustrated in their efforts to translate this training into full-time employment. Several additional organizational challenges were noted, including concerns for the safety of staff and clients as well as high rates of staff turnover.

Both service providers and law enforcement officials widely and readily acknowledged the challenges of working together. Three-quarters (75%) of service providers responding to the question rated the performance of the police in meeting the needs of trafficked persons as either somewhat unsatisfactory or highly unsatisfactory. One respondent (identity withheld) indicated that, in her experience, law enforcement lacks the knowledge and experience to understand survivors, especially the survivors of labor trafficking.

In turn, law enforcement agency representatives that we interviewed pointed towards several challenges in working with service providers. One key informant (identity withheld) pointed out that law enforcement and service providers do not work the same schedule. Service providers tend to work a 9 to 5 schedule while most of their cases occur after hours and on the weekend. This hampers collaboration and survivors' immediate access to services and support beyond initial protection by law enforcement.

Law enforcement officials also expressed concerns about service providers impeding the prosecution of traffickers. One representative of a federal agency (identity withheld) suggested that providers' concerns regarding confidentiality were often overwrought and unwarranted:

I think confidentiality is a very western concept. They (trafficking victims) come from countries where the milkman and shopkeeper knows what's going on with you. These victims are now in this country. They're isolated. They don't speak language and they don't know what a NGO is. And now confidentiality is thrown at them...A common sense approach is what should happen. Once NGOs establish trust, then they should indicate that law enforcement agencies are there to assist.

Another key informant (identity withheld) related and expanded upon similar concerns:

NGOs have to work more closely with police departments. They have to understand that we have a job to do and that is to go after the traffickers. We would like to be involved in the in-take process. I'd be more than willing to have service providers involved in our interview process. I understand that service providers need to protect the confidentiality of clients. Nonetheless, things they might say during that initial interview that NGOs might pass over and forget could be useful in prosecution. In a lot of interviews that we've done, the victims are schooled too much by service providers. We need to know key things such as movement. Coached victims often make things up and we catch them in lies. There are many cases that slip through the cracks because of the lies and victims not being forthcoming. Whatever she tells us she also has to tell the DAs. If the statements don't match up, then we can't prosecute.

Law enforcement agency representatives indicated that service providers need to learn more about the process of criminal investigations and judicial proceedings.

One representative of a federal agency (identity withheld) noted a lack of capacity on the part of some of the service providers offering assistance: "We're picky about who we work with. It boils down to who we can rely upon and who we can trust. There are so many NGOs in the area, but sometimes they can't do what they're offering...You really have to vet the service providers."

Service providers and law enforcement agents also often disagree over the extent to which law enforcement has shifted its approach from criminalizing those who have been trafficked to treating them as victims. With regard to the NYPD, one service provider representative (identity withheld) stated:

It depends on the police officer. There are some excellent NYPD officers that really understand the issue and are doing what they can to educate other officers. However, police are looking at the women mostly as criminals rather than victims. Therefore, their perception of the problem is usually victim-blaming.

In contrast, Sergeant Minca, NYPD Vice Enforcement Division Major Case Team stated, “We emphasize that we want to go after the traffickers and not them. We try not to arrest the girls and we see them as victims. It’s a major shift in the NYPD. I also see this shift when talking with other agencies.” This perception of a major shift was echoed by a federal agency representative (identity withheld) :

I agree 100%. This position I’m in didn’t exist until 2 years ago. We had one woman who single handedly tried to work on this in Washington DC... Now we are up to 15 individuals nationally working full time on trafficking. We hope to have full time Victims Assistance Coordinators in all of the offices to conduct emergency assessments and to hook up with NGOs.

Another federal agency representative (identity withheld) similarly states: “I’m surprised at the question. I can’t recall my agency ever taking a criminalization approach. We take the opposite approach.” Service providers and law enforcement agencies need to overcome these challenges to ensure that survivors of trafficking receive both restorative services and remedial justice.

RECOMMENDATIONS

In this section, we present recommendations based upon the findings of our research regarding ways for funding and coordinating agencies (both public and private), service providers (both public and private), and law enforcement agencies to further identify survivors and to assist them in restoring their dignity, rebuilding their lives, ensuring justice, and mobilizing against human trafficking. While much of the discussion above has focused upon service providers and law enforcement agencies, it is clear that without expanded resource provision and direction from funding and coordinating agencies, service providers and law enforcement agencies cannot fill gaps in publicity, training, and services.

Increasing the Identification of Trafficked Persons

1. We recommend that funding and coordinating agencies provide the resources (e.g., money, space, mailing lists) necessary to further expand trainings targeting: (1) leadership in law enforcement agencies that do not view trafficking as a local problem; and (2) less recently graduated patrol officers and precinct officers. The trainings should focus upon locating and identifying trafficked victims.
2. Funding is also needed to train current and potential service providers (especially domestic violence-focused providers and health care providers). The trainings should similarly focus upon locating and identifying trafficked victims.
3. Large numbers of contacts resulting from outreach efforts by survey respondents highlight the importance of widely and intensively publicizing qualified service providers. We recommend an increase in outreach efforts utilizing communications technologies most likely to be available to victims; in particular publicity through radio programs, television programs, newspapers, and magazines. We further recommend contacting media outlets using languages most frequently spoken by survivors. Our survey data indicates that languages spoken by survivors in the New York City metropolitan area include, but are not limited to (listed in descending order of the number of speakers): English, Spanish, Chinese (e.g., Mandarin, Fuzhounese), Russian, Korean, Bengali, Arabic, Igbo, Hindi, Thai, Hungarian, French, Tagalog, Haitian Creole, Bulgarian, Portuguese, Malayalam, Nepalese, Bahasa Indonesian, Telegu, Urdu, and Ukrainian.
4. The general public also should be provided access to identification of human trafficking victims training so they are able to assist individuals in their neighborhoods. We recommend the utilization of advocates to distribute literature in locations identified as experiencing trafficking.
5. Some key informants noted trafficking victims encountering problems connecting with providers when calling New York City area hotlines established primarily to assist domestic violence victims. Accordingly, we recommend that stakeholders attempt to come to an agreement to extensively publicizing one hotline that focuses solely upon trafficking victims (e.g., the National Human Trafficking Resource Center hotline—888-3737-888).

Filling Gaps in Service Provision

6. Our research indicates that there is a severe shortage of housing suitable for the survivors of trafficking in the New York City metropolitan area. Greater cooperation among both public and private coordinating/funding agencies and social service providers is needed to prioritize the creation of long-term, safe housing programs that offer a comprehensive set of services to survivors, preferably directly or, if necessary, through referrals.
7. Offering a wider array of services is essential to rebuilding the lives of trafficking survivors. Above, we have documented the tragic consequences of failing to provide these services, including the re-trafficking of survivors. Based upon our survey findings, many service providers are unable to assist survivors (either directly or through referrals to housing programs) with medical care (80.9% of clients needed, 2.2% serviced demand), telephone services (75.4% of clients needed, 15.3% serviced demand), formal/general education (74.8% of clients needed, 0.3% serviced demand), and volunteer programs for survivors (74.0% of clients needed, 5.7% serviced demand). We recommend increased funding for the creation of new and in-depth service programs in these areas as our research indicates that these services are essential to empowering survivors.
8. We recommend that service providers working with unaccompanied survivors under the age of 18 ensure the provision of foster care or permanent placement. The Unaccompanied Refugee Minor Program (URM) is particularly helpful in securing these and other services for international minors. We also recommend that funding and coordinating agencies assist service providers working with survivors with children in developing family counseling and parenting classes. At present, such services are virtually non-existent. To help ensure the highest quality of services, we recommend that the New York State Office of Children and Family Services develop a comprehensive approach to screening and training providers.
9. Given their underserved status, we recommend that funders and providers take steps to increase the provision of services to survivors under 18 years of age, male survivors, transgender survivors, and domestic-born survivors. Efforts should be made to more widely publicize providers serving these sub-populations (see Recommendation #12) as well as to ensure that transportation is available to survivors who are a considerable distance away from these providers. Nonetheless, the demand for the services of these providers may exceed the capacities of the agency. In this context, greater coordination between service providers focusing upon sex trafficking and service providers focusing upon labor trafficking can increase the availability of services to female labor trafficking victims. In addition, funders can support organizations in either creating new facilities and services providing for the needs of male and transgender survivors and/or to expand existing facilities and services to become more gender inclusive. Whenever possible, providers should establish inclusive guidelines regarding eligibility for housing and other social services. We also recommend that staff at service providers (in particular emergency shelters, ACS

facilities, and domestic violence shelters) receive trainings in preparation for working with underserved populations.

10. When possible and appropriate, increase the number of bilingual staff, interpretation services, and English language courses to facilitate communication with ESL survivors.
11. Given the frequent need of survivors for multiple services, service providers need to develop strong case management systems that include a comprehensive initial assessment, awareness of referral opportunities, and a commitment to working with survivors to gain access to available services.
12. To facilitate service referrals, coordination, and assessment, we recommend developing and maintaining a centralized, shared database of actual and potential service providers in the New York City metropolitan area. For each provider, the database should specify what services providers are capable of providing, to whom, and at what cost (if any). To help create this database, the authors of this report commit to sharing our sampling frame and relevant survey findings with the New York State Interagency Taskforce on Trafficking, the New York City Anti-Trafficking Taskforce, and the Polaris Project. Cooperative initiatives between stakeholders are essential for providing fast and high quality housing and service provision to survivors.

Furthering Cooperation between Law Enforcement Agencies and Service Providers

Our research reveals ongoing challenges in the relationship between law enforcement agencies and service providers. We suggest the following as possible ways to promote constructive working relationships:

13. Ensuring that both the New York State Interagency Taskforce on Trafficking and the New York City Anti-Trafficking Taskforce are inclusive of NGOs and have regular attendance by all members;
14. Scheduling ongoing meet-and-greets to connect providers with law enforcement agencies to expand stakeholder networks and to build trust;
15. Expanding and, where applicable, redefining Victim Assistance positions at law enforcement agencies to ensure that: (a) interviews with survivors are conducted in a respectful manner, recognizing that trafficking survivors are victims that are likely to have experienced repeated traumas and physical injuries that may make it difficult for them to immediately relay information to law enforcement officials; and (b) survivors are immediately provided with safe housing in non-incarceration settings, medical care, and other services determined by emergency case assessment to be urgently needed.
16. Trauma and physical injuries experienced by victims can preclude their immediate disclosure of information regarding trafficking situations. As a result, law enforcement agencies may have to drop cases against traffickers because of the need to immediately convene a grand jury. Accordingly, we recommend that law enforcement agencies and service providers work together to advocate for statutory changes (where needed) to enable judges to waive grand juries in cases of human trafficking.

17. Funding a new staff position at service providers specializing in emergency assessment and service delivery. The new staff person would serve as a liaison to law enforcement agencies. The liaison would be on call and available during days and times that law enforcement are mostly likely to encounter victims;
18. Developing a joint intake protocol articulated through memoranda of understanding whereby law enforcement and service agency representatives work together to ensure that the survivor's immediate needs are met and rights are respected while assisting law enforcement to the fullest extent possible in taking action against traffickers. We recommend that part of this protocol entails the immediate provision of the following services: translator services, medical care (including a psychological assessment by a professional counselor specializing in PTSD), and contact with a victim assistance coordinator and service provider representative. Providing a translator for survivors possessing limited English proficiency is important when survivors first arrive at the precinct in order to convey safety and protection to the survivors. In cases such as sex trafficking, it is also important that specific medical services are provided quickly for the well being of the survivor and to assist in the prosecution of traffickers (e.g., rape kits can provide important evidence). Safe housing service providers should be contacted immediately in cases where a law enforcement agency cannot provide safe housing outside of a lockdown setting.
19. Increased funding for expanded trainings of law enforcement officials by service providers regarding the needs of survivors will help law enforcement officials to better assist survivors if service providers are not available during late hours. The trainings should focus upon: (a) protocols regarding the questioning of possible trafficking victims; (b) awareness and sensitivity to cultural differences that could influence the quality of interactions between officers and survivors; (c) the immediate service needs of survivors; and (d) resources available to meet those needs, including safe emergency housing. These trainings can occur in tandem with trainings assisting law enforcement officials in identifying victims of trafficking (also see Recommendation #1 above).
20. Funding is also needed to train current and potential service providers (especially domestic violence-focused providers and health care providers). The trainings should focus upon: (a) understanding criminal investigative procedures and judicial proceedings as they pertain to trafficking cases; (b) cross-cultural competence, and (c) the legal needs of survivors. These trainings can occur in tandem with trainings assisting service providers in identifying victims of trafficking (also see Recommendation #2 above).

We are confident that the benefits from cooperation and collaboration will outweigh initial obstacles and allow the stakeholders to help survivors transition into society more smoothly and strengthen the struggle against human trafficking.

CONCLUSION

Our research indicates that a large majority of survivors of human trafficking require access to safe, long-term housing and multiple support services including direct cash, transportation, trauma counseling, support groups, document collection, life skills training, medical care (including dental and vision care), clothing, telephone services, formal education, and volunteer programs for trafficking survivors.

There is a pressing need for more and better housing for trafficking survivors. Only 3.9% of survivors who needed long-term housing actually received it. Representatives from coordinating and funding agencies (both public and private), law enforcement agencies, and service providers (both public and private) all highlighted this gap during their interviews. In particular, youth and transgender individuals are less likely to receive appropriate housing and other services.

Our recommendations are based upon findings from our survey of service providers, our interviews with key informants, and our review of the relevant literature. All three stakeholders (funding and coordinating agencies, law enforcement, and service providers) need to continue to develop more efficient and collaborative ways of identifying trafficking victims and working together to ensure restorative services and remedial justice. Greater time, effort, and funding is needed to train law enforcement officials and the staff of service providers (particularly health care, domestic violence, and ACS providers) to identify survivors, to offer survivors safe and adequate housing and other needed services, to be knowledgeable about humane, supportive, and culturally appropriate interactions with survivors, and to understand the often multi-level, location-dependent, and time-sensitive processes of criminal investigation and prosecution of traffickers. While current efforts must be acknowledged, more can be done to enhance public awareness. Expanded publicity through the radio, television, newspapers, and magazines coupled with the greater utilization of advocates to distribute literature in locations identified as experiencing trafficking are ways to increase the chances of reaching victims.

Beyond these collaborative recommendations, there are recommendations that focus mainly on one of the three stakeholders. **Funding and coordinating agencies** should either encourage organizations to create new facilities and services providing for the needs of underserved gender minorities or expand existing facilities and services to become more gender inclusive. Furthermore, service providers should receive the funding necessary to provide highly needed and largely unavailable services such as medical care, telephone services, formal/general education, and volunteer programs.

Service providers attempt to meet the critical needs of survivors, but good intentions are not always sufficient. An almost ad hoc process of providing services needs to be reevaluated and turned into a professionalized system where the staff of service providers are trained, protected, and supported. Either directly or through referral, providers should endeavor to increase the provision of the following services: long-term safe housing, medical care, telephone services, formal/general education, and volunteer programs for survivors. Providers working with foreign-born survivors are encouraged to

provide English language classes either directly or through referral. Providers working with minors should ensure, where appropriate, the provision of foster care or permanent placement. Providers working with survivors with children should develop or identify family counseling and parenting classes to support survivors.

Additionally, to ensure the equitable delivery of services to all survivors, to the fullest extent possible providers should establish inclusive eligibility guidelines to increase service access for underserved sub-group such as transgender individuals and minors. When possible and appropriate, increasing the number of bilingual staff to facilitate communication with ESL survivors and providing specific training for staff regarding working with transgender survivors is also recommended.

While funders and service providers focus primarily on the survivors' well-being, **law enforcement** has the task of also incarcerating traffickers and making sure that justice is served. Formal and informal opportunities to network and build trust between service providers and law enforcement officials are critical to promoting cooperation in the pursuit of both of these objectives. Another key recommendation is the development of joint intake protocols and memoranda of understanding between law enforcement agencies and service providers to ensure that the survivors' immediate needs are met and rights are respected while assisting law enforcement to the fullest extent possible in taking action against traffickers. We recommend that part of these protocols and MOUs entail the immediate provision of the much needed services, including safe housing in non-incarceration settings, translator services, medical care, and expedited case assessments by service providers. The expansion of the number of victims assistance staff at law enforcement agencies and their presence during investigative interviews with survivors along with trainings of law enforcement officials by service providers should help to ensure that survivors' immediate needs are met during late and weekend hours, when representatives from service providers are not necessarily available. A considerable amount of tension results from requirements in certain jurisdictions to immediately empanel grand juries to indict incarcerated traffickers. Successfully lobbying for legislative changes that enable judges to waive grand juries in cases of alleged human trafficking will help to ensure that the needs of survivors are prioritized without jeopardizing the ability to prosecute their traffickers.

Meeting the needs of the survivors of human trafficking requires more than the goodwill of a few people. Our research has shown that there is a lack of data available on service delivery to trafficking survivors. We call for similar studies to be conducted on an ongoing basis to assess progress in meeting the service needs of survivors. Remaining cognizant of the vulnerability of survivors as human subjects, law enforcement agencies and service providers might consider bringing in an independent researcher to administer anonymous or confidential surveys to survivors to learn of their perceptions of interactions with law enforcement agencies and service providers. Members of survivor support groups could also be approached collectively to see if they would be willing to serve as focus group for an independent researcher. Researchers should attempt to collect more than a handful of case studies to enhance the external validity of the findings.

By taking the research findings seriously and translating them into practice, we are confident that LifeWay Network and other stakeholders can effectively accomplish our mission of serving, protecting, and empowering the survivors of human trafficking. The alternative is to see the continued re-victimization and denial of human dignity to trafficked persons.

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APPENDIX: DISCUSSION OF METHODOLOGY

In partnership with LifeWay Network, Dr. Maney, and graduate students enrolled in the Masters of Applied Social Research and Public Policy program at Hofstra University conducted a study to assess the need for and availability of safe housing and other support services for survivors of human trafficking living in the New York City metropolitan area. Our research consisted of administering an online survey to non-profit or private agencies providing services to trafficking survivors as well as conducting interviews with key informants from funding and coordinating agencies (both private and public), service providers (both private and public), and law enforcement agencies. The survey instrument was revised substantially based upon the feedback of representatives from three funding/coordinating agencies and one major private service provider coupled with the results of a pilot survey. Both survey and interview respondents were asked a series of questions regarding their knowledge and experiences related to how they came into contact with survivors; the extent of their interactions with survivors; the demographic characteristics of the client population; the service needs of survivors, service availability and quality; and major challenges in assisting survivors. Participation in both the survey and the interviews was voluntary. Respondents were able to discontinue or refuse to answer any question at any time.

Ensuring Validity and Reliability

Concerns persist regarding the validity and reliability of data on human trafficking due to, among other things, the silencing of those being trafficked, underreporting by survivors who have escaped traffickers, a failure by law enforcement agencies and service providers to identify victims, oversimplifying assumptions and the biasing of research subjects by researchers, and small, biased samples (e.g., Tyldum 2010; Brunovskis and Surtees 2010; Choo, Jang, and Choi 2010; Zhang 2009). Even if these threats are mitigated, errors in data entry, coding, and analysis could undermine the accuracy of the findings.

We have proactively addressed these issues to meet the challenges of producing credible research. We took several steps to ensure the validity and reliability of the measures included in the survey instrument. First, we asked that when answering survey questions, respondents use the same definition of human trafficking; specifically, the definitions of severe forms of human trafficking provided by the Trafficking Victims Protection Reauthorization Act of 2008. Second, we simplified and clarified the language of several questions based upon feedback from the pilot survey as well as interviews with key informants. We made deliberate, concerted efforts to use neutral phrasing and terminology familiar to service providers. Third, we also used this feedback to compile a comprehensive if not exhaustive list of potential responses; in particular, responses to questions pertaining to service needs, availability, and eligibility. Fourth, many of our survey questions gave respondents an open-ended option to provide responses other than the preset categories. Beyond consent-related questions, respondents were not required to answer questions. Fifth, we decided to administer the survey online using Qualtrics to

avoid any threat that differences among survey administrators might pose to the reliability of responses.

One of the shortcomings of our analysis was the lack of systematic data collection by organizations, raising the possibility that our survey data may only provide crude estimations of the actual experiences of service providers. Accordingly, whenever possible, we compare our survey data with statistics compiled by taskforces, funders, and (other) government agencies. We refrained from using other methodological instruments such as case studies, as those would have reliable lower degree of external validity than our survey.

Sample Selection

We sought to survey non-profit organizations actively providing services to trafficked persons living in the New York City metropolitan area. As is often the case in human rights research, a randomized sampling technique was not feasible due to the small estimated population of service providers. Through online searches, we identified multiple resource lists for trafficking victims. From these lists we identified 130 non-profit organizations said to offer services to trafficked persons. Of these 130 organizations, we determined that 109 offer services in the New York City metropolitan area. We contacted each of these 109 organizations, via e-mail and phone, encouraging them to complete the survey. Of the organizations contacted, 8 indicated that they had not provided services to trafficked persons, including one law firm providing representation to those accused of trafficking. These organizations were told not to fill out the survey. In total, representatives from 17 private service providers completed the survey.¹¹

Because the sample is not random, it may not be representative of the population of private service providers. It is likely that when compared to non-respondents, respondents have greater resources and greater contacts with other services providers. Moreover, some of our respondents provide services across the region, including locations outside of the New York City metropolitan area. As a result, statistics based upon our survey data may overestimate the size of the population of trafficking survivors interacting with service providers in the New York area. On the other hand, providers responding to the survey are likely to not have identified some of their clients as trafficking victims. For instance, one survey respondent (identity withheld) stated: “We are working with 55 clients all from Korean and Chinese background. From this number, it is clear that at least 15 of the clients are clear trafficking cases, though we estimate that the number is much, much higher (probably closer to about 40 clients).” The inability to identify all clients who have been trafficked is likely to contribute to our

11 The response rate for the sampling frame was 16.8%. We do not know whether or not all of the organizations in the sampling frame that did not respond to our emails and telephone calls have actually provided services to trafficking survivors. We asked the 17 respondents to list up to three agencies that they made referrals to. Based upon this information, we know of 31 service providers that have interacted with one or more trafficking survivors in the New York City metropolitan area. The response rate for known service providers, therefore, was 54.8%.

statistics underestimating the size of the population of survivors interacting with service providers in the New York City metropolitan area.

We stress that because of the silencing of victims and survivors moving immediately from the area, service providers are likely to interact with only a small fraction of trafficking victims. Accordingly, we do not attempt to estimate the number of persons trafficked in the New York City metropolitan area. Rather we limit ourselves to estimating the number of trafficked persons interacting with area private service providers. Our estimate does not include the number of trafficked persons interacting only with public service providers.

It is also possible that the regional origins of clients as reported by respondents may be a function of the relative size and affluence of different Diasporic groups in the United States. It is reasonable to conclude that the larger and more affluent the Diasporic group is, the more likely it is that there is a service provider specializing in assisting this sub-population of trafficked persons.

Protection of Human Subjects

Some researchers have interviewed and/or surveyed trafficking survivors (e.g., Simkhada 2008; Aron, Zweig, and Newmark 2006). Zimmerman et al. (2008), however, encountered ethical challenges when talking to victims of human trafficking. They chose to exclude possible subjects after psychological assessment because the subjects were psychologically unable to participate or could not complete the interview.

Our research team (including LifeWay Network staff) discussed and addressed human subject concerns prior to conducting both the survey and the interviews. We refrained from surveying or interviewing individual trafficking victims for two reasons. First and foremost, due to their marginalized and vulnerable status, it was decided that conducting research directly with trafficked persons would present undue risks to human subjects. Second, gaining access to trafficked persons presents a myriad of challenges.

We chose, therefore, to instead conduct research with representatives from funders, service providers, and law enforcement officials focusing upon human trafficking. Most of our subjects have interacted with large numbers of trafficking survivors. These experiences qualify our subjects to speak competently about issues related to service provision. Our survey started by asking for consent for use of their name and in a separate question the use of the name of their affiliated organization. In reporting our findings below, we respect the confidentiality of respondents who requested that their identities be withheld. The interviews were conducted and recorded with either the verbal or written permission of the respondents. All key informants and survey respondents were given an opportunity to comment on a draft of this report. Extensive efforts were made to incorporate this feedback into the final version.

Data Coding and Analysis

Survey Data—Qualtrics automatically created a quantitative database of survey responses. Dr. Maney and Ms. Wiktor then cleaned this data. Once identified, outlier values were either verified, replaced, or removed. Instances of double responses to single-response questions were removed from the analysis. Whenever appropriate, text

responses were reassigned to appropriate response categories. Most of our analyses consisted of calculating descriptive statistics such as sums, averages, and percentages. We made these calculations using either Excel or Stata. Where appropriate and needed, our estimates control for cross-agency referrals as well as differences among respondents in the reported number of clients served.

Interview Data—Once transcribed, interviews were imported into a content analysis software program (NVivo!) and coded for themes arrived at both deductively and inductively. In particular, we created thematic coding units that would assist us in answering the five sets of research questions discussed above (see p. 9). After coding selected passages of interviews together for training purposes, Dr. Maney, Ms. Brown, Mr. Simoneschi, and Ms. Wiktor separately coded the interviews. Differences in coding were discussed and reconciled. Themes were then analyzed for their robustness. Interview passages that were representative of prevailing themes across key informants and consistent with our analysis of the survey data are reported in the findings. We believe that, when taken together, our survey and interview data provide credible, new insights regarding the provision of services to trafficking survivors living in the New York City metropolitan area.

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New York State Interagency Task Force
on
Human Trafficking

A report by the Interagency Task Force
Implementation of the 2007 law

Task Force Co-chairs

Commissioner Denise E. O'Donnell
Division of Criminal Justice Services

Commissioner David A. Hansell
Office of Temporary and Disability Assistance



August 2008

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Executive Summary

On June 6, 2007, New York State passed its first law against human trafficking, joining the steadily growing number of states to recognize that “slavery” still exists in this country in the form of sex and labor trafficking.

Lauded by advocates as one of the most comprehensive human trafficking laws in the nation, this historic anti-trafficking legislation empowers New York State to prosecute traffickers, protect and assist victims, and coordinate its efforts to fight human trafficking.

New York’s Human Trafficking Law criminalized sex trafficking and labor trafficking, and modified existing laws to strengthen the State’s criminal justice response to traffickers and sex tourism (see Section II.A., New state crimes). It established services and assistance for human trafficking victims, making New York one of only a handful of states to do so (see Section II.B., New services and assistance). It also created an Interagency Task Force on Human Trafficking to coordinate the implementation of the new law and the State’s efforts to combat human trafficking (see Section II.C., New Interagency Task Force on Human Trafficking).

New York’s Human Trafficking Law

- Criminalizes sex and labor trafficking
- Toughens penalties
- Establishes services for victims

The Human Trafficking Law charged the Task Force with reporting to the Governor and the Legislature on progress in implementing the new law. Now, one year later, the Task Force is pleased to report considerable progress. Its accomplishments to date include, but are not limited to:

- Establishing a victim services program (see Section II.B., New services and assistance).
- Providing statewide training on human trafficking to law enforcement personnel, prosecutors, and service providers (see Section III.B., Statewide training and outreach programs).
- Establishing collaboration between various government agencies, law enforcement, and nongovernmental entities.
- Conducting awareness-raising activities statewide (see Section III.C. Public awareness efforts).

Much has been accomplished, but much remains to be done. This report includes a brief list of goals for the second year (see Section IV., Going forward).

A Snapshot of the First Year's Experiences

Since the law took effect on November 1, 2007, our experience makes abundantly clear that there is no “typical” victim or case.

As of July 3, 2008, 36 persons have been confirmed by the Division of Criminal Justice Services (DCJS) in consultation with the Office of Temporary and Disability Assistance (OTDA) as victims of human trafficking for purposes of accessing services and assistance.

Most (27 of 36) of the confirmed victims are female, and they range in age from 16 to 52 and come from disparate locations. Six are United States citizens. Thirty are foreign born. Of the foreign-born victims, eleven are from Asia, eighteen are from Latin America, and one is from South America.

Nineteen of the victims were trafficked for prostitution. Seventeen of the victims were trafficked for labor. Trafficking occurred in restaurants, massage parlors, hotels, and on a farm. Twenty-eight of the victims (representing five cases) were trafficked upstate; the remaining eight (six cases) were trafficked downstate.

Victims Identified

- 36 in total
- 27 women
- 30 foreign born
- 6 U.S. citizens

The 36 confirmed victims are eligible for various forms of government services and assistance. With resources provided through State human trafficking program funds, as well as other funding streams, the victims have been afforded services such as:

- Case management
- Housing
- Nutritional assistance
- Provision of personal care items
- Health care
- Mental health counseling
- Job placement assistance
- Transportation
- Language interpretation and translation services
- Assistance in establishing permanent residence in the U.S

New York State is beginning to make prosecutorial inroads with its new statute; the first indictment under the new statute was announced June 18, 2008 by the Queens County District Attorney. In that case, a 22-year-old man was accused of using intimidation and threats of murder to force a teenage girl to perform sex acts for approximately a dozen customers a day. Several other cases are under investigation.

Recommendations for 2008-2009

Given the experiences of this first year, the Interagency Task Force on Human Trafficking proposes the following to improve New York State's response to human trafficking:

- Expand training of and coordination between state law enforcement agencies, U.S. Customs and Immigration Enforcement (ICE), service providers, and non-law enforcement agencies likely to encounter human trafficking victims;
- Expand outreach and public awareness efforts;
- Establish a statewide directory of service providers capable of serving human trafficking victims;
- Improve the delivery of services for U.S. citizen, eligible alien and child human trafficking victims who do not qualify for the full range of Response to Human Trafficking Program-funded services;
- Expand safe housing options for human trafficking victims;
- Promote federal legislation to facilitate the ability of foreign-born human trafficking victims to obtain lawful immigration status and federal assistance;
- Enhance law enforcement strategies directed toward persons who exploit prostitutes and employ forced labor in New York State; and
- Explore the development of prostitution diversion courts.

I. Introduction

A. The human trafficking problem

Human trafficking is a contemporary form of slavery and a tragic human rights abuse that affects people around the globe. Victims are trafficked into the United States from all over the world, within U.S. borders, and within other countries. They are frequently found enslaved in prostitution, massage parlors and escort services, erotic dancing establishments, pornography, and sweatshops/factories. Human trafficking has even been found to exist in legitimate industries such as agriculture, construction, domestic work, hotels, restaurants, and many other enterprises. Some are forced, tricked, or coerced into marriage; others into begging and peddling.

Human Trafficking victims have been found in:

- Brothels
- Massage parlors
- Escort services
- Sweatshops
- Restaurants

Trafficking takes on seemingly endless variations and occurs in every type of community – urban, rural, and suburban. Oftentimes, it is an insidious blight on the community. Victims are frequently isolated, instilled with fear of authorities and reluctant to report their victimization to law enforcement.

Consequently, the scope of the problem is difficult to define. We do know, however, that it is an enormous problem that exacts a terrible toll on its victims.

Human trafficking victims often suffer physical and psychological abuse at the hands of their traffickers, resulting in health problems, mental illness, and addiction. The need for assistance and treatment among victims is great.

Human trafficking was largely unrecognized by either federal or state governments until Congress enacted the Trafficking Victims Protection Act of 2000 (TVPA). The TVPA marked the first comprehensive national effort to address human trafficking, and provided for enhanced penalties for human trafficking crimes and special service programs to provide assistance to victims.

At the time, the U.S. Department of State estimated that 800,000 people were trafficked across international borders each year for sex and labor purposes.¹ As alarming as that figure was, it was under-representative of the magnitude of the problem because it did not include victims trafficked within nations' borders or victims whose experiences do not fit the federal definition of human trafficking.

¹ Trafficking in Persons Report: June 2007, available at <http://www.state.gov/documents/organization/82902.pdf> (accessed June 1, 2008).

Federal trafficking prosecutions have not kept pace with estimates of human trafficking prevalence in the U.S.² and victim assistance under the TVPA is limited and can be difficult to obtain.³

While the TVPA ensured that foreign-born victims without immigration status could access assistance like their US-born counter parts, this help can be difficult to obtain: Between FFY 2001 and FFY 2007, only 1,379 victims received assistance under the TVPA⁴. One human trafficking victim in upstate New York, served by OTDA prior to enactment of the Human Trafficking Law, waited 18 months before receiving assistance under the TVPA.

Despite its shortcomings, TVPA was a watershed development in addressing what is now viewed not solely as a national problem, but a state and local problem as well. Meanwhile, states -- including New York -- lacked the statutory authority and victim-service programs to fill that void.

The challenge to government was clear. We had a crime we could not measure, a victim base that feared the potential protectors more than the perpetrators and a daunting and unmet need for services.

New York responded to this challenge with one of the most comprehensive anti-trafficking laws in the nation -- a potent law that includes both law enforcement and victim services components.

B. How New York State dealt with the problem pre-2007

New York State's laws, prior to the enactment of the Human Trafficking Law were inadequate, despite the fact that New York State's human trafficking problem is one of the worst in the nation.⁵ With its long international border, major ports of entry and diverse population, New York remains fertile ground for traffickers. U.S. Department of Justice figures suggest that human trafficking occurs more frequently in New York than in most other states; only California, Florida, and Texas outrank New York in the number of federal human trafficking cases opened between 2001 and 2005.⁶

2 USDOJ, Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons: Fiscal Year 2006, available at <http://www.usdoj.gov/ag/annualreports/tr2006/agreporhumantrafficking2006.pdf> (accessed June 1, 2008).

3 USDHHS, Administration for Children and Families, The Campaign to Rescue and Restore Victims of Human Trafficking, Human Trafficking Fact Sheet, available at http://www.acf.hhs.gov/trafficking/about/fact_human2004.pdf (accessed June 1, 2008).

4 Deputy Director, USDHHS, Administration for Children and Families, Office of Refugee Resettlement, Anti-trafficking in Persons Office, personal communication, Apr. 21, 2008.

5 USDOJ, Office of Justice Programs, Bureau of Justice Statistics Data Brief: Federal Prosecution of Human Trafficking, 2001-2005 (Oct. 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf> (accessed June 1, 2008).

6 USDOJ, Office of Justice Programs, Bureau of Justice Statistics Data Brief: Federal Prosecution of Human Trafficking, 2001-2005 (Oct. 2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf> (accessed June 1, 2008).

Trafficking-related crimes often were defined too narrowly to cover the methods of inducement and control used by traffickers. Furthermore, the State was limited in its ability to assist human trafficking victims without immigration status during the often lengthy period of time preceding approval for federal government assistance, when victims are vulnerable to re-victimization.

Pre-2007 New York laws were inadequate to deal with either the problem in New York, or the shortfalls in the federal Trafficking Victims Protection Act.

The lack of a comprehensive human trafficking law in New York State meant that many state and local law enforcement agencies and prosecutors, state government agencies, and service providers likely never received training on recognizing human trafficking.

Consequently, sex trafficking victims were often treated as criminals. Labor trafficking victims without immigration status were subject to deportation, with no inquiry into the circumstances of their “employment.” Many human trafficking victims were likely never identified at all. Thus, it was essential for New York State to take legislative action to fill the gaps in prosecutions and assistance left by the TVPA, and to address the State’s slave trade. To its credit, New York took those steps in June 2007.

II. The 2007 Reform: A New Paradigm

In June of 2007, the New York State Legislature unanimously passed one of the most comprehensive human trafficking laws of any U.S. state, effective November 1, 2007. This landmark legislation recognizes that those trafficked for prostitution and labor are victims of crime, and encourages them to be treated as such and not as criminals or illegal immigrants. It represents a multi-faceted and multi-disciplinary approach to fighting human trafficking. This law addresses human trafficking in three main ways by:

- 1) Establishing new crimes that specify the methods of inducement and control used by traffickers to exploit their victims;
- 2) Providing services to human trafficking victims who are unable to obtain assistance elsewhere due to their immigration status; and
- 3) Creating an interagency task force to coordinate the implementation of the new law and the State's efforts to combat human trafficking.

A. New state crimes

The Human Trafficking Law (chapter 74 of the laws of 2007) established the crimes of sex trafficking and labor trafficking in New York State, and modified existing Penal Law provisions to strengthen the State's response. The new law specifies the methods of advancing or profiting from prostitution, as well as compelling, inducing, enticing, harboring, or transporting a person to engage in labor, that constitute the New York State crimes of sex trafficking and labor trafficking, respectively. (See Appendix A for the complete text of the Human Trafficking Law, which is also available at www.criminaljustice.state.ny.us/pio/humantrafficking/humantrafficking).

1. Sex Trafficking

Section 230.34 of the N.Y.S. Penal Law provides that a person is guilty of sex trafficking, a class B nonviolent felony carrying a maximum sentence of 25 years imprisonment, if he/she intentionally advances or profits from prostitution by using one of the means specified.

The Human Trafficking Law recognizes the relationship between promoting prostitution and sex trafficking: The crime of sex trafficking is located in Article 230 of the Penal Law, the same article that contains the crimes of promoting prostitution, prostitution, and patronizing a prostitute. The use of the words "advances" and "profits"

Sex trafficking in New York State now carries a maximum sentence of 25 years in prison.

in the sex trafficking statute are derived from the definition of promoting prostitution in §230.15 of the Penal Law. Thus, in New York State, sex trafficking is promoting prostitution by using one of the following means enumerated in Penal Law §230.34:

- Unlawfully providing a drug to a person patronized in prostitution, with the intent to impair his/her judgment. The drug need not be a controlled substance.
- Making material false statements, misstatements, or omissions to induce or maintain a patronized person to engage in, or continue to engage in, prostitution activity.
- Withholding, destroying, or confiscating another person's actual or purported government identification document, with the intent to impair his/her freedom of movement.
- Requiring that prostitution be performed to retire, repay, or service a real or purported debt.
- Using force. Traffickers often control their victims with physical and sexual abuse.
- Engaging in any scheme, plan, or pattern to induce a patronized person to engage in, or continue to engage in, prostitution activity by instilling a fear in that person that, if he/she does not comply with the actor's demand, the actor or someone else will perform one or more acts. These threats and acts may be carried out, not only against the sex trafficking victim, but against his/her family, friends, or others -- with the indirect effect of perpetuating the victim's bondage. They include:
 - Causing physical injury, serious physical injury, or death to a person.
 - Causing damage to the property of someone other than the actor.
 - Engaging in any other conduct constituting a felony or unlawful imprisonment in the second degree, as defined in Penal Law §135.05.
 - Accusing a person of a crime or causing criminal charges or deportation proceedings to be instituted against him/her.
 - Exposing a secret or publicizing an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule.
- Testifying or providing information, or withholding testimony or information, with respect to another's legal claim or defense.
- Exercising or failing to exercise official duties as a public servant in a manner that affects some person adversely.

Sex Trafficking "Means"

- Drugging the victim with a controlled or uncontrolled substance
- Lying to the victim
- Confiscating government ID
- "Debt bondage"
- Physical force
- Instilling fear

- Performing an act calculated to harm a patronized person materially with respect to his/her health, safety, or immigration status.

Prosecution of traffickers and identification of sex trafficking victims will occur more frequently when more law enforcement, prosecutors, service providers, and the general public recognize persons patronized in prostitution as potential victims of sex trafficking, and when law enforcement and prosecutors screen for human trafficking in arrests for prostitution and prostitution-related crimes.

2. Attacking sex trafficking by reducing the demand for prostitution

New York State's Human Trafficking Law recognizes that the demand for prostitution drives the sex trafficking industry. It addresses this demand in two ways: First, the law increases the lowest level crime of patronizing a prostitute from a class B to a class A misdemeanor, subjecting the patron to a maximum sentence of one year in jail, if convicted.

New York's Human Trafficking Law recognizes that the demand for prostitution drives the supply of victims.

Increasing the penalty for patronizing a prostitute in the third degree codifies the judgment of the Legislature that patronizing a prostitute is a crime that can be deterred by increasing the penalty for that offense. However, patronizing offenses are currently underused by law enforcement personnel and prosecutors, who arrest and prosecute those patronized far more often than their patrons.⁷ Thus, law enforcement has yet to give full effect to this critical component of New York State's anti-trafficking efforts.

Second, the Human Trafficking Law amended §230.25 of the Penal Law to clarify that advancing or profiting from prostitution by operating a sex tour business is a form of promoting prostitution. Sex tour businesses typically transport patrons from the United States to other countries, such as the Philippines, Thailand, or the Dominican Republic, for purposes of paying for sex in these countries. This provision acknowledges that sex tour businesses operating in New York State increase global sex trafficking activity and that New York State must act as a responsible global citizen to fight sex trafficking as effectively as possible. New York is one of only five states to criminalize the operation of sex tour businesses (the others are Alaska, Hawaii, Missouri and Washington).

Patronizing offenses are currently underused by law enforcement personnel and prosecutors, who tend to arrest and prosecute those patronized far more often than their patrons.

⁷ DCJS criminal history records show that since 2002 police have made 43% more arrests for prostitution than for patronizing a prostitute. Defendants charged with prostitution are convicted at a 752% greater rate than those convicted of patronizing prostitutes.

3. Labor Trafficking

Section 135.35 of the Penal Law provides that a person is guilty of labor trafficking, a class D nonviolent felony carrying a maximum sentence of seven years imprisonment, if he/she compels or induces a person to engage in labor, or recruits, entices, harbors, or transports a person to engage in labor, by intentionally using one of the means specified. The means specified in the labor trafficking statute closely track the means specified in the sex trafficking statute, with some important distinctions. The means specified in §135.35 of the Penal Law include:

- Unlawfully providing a controlled substance to a person, with the intent to impair his/her judgment.
- Forcing the victim to work in order to pay off a real or purported debt.
- Withholding, destroying, or confiscating another person's actual or purported government identification document, with the intent to impair that person's freedom of movement.
- Using force. Traffickers often control their victims with physical and sexual abuse.⁸
- Engaging in any scheme, plan, or pattern to compel or induce a person to engage in, or continue to engage in, labor by instilling a fear in that person that, if he/she does not comply with the actor's demand, the actor or someone else will perform one or more act, including:
 - Causing physical injury, serious physical injury, or death to a person. That person can be the labor trafficking victim or others.
 - Causing damage to the property of someone other than the actor. Here, too, that someone can be the victim or others.
 - Engaging in any other conduct constituting a felony or unlawful imprisonment.
 - Accusing a person of a crime or causing criminal charges or deportation proceedings to be instituted against him/her.

Labor Trafficking "Means"

- Drugging the victim with a controlled substance
- "Debt bondage"
- Confiscating government ID
- Physical force
- Instilling fear

⁸ U.S. Department of Health and Human Services, Administration for Children and Families, The Campaign to Rescue and Restore Victims of Human Trafficking, Resources: Common Health Issues Seen in Victims of Human Trafficking, available at http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_health/health_problems.pdf (accessed June 1, 2008).

- Exposing a secret or publicizing an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule. This threat may be applied to labor trafficking victims or others.
- Testifying or providing information, or withholding testimony or information, with respect to another's legal claim or defense.
- Exercising or failing to exercise official duties as a public servant in a manner that affects some person adversely.

Again, New York State's Human Trafficking Law does not require movement of the victim, and labor trafficking victims may be U.S. citizens, or foreign-born persons with or without immigration status in the U.S. The statute protects victims who are trafficked anywhere in the State, including in low-wage industry venues, such as domestic work, sweatshops/factories, agriculture, hotels,⁹ restaurants,¹⁰ construction,¹¹ and nail and hair salons.¹²

One of the difficulties in recognizing labor trafficking is that the work performed by victims is usually legal, unlike the prostitution performed in sex trafficking. Therefore, sex trafficking may be more likely than labor trafficking to be the subject of law enforcement attention. Some manifestations of labor trafficking, such as domestic work, can be very well hidden and extremely difficult to discover. Thus, outreach and public awareness initiatives are critical to uncovering labor trafficking.

4. Other Criminal Provisions for Combating Human Trafficking

Sections 230.36 and 135.36 of the Penal Law preclude the liability of human trafficking victims as accomplices to their traffickers in the prosecution of human trafficking crimes. Consequently, convictions for sex trafficking and labor trafficking may be obtained from the uncorroborated testimony of victims.

⁹ USDHHS, Administration for Children and Families, The Campaign to Rescue and Restore Victims of Human Trafficking, Fact Sheet: Child Victims of Human Trafficking, available at http://www.acf.hhs.gov/trafficking/campaign_kits/tool_kit_social/child_victims.pdf (accessed June 1, 2008)

¹⁰ Id.

¹¹ USDHHS, Administration for Children and Families, The Campaign to Rescue and Restore Victims of Human Trafficking, Fact Sheet: Labor Trafficking, available at http://www.acf.hhs.gov/trafficking/about/fact_labor.pdf (accessed June 1, 2008).

¹² Donohue, Three charged in hair salon human trafficking ring (Sep. 6, 2007), available at http://www.nj.com/news/index.ssf/2007/09/three_charged_in_human_traffic.html (accessed June 1, 2008).

Additionally, the Human Trafficking Law amended §460.10 of the Penal Law to make sex trafficking and labor trafficking predicate crimes for enterprise corruption charges, and amended §700.05(8)(b) of the Criminal Procedure Law to include sex trafficking and labor trafficking as crimes for which eavesdropping and electronic surveillance warrants can be obtained.

Convictions for sex trafficking and labor trafficking may be obtained from uncorroborated witness testimony.

Finally, amendments to §168-a(2)(a)(i) of the Correction Law designate sex trafficking and attempted sex trafficking as offenses for which a conviction requires registration as a sex offender in New York State.

B. New services and assistance

Human trafficking victims are historically reluctant to come forward for a wide variety of reasons, including the fact that they fear arrest or deportation and because they are often dependent on the perpetrator for support, housing and other necessities for survival. However, neither federal nor state services in place prior to the Human Trafficking Law adequately addressed this problem.

Human trafficking victims are often reluctant to come forward, fearing law enforcement even more than their abuser. The new law should help to alleviate that fear.

To help address these gaps in assistance, the Human Trafficking Law provides for services to human trafficking victims who are unable to obtain assistance elsewhere due to their immigration status. These services include, but are not limited to:

- Case management services
- Emergency temporary housing assistance
- Health care
- Mental health counseling
- Drug addiction screening and treatment
- Language interpretation and translation services
- English language instruction
- Job training and placement assistance
- Post-employment services to promote job retention
- Services to assist human trafficking victims and their family members to establish permanent residence in the U.S.

OTDA provides, through contracts with service providers, services to adult human trafficking victims and certain of their family members who are unable to obtain assistance elsewhere due to their immigration status.

The Human Trafficking law provides a host of critical services that previously were unavailable to victims.

U.S. citizens, “eligible aliens”¹³ and most minors, regardless of immigration status, are not eligible for services from these providers. Local departments of social services throughout the state, however, provide services to human trafficking victims in these categories.

In order to access the services and assistance made available under the Human Trafficking Law, a person must be “confirmed” as a victim of human trafficking in accordance with §483-cc of Article 10-D of the Social Services Law.¹⁴ U.S. citizens, eligible aliens, and children need not be confirmed as victims of human trafficking under §483-cc to access the assistance already available to them at local departments of social services. However, OTDA facilitates their referral to local departments of social services.

That process begins with a referral from a law enforcement agency or district attorneys’ office to DCJS and OTDA (see Appendix B for a copy of the referral form). DCJS, in consultation with OTDA and the referring agency, determines whether the individual appears to meet the criteria for certification as a “victim of a severe form of trafficking in persons,” as defined by the TVPA, or otherwise appears to be eligible for any federal, state or local benefits. Once a victim is confirmed, OTDA is responsible for assisting the victim in obtaining services for which they are eligible.

C. New Interagency Task Force on Human Trafficking

Recognizing that the battle against human trafficking is a multi-agency and multi-disciplinary effort, the new law created an interagency task force. The task force is co-chaired by the commissioners of DCJS and OTDA, and includes eight other State agencies:

- Crime Victims Board
- Department of Health
- Department of Labor
- Division of State Police
- Office of Alcoholism and Substance Abuse Services
- Office of Children and Family Services
- Office of Mental Health
- Office for the Prevention of Domestic Violence

¹³ The term “eligible alien,” as used in this document, means only those aliens (e.g., legal permanent residents) who are eligible for assistance at local departments of social services (NYS Social Services Law § 122). Local departments of social services decide eligibility in all applications for assistance.

¹⁴ “Confirmation” must be distinguished from “certification.” “Confirmation” is limited to New York State and involves an assessment of whether a person is a victim of human trafficking under State law for purposes of receiving the services and assistance made available under the NYS Human Trafficking Law (NYS Social Services Law, Article 10-D, § 483-cc). In contrast, “certification” is a federal determination involving an assessment of whether a person is “a victim of a severe form of trafficking in persons” under the TVPA (PL 106-386 § 107[e][i][I]).

The statutory duties of the task force include:

- Collecting and organizing data on the nature and extent of human trafficking in New York State;
- Identifying federal, state, and local service programs for human trafficking victims;
- Developing recommendations for preventing human trafficking, protecting and assisting victims, and prosecuting traffickers;
- Establishing interagency protocols, and collaboration among government agencies, law enforcement agencies, and nongovernmental agencies;
- Evaluating and recommending strategies to increase public awareness of human trafficking;
- Evaluating training programs on human trafficking and making recommendations for improving them; and
- Evaluating the progress of New York State in preventing human trafficking, protecting and assisting victims, and prosecuting traffickers.

The task force meets on a quarterly basis. To fulfill its mandate, the task force established two subcommittees -- one to focus on criminal justice issues and another to focus on victim services, with both relying on the expertise of other agencies.

The Criminal Justice Subcommittee is chaired by DCJS and includes the following members:

- Department of Labor (N.Y.S.)
- Division of State Police (N.Y.S.)
- Office of Children and Family Services (N.Y.S.)
- Erie County Sheriff's Office
- New York City Criminal Justice Coordinator's Office
- New York City Police Department
- New York County District Attorney
- New York-New Jersey Regional Center for Public Safety Innovation
- Office of the New York State Attorney General
- New York State District Attorneys Association
- Office of Court Administration (N.Y.S.)
- Suffolk County Police Department
- U.S. Attorney's Office, Northern District of New York
- U.S. Attorney's Office, Western District of New York
- U.S. Immigration and Customs Enforcement (ICE)
- New York State Association of Chiefs of Police
- Office for the Prevention of Domestic Violence (N.Y.S.)

The Services Subcommittee is chaired by OTDA and includes the following New York State partners:

- Crime Victims Board
- Department of Health
- Department of Labor
- Office of Alcoholism and Substance Abuse Services
- Office of Children and Family Services
- Office of Mental Health
- Office for the Prevention of Domestic Violence
- Department of Agriculture and Markets
- Division of Housing and Community Renewal
- Office of Mental Retardation and Developmental Disabilities

III. Implementing the New Law

Implementing the new law required a coordinated effort by various agencies to ensure that the services promised under the legislation are available, that law enforcement and service providers are adequately trained and that victims and their advocates are aware of the protections and benefits provided through this historic legislation. The following describes efforts underway by the task force agencies to implement the Human Trafficking Law.

A. Response to Human Trafficking Program -- (RHTP)

OTDA established the Response to Human Trafficking Program (RHTP) to respond to the needs of human trafficking victims. This program offers desperately needed services to adult human trafficking victims without immigration status, and certain of their family members, who are unable to obtain such services under most federal, state, and local service programs.¹⁵

Implementing the new law required a concerted effort by myriad stakeholder agencies.

The RHTP provides these services through regional case management agencies under contract with OTDA. These case management agencies offer services modeled after the assistance currently available to persons eligible for public assistance. The RHTP also provides U.S. citizen, eligible alien, and child human trafficking victims with facilitated referrals for assistance from local departments of social services.

1. Adult human trafficking victims without immigration status and certain family members

Through a competitive bid process, OTDA entered into contracts with six organizations to provide case management and other services to confirmed adult human trafficking victims without immigration status and certain of their family members in eight statewide regions¹⁶ (see Appendix C for a map of regions):

- Western New York (Region 1): International Institute of Buffalo.
- Central New York, Southern Tier, and Mohawk Valley (Regions 2, 3, and 4, respectively): Catholic Charities of the Roman Catholic Diocese of Syracuse.
- Capital Region (Region 5): U.S. Committee for Refugees and Immigrants, Albany Field Office.
- Lower Hudson Valley (Region 6): My Sister's Place.
- Long Island (Region 7): Catholic Charities, Diocese of Rockville Centre.
- Metropolitan New York City (Region 8): Safe Horizon, Inc.

¹⁵ The U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement provides limited funding for this group of human trafficking victims through a contract with the U.S. Conference of Catholic Bishops.

¹⁶ OTDA received applications for only six Response to Human Trafficking Program (RHTP) regions. For this reason, five case management agencies cover one RHTP region each and one case management agency covers three regions.

In cases where an RHTP case management agency cannot provide services directly, the case management agency provides services through subcontracts/agreements with, or referrals to, other service providers. The RHTP contract term is 18 months, renewable for up to three 12-month terms.

- Services provided under the RHTP include all those authorized by the Human Trafficking Law:
- Case management services: Case management involves assessing client needs, developing service plans, and providing needed services, directly or indirectly through partnerships with service providers. As a condition of funding, RHTP case management agencies must provide case management services to all human trafficking victims served under the RHTP.
- Emergency temporary housing assistance
- Health care: Health care under the RHTP includes a comprehensive medical screening, as well as prescription medication. Treatment is limited to services and costs that would be allowed under Medicaid.
- Mental health counseling
- Drug addiction screening and treatment
- Language interpretation and translation services
- English language instruction
- Job training and placement assistance
- Post-employment services to promote job retention
- Services to assist human trafficking victims and their family members to establish permanent residence in the U.S. Such services include immigration application assistance and related legal services.

Additionally, the RHTP makes the following services available to confirmed human trafficking victims:

- Nutritional assistance
- Transitional and long-term housing
- Services to meet other identified needs¹⁷

The RHTP received funds totaling \$441,000 for State Fiscal Year 2008-2009. RHTP case management agencies currently receive \$289 for case management services per human trafficking victim per month, for up to six months,¹⁸ for a maximum of \$1,734.

17 RHTP case management agencies must receive written approval from OTDA before receiving cost reimbursement for other identified needs, such as clothing or transportation.

18 Some service providers/advocates have suggested that six months is an insufficient period of time for case management services to human trafficking victims. However, because human trafficking victims without immigration status may apply for federal certification (as distinguished from State confirmation) under the Trafficking Victims Protection Act of 2000 (PL 106-386), the RHTP offers these victims (and certain of their family members) services for a six-month period, in anticipation that many of them will eventually obtain certification. Once certified, these victims become eligible to receive services and assistance as if they were refugees, through local departments of social services and refugee service providers.

RHTP case management agencies receive actual cost reimbursement for all other services provided to victims under the RHTP, up to a \$10,754 aggregate cap for all services. However, if costs for any given service exceed OTDA's anticipated average amount¹⁹ by 20 percent or more, RHTP case management agencies must justify this cost and receive OTDA approval to bill OTDA for this cost.

OTDA is working closely with federal authorities to ensure that RHTP funds do not supplant federal funding available through certification for foreign-born victims, without immigration status.

RHTP case management agencies are prohibited, under the terms of their contracts, from using RHTP funds to supplant existing funding. Thus, RHTP funds do not duplicate other funds that may be available to adult human trafficking victims without immigration status.

One of the challenges of implementing the Human Trafficking Law has been the efficient coordination of service delivery over a large geographic region that includes one of the most densely populated cities in the world, as well as underserved rural areas. Establishing a statewide directory of service providers capable of serving human trafficking victims with linguistic and cultural sensitivity would facilitate greater coordination of assistance to these victims, especially after regular business hours and throughout the vast rural reaches of New York State.

Interagency Task Force on Human Trafficking members have identified a number of federal, state, and local service providers that offer assistance to human trafficking victims or have the capacity to offer such assistance. OTDA is compiling this information and plans to release a statewide services directory in the fall of 2008.

Another challenge is ensuring federal immigration assistance is provided to foreign-born victims. Section 483-dd of the NYS Social Services Law requires state and local law enforcement agencies and district attorneys' offices, upon the request of a victim of sex trafficking or labor trafficking under the Penal Law (or his/her representative), to provide that person with U.S. Citizenship and Immigration Services (USCIS) Form I-914, Supplement B – Declaration of Law Enforcement Officer for Victim of Trafficking in Persons ("I-914B"). This form assists human trafficking victims who are without immigration status and who are present in the U.S. because of trafficking to obtain immigration and other federally-funded assistance from the U.S. government.

However, federal immigration authorities currently give more weight to this document when submitted by federal law enforcement personnel.²⁰ For this reason, OTDA has made part of its federal

¹⁹ OTDA arrived at anticipated average amounts for individual RHTP services by analyzing data provided by victim service organizations and public assistance data.

²⁰ 67 Fed. Reg. 21 (Jan. 31, 2002); 8 USC 214.11; USCIS, Interoffice Memorandum HQOPRD 70/6.2 (Apr. 15, 2004).

legislative agenda a proposal to amend the Trafficking Victims Protection Act of 2000²¹ so that an I-914B submitted by state or local law enforcement is considered equal to an I-914B submitted by federal law enforcement.

2. United States citizen, eligible alien, and child human trafficking victims

U.S. citizen, eligible alien, and most child human trafficking victims are precluded from RHTP-funded services because they can apply for public assistance benefits which are similar to the services available through the RHTP. Indeed, the services described above were modeled after the assistance currently provided at local departments of social services.

The OTDA Anti-trafficking Program Coordinator, who manages the RHTP, provides facilitated referrals to local social services districts for U.S. citizen, eligible alien, and child human trafficking victims. OTDA and the Office of Children and Family Services (OCFS) are working jointly to explore non-residential services that may be provided to unaccompanied minors who have been trafficked and confirmed under the N.Y.S. human trafficking law and are not otherwise eligible for services. In all instances involving a minor, OTDA is committed to working closely with the local districts to ensure that appropriate services are provided.

Additionally, OTDA and OCFS have drafted a formal protocol governing local department of social services procedures in these cases that will be issued shortly and OTDA is planning to train local departments of social services on serving human trafficking victims during the fall of 2008 (see Section III.B., Statewide training and outreach program).

The Task Force also plans to develop a set of recommendations for improving service delivery at local departments of social services and for facilitating US citizen, eligible alien, and child human trafficking victim access to assistance available at local departments of social services.

The Task Force will work with local social service departments to improve the delivery of service to victims of human trafficking.

3. Safe housing for trafficking victims

Human trafficking victims can be vulnerable to re-victimization; they require safe housing that protects their person, confidentiality, and privacy. Domestic violence shelters, which can sometimes provide safe haven for female human trafficking victims, are governed by statutes and regulations that were not designed with the specific nature of trafficking victims in mind, and have restrictions that can prevent victims from seeking their shelter.

The Office for the Prevention of Domestic Violence (OPDV), in partnership with OCFS and OTDA, are already in the process of reviewing and updating existing domestic violence shelter regulations and will examine whether amendments might be made to provide greater access to female human trafficking victims. Task Force members also are examining means of providing safe housing to male human trafficking victims, who have even fewer housing options available to them.²²

Additionally, OCFS and other Task Force members are examining how to best provide housing to child human trafficking victims, who pose particular problems where shelter is concerned.

Child victims of human trafficking can be treated as either juvenile delinquents or as subjects of child protective matters under the current law. The decision on how to classify these children and on whether or not to treat them as victims is made at the local level. Child victims who are classified as subjects of child protective matters are cared for by local departments of social services. Children who are charged and adjudicated as juvenile delinquents are sometimes remanded to the custody of OCFS in a juvenile justice facility.

OCFS and other Task Force members are working to develop alternative housing for child human trafficking victims. OCFS is also considering how best to provide housing and services to child human trafficking victims without immigration status, as federal law currently prohibits the utilization of State funds to provide foster care services to such victims.²³ OCFS is developing safe, service-oriented housing for sexually exploited and abused girls who are in OCFS custody. Finally, OCFS is seeking to remove an agency regulation requirement that Child Protective Services staff inform federal immigration authorities when they encounter someone without immigration status. This amendment will help promote the treatment of trafficked children without immigration status as victims.

B. Statewide training and outreach program

The Interagency Task Force co-chairs-- DCJS and OTDA -- have conducted extensive human trafficking training and outreach to law enforcement, service providers and others in the past year. Other Task Force members have also been training staff and raising awareness about human trafficking in their respective agencies and service provider networks.

While much training and outreach has occurred during the first year, much more is needed before the potential for this new law is realized.

22 Typically, men cannot access domestic violence shelters.

23 OCFS has proposed legislation to clarify the definition of “destitute children” in New York State to establish a mechanism for assisting child human trafficking victims who are not victims of child abuse or maltreatment under State law. Local Departments of Social Services are required to assist destitute children in New York State, regardless of their immigration status. However, the current law does not provide for any process for Local Departments of Social Services to employ to legally take custody of these children and pursue permanency for them. In addition, current state and federal law prohibit the use of state or federal funds for residential services for undocumented children. The proposed legislation would establish a process for taking these children into custody, promote permanency for them and make the statutory changes necessary to allow state funds to be spent on foster care expenses of undocumented children.

OTDA's training and outreach efforts include:

- Retaining a nationally-renowned expert on human trafficking to train State agency staff,²⁴ Response to Human Trafficking Program case management agencies, and law enforcement personnel.
- Contracting with a nationally renowned victim service organization-- Safe Horizon Inc. -- to train service providers and law enforcement in a series of regional trainings offered statewide during the spring of 2008.
- Participating in numerous DCJS-sponsored trainings and delivering agency-specific trainings to individual state government agencies, including the Office of Alcoholism and Substance Abuse Services, the Office of Court Administration, and the Office of Mental Retardation and Developmental Disabilities.

DCJS' training and outreach efforts include:

- Advising all New York State law enforcement agencies of the provisions in the Human Trafficking Law by letter shortly before the law took effect on November 1, 2007 (see Appendix D).
- Training law enforcement on human trafficking and the Human Trafficking Law since September of 2007. DCJS has trained numerous agencies (Department of Labor, Office of Alcoholism and Substance Abuse Services, and the Office of Mental Retardation and Developmental Disabilities), in addition to staff from the Unified Court System's Office of Court Administration, state prosecutors through the New York Prosecutors Training Institute, Inc. (NYPTI), and the Syracuse Area Domestic and Sexual Violence Coalition.
- Distributing a 50-minute training DVD on the Human Trafficking Law to all 62 district attorneys in New York State. The DVD has also been posted to eJusticeNY, a secure DCJS website for law enforcement agencies, to reach as many law enforcement agencies as possible.

DCJS' efforts to train prosecutors have included individual meetings and Continuing Legal Education programs at district attorneys' offices statewide to discuss the implementation of the Human Trafficking Law, and how the investigation of prostitution activity can lead to the identification of human trafficking victims and the prosecution of traffickers. These training efforts include the identification of law enforcement strategies to uncover human trafficking, including:

- Screening defendants charged with prostitution activity to identify sex trafficking victims;
- Monitoring websites that advertise sexual services, such as www.bestgfe.com, www.utopiaguide.com, and the erotic services section of www.craigslist.com;
- Addressing the demand for prostitution by focusing enforcement efforts on patrons/persons who pay for sex;

²⁴ Staff from the Crime Victims Board, Department of Health, OCFS, Office of Mental Health, Office of Mental Retardation and Developmental Disabilities, and OPDV attended OTDA's State agency staff training.

- Adopting a “no plea” policy in promoting prostitution cases;
- Screening patrons/persons who pay for sex for information on possible human trafficking;
- Encouraging law enforcement to consider labor trafficking charges in a prostitution investigation; and
- Establishing contacts between state and federal law enforcement to ensure that victims of labor trafficking under both federal and state law are identified.

Sex and labor trafficking cases can be prosecuted under organized crime statutes.

The training emphasizes the investigatory tools available to law enforcement under the Human Trafficking Law, including eavesdropping and video surveillance warrants for sex trafficking and labor trafficking investigations, and using sex trafficking and labor trafficking as bases for organized crime charges.

In addition to the statewide training efforts of OTDA and DCJS, all of the other Interagency Task Force members have engaged their staff and service provider networks in training on human trafficking and/or the Human Trafficking Law.

Training is essential for state law enforcement, ICE, service providers, and non-law enforcement agencies likely to encounter human trafficking victims as these groups play a key role in identifying and providing services to human trafficking victims, prosecuting traffickers, and preventing human trafficking. Agencies that have received training have been very active in producing leads for law enforcement and in assisting victims.

Finally, in order to obtain direct comment from the human trafficking service provider/advocate

The Task Force cannot overstate the importance of training for law enforcement, service providers, and government agency staff.

community, the NYS Interagency Task Force on Human Trafficking (“Task Force”) hosted a public hearing in December of 2007 to capture the recommendations of this community for strengthening the State’s human trafficking response. The Task Force received oral testimony from 20 organizations at the hearing (see <http://www.otda.state.ny.us/main/bria/> for a transcript of the hearing). Written testimony was submitted by another seven organizations that could not attend the hearing.

The Task Force also plans to form an Advocacy Subcommittee to afford the advocate community an opportunity for greater input in the implementation of the human trafficking law. The Advocacy Subcommittee will compliment the Task Force’s existing Criminal Justice and Services Subcommittees (see section II.C.).

C. Public awareness efforts

The task force co-chairs (DCJS and OTDA) have conducted and participated in public awareness initiatives around the State to increase the recognition of human trafficking activities and identification of victims. The Task Force plans to expand its public awareness efforts in 2008-2009.

OTDA's public awareness efforts for 2007-2008 include:

- Training OTDA's N.Y.S. Citizenship Hotline²⁵ operators to address calls about human trafficking;
- Regularly providing information about human trafficking to the Albanian, Arabic, Asian, Chinese, Haitian, Hispanic, North African and French-speaking African, Polish, Russian, Slavic, and former Soviet republic communities through OTDA's Bureau of Refugee and Immigrant Assistance, Immigrant Community Liaison Unit (ICLU);
- Publishing an informational brochure on human trafficking for the general public (see Appendix E) and posting the brochure on the OTDA website (<http://www.otda.state.ny.us/main/bria/>);
- Speaking on New York State's human trafficking response at a New York Service Network for Trafficked Persons meeting in New York City in February of 2008;
- Speaking on New York State's human trafficking response at the Empire State Coalition's Rescue and Restore Coalition meeting in Nassau County in March of 2008;
- Participating in a human trafficking awareness-raising event in New York City, sponsored by Rivers in the Desert Advocacy Center and co-sponsored by several community groups, in March of 2008;
- Speaking on New York State's human trafficking response at the Arizona Refugee Resettlement Program Conference in April of 2008;
- Speaking on a human trafficking panel at the NYS Coalition Against Domestic Violence conference in New York City in April of 2008;
- Speaking on New York State's human trafficking response at the Freedom Network for Trafficked Persons conference in Georgia in April of 2008;
- Speaking on New York State's human trafficking response at the Third Annual Unaccompanied Alien Children Conference in Illinois in April of 2008; and
- Speaking on New York State's human trafficking response at Niagara University's Human Trafficking Conference in May of 2008.

DCJS has engaged in similar outreach initiatives to raise public awareness, with the goal of encouraging law enforcement personnel and members of the public to identify human trafficking victims.

Accomplishing this goal requires a shift in paradigm: At first glance, human trafficking victims may appear to be prostitutes, runaways, or illegal U.S. entrants, and shifting this perception to the view that such persons also may be victims of crime in need of assistance requires significant outreach. To this end, DCJS focuses its public awareness efforts on fostering this paradigm shift, and encouraging law enforcement personnel, service providers, and the general public to work together to identify and assist human trafficking victims.

²⁵ The NYS Citizenship Hotline is a multilingual service that provides information about immigration matters and referrals to callers. For more information, call 800-566-7636.

DCJS' outreach activities for 2007-2008 include:

- Publishing information regarding human trafficking on DCJS' website at www.criminaljustice.state.ny.us/pio/humantrafficking.htm;
- Providing media interviews and publishing an article on the human trafficking law by DCJS Commissioner Denise E. O'Donnell in the New York Law Journal (see Appendix F) in December of 2007;
- Participating in a human trafficking awareness-raising event to announce the availability of information on human trafficking at all Northway (I-87) rest stops, sponsored by Soroptimist International, in January of 2008;
- Participating in a human trafficking awareness-raising event in New York City, sponsored by Rivers in the Desert Advocacy Center and co-sponsored by several community groups, in March of 2008;
- Speaking on a human trafficking panel at the N.Y.S. Coalition Against Domestic Violence conference in New York City in April of 2008;
- Participating in a Sexual Assault Awareness Month event highlighting human trafficking, sponsored by the N.Y.S. Coalition Against Sexual Assault and co-sponsored by certain New York State legislators, in April of 2008;
- Speaking at a United Nations' panel sponsored by the United States Mission to the United Nations, "How New York Implemented The Nation's Toughest Trafficking Law," in May 2008;
- Creating a 30-minute television program on human trafficking that is expected to air on several public access stations over the next several months.

The Task Force plans to evaluate its own and other approaches to raising public awareness about human trafficking during 2008-2009. It also plans to convene a workgroup during 2008-2009 to review Task Force members' human trafficking literature for accuracy and clarity.

Effective prosecution of human trafficking cases requires a new way of thinking, and a willingness to view prostitutes and "under-the-table" workers as potential victims and not simply law-breakers.

D. Activities of the Task Force Members

Efforts to implement the new law by the Task Force co-chairs, DCJS and OTDA, were augmented by the activities of the other Task Force partners. All of them made valuable contributions, as outlined below.

1. New York State Crime Victims Board

The Crime Victims Board (CVB) has taken a number of steps to implement the Human Trafficking Law, including modifying regulations to create a rebuttable presumption that human trafficking victims have suffered physical injury for purposes of establishing their eligibility for crime victims compensation. CVB has also notified its victim assistance providers of procedures to follow upon encountering a human trafficking victim applicant for crime victims compensation (see Appendix G for CVB advisory bulletin), and is training its victim assistance providers to request and collect restitution payable to human trafficking victims.

CVB now accepts a notice of confirmation from OTDA, in lieu of a law enforcement attestation, to verify a human trafficking victim's status as a crime victim and requires its victim assistance providers to indicate on applications when an applicant is also a human trafficking victim.²⁶

CVB staff attended the human trafficking training for state agency staff offered by the Office of Temporary and Disability Assistance (OTDA) in January of 2008, and served as co-presenter at every OTDA-sponsored regional training for service providers and law enforcement. CVB continues to encourage its staff and victim assistance providers to participate in trainings to increase their understanding of human trafficking, and CVB plans to use its website, National Crime Victims' Rights Week in April each year, and other outreach opportunities to raise public awareness.

2. New York State Department of Health

The Department of Health (DOH) currently serves federally-certified human trafficking victims through its Refugee Health Program. This program's statewide providers offer federally-funded health assessments to persons certified as victims of a severe form of trafficking in persons under federal law. The Refugee Health Program collects health and other data from these victims. DOH plans to survey its staff to ascertain the level of human trafficking awareness among other programs, as well as the nature and extent of DOH program contact with human trafficking victims.

DOH staff attended the human trafficking training for state agency staff offered by OTDA in January of 2008, and made OTDA and DCJS training opportunities available to local health departments. DOH has plans for further staff training, using a domestic violence/child abuse training model in order to emphasize the importance of maintaining the safety of victims and staff. DOH also has plans to train local health departments to recognize and report human trafficking, while maintaining victim and staff safety, through the New York State Association of County Health Officials. Additionally, DOH is helping to facilitate OTDA-sponsored training for the Onondaga Migrant Health Coalition, slated for fall of 2008.

²⁶ Since the Human Trafficking Law took effect on November 1, 2007, CVB has received one claim for crime victims compensation from a human trafficking victim.

3. New York State Department of Labor

The Department of Labor (DOL) arranged for DCJS to train all of its Labor Standards investigators to recognize human trafficking by January of 2008. These investigators have also been trained on use of Interpretalk, so that they can quickly access interpreters in any language over the telephone. Subsequently, these investigators uncovered a sex trafficking case in upstate New York in February of 2008. DOL involved DCJS, OTDA, and appropriate law enforcement agencies in the case, which collaborated with DOL to organize a rescue and assistance initiative for the human trafficking victim involved.

Additionally, DOL's Bureau of Immigrant Workers' Rights and Labor on Wheels program, which provides outreach to immigrant communities around the State, plans to include human trafficking in its outreach efforts and DOL labor law investigators plan to screen for possible human trafficking during investigations of low-wage industry venues and to offer service referrals to suspected victims.

4. New York State Division of State Police

The Division of State Police prepared and distributed a legal bulletin providing an overview of the Human Trafficking Law, and law enforcement agencies' obligations under this law, to all State Police personnel. Additionally, the State Police arranged for DCJS to train sworn personnel statewide on the Human Trafficking Law. The State Police designated the Crime Victim Specialist in each State Police Troop as a liaison on human trafficking cases, and is developing an accelerated training program on the Human Trafficking Law for Senior Investigators in the Bureau of Criminal Investigation in every State Police Troop. These Senior Investigators will also act as liaisons on human trafficking.

Furthermore, the State Police have posted on their intranet a referral form for law enforcement agencies, district attorneys' offices, and sworn personnel to use in making notifications under §483-cc of Article 10-D of the Social Services Law (see Appendix B).

5. New York State Office of Alcoholism and Substance Abuse Services

The Office of Alcoholism and Substance Abuse Services (OASAS) has widely disseminated information on human trafficking, including OTDA's human trafficking brochure (see Appendix E), to its service provider network.²⁷

Additionally, OASAS has arranged for DCJS and OTDA to train OASAS community-based service provider staff, particularly staff working with immigrant communities in New York City and on

27 OASAS also plans to distribute the brochure under development at the NYS Office of Mental Health, once it is complete.

Long Island, to encourage increased awareness of human trafficking among OASAS' service population and to encourage the identification of human trafficking victims among this population by OASAS staff. OASAS is exploring how to capture demographic information on human trafficking victims in its client data system.

6. New York State Office of Children and Family Services

OCFS has worked very closely with OTDA to develop a protocol which will be issued shortly to facilitate child human trafficking victim contact with local departments of social services. This protocol details methods currently available to local departments of social services to assist child human trafficking victims. OCFS has also designated two regional staff, one in New York City and one in Buffalo, to support child welfare staff at local departments of social services in human trafficking cases. These staff attended OTDA and DCJS trainings, including OTDA's state agency staff training offered in January of 2008.

In collaboration with OPDV, OCFS shared training opportunities, the service provider/advocate public hearing announcement, and a referral form for law enforcement agencies and district attorneys' offices to use in making notifications under §483-cc of Article 10-D of the Social Services Law (see Appendix B) with all residential and non-residential domestic violence programs in the State.

Additionally, OCFS is developing safe housing for sexually exploited and abused girls who are in OCFS custody, and exploring other safe housing and assistance options for child human trafficking victims. OCFS has adopted a policy of treating these children as victims, despite any criminal or juvenile delinquent charges filed against them as a result of the trafficking.²⁸ As previously noted, OCFS has also proposed legislation to clarify the definition of "destitute children" in New York State to establish a mechanism for assisting child human trafficking victims who are not victims of child abuse or maltreatment under State law, and is seeking to remove an agency regulation requirement that Child Protective Services staff inform federal immigration authorities when they encounter someone without immigration status.

7. New York State Office of Mental Health

The Office of Mental Health (OMH) is developing a brochure to raise awareness about human trafficking among its programs' service providers. The brochure will provide an overview of human trafficking, information on identifying and communicating with victims, and sample interview questions. OMH staff also attended the human trafficking training for state agency staff offered by OTDA in January of 2008 and has plans for additional staff training.

²⁸ Currently, criminal or juvenile delinquent charges affect the type of assistance available to children at local departments of social services.

8. New York State Office of Mental Retardation and Developmental Disabilities

The Office of Mental Retardation and Developmental Disabilities (OMRDD) attended the human trafficking training for state agency staff offered by OTDA in January of 2008, and OMRDD staff attended an agency-specific training provided by DCJS and OTDA in the spring of 2008. Additionally, OMRDD prepared and distributed an article on human trafficking to OMRDD's service coordinators.

OMRDD plans to offer its staff additional human trafficking training opportunities, including a segment on human trafficking during its annual staff training, and plans to post information about the Human Trafficking Law at Developmental Disabilities Services Offices statewide.

9. New York State Office for the Prevention of Domestic Violence

All Office for the Prevention of Domestic Violence (OPDV) training staff attended the human trafficking training for state agency staff offered by OTDA in January of 2008. These training staff, who themselves train service providers and law enforcement personnel, have incorporated a human trafficking component into OPDV's training curriculum for law enforcement personnel and plan to incorporate human trafficking into all other OPDV training curricula.

Additionally, in collaboration with OCFS, OPDV shared training opportunities, the service provider/advocate public hearing announcement, and a referral form for law enforcement agencies and district attorneys' offices to use in making notifications under §483-cc of Article 10-D of the NYS Social Services Law (see Appendix B) with all residential and non-residential domestic violence programs in the State.

OPDV, along with other Task Force members, is also examining domestic violence shelter statutes and regulations to determine whether amendments could provide greater safe housing access to female human trafficking victims,²⁹ who are often prevented from using domestic violence shelters by the current legal construct.

Furthermore, OPDV is preparing a brief guide to human trafficking for its service provider network, and plans to make Response to Human Trafficking Program contact information available from OPDV training staff, from the State's domestic violence and sexual assault hotlines, and from its website.

29 Typically, men cannot access domestic violence shelters.

IV. Going Forward

A. Priorities

Although the battle against human trafficking has advanced considerably in the past year, this effort is still in its infancy as the Interagency Task Force pursues a tripartite mission: preventing human trafficking; protecting and assisting victims; and prosecuting and punishing traffickers.

The major and immediate objectives for the Task Force include:

- **Expanding statewide training**

to and coordination with state law enforcement agencies, ICE, service providers, and non-law enforcement agencies likely to encounter human trafficking victims. Training is essential for law enforcement, service providers, and faith-based organizations as these groups play a key role in the identification and provision of assistance to human trafficking victims, the prosecution of traffickers, and the prevention of future human trafficking.

Immediate goals

Expand training

Expand outreach and public awareness

Establish directory of service providers

Improve service delivery

Expand housing options

Promote immigration assistance

Reduce demand

Explore development of prostitution diversion courts

- **Expanding outreach and public awareness efforts.** Public awareness is paramount to changing the perception that trafficking victims are criminals and not “real victims.”
- **Establishing a statewide directory of service providers.** One of the challenges of implementing the Human Trafficking Law has been the efficient coordination of service delivery over a large geographic region that includes one of the most densely populated cities in the world, as well as underserved rural areas. Establishing a statewide directory of service providers capable of serving human trafficking victims with linguistic and cultural sensitivity would facilitate greater coordination of assistance to these victims, especially after regular business hours and throughout the vast rural reaches of New York State.
- **Improving the delivery of services for U.S. citizen, eligible alien and child human trafficking victims who do not qualify for the full range of “Response to Human Trafficking Program (RHTP)”- funded services.** The Task Force plans to develop a set of recommendations for improving service delivery at local departments of social services and for facilitating U.S. citizen,

eligible alien, and child human trafficking victim access to assistance available at local departments of social services.

- **Expanding safe housing options.** Providing safe housing to human trafficking victims has been a particularly difficult endeavor: Human trafficking victims can be vulnerable to re-victimization and require safe housing that protects them and respects their privacy/ confidentiality interests.³⁰ Unfortunately, domestic violence shelters, which might otherwise provide safe haven for female human trafficking victims, are governed by a restrictive legal environment that often prevent these victims from seeking their shelter.
- **Promoting federal immigration assistance.** Section 483-dd of the Social Services Law requires state and local law enforcement agencies and district attorneys' offices to provide, upon request, a trafficking victim with U.S. Citizenship and Immigration Services (USCIS) Form I-914, Supplement B – Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (“I-914B”). This form assists human trafficking victims who are without immigration status and who are present in the U.S. because of trafficking to obtain immigration and other federally funded assistance from the U.S. government. Because federal immigration authorities currently give more weight to this document when submitted by federal law enforcement personnel, OTDA has made part of its federal legislative agenda a proposal to amend the Trafficking Victims Protection Act of 2000 so that an I-914B submitted by state or local law enforcement is considered equal to an I-914B submitted by federal law enforcement.
- **Enhancing law enforcement strategies directed toward persons who exploit prostitutes and employ forced labor in New York State.** Stemming the demand for prostitution, as well as goods produced with forced labor, will reduce human trafficking. Similarly, it follows that making New York State less hospitable to traffickers will reduce the influx of human trafficking victims.
- **Explore the development of prostitution diversion courts.** Two downstate courts, the Midtown Community Court and Queens Criminal Court, provide special services to prostitution defendants in recognition that they may be victims of sex trafficking. Programs like these have the potential to dramatically reduce the harm -- legal and otherwise -- suffered by sex trafficking victims. These programs acknowledge the victimhood of sex trafficking victims arrested for prostitution and offer them help, rather than prosecution.

³⁰ The NYS Interagency Task Force on Human Trafficking is exploring how best to observe the heightened confidentiality needs of human trafficking victims in housing and in the provision of services.

APPENDIX A

HUMAN TRAFFICKING

LAWS OF NEW YORK, 2007
CHAPTER 74

EXPLANATION--Matter in **italics** is new; matter in brackets [-] is old law to be omitted.

AN ACT to amend the penal law, the criminal procedure law, the correction law, the social services law and the executive law, in relation to human trafficking; to repeal section 230.03 of the penal law relating to patronizing a prostitute in the fourth degree; and providing for the repeal of certain provisions upon expiration thereof

Became a law June 6, 2007, with the approval of the Governor.
Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 230.25 of the penal law, as amended by chapter 627 of the laws of 1978, is amended to read as follows:

1. Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by two or more prostitutes, **or a business that sells travel-related services knowing that such services include or are intended to facilitate travel for the purpose of patronizing a prostitute, including to a foreign jurisdiction and regardless of the legality of prostitution in said foreign jurisdiction;** or

§ 2. The penal law is amended by adding two new sections 230.34 and 230.36 to read as follows:

§ 230.34 Sex trafficking.

A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;

2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;

3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
(a) cause physical injury, serious physical injury, or death to a person; or
(b) cause damage to property, other than the property of the actor; or
(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;
or
(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
(g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
(h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.

Sex trafficking is a class B felony

§ 230.36 Sex trafficking; accomplice.

In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed to be an accomplice.

§ 3. The penal law is amended by adding two new sections 135.35 and 135.36 to read as follows:

§ 135.35 Labor trafficking.

A person is guilty of labor trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors, or transports such other person by means of intentionally:

1. unlawfully providing a controlled substance to such person with intent to impair said person's judgment;
2. requiring that the labor be performed to retire, repay, or service a real or purported debt that the actor has caused by a systematic ongoing course of conduct with intent to defraud such person;
3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported govern-

ment identification document, of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. using force or engaging in any scheme, plan or pattern to compel or induce such person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or

(e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Labor trafficking is a class D felony.

§ 135.36 Labor trafficking; accomplice.

In a prosecution for labor trafficking, a person who has been compelled or induced or recruited, enticed, harbored or transported to engage in labor shall not be deemed to be an accomplice.

§ 4. Section 230.03 of the penal law is REPEALED.

§ 5. Section 230.04 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

§ 230.04 Patronizing a prostitute in the third degree.

A person is guilty of patronizing a prostitute in the third degree when [~~being over twenty one years of age,~~] he or she patronizes a prostitute [~~and the person patronized is less than seventeen years of age~~].

Patronizing a prostitute in the third degree is a class A misdemeanor.

§ 6. Section 230.07 of the penal law, as added by chapter 627 of the laws of 1978, is amended to read as follows:

§ 230.07 Patronizing a prostitute; defense.

In any prosecution for patronizing a prostitute in the first[~~7~~] or second [~~or third~~] degrees, it is a defense that the defendant did not have reasonable grounds to believe that the person was less than the age

specified.

§ 7. Paragraph (a) of subdivision 1 of section 460.10 of the penal law, as amended by chapter 442 of the laws of 2006, is amended to read as follows:

(a) Any of the felonies set forth in this chapter: sections 120.05, 120.10 and 120.11 relating to assault; sections 125.10 to 125.27 relating to homicide; sections 130.25, 130.30 and 130.35 relating to rape; sections 135.20 and 135.25 relating to kidnapping; **section 135.35 relating to labor trafficking**; section 135.65 relating to coercion; sections 140.20, 140.25 and 140.30 relating to burglary; sections 145.05, 145.10 and 145.12 relating to criminal mischief; article one hundred fifty relating to arson; sections 155.30, 155.35, 155.40 and 155.42 relating to grand larceny; sections 177.10, 177.15, 177.20 and 177.25 relating to health care fraud; article one hundred sixty relating to robbery; sections 165.45, 165.50, 165.52 and 165.54 relating to criminal possession of stolen property; sections 170.10, 170.15, 170.25, 170.30, 170.40, 170.65 and 170.70 relating to forgery; sections 175.10, 175.25, 175.35, 175.40 and 210.40 relating to false statements; sections 176.15, 176.20, 176.25 and 176.30 relating to insurance fraud; sections 178.20 and 178.25 relating to criminal diversion of prescription medications and prescriptions; sections 180.03, 180.08, 180.15, 180.25, 180.40, 180.45, 200.00, 200.03, 200.04, 200.10, 200.11, 200.12, 200.20, 200.22, 200.25, 200.27, 215.00, 215.05 and 215.19 relating to bribery; sections 190.40 and 190.42 relating to criminal usury; section 190.65 relating to schemes to defraud; sections 205.60 and 205.65 relating to hindering prosecution; sections 210.10, 210.15, and 215.51 relating to perjury and contempt; section 215.40 relating to tampering with physical evidence; sections 220.06, 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43, 220.46, 220.55 and 220.60 relating to controlled substances; sections 225.10 and 225.20 relating to gambling; sections 230.25, 230.30, and 230.32 relating to promoting prostitution; **section 230.34 relating to sex trafficking**; sections 235.06, 235.07 and 235.21 relating to obscenity; section 263.10 relating to promoting an obscene **sexual** performance by a child; sections 265.02, 265.03, 265.04, 265.11, 265.12, 265.13 and the provisions of section 265.10 which constitute a felony relating to firearms and other dangerous weapons; and sections 265.14 and 265.16 relating to criminal sale of a firearm; and section 275.10, 275.20, 275.30, or 275.40 relating to unauthorized recordings; and sections 470.05, 470.10, 470.15 and 470.20 relating to money laundering; or

§ 8. Paragraph (b) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 442 of the laws of 2006, is amended to read as follows:

(b) Any of the following felonies: assault in the second degree as defined in section 120.05 of the penal law, assault in the first degree as defined in section 120.10 of the penal law, reckless endangerment in the first degree as defined in section 120.25 of the penal law, promoting a suicide attempt as defined in section 120.30 of the penal law, criminally negligent homicide as defined in section 125.10 of the penal law, manslaughter in the second degree as defined in section 125.15 of the penal law, manslaughter in the first degree as defined in section 125.20 of the penal law, murder in the second degree as defined in

section 125.25 of the penal law, murder in the first degree as defined in section 125.27 of the penal law, abortion in the second degree as defined in section 125.40 of the penal law, abortion in the first degree as defined in section 125.45 of the penal law, rape in the third degree as defined in section 130.25 of the penal law, rape in the second degree as defined in section 130.30 of the penal law, rape in the first degree as defined in section 130.35 of the penal law, criminal sexual act in the third degree as defined in section 130.40 of the penal law, criminal sexual act in the second degree as defined in section 130.45 of the penal law, criminal sexual act in the first degree as defined in section 130.50 of the penal law, sexual abuse in the first degree as defined in section 130.65 of the penal law, unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, kidnapping in the second degree as defined in section 135.20 of the penal law, kidnapping in the first degree as defined in section 135.25 of the penal law, **labor trafficking as defined in section 135.35 of the penal law**, custodial interference in the first degree as defined in section 135.50 of the penal law, coercion in the first degree as defined in section 135.65 of the penal law, criminal trespass in the first degree as defined in section 140.17 of the penal law, burglary in the third degree as defined in section 140.20 of the penal law, burglary in the second degree as defined in section 140.25 of the penal law, burglary in the first degree as defined in section 140.30 of the penal law, criminal mischief in the third degree as defined in section 145.05 of the penal law, criminal mischief in the second degree as defined in section 145.10 of the penal law, criminal mischief in the first degree as defined in section 145.12 of the penal law, criminal tampering in the first degree as defined in section 145.20 of the penal law, arson in the fourth degree as defined in section 150.05 of the penal law, arson in the third degree as defined in section 150.10 of the penal law, arson in the second degree as defined in section 150.15 of the penal law, arson in the first degree as defined in section 150.20 of the penal law, grand larceny in the fourth degree as defined in section 155.30 of the penal law, grand larceny in the third degree as defined in section 155.35 of the penal law, grand larceny in the second degree as defined in section 155.40 of the penal law, grand larceny in the first degree as defined in section 155.42 of the penal law, health care fraud in the fourth degree as defined in section 177.10 of the penal law, health care fraud in the third degree as defined in section 177.15 of the penal law, health care fraud in the second degree as defined in section 177.20 of the penal law, health care fraud in the first degree as defined in section 177.25 of the penal law, robbery in the third degree as defined in section 160.05 of the penal law, robbery in the second degree as defined in section 160.10 of the penal law, robbery in the first degree as defined in section 160.15 of the penal law, unlawful use of secret scientific material as defined in section 165.07 of the penal law, criminal possession of stolen property in the fourth degree as defined in section 165.45 of the penal law, criminal possession of stolen property in the third degree as defined in section 165.50 of the penal law, criminal possession of stolen property in the second degree as defined by section 165.52 of the penal law, criminal possession of stolen property in the first degree as defined by section 165.54 of the penal law, trademark counterfeiting in the first

degree as defined in section 165.73 of the penal law, forgery in the second degree as defined in section 170.10 of the penal law, forgery in the first degree as defined in section 170.15 of the penal law, criminal possession of a forged instrument in the second degree as defined in section 170.25 of the penal law, criminal possession of a forged instrument in the first degree as defined in section 170.30 of the penal law, criminal possession of forgery devices as defined in section 170.40 of the penal law, falsifying business records in the first degree as defined in section 175.10 of the penal law, tampering with public records in the first degree as defined in section 175.25 of the penal law, offering a false instrument for filing in the first degree as defined in section 175.35 of the penal law, issuing a false certificate as defined in section 175.40 of the penal law, criminal diversion of prescription medications and prescriptions in the second degree as defined in section 178.20 of the penal law, criminal diversion of prescription medications and prescriptions in the first degree as defined in section 178.25 of the penal law, escape in the second degree as defined in section 205.10 of the penal law, escape in the first degree as defined in section 205.15 of the penal law, absconding from temporary release in the first degree as defined in section 205.17 of the penal law, promoting prison contraband in the first degree as defined in section 205.25 of the penal law, hindering prosecution in the second degree as defined in section 205.60 of the penal law, hindering prosecution in the first degree as defined in section 205.65 of the penal law, **sex trafficking as defined in section 230.34 of the penal law**, criminal possession of a weapon in the third degree as defined in subdivisions two, three, four and five of section 265.02 of the penal law, criminal possession of a weapon in the second degree as defined in section 265.03 of the penal law, criminal possession of a dangerous weapon in the first degree as defined in section 265.04 of the penal law, manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances defined as felonies in subdivisions one, two, and three of section 265.10 of the penal law, sections 265.11, 265.12 and 265.13 of the penal law, or prohibited use of weapons as defined in subdivision two of section 265.35 of the penal law, relating to firearms and other dangerous weapons;

§ 9. Subparagraph (i) of paragraph (a) of subdivision 2 of section 168-a of the correction law, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

(i) a conviction of or a conviction for an attempt to commit any of the provisions of sections 130.20, 130.25, 130.30, 130.40, 130.45, 130.60, **230.34**, 250.50, 255.25, 255.26 and 255.27 or article two hundred sixty-three of the penal law, or section 135.05, 135.10, 135.20 or 135.25 of such law relating to kidnapping offenses, provided the victim of such kidnapping or related offense is less than seventeen years old and the offender is not the parent of the victim, or section 230.04, where the person patronized is in fact less than seventeen years of age, 230.05 or 230.06, or subdivision two of section 230.30, or section 230.32 or 230.33 of the penal law, or

§ 10. Paragraph (b) of subdivision 1 of section 168-d of the correction law, as amended by chapter 11 of the laws of 2002, is amended to read as follows:

(b) Where a defendant stands convicted of an offense defined in paragraph (b) of subdivision two of section one hundred sixty-eight-a of this article **or where the defendant was convicted of patronizing a prostitute in the third degree under section 230.04 of the penal law** and the defendant controverts an allegation that the victim of such offense was less than eighteen years of age **or, in the case of a conviction under section 230.04 of the penal law, less than seventeen years of age**, the court, without a jury, shall, prior to sentencing, conduct a hearing, and the people may prove by clear and convincing evidence that the victim was less than eighteen years of age **or less than seventeen years of age, as applicable**, by any evidence admissible under the rules applicable to a trial of the issue of guilt. The court in addition to such admissible evidence may also consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of the age of the victim. Facts concerning the age of the victim proven at trial or ascertained at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated. At the conclusion of the hearing, or if the defendant does not controvert an allegation that the victim of the offense was less than eighteen years of age **or less than seventeen years of age, as applicable**, the court must make a finding and enter an order setting forth the age of the victim. If the court finds that the victim of such offense was under eighteen years of age **or under seventeen years of age, as applicable**, the court shall certify the defendant as a sex offender, the provisions of paragraph (a) of this subdivision shall apply and the defendant shall register with the division in accordance with the provisions of this article.

§ 11. The social services law is amended by adding a new article 10-D to read as follows:

ARTICLE 10-D
SERVICES FOR VICTIMS OF HUMAN TRAFFICKING

Section 483-aa. Definitions.

483-bb. Services for victims of human trafficking.

483-cc. Confirmation as a victim of human trafficking.

483-dd. Law enforcement assistance with respect to immigration.

483-ee. Establishment of interagency task force on human trafficking.

§ 483-aa. Definitions. The following definitions shall apply to this article:

(a) "Human trafficking victim" means a person who is a victim of sex trafficking as defined in section 230.34 of the penal law or a victim of labor trafficking as defined in section 135.35 of the penal law.

(b) "Pre-certified victim of human trafficking" is a person who has a pending application for federal certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) but has not yet obtained such certification, or a person who has reported a crime to law enforcement and it reasonably appears to law enforcement that the person is such a victim.

§ 483-bb. Services for victims of human trafficking. (a) The office of temporary and disability assistance may coordinate with and assist law enforcement agencies and district attorney's offices to access appropri-

ate services for human trafficking victims.

(b) In providing such assistance, the office of temporary and disability assistance may enter into contracts with non-government organizations for providing services to pre-certified victims of human trafficking as defined in subdivision (b) of section four hundred eighty-three-aa of this article, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Nothing in this section shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter with any benefits or services for which they otherwise may be eligible.

§ 483-cc. Confirmation as a victim of human trafficking. (a) As soon as practicable after a first encounter with a person who reasonably appears to a law enforcement agency or a district attorney's office to be a human trafficking victim, that agency or office shall notify the office of temporary and disability assistance and the division of criminal justice services that such person may be eligible for services under this article.

(b) Upon receipt of such a notification, the division of criminal justice services, in consultation with the office of temporary and disability assistance and the referring agency or office, shall make a preliminary assessment of whether such victim or possible victim appears to meet the criteria for certification as a victim of a severe form of trafficking in persons as defined in section 7105 of title 22 of the United States Code (Trafficking Victims Protection) or appears to be otherwise eligible for any federal, state or local benefits and services. If it is determined that the victim appears to meet such criteria, the office of temporary and disability assistance shall report the finding to the victim, and to the referring law enforcement agency or district attorney's office, and may assist that agency or office in having such victim receive services from a case management provider who may be under contract with the office of temporary and disability assistance, or from any other available source. If the victim or possible victim is under the age of eighteen, the office of temporary and disability assistance also shall notify the local department of social services in the county where the child was found.

§ 483-dd. Law enforcement assistance with respect to immigration. Upon the request of a human trafficking victim or a representative of a human trafficking victim, the state or local law enforcement agency or district attorney's office shall provide the victim with the United States Citizenship and Immigration Service (USCIS) Form I-914 Supplement B Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. In order to provide persuasive evidence, the state or local law enforcement agency endorsement must contain a description of the victim-

ization upon which the application is based, including the dates the trafficking in persons occurred. The endorsement must address whether the victim had been recruited, harbored, transported, provided, or obtained specifically for either labor servitude or services or for the purposes of a commercial sex act as defined in subdivision three of section 7102 of title 22 of the United States Code.

§ 483-ee. Establishment of interagency task force on human trafficking. (a) There is established an interagency task force on trafficking in persons, which shall consist of the following members or their designees: (1) the commissioner of the division of criminal justice services; (2) the commissioner of the office of temporary and disability assistance; (3) the commissioner of health; (4) the commissioner of the office of mental health; (5) the commissioner of labor; (6) the commissioner of the office of children and family services; (7) the commissioner of the office of alcoholism and substance abuse services; (8) the chairperson of the crime victims board; (9) the executive director of the office for the prevention of domestic violence; and (10) the superintendent of the division of state police; and others as may be necessary to carry out the duties and responsibilities under this section. The task force will be co-chaired by the commissioners of the division of criminal justice services and the office of temporary and disability assistance, or their designees. It shall meet as often as is necessary and under circumstances as are appropriate to fulfilling its duties under this section.

(b) The task force shall: (1) collect and organize data on the nature and extent of trafficking in persons in the state; (2) identify available federal, state and local programs that provide services to victims of trafficking, including but not limited to case management, housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States; (3) consult with governmental and non-governmental organizations in developing recommendations to strengthen state and local efforts to prevent trafficking, protect and assist victims of trafficking and prosecute traffickers; (4) establish interagency protocols and collaboration between federal, state, and local law enforcement, state and governmental agencies, child welfare agencies, and non-governmental organizations; (5) evaluate approaches to increase public awareness about trafficking and make recommendations on such approaches; (6) evaluate the effectiveness of training programs on human trafficking that have been designed for law enforcement personnel, criminal defense attorneys, social service providers and non-governmental organizations, and make recommendations for improving the quality and effectiveness of such programs; and (7) measure and evaluate the progress of the state in preventing trafficking, protecting and providing assistance to victims of trafficking, and prosecuting persons engaged in trafficking.

(c) One year from the effective date of this section, or earlier if deemed appropriate, the task force shall report to the governor and the legislature on these issues, and it shall thereafter issue such reports and recommendations as it deems necessary to carry out its duties and

responsibilities.

§ 12. Subdivision 5 of section 621 of the executive law, as amended by chapter 620 of the laws of 1997, is amended to read as follows:

5. "Victim" shall mean (a) a person who suffers personal physical injury as a direct result of a crime; (b) a person who is the victim of either the crime of (1) unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, (2) kidnapping in the second degree as defined in section 135.20 of the penal law, ~~or~~ (3) kidnapping in the first degree as defined in section 135.25 of the penal law, **(4) labor trafficking as defined in section 135.35 of the penal law, or (5) sex trafficking as defined in section 230.34 of the penal law;** or a person who has had a frivolous lawsuit filed against them.

§ 13. Subdivision 1 of section 631 of the executive law, as amended by chapter 320 of the laws of 2006, is amended to read as follows:

1. No award shall be made unless the board or board member, as the case may be, finds that (a) a crime was committed, (b) such crime directly resulted in personal physical injury to or the exacerbation of a preexisting disability, or condition, or death of, the victim, and (c) criminal justice agency records show that such crime was promptly reported to the proper authorities; and in no case may an award be made where the criminal justice agency records show that such report was made more than one week after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified; provided, however, in cases involving an alleged sex offense as contained in article one hundred thirty of the penal law or incest as defined in section 255.25, 255.26 or 255.27 of the penal law **or labor trafficking as defined in section 135.35 of the penal law or sex trafficking as defined in section 230.34 of the penal law** or an offense chargeable as a family offense as described in section eight hundred twelve of the family court act or section 530.11 of the criminal procedure law, the criminal justice agency report need only be made within a reasonable time considering all the circumstances, including the victim's physical, emotional and mental condition and family situation. For the purposes of this subdivision, "criminal justice agency" shall include, but not be limited to, a police department, a district attorney's office, and any other governmental agency having responsibility for the enforcement of the criminal laws of the state provided, however, that in cases involving such sex offense a criminal justice agency shall also mean a family court, a governmental agency responsible for child and/or adult protective services pursuant to title six of article six of the social services law and/or title one of article nine-B of the social services law, and any medical facility established under the laws of the state that provides a forensic physical examination for victims of rape and sexual assault.

§ 14. This act shall take effect on the first of November next succeeding the date on which it shall have become a law; provided that section 483-ee of the social services law as added by section eleven of this act shall take effect immediately and shall remain in full force and effect until September 1, 2011 when upon such date the provisions of such section shall expire and be deemed repealed. Provided, effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the timely implementation of the provisions of

article 10-D of the social services law, as added by section eleven of this act, on its effective date are authorized to be made on or before such effective date.

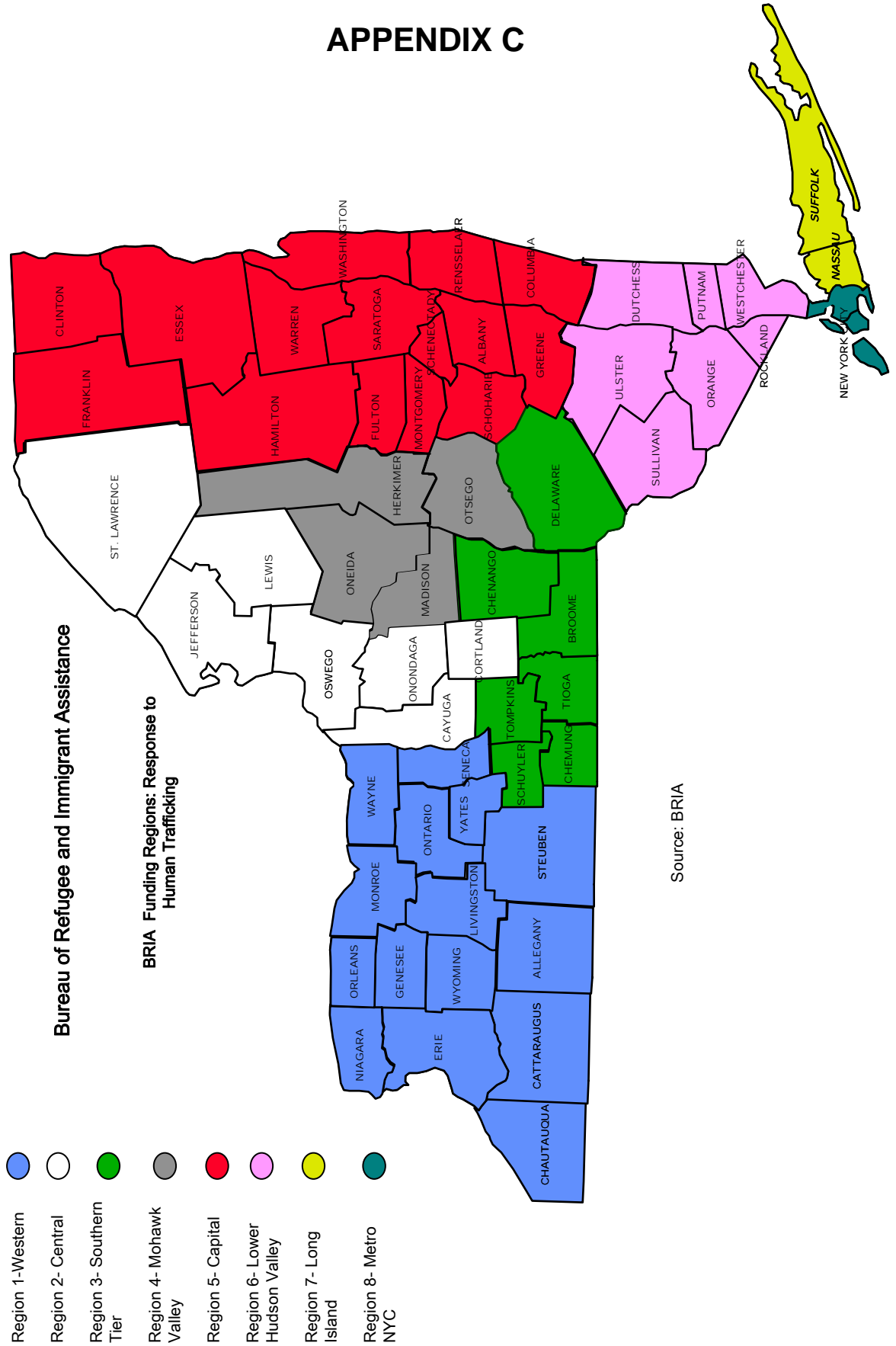
The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly

APPENDIX C



APPENDIX D



MEMORANDUM

TO: NYS Law Enforcement and NYS District Attorney's Offices

FROM: Ken Franzblau, Director of Human Trafficking Prevention and Training

DATE: October 30, 2007

SUBJECT: Human Trafficking

Effective November 1, 2007 amendments and additions to New York Penal Law and Social Services law to address human trafficking will take effect. These amendments and additions have created a comprehensive law enforcement and social service response to this crime. A copy of the bill setting forth these changes is enclosed. Penal Law changes are creation of the crimes of Sex Trafficking (Penal Law 230.34), Labor Trafficking (Penal Law 135.35), redefining Promoting Prostitution in the third degree (Penal Law 230.25), the repeal of Penal Law 230.03 and the amendment of Penal Law 230.04.

Sex Trafficking is defined as advancing or profiting from prostitution by use of one or more of the means contained in Penal Law 230.34 (1)-(5). The prohibited means of promoting prostitution set forth in Penal Law 230.34 are derived from methods that have been used in previous cases of sex trafficking from various jurisdictions. These include, but are not limited to, making false material statements, threatening to invoke deportation proceedings, using or threatening the use of force or coercion and requiring that prostitution be performed to pay off a real or purported debt. Sex Trafficking is a Class B felony.

Labor Trafficking is defined as compelling or inducing another to engage in labor or recruiting, enticing, harboring or transporting the person where labor is being compelled or induced by use of one or more of the means contained in Penal Law 135.35 (1)-(4). The prohibited means are very similar to those set forth in Penal Law 230.34(1)-(5). Labor Trafficking is a Class D felony.

Penal Law 230.03, Patronizing a Prostitute in the fourth degree, has been repealed. Penal Law 230.04 has been amended by deleting the age requirements of the patronizer and the prostituted person. The result of these two changes is that Patronizing a Prostitute in the third degree is now the lowest level patronizing offense. This is a Class A misdemeanor.

The human trafficking law also provides law enforcement with specific responsibilities assisting victims in obtaining services and with respect to immigration status. Social Services Law 483-cc requires that as soon as practicable after a first encounter with a person who reasonably appears to be a trafficking victim the law enforcement agency or district attorney's office shall notify the Division of Criminal Justice Services (DCJS) and the Office of Temporary and Disability Assistance (OTDA). A form has been created for this purpose and a copy of it is enclosed.

Social Services Law 483-dd requires that the law enforcement agency or district attorney's office shall provide USCIS Form I-914 Supplement B at the request of a trafficking victim or their representative. A copy of this form is enclosed.

DCJS strongly recommends that law enforcement collaborate early and closely with service providers in human trafficking cases. Social service organizations can offer expert assistance in cultural and language matters. They can assist with the completion of USCIS Form I-914 Supplement B. They can help make victims feel safer thereby increasing the likelihood that they will cooperate in your investigation and prosecution.

Enclosed for posting in your agency is a list of reminders and recommendations when dealing with human trafficking cases under New York's new statute.

Also enclosed is an interim list of agencies that you can contact to obtain assistance and services for human trafficking victims.

Please be advised that if there are questions regarding any aspect of the state's new human trafficking law please call me at 518-457-8413.

In an emergency situation only, occurring outside of regular business hours, please call 1-800-346-3543 for assistance.

Enclosures

Questions You Can Ask to Determine if Someone is a Human Trafficking Victim

The following are examples of questions that you can ask someone who might be a human trafficking victim. Make sure that the person is alone when you ask these questions and tell the person that you want to help.

- Under what circumstances or conditions did you come to America? Do you or your family owe a debt to your employer or the person who brought you here? What is your relationship to the person who organized your migration to the U.S.?
- What do you do for work? Were you brought to America for one kind of job, but forced to do something else once you arrived? How did you learn about your job?
- Are you paid for working? Does anyone take the money that you earn? Are you given something instead of money, like drugs or alcohol?
- How many hours a day do you work? How many days a week do you work?
- Do you live at work or nearby? Are you free to leave work or home without permission? Does anyone go with you when you leave?
- Do you have to ask permission to eat, sleep, or use a toilet?
- Has anyone hurt or threatened you or your family?
- Do you have access to your identification documents? Did anyone take them from you?
- Are you afraid that you or your family will be deported if you try to leave work or home?

How You Can Help

Human trafficking is illegal. If you suspect that someone has suffered under any of the practices or conditions described in this brochure, you can help. Human trafficking victims are eligible for protection, immigration assistance, and benefits and services under state and federal law.

Get immediate help or report a human trafficking case for investigation by calling **911**, your **local police department**, or your local **district attorney's office**.

Learn about services for human trafficking victims in New York State by contacting the **New York State Bureau of Refugee and Immigrant Assistance**:

1-518-402-3096

Contact the **New York State Division of Criminal Justice Services** for information about how human trafficking victims are confirmed for services in New York State:

1-518-457-8413

Learn about crime victims compensation for human trafficking victims in New York State by calling the **New York State Crime Victims Board**:

1-800-247-8035

David A. Paterson, Governor



Office of Temporary & Disability Assistance
David A. Hansell, Commissioner

PUB — 4900 Rev (4-08)

Human Trafficking: Contemporary Slavery



New York State Office of Temporary and Disability Assistance

What is Human Trafficking?

Human trafficking is modern-day slavery. Despite laws forbidding slavery and involuntary servitude in the United States, people are forced and manipulated into sexual slavery and labor servitude in the U.S. every day. According to the U.S. Department of State, 14,500 to 17,500 people are trafficked into the U.S. every year.

Human trafficking is a violation of human rights. Human trafficking victims are sold and bought like commodities. They are forced to work in dangerous, unhealthy conditions for long hours without breaks, food, or pay. Human trafficking victims are made to sell their bodies on the street and in brothels. They are deprived of freedom, isolated from the outside world, beaten and abused into submission.



Human trafficking is not smuggling.

While human trafficking and smuggling can appear to be similar, human trafficking involves force, fraud, or coercion, whereas smuggling does not.

Human trafficking is not a choice.

A person cannot meaningfully consent to become a slave. Most human trafficking victims are desperate to escape.

What You Should Know About Human Trafficking

Who is affected by human trafficking?

Human trafficking affects men, women, and children, and people of all races and ethnicities. Human trafficking victims are trafficked into the U.S. from nearly every country in the world,* but most often from impoverished regions with little economic opportunity, politically corrupt and disorganized areas, and places with pronounced social inequality. High demand for victims and low prosecution of traffickers allows human trafficking to persist.

What does human trafficking look like?

Human trafficking victims may be forced to work in sweatshops, fields or farms, hotels, fisheries, or restaurants. They may be forced to beg or peddle, or to become domestic laborers, janitors, or construction workers. Some human trafficking victims are forced into prostitution, exotic dancing, and pornography, while others are forced into marriage. Human trafficking victims can be found in virtually any setting.

Where does human trafficking occur?

Human trafficking occurs all over the world. In the U.S., human trafficking occurs in urban, suburban, and rural areas in every state. According to the U.S. Department of Justice, human trafficking occurs more frequently in New York State than in any other state, after California, Florida, and Texas.

*While the focus of this brochure is international human trafficking, people also become domestic human trafficking victims when they are forced and manipulated into slavery and involuntary servitude in their own countries — human trafficking does not require crossing a border.

How to Recognize a Human Trafficking Victim

Most human trafficking victims are reluctant to identify themselves, even if encouraged, because they live with constant fear and intimidation. However, there are signs that someone is suffering from human trafficking:

- Person appears to be watched or supervised by another, or intimidated by a companion
- Evidence of physical or sexual abuse, e.g., bruises, sexually transmitted diseases (STDs)
- Person appears to be fearful, anxious, or depressed



Photo by Kay Chernush for the U.S. State Department. Reused with permission.

- Person is unable to speak English and/or someone else insists on interpreting/translating for person
- Signs of malnutrition or dehydration, poor hygiene, or untreated medical problems
- Person has no identification documents, e.g., a passport or visa, or someone else keeps such documents
- Evidence of mental illness or disturbance, especially post-traumatic stress disorder (PTSD)
- Person has little or no pocket money

APPENDIX F

New York Law Journal

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New York's Human Trafficking Law

Denise E. O'Donnell
12-19-2007

New York's human trafficking law, the most comprehensive of its kind in the United States, took effect Nov. 1. It provides the criminal justice community with a new weapon to combat what Governor Eliot Spitzer has accurately described as "modern day slavery." It also imposes on us an obligation to carefully distinguish cases appropriate for prosecution under the new provisions, and to view from a fresh and different perspective incidents that may implicate trafficking.

Traditionally, enforcement has been problematic because police are trained to look first at the law evidently being broken, and often what they saw first was "prostitution" or a labor law violation by the employer. Only further investigation would reveal that a much different and more savage crime was at the root.

We now have the tools we need to effectively prosecute sex and labor trafficking. Still, these cases will remain challenging, largely because successful prosecution will require a trusting relationship with a victim who instinctively distrusts anyone in law enforcement. Building trust with trafficking victims will take time and effort. Many victims were trafficked by or with the cooperation of government and law enforcement officials in their home countries. Further, traffickers, even those who traffic domestic victims, often maintain control of their victims by convincing them that the consequences of getting "caught" by authorities are worse than involuntary servitude. Working closely and patiently with service providers will be necessary to build trust between law enforcement and trafficking victims.

Part of my role as co-chair (along with David A. Hansell, commissioner of the Office of Temporary and Disability Assistance) of the Interagency Task Force on Human Trafficking is to help educate the law enforcement, victim, advocacy and legal communities about the new law and its potential to both punish the purveyors of human trafficking and assist the

victims. Our law enforcement agencies must know where to look, what to look for and what questions to ask.

New Crimes

At its foundation, the law contains several provisions that empower us to prosecute human traffickers, a power we largely lacked until Nov. 1. It creates the new crimes of Sex Trafficking and Labor Trafficking, increases the lowest level crime of patronizing a prostitute from a B to an A misdemeanor, and provides for benefits and services to trafficking victims. A summary of the new law follows:

- The crime of Sex Trafficking, Penal Law §230.34, is a class B felony. As its inclusion in Penal Law Article 230 indicates, this section finds its origin in the promoting prostitution sections of the Penal Law. Section 230.34 provides that a person is guilty of Sex Trafficking if he or she intentionally advances or profits from prostitution using one of the prohibited means contained in subdivisions (1) through (5).
- The prohibited means contained in subdivisions (1)-(5) include unlawfully providing to a patronized person a narcotic with the intent to impair that person's judgment; making material false statements, misstatements, or omissions to induce a person to engage in prostitution activity or to maintain them in that activity; withholding, destroying, or confiscating any actual or purported passport or other government identification document with intent to impair that person's freedom of movement; or requiring that prostitution be performed to retire, repay or service a real or purported debt.
- Penal Law 230.34 addresses the use of force or intimidation to induce someone to engage in prostitution. This section closely follows Penal Law §135.60 (coercion in the second degree). A person is liable under 230.34 if, in inducing someone to engage in prostitution, they: cause physical injury, serious physical injury, or death to a person; cause damage to property; engage in other conduct constituting a felony or a violation of Penal Law §135.05; accuse some person of a crime or causing criminal charges or deportation proceedings to be brought against someone; expose a secret or publicize an asserted fact, whether true or false, tending to subject someone to hatred, contempt, or ridicule; or provide, or withhold, information with respect to another's legal claim or defense.
- The crime of Labor Trafficking, Penal Law §135.35, is a class D felony. A person is guilty of Labor Trafficking if he or she compels or induces another to engage in labor or recruits, entices, harbors or transports such other person by specified prohibited means. The prohibited means are very similar to those contained in Penal Law §230.34. The most notable difference between these sections is that there is no labor trafficking equivalent of Penal Law §230.34(2), making material false statements, misstatements or omissions.
- The new law also addresses the demand side of the human trafficking problem by creating a deterrent to the conduct that causes sex trafficking. It repeals Penal Law

§230.03 and amends Penal Law §230.04 to eliminate the age requirements of the prostituted person and patronizer. The net result of these changes is that patronizing a prostitute in the third degree, the lowest level patronizing offense, is elevated from a class B to a class A misdemeanor.

- The demand for sex trafficking is addressed in an amendment to Penal Law §230.35, promoting prostitution in the third degree, to clarify that the operation of sex tours fall within the coverage of this section. The operation of such tours is criminal conduct even when prostitution is legal in the tour's foreign destination. This reflects the concern that sex trafficking is prevalent in jurisdictions where prostitution is tolerated.
- Other trafficking-related changes are found in Penal Law §§135.36, 230.07, 230.36, 460.10(1)(a), Criminal Procedure Law 700.05(8)(b), and Correction Law sections 168-a (2)(a)(i) and 168-d(1)(b).
- The amendments to Penal Law §§135.36 and 230.36 provide that victims of trafficking shall not be considered accomplices in the prosecution of their traffickers. Section 230.07 was amended to make the patronizing a prostitute defense consistent with the repeal of 230.03 and amendment of 230.04. The amendment to §460.10(1)(a) makes sex trafficking and labor trafficking predicate crimes for enterprise corruption.
- Criminal Procedure Law §700.05(8)(b) was amended to include Sex Trafficking and Labor Trafficking as designated offenses for purposes of eavesdropping and video surveillance warrants. The amendment to Correction Law §168-a (2)(a)(i) makes Sex Trafficking a sex offense for purposes of sex offender registration. The amendment to Correction Law §168-d(1) (b) entitles a defendant convicted of patronizing a prostitute in the third degree to a hearing to determine if the victim was less than 17 years of age.

The law further imposes upon police and prosecutors the duty to refer victims of human trafficking to the Division of Criminal Justice Services and to assist victims to obtain services and a "T visa" (created by the federal Trafficking Victims Protection Act of 2000 to victims of human trafficking).

- Specifically, Social Services Law 483-cc requires that a law enforcement agency or district attorney's office notify the Division of Criminal Justice Services and the Office of Temporary Disability and Assistance (OTDA) after a first encounter with a person who reasonably appears to be a human trafficking victim. This notification is accomplished by faxing a form created for this purpose to Division of Criminal Justice Services (all law enforcement agencies and District Attorney's offices have been provided a copy of the form and it is also available on eJusticeNY, a secure portal). Division of Criminal Justice Services and Office of Temporary Disability and Assistance must then determine whether the victim appears to meet the criteria for certification as a victim of a severe form of trafficking under federal law. The referring agency will then be notified by Office of Temporary Disability and Assistance if the victim has been confirmed as a human trafficking victim for purposes of receiving the benefits provided by the law.

- Social Services Law 483-dd requires that upon request of the victim or their representative, the referring law enforcement agency or district attorney's office complete U.S. Citizenship and Immigration Service Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victim of Trafficking in Persons. This form is submitted in support of the victim's application for a T visa. The New York law applies to U.S. citizens as well as non-citizens.

Investigation of human trafficking requires a different way of looking at crime, a different approach to observation and surveillance, a different understanding of the relationship between prostitution and sex trafficking and increased attention to the role played by the demand for prostitution as our front line officers attempt to determine whether what they are dealing with is a promoting prostitution case or something far deeper and more insidious. We will be working with law enforcement personnel on both the training and enforcement end as we seek to curtail this most repugnant of crimes.

Denise E. O'Donnell *is commissioner of the New York State Division of Criminal Justice Services and Assistant Secretary to the Governor for Criminal Justice.*

APPENDIX G



NEW YORK STATE CRIME VICTIMS BOARD

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TRANSMITTAL NO. 2007-13

TO: ALL FUNDED PROGRAMS
ADVISORY COUNCIL MEMBERS

FROM: TINA M. STANFORD
CHAIRWOMAN

SUBJECT: HUMAN TRAFFICKING

DATE: OCTOBER 29, 2007

On November 1, 2007, a new law will take effect relating to victims of human trafficking. Chapter 74 of the Laws of 2007 creates the two, new Penal Law crimes of Labor Trafficking (135.35) and Sex Trafficking (230.34).

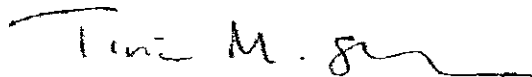
In addition, Chapter 74 amends the Crime Victims Board's (the Board) governing statute to include in its definition of "Victim," a person who is the victim of these new crimes (Executive Law, Section 621, subdiv. 5). Executive Law, Section 631, subdiv. 1, was also amended to allow for these crimes to be reported to law enforcement agencies within a reasonable time considering the circumstances, instead of the general requirement that it be reported within one week.

It is the intention of this new law to provide the victims of these new crimes with the most comprehensive array of Crime Victims Board benefits available. That is why, in anticipation of the effective date of this new law, the Board adopted a regulation (9 NYCRR 525.32) to create the rebuttable presumption a victim of these crimes has suffered a physical injury, for the purpose of establishing eligibility.

Therefore, agency staff and Victim Assistance Providers need to be aware of the following procedures in handling these types of cases. In instances where the police report or law enforcement agency documentation indicates a charge of Penal Law 135.35 and/or 230.34:

1. The report to the law enforcement agency does not necessarily need to be made within a week of the crime, but within a reasonable period of time under the circumstances, and
2. No further investigation (beyond the charge itself) is necessary to establish a physical injury has been suffered by such victims to establish eligibility. However, should agency staff suspect fraud or abuse, or if the victim him/herself admits to having no related injuries, eligibility may be denied after further investigation.
3. When assisting a trafficking victim complete the Crime Victims Board application, **Other** should be checked under section 3. **Tell us about the crime** and "trafficking victim" must be written in on the line next to **Other**.

On behalf of the Board, we look forward to working with you in our continued effort to provide the highest quality services to innocent victims of crime in New York State.



Tina M. Stanford
Chairwoman

*New York Prevalence Study of
Commercially Sexually
Exploited Children*

Final Report

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April 18, 2007

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Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the New York State Office of Children and Family Services.

EXECUTIVE SUMMARY

The New York State Legislature required the New York State Office of Children and Family Services (OCFS) to develop a comprehensive study that: (1) estimates the prevalence of sexually exploited children within New York State, (2) identifies the unique needs of sexually exploited children, (3) specifies the types of programs and services that best meet such needs, and (4) evaluates the capacity of the current children's service system to meet the needs of commercially sexually exploited children (CSEC). Under contract with OCFS, Westat designed and conducted a prospective survey to estimate the prevalence of these children in the current service system and to specify available and needed services.

The Safe Harbour bill of 2006 defined "sexually exploited children" as:

people under the age of 18 who may be subject to sexual exploitation because they have engaged or agreed or offered to engage in sexual conduct with another person in return for a fee, traded sex for food, clothing or a place to stay, stripped, been filmed or photographed performing or engaging in sexual acts or loitered for the purpose of engaging in a prostitution offense as defined in section 240.37 of the penal law.*

Westat developed two mail surveys, two qualitative interview protocols, and a focus group protocol to facilitate the collection of data. The mail surveys were sent to 159 agencies in four New York City (NYC) boroughs—Bronx, Brooklyn, Manhattan, and Queens—and seven Upstate counties—Chautauqua, Erie, Oneida, Onondaga, Schenectady, Warren, and Washington. These counties represented a purposive sample drawn to represent variations in population under 18 and geography, high rates of prostitution arrests and high rates of child sexual abuse reports, and the presence of agencies likely to serve as sentinels of CSEC. Agencies sampled within these counties included county and municipal law enforcement, probation departments, detention centers, OCFS female juvenile justice facilities, child advocacy centers (CACs), runaway shelters and transitional independent living programs, congregate care facilities, rape crisis centers, and youth-serving agencies.

The data on prevalence of CSEC were collected through prospective mail questionnaires covering children identified as commercially sexually exploited from July 15

* Education, Labor and Family Assistance Article VII/Language Bill (S6458 – C/A 9558-B), Part F. Note that trading sex for drugs was included in the definition used for this study because it was added to the May 2006 version of the Safe Harbour bill.

through September 15, 2006. Ninety-seven of the agencies returned the mail surveys, for a response rate of 81.0 percent Upstate and 45.2 percent in NYC. Data were weighted to give annual estimates of the prevalence of CSEC identified by service agencies for the two geographic areas—NYC and the seven Upstate counties. In addition, 20 non-police agencies—the NYC Administration for Children’s Services (ACS), the seven Departments of Social Services (DSS) responsible for the Upstate counties covered by the mail survey, and 12 other service agencies—participated in qualitative interviews. Finally, three focus groups were conducted with CSEC in NYC.

On an annual basis, the number of CSEC identified in NYC is estimated at over five times the number for the seven Upstate counties (2,253 identified in NYC versus 399 Upstate). The estimate of 399 CSEC for the Upstate counties is not a statewide estimate, but applies only to the seven counties sampled for the study. Demographically, there are noteworthy variations between CSEC in NYC and the sampled counties Upstate. CSEC in NYC were predominantly female (85 percent), Black/African American (67 percent), and 16 to 17 years old (59 percent). Just four percent ($n=82$ girls) were age 13 or under. NYC had the only children who identified as transgender ($n=31$), and the majority of children identifying as gay, lesbian, bisexual, and questioning. Nearly one fifth of the NYC children were Hispanic/Latino. Upstate, male children were a significant minority (22 percent). Upstate children were also younger; only 36 percent were 16 to 17 years old and 28 percent ($n=63$ girls and 50 boys) were 13 or younger. Only two percent identified themselves as gay, lesbian, bisexual, or questioning, and none were transgender. The largest racial group Upstate was white (47 percent). Ten percent were Hispanic/Latino.

Consistent with other research, the data analysis revealed that the overwhelming majority of CSEC (at least 85 percent), regardless of geographic area, had prior child welfare involvement—typically in the form of child abuse and neglect allegations/investigations (69 percent of the NYC CSEC and 54 percent of those Upstate) and/or a foster care placement (75 percent of the NYC CSEC and 49 percent Upstate). A substantial proportion (over half of the NYC CSEC and 44 percent of those Upstate) had a prior juvenile justice placement, although secure placements were more common among the NYC children. About half of both groups had prior episodes of commercial sexual exploitation.

Distinct differences in the characteristics of the most recent commercial sexual exploitation between NYC and the Upstate counties are evident. While a sex act in exchange for money is by far the most common type of exploitation, reported for over 80 percent of CSEC in

both areas, loitering for prostitution is more often identified in NYC (30 percent versus five percent Upstate), while only the Upstate counties report involvement with sexual acts that are filmed, photographed or tape recorded (17 percent). In NYC, the exploitation most often occurred in a hotel (44 percent versus nine percent Upstate) or outside (30 percent versus two percent Upstate). Upstate it typically occurred in the child's home (52 percent versus seven percent in NYC). In NYC, the exploiter was most likely an adult stranger (75 percent versus 28 percent Upstate), while Upstate, the exploiter was most likely an adult friend or acquaintance (58 percent versus 24 percent in NYC). In NYC, force was used in 58 percent of the cases, compared with 32 percent in the Upstate counties.

Questions about service availability and capacity, CSEC service needs, and problems providing needed services were included in both the mail questionnaire and the qualitative interviews. Typically, CSEC in NYC received more types of services (7.6 on average) than did CSEC in the Upstate counties (5.8 on average). Mental health counseling and case management were provided to the majority of CSEC in both geographic areas. A majority of CSEC in NYC also received food, clothing, transportation, assessment, and/or advocacy. The majority identified Upstate also received residential services. Service referrals, made for 86 percent of the NYC children and 45 percent of those Upstate, were also critical to the constellation of services available. Medical care (71 percent) and mental health counseling (68 percent) were the most common referrals by NYC agencies. Substance abuse screening (30 percent) and mental health counseling (22 percent) were the most common service referrals Upstate.

When asked about specialized service needs for CSEC, NYC agencies identified an average of 3.1 services compared to an average of 1.6 by the Upstate agencies. In both areas, mental health counseling was the need most often identified (72 percent in NYC and 64 percent Upstate). The largest proportional difference between the two geographic areas occurred for medical care (identified as a need by 59 percent in NYC versus 25 percent in Upstate) and crisis shelter (27 percent in NYC versus 9 percent Upstate).

Agencies were also asked about service barriers. The type of barriers identified differed by both service category and geographic area. NYC respondents most commonly cited an insufficient number of beds for crisis shelter and restrictions on non-county youth for residential services. Limited funding and lack of staff or staff training were typically cited for other service needs. Upstate, concern centered on insufficient slots or beds for mental health counseling.

“Other” barriers were the most typically cited for other services needs identified Upstate. These barriers included lack of insurance, limited transportation, and general lack of resources.

In discussing service gaps and barriers, interviewees from DSS and other service agencies echoed many of these concerns, but specified finding and funding safe housing as a particular challenge. The majority of interviewees (both in NYC and Upstate) were also concerned about training deficits for personnel who work with CSEC, ranging from clinical staff to police and judges who handle CSEC cases.

A number of recommendations emerged based on responses to the qualitative interviews, discussions with the Study Advisory Group, and findings from the mail survey and other data sources. The proposed support for both short-term crisis housing and long-term safe houses in the Safe Harbour bill was fully consistent with the study findings. Nine agencies (seven from NYC and two Upstate) responding to the qualitative survey reported that housing was the most critical need for CSEC, and three NYC agencies supported dedicated housing for this population because of the stigma attached to the sex industry. Agencies supported changes in criminal statutes, such as exempting 16- and 17-year-olds from prosecution in criminal court for prostitution. Support was also expressed for defining 16- and 17-year-olds that engaged in prostitution as PINS. Support was mixed concerning exempting youth under 16 from delinquency statutes because of concern that a secure placement option was necessary for some youth with a history of running away from foster care and non-secure voluntary agency settings and being re-exploited. The Advisory Group strongly supported the development of a safe environment for CSEC, which would include counseling and other “tailored” services. It also argued for increasing the severity of the sanctions for pimps, whom they perceive as currently receiving little more than “a slap on the wrist.”

Annual counts of CSEC would be helpful for determining their service needs; however, agencies will need to develop an ongoing procedure to capture this information and use a consistent definition of commercial sexual exploitation. Additional consideration should be given to conducting a census of street youth who are active in the sex industry but may not be receiving services.

Programs directed toward commercially sexually exploited children should be prepared to address a multiplicity of problems presented by these children, including a history of victimization, mental health needs, and medical issues. Other recommendations made by agency staff and supported by the Advisory Group include:

- a written protocol or community plan for dealing with CSEC,
- a tool for identifying CSEC among children referred to an agency,
- increased public education and awareness,
- consistent response between the courts and law enforcement,
- placing a victim advocate in the law enforcement system,
- mandated joint investigations,
- mandatory sentences for abusers,
- more after-school activities, youth centers, outreach workers,
- improved procedures for information sharing,
- primary prevention and early intervention in family difficulties as well as additional efforts to ensure a smooth and seamless transition from child welfare and juvenile justice to the next stage of a child's life, and
- responsive programs tailored to the child's background, experience, and needs.

NEW YORK PREVALENCE STUDY OF COMMERCIALY SEXUALLY EXPLOITED CHILDREN

FINAL REPORT

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1. INTRODUCTION

1.1 Overview

In April 2006, the New York State Legislature required the New York State Office of Children and Family Services (OCFS) to develop a comprehensive study that:

- Estimates the prevalence of sexually exploited children within New York State;
- Identifies the unique needs of sexually exploited children;
- Specifies the types of programs and services that best meet such needs; and
- Evaluates the capacity of the current children's service system to meet needs of commercially sexually exploited children.¹

The initiative for this legislation began through the efforts of Assemblyman William Scarborough and Senator Dale M. Volker. They became interested in how the child welfare and criminal justice systems were handling youth who were sexually exploited in the commercial sex business after advocates for sexually exploited children raised the issue with the Legislature in 2005. In response to the concerns of advocates, Assemblyman Scarborough and Senator Volker first introduced a bill called the Safe Harbour Act to address the special needs of sexually exploited youth.

In early 2006, the Assembly Committee on Children and Families convened a roundtable where an expert from the National Center for Missing and Exploited Children provided estimates of the magnitude of the problem of child sexual exploitation nationwide. More disturbingly, several young people provided testimony about their own harrowing experiences as sex workers that started when they were only 12 or 13 years old in New York City (NYC). Rachel Lloyd, the founder of Girls Education and Mentoring Services (GEMS), which specializes in outreach services to girls who are being exploited through prostitution in New York City, spoke about the unmet needs of the girls she was trying to extricate from dangerous abuse inflicted by pimps and customers. Ms. Lloyd testified that safe housing and context-specific counseling by staff who understood the problems of girls who were being prostituted was most urgently needed. Without safe and secure housing, pimps could and did psychologically and/or physically kidnap these traumatized girls, bringing them back to work for them before the girls had been given a chance to heal.

¹ Education, Labor and Family Assistance Article VII/Language Bill (S6458 – C/A 9558-B), Part F.

Shortly thereafter, the New York State Legislature decided it needed information about the magnitude of the problem that was specific to New York State before prescribing changes in law or mandating special services statewide.

The study to address these concerns was carried out in summer and fall 2006, using a combination of mail surveys and telephone interviews of public and private agencies that handle cases involving sexually exploited children, and placing an emphasis on those aspects of sexual exploitation that are commercial. The surveys targeted a purposive sample of 11 New York counties and focused on children identified by the participating agencies during a two-month period from July 15 through September 15, 2006. The data were then weighted to represent annual estimates of commercially sexually exploited children served in seven Upstate counties and four New York City (NYC) boroughs.

The purpose of this report is to describe the findings from this investigation. The remainder of Chapter 1 provides a brief review of the literature on commercially sexually exploited children (CSEC) and defines commercial child sexual exploitation for purposes of this study. Chapter 2 describes the study methodology and the rate of success in getting agencies to participate. Chapter 3 provides findings from the mail questionnaire on the prevalence of CSEC in the sample counties, their characteristics, the nature of the sexual exploitation, and variations in CSEC between the Upstate counties and NYC boroughs. Chapter 4 adds more detail to the picture of CSEC by reporting findings from three youth focus groups conducted in NYC, information about commercially sexually exploited girls remanded to OCFS facilities from across the State, and a survey by the New York State Division of Probation and Correctional Alternatives. Chapter 5, using data from both mail questionnaires and phone interviews, looks at current service provision, needs, and deficits. Chapter 6 examines the settings and practices used when serving these children. Chapter 7 provides a summary of findings, limitations to the study, and recommendations for identifying and serving CSEC.

1.2 Background

According to *Report of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography (1996)* 300,000 prostituted children may live on U.S.

streets.² Other estimates suggest the number lies somewhere between 100,000 and 3 million.³ These estimates are ten years old, and the problems plaguing studies in this area persist—small sample sizes and dependence on information from service providers who may serve only a fraction of the sexually exploited child population.

Commercially sexually exploited children (CSEC) are often “hidden” because they are runaways or homeless⁴ or never disclose their sexual exploitation due to shame or embarrassment. While girls are more likely to be the victims of sexual exploitation in most countries, advocates of programs targeting commercially exploited youth have estimated that in the United States, exploited boys may be nearly equal in number to girls; however, boys are even more difficult to find because they are less reliant on pimps and tend to create their own protection groups.⁵

Several studies identify three primary paths to commercial sexual exploitation: (1) survival sex, where sex is used by runaway or homeless youth for food, clothing, housing, and protection; (2) sex used to maintain a drug addiction; and (3) participation in the sex industry primarily for money, where children are used for an adult’s profit.⁶ Reasons for entry into these paths are complex and nuanced. A number of different attributes appear to place children at risk of commercial sexual exploitation. As adolescents, these children often have problems—low self-esteem, poor judgment, neediness—that make them targets.⁷ Many lack adults who care about them and who can serve as role models.

Childhood victimization is often a factor. In different studies, the percentage of prostituted women with a history of childhood sexual abuse varied from 10 to 70 percent.⁸ Some

² *Report of the special rapporteur on the sale of children, child prostitution, and child pornography.* (1996) United Nations Economic and Social Council. Commission on Human Rights. 52nd Session. Agenda Item 20, Section 35, U.N. Document #/CN.4/1996/100.

³ Youth Advocate Program International. (1998) *Children for sale: Youth involved in prostitution, pornography, and sex trafficking.* Washington, DC: Author, p. 1.

⁴ Klain, E.J. (1999) *Prostitution of children and child-sex tourism: An analysis of domestic and international responses.* Washington, DC: National Center for Missing and Exploited Children, p. 2.

⁵ Youth Advocate Program International, op. cit., 1.

⁶ Youth Advocate Program International, op.cit., 1; Barrett, D., Beckett, W. (1996) “Child prostitution: Reaching out to children who sell sex to survive.” *British Journal of Nursing* 5 (13):1120-1121.

⁷ Slavin, P. (2002) “How safe are our children on the Internet.” *Children’s Voice.* Accessed December 9, 2006, from www.cwla.org/articles/cv0201safeinternet.htm.

⁸ Dalla, R.L., Xia, Y., and Kennedy, H. (2003) “You just give them what they want and pray they don’t kill you. Street-level sex workers reports of victimization, personal resources, and coping strategies.” *Violence Against Women* 9:1369; McClanahan, S.F., McClelland, G.M., Abram, K.M., and Teplin, L.A. (1999) “Pathways into prostitution among female jail detainees and their implications for mental health services.” *Psychiatric Services* 50(12):1608.

come from generations of family abuse. In their study of female jail detainees, McClanahan and colleagues found that childhood victimization affects entry into prostitution, regardless of the age at entry. Running away particularly affects entrance into prostitution for children under 15 years of age.⁹ Widom and Kuhns also found that child physical abuse and neglect were associated with an increased risk for prostitution.¹⁰ Advocates suggest that abuse or neglect makes children especially vulnerable to pimps who may initially shower attention on them.¹¹ This has been found to be particularly true for females.¹²

Many children may not understand that they are being exploited, due to age, learning disabilities and limitations, poor judgment, need for attention, or previous sexual or physical abuse. This confusion often extends to adults who come in contact with these youth—police officers, probation officers, facility supervisors—who do not fully understand that children cannot be considered willing participants, even if they appear so.

Homelessness and running away are also key correlates of commercial sex abuse, particularly survival sex, which involves selling sex to meet basic or subsistence needs. In a nationally representative sample of youth in runaway shelters, Green, Ennett, and Ringwalt found that 61 percent of the females in the sample had engaged in survival sex. In their related sample of youth living on the street, 61 percent of the males had also participated in survival sex. In both samples, children were twice as likely to have reported engaging in survival sex if they reported being physically abused by family members.¹³

For children who become the victims of commercial sexual exploitation, violence is often described as a condition of everyday life. Pimp-related violence is the most well known. While not all prostitutes work for pimps, one study estimated that 80 percent of female street prostitutes are involved with a pimp at some point. Children, particularly runaways who have difficulty meeting basic needs, are vulnerable to the attention of a pimp who is skilled at assessing the needs of his victim, fulfilling the unmet needs, and “turning the victim out” for prostitution. The initial courtship between pimp and prostitute can last anywhere from one day to

⁹ McClanahan et al., op. cit., 1608.

¹⁰ Widom, C.S., and Kuhns, J.B. (1996) “Childhood victimization and subsequent risk for promiscuity: A prospective study.” *American Journal of Public Health* 86(11):1611.

¹¹ Youth Advocate Program International, op. cit., 2.

¹² Widom and Kuhns, op. cit., 1611.

¹³ Greene, J.M., Ennett, S.T., and Ringwalt, C.L. (1999) “Prevalence and correlates of survival sex among runaway and homeless youth.” *American Journal of Public Health* 89(9):1408-1409.

several months. During this time, the victim develops devotion, infatuation, admiration, or loyalty.¹⁴ Pimps use violence to enforce rules set for CSEC (such as earning a set amount of money or working a specific area or time). While this violence is often predictable, pimps also use violence more randomly to keep the children under their control.

But violence comes from other sources as well, including customers, others working for the pimp, the public, and even service providers.¹⁵ Customer violence or “bad dates” are common. Such violence involves beatings, robbery (which may result in beatings from the pimp), rape, and leaving the victim in a deserted or distant location. Other women or girls working for the pimp may also attack a prostitute in order to show their dedication to the pimp or, if not working for the pimp, to establish authority over a given territory. In addition, prostitutes encounter violence or abuse from the public. Objects are thrown at them from passing cars, or they are attacked or harassed when they seek services. Prostitutes rarely report such crimes to authorities for fear of being victimized by police. In Nixon, Crowne, Gorkoff, and Ursel, street prostitutes in western Canada reported being hit by or forced to have sex with police.¹⁶ A number of women also avoided police because of stories they heard about abuse.

Drug abuse, particularly crack, is another factor in commercial sexual exploitation. In one study, 66 percent of the women interviewed reported entering into street prostitution to support a drug habit. In another, the same percentage of women reported becoming drug abusers after they became involved in street prostitution. For these women, drugs or alcohol were needed to overcome their fear of the street and what could happen. Pimps also use drugs to get girls under their control. Use of drugs, while reducing fear, may dispose victims to risk even greater dangers, such as engaging in unprotected sex or going with someone who poses a distinct threat.

It is widely recognized that commercially exploited youth are at substantial risk of sexually transmitted diseases, including HIV/AIDS. The social and emotional risks are also significant, with studies reporting disproportionate levels of mental illness.¹⁷ A study on youth victimization by Kilpatrick, Saunders, and Smith found that children who were victims of sexual assault were three to five times more likely to exhibit post-traumatic stress disorder (PTSD),

¹⁴ Williamson, C., and Cluse-Tolar, T. (2002) “Pimp-controlled prostitution: Still an integral part of street life.” *Violence Against Women* 8:1084.

¹⁵ Nixon, K., Tutty, L., Cowne, P., Gorkoff, K., and Ursel, J. (2002). “The Everyday Occurrence. Violence in the Lives of Girls Exploited Through Prostitution.” *Violence Against Women* 8(9):1016-1043.

¹⁶ *Ibid.* 1037.

¹⁷ Estes, R.J., and Weiner, N.A. (2001) *The commercial exploitation of children in the U.S., Canada and Mexico*. Philadelphia, PA: University of Pennsylvania, p. 63.

substance abuse, and delinquency. While these findings are striking, the study excluded runaways and juveniles in correctional or inpatient mental health treatment facilities—arguably some of the most vulnerable youth and those most likely to be involved in commercial sexual exploitation.¹⁸

1.3 Study Definition of Commercial Sexual Exploitation of Children

For the purposes of this study, the definition of commercial sexual exploitation was based on that provided by the New York State Legislature in the Safe Harbour bill, which was first proposed during the 2005 session:

“sexually exploited children” shall mean people under the age of 18 who may be subject to sexual exploitation because they have engaged or agreed or offered to engage in sexual conduct with another person in return for a fee, traded sex for food, clothing or a place to stay, stripped, been filmed or photographed performing or engaging in sexual acts or loitered for the purpose of engaging in a prostitution offense as defined in section 240.37 of the penal law.¹⁹

This definition is comparable to the definition of “severe sex trafficking” used in the federal *Trafficking Victims Protection Reauthorization Act* (TVPRA) of 2005, although more specific regarding the acts involved in sexual exploitation. In TVPRA, severe sex trafficking is defined as “a commercial sex act induced by force, fraud, or coercion, or in which the person induced to perform such acts has not attained 18 years of age.”²⁰ All children identified for the study met the TVPRA definition of severe sex trafficking.

In operationalizing the definition of CSEC for this study, OCFS staff examined the intent of the legislation and discussed the definition with legislative staffers who worked on the original Safe Harbour bill, and the May 2006 revision that included trading sex for drugs in the bill’s definition of sexual exploitation. Further, staff examined the definition used by previous studies cited above. Of particular concern was the need to rule out sexual abuse of children by caregivers or others without a commercial purpose and focus on exploitation that involves exchange for money or bartered items such as food, clothing, or drugs. These distinctions can be

¹⁸ Kilpatrick, D.G., Saunders, B.E., and Smith, D.W. (2003) “Youth victimization: Prevalence and implications.” *Research in Brief*. Washington, DC: U.S. Department of Justice, National Institute of Justice, p. 2.

¹⁹ Education, Labor and Family Assistance Article VII/Language Bill (S6458 – C/A 9558-B), Part F. Note that trading sex for drugs was included in the study definition because this wording was added to a revised Safe Harbour bill that was introduced in May 2006 before the study commenced.

²⁰ *Trafficking Victims Protection Reauthorization Act of 2005* (Public Law 106-386), Section 103(8(A)).

subtle, which we further confirmed in implementing this study. Specifically, for this study, a commercially sexually exploited child is a person, under age 18, identified as having been involved in at least one of the following acts:

- Engaged in, agreed to, offered, or was threatened or coerced to engage in sexual conduct or acts with another person in return for money, food, clothing, protection, drugs, or a place to stay;
- Stripped and performed in public or over the Internet;
- Was filmed, photographed, or tape recorded engaging in a sexual act; or
- Loitered for the purpose of engaging in prostitution.

The perpetrators of sexual exploitation can be relatives, strangers, acquaintances, or friends and can be adults or minors. However, the agencies surveyed for this study were asked to exclude situations where, for example, food, clothes, or drugs were offered in exchange for sexual acts between romantic partners, such as boyfriends and girlfriends. The definition used by the study proved to be consistent with that used by these other agencies. All agencies participating in the qualitative interviews as part of the study agreed with the study definition.

2. METHODOLOGY

Westat used a two-pronged approach, combining both qualitative and quantitative methods, to collect information on CSEC and the current service delivery programs for victims. The methodology—the sample design, instrument development, data collection, data processing, data analysis, and weighting—used to respond to all requirements of the study is outlined below. A brief description of the agencies included in the study is also provided.

2.1 Sample Design

A purposive sample of eleven counties was drawn to represent variations in population under 18 and geography; high rates of prostitution arrests and child sexual abuse reports; and the presence of agencies likely to serve as sentinels²¹ of CSEC, such as child advocacy centers (CACs), runaway programs and shelters, and service programs known to target sexually exploited children. Because there is anecdotal evidence that the prevalence of sexually exploited children is considerably higher in NYC than in other parts of the State and that such cases may be handled differently in NYC than in the rest of the State, four of the NYC boroughs—Brooklyn (Kings County), Queens, Bronx, and Manhattan (New York County)—were included. The seven counties selected from the rest of the State, hereafter referred to as Upstate counties, were:

- Chautauqua,
- Erie,
- Oneida,
- Onondaga,
- Schenectady,
- Warren, and
- Washington.

²¹ The term “sentinel” is typically used in research to denote persons or agencies that are in a position to observe, identify, or intervene in the behavior that is being studied.

As shown in Table 2.1, these seven counties and four boroughs contain half the total population of New York State and half its population under 18. In 2005, these areas had 4,321 reports of child sexual abuse and 5,044 arrests of adults for prostitution. All but three arrests of persons less than 18 years old for prostitution in the State occurred in these areas—182 in the four NYC boroughs and four in the Upstate counties.

Table 2.1: Demographics of the Sample Counties							
County	Total Population (2000)		Population Under 18 Years (2000)		Child Sex Abuse Reports (2005)	Prostitution Arrests Over 17 ¹ (2005)	Prostitution Arrests Under 18 ¹ (2005)
	Number	Percent ²	Number	Percent	Number	Number	Number
New York City Boroughs							
Bronx	1,332,650	7.0	395,849	8.5	1,246	271	11
Kings	2,465,326	13.0	658,663	14.1	897	1,542	65
New York	1,537,195	8.1	255,598	5.5	356	1,969	64
Queens	2,229,379	11.7	507,425	10.9	599	849	42
<i>Total for NYC³</i>	<i>7,564,550</i>	<i>39.9</i>	<i>1,817,535</i>	<i>38.9</i>	<i>3,098</i>	<i>4,631</i>	<i>182</i>
Upstate Counties³							
Chautauqua	139,750	0.7	34,098	0.7	163	0	0
Erie	950,265	5.0	230,257	4.9	400	86	1
Oneida	235,469	1.2	56,324	1.2	156	88	0
Onondaga	458,336	2.4	118,044	2.5	242	192	3
Schenectady	146,555	0.8	35,572	0.8	138	47	0
Warren	63,303	0.3	15,218	0.3	56	0	0
Washington	61,042	0.3	15,000	0.3	68	0	0
<i>Total for Upstate³</i>	<i>2,054,720</i>	<i>10.8</i>	<i>504,513</i>	<i>10.8</i>	<i>1,223</i>	<i>413</i>	<i>4</i>
<i>Total for Sample³</i>	<i>9,619,270</i>	<i>50.7</i>	<i>2,322,048</i>	<i>49.7</i>	<i>4,321</i>	<i>5,044</i>	<i>186</i>
<i>Total for NY State</i>	<i>18,976,457</i>	<i>100.0</i>	<i>4,674,191</i>	<i>100.0</i>	<i>8,873</i>	<i>8,071</i>	<i>189</i>
¹ Prostitution arrests also include patronizing and promoting. ² Percentages based on total population for New York State. ³ Percentages in these rows are based on totals for New York State.							

It is important to note that Westat used a purposive sample to allow fuller investigation of the issues associated with CSEC, instead of randomly selecting counties where the problem may not exist. When a purposive sample of counties is drawn, the counties do not have a known probability of selection, so it is impossible to produce unbiased estimates for all of New York State.²² Indeed, in this survey, most of the sample counties were selected because their rates of juvenile prostitution are believed to be high—that is, the counties were not intended to be

²² Known probability of selection means that a county or agency was drawn from among a group of counties or agencies at a given rate. For example, a ten percent sample of New York counties would yield a sample of six counties all with an equal chance of selection and a known probability of selection, one in ten.

representative. Thus, a statewide estimate of sexually exploited youth based on this sample of counties would very likely be a substantial over-estimate.

A Study Advisory Group (see Appendix A) was invited to support the project by identifying issues of greatest concern to agencies that work with sexually exploited youth as well as the types of agencies most likely to see these youth. Within each sampled county, comprehensive listings of ten targeted agency types were developed from several sources of information. The ten agency categories included:

- **County law enforcement.** One agency—the Sheriff’s Department—was selected per county, provided that investigation was part of the Sheriff’s function. (Source: *National Directory of Law Enforcement Administrators*. National Public Safety Information Bureau, 2004.)
- **Municipal law enforcement,** as well as the Port Authority Police in New York City. Two agencies per county were selected. The agencies with the largest number of officers were selected first.²³ (Source: *National Directory of Law Enforcement Administrators*. National Public Safety Information Bureau, 2004.)
- **Juvenile probation departments.** The probation department in each county was selected. (Source: Listing of county probation offices from the New York State Division of Probation and Correctional Alternatives, 2006.)
- **Juvenile detention facilities.** One facility per county was selected (the one with the largest number of beds), if there were such facilities in the county. (Source: *Directory of Juvenile Detention Facilities in New York State*. New York State Office of Children & Family Services, 2005.)
- **OCFS female juvenile justice facilities.** The OCFS Girls Reception Facility, which provides centralized intake for females committed to OCFS by the court, provided detailed information on statewide and county-level intake counts, annually and for the reference period, for all girls identified as sexually exploited (based on the arrest charge and data contained in the Reception Assessment Report) at intake.²⁴ We treated data for each county or borough as if they represented a separate OCFS “facility.” (Source: *Reception Assessment Reports on OCFS’ internal database*.)

²³ In NYC, the police department covers all boroughs, so data were collected centrally for the four boroughs in NYC.

²⁴ OCFS data were limited to females because no males were admitted to OCFS for prostitution-related offenses or promoting a child in sexual performance offenses during the study period. Also, the male reception assessment reports (RAR) are not computerized and could not be searched for other hints of sexual exploitation within the limited timeframe available to conduct this study. The female RARs were available on computer.

- **Runaway homeless youth (RHY) shelters/transitional independent living (TIL) programs.** All such facilities in the county were selected. (Source: *Runaway and Homeless Youth Program Directory*. New York State Office of Children & Families, 2006.)
- **Congregate care facilities.** These facilities—such as group homes and other residences for children in foster care—were sampled on the basis of size. Agencies serving the most children (either in a single facility or multiple facilities) within the county were selected. Up to two agencies were chosen per county. (Source: *Listing of Voluntary Agencies Utilized by Counties for Foster Care from Council of Family and Child Caring Agencies and Administration for Children’s Services (ACS)*, 2006.)
- **Rape crisis centers.** Up to two agencies were chosen per county. (Source: *Local Programs*. New York State Coalition Against Sexual Assault, 2006.)
- **Child advocacy centers (CACs).** One CAC per county was selected. (Source: *CAC Directory*. New York State Child Advocacy Resource and Consultation Center, 2006.)
- **Youth-serving agencies.** A number of agencies were selected from each county. These agencies included diversion programs for Persons In Need of Supervision (PINS), Legal Aid divisions, street outreach, and teen health programs. For the most part, all agencies in this residual category that were known to work with sexually exploited youth were selected. (Sources: *Listing of PINS Diversion Program, Children’s Aid Society*; *Listing of Juvenile Practice Division, Legal Aid*; *Listing of Youth-Serving Agencies From County Youth Bureaus*; recommendations from Advisory Board members.)

A total of 159 agencies were sampled. In cases where more than one or two agencies were located in the county, replacements were selected for any agencies that refused to participate in the study.

2.2 Instrument Development

Five data collection instruments were developed to capture information on the prevalence of sexually exploited children, the services needed and provided, and the experiences of those agencies working most directly with CSEC. The data on prevalence of CSEC were collected through a prospective questionnaire covering cases newly identified during a specific period of time. An alternative approach—asking agencies to retrieve data on previous cases—was rejected because members of the Advisory Group consistently commented that few agencies could easily retrieve data on past CSEC cases. As a result, police, corrections, probation, social service, and legal service agencies represented on the Advisory Group reached a consensus. Any

instrument developed would need to be given to the agencies in advance so that they could collect data soon after a case was identified.

Two mail questionnaires, one for police/sheriff's departments and a second for all other agencies, were developed (see Appendix B). The questionnaires were modeled after the Juvenile Facilities Study for the Second National Incidence Study of Missing, Abducted, Runaway, and Thrownaway Children.²⁵ These two instruments collected data on the total number of children and youth served or involved with the agency (Part I), the number of sexually exploited children identified by the agency during a two-month period (July 15 through September 15, 2006) (Part II), and more detailed information at the child level on a sample of the sexually exploited children (Part III). In Part III, agencies were asked to provide detailed information on up to five sexually exploited youth identified by the agency—specifically, the last five children identified during the reference period. The term “identified” means that the agency learned of the sexual exploitation during the reference period through child disclosure, police or other agency referral, observation of the exploitation, or some other way. This term was used in recognition of the fact that it often takes children a long time to disclose sexual exploitation (and some of it never *is* identified). Pilot tests were conducted with five agencies to refine the wording on questions and instructions.

Two qualitative interview protocols for telephone administration were developed (see Appendix C). The Agency Qualitative Interview was used with agencies identified in the mail questionnaire as providing services to CSEC. Other agencies recommended by the Study Advisory Group were also included. This survey asks for information on the different services provided, successful approaches in working with CSEC, the availability of community resources to serve these children (both within and outside the agency), and community resources needed. It also asks a series of questions about how the community deals with CSEC (such as protocols governing which agencies provide services, etc.). An alternate version of this survey, the DSS Qualitative Interview, was also developed for interviews with staff of the NYC Administration for Children's Services (ACS) and the upstate Departments of Social Services (DSS) in the sampled counties. These interviews provide a context for the data collected on the number and types of services provided in each county.

²⁵ Sedlak, A., Schultz, D., Croos, J., and Choudhry, H.(2003) *Second National Incidence Study of Missing, Abducted, Runaway, and Thrownaway Children: Juvenile Facilities Study Methodology Report*. Westat: Rockville, MD.

Last, Westat developed a focus group protocol (see Appendix D). This was sent to a subset of agencies (runaway and homeless youth agencies and agencies particularly noted for their work with CSEC), with a request that they hold a focus group comprising CSEC who were clients of the agency. Focus group topics included: (1) definitions of sexual exploitation, (2) gateways to sexual exploitation, (3) details about the clients' involvement, (4) problems caused by the exploitation, and (5) service access and availability. Three focus groups were conducted in NYC in the allotted time.

2.3 Data Collection

2.3.1 Mail Questionnaires

Once the sample was drawn, mailing lists and questionnaires were prepared. A joint letter from OCFS and the Division of Criminal Justice Services (DCJS) urging agencies to participate was developed. Once the OCFS/DCJS letter was approved (July 28), 159 agencies were mailed questionnaires and the accompanying letter on July 31, 2006. The letter asked agencies to respond for the period July 15 through September 15, 2006, and send completed questionnaires by September 30. Prior to mailing questionnaires, Westat staff had begun calling sampled agencies to ask for their active participation, and, where possible, to determine who should complete the questionnaire. In most cases, the executive director expressed an interest in seeing the questionnaire first. Several days after the surveys were mailed, Westat staff again called agencies to ensure that the agencies had received the survey (if not, a replacement was e-mailed, faxed, or mailed), to identify staff completing the form, and to answer questions about the survey. On August 25, postcards were sent to remind agencies about the survey and again give them a 1-800 telephone number to call if there were questions.

Few questionnaires ($n=17$) were returned by September 30. A second mailing was sent to nonrespondents. This mailing included letters from the project staff and the original letter from OCFS and DCJS, the questionnaire, and a Federal Express return envelope. Several days after the mailing, staff again called agencies to determine if they had received this mailing and ask that they complete the questionnaires. Staff continued calling on a routine basis for the next few weeks. Few agencies refused outright to participate. Most refusals were passive; phone calls and questionnaires were not returned. In mid-October, staff from OCFS also called nonrespondents to enlist their participation.

Data collection for most agencies was cut off in early January 2007, to permit time for data analysis. Data for one agency was added as late as February 15, 2007. Based on responses received at that time, we determined that seven agencies that received surveys (four Upstate and three in NYC) should not have been included in the survey sample because they did not meet study criteria. They were ruled “out of scope.” Table 2.2 shows the overall response rates by agency type and for NYC versus Upstate counties. The difference in response rates between NYC boroughs and the Upstate counties is dramatic, 45.2 percent versus 81.0 percent, respectively. The lower response rate for the NYC boroughs causes particular concern given the expectation that a higher incidence of CSEC would be found there. In Upstate counties, the majority of sampled agencies in all categories submitted the mail questionnaires. In NYC, the majority of the agencies in the police, probation, detention center, OCFS juvenile justice facility, and CAC categories submitted the mail questionnaires. The lowest response rate—17.2 percent--was obtained for youth-serving agencies in NYC, where they represented the largest number of agencies ($n=29$) in the original sampling frame. This had been the most diverse survey group targeted (health clinics, PINS diversion programs, legal services, street outreach, etc.). Just three youth-serving agencies were in the Upstate sampling frame and all of them responded.

Table 2.2: Response Rates by Agency Type and Geographic Area

Agencies	NYC (4 Counties)				Upstate (7 Counties)			
	No. Contacted	No. in scope	No. Completed	Response Rate (%)	No. Contacted	No. in scope	No. Completed	Response Rate (%)
Municipal and County Police ¹	5	5	4	80.0	21	19	16	84.2
Probation Departments ²	4	4	4	100.0	7	7	7	100.0
Detention Centers	8	8	6	75.0	11	9	5	55.6
OCFS Female Juvenile Justice Facilities ³	4	4	4	100.0	7	7	7	100.0
RHY Shelter/TILP Programs	5	3	1	33.3	9	9	6	66.7
Congregate Care	7	7	3	42.9	13	13	10	76.9
Rape Crisis Centers	9	8	3	37.5	7	7	5	71.4
Child Advocacy Centers	5	5	3	60.0	5	5	5	100.0
Youth-Serving Agencies	29	29	5	17.2	3	3	3	100.0
TOTAL	76	73	33	45.2	83	79	64	81.0

¹ NYC Police department is counted as four agencies, representing the four sample counties in the city.

² NYC Probation is counted as four agencies, representing the four sample counties in the city.

³ OCFS is counted as seven Upstate and four NYC agencies, as the Reception Facility houses girls from all counties and provided data for the sample counties and the entire state.

Another concern for the analysis was non-participation by two large police agencies in the sample, the Buffalo Police Department and the Port Authority Police in New York City, and by legal service agencies that work with CSEC. Although a number of calls were made to these agencies, staff were unable to gain participation. We believe participation from these agencies would have increased the prevalence counts.

In the few cases where agencies gave reasons for not participating, the most common explanation was that data were unavailable, which generally meant that the data were not stored in a central database, unless the child had been charged with a commercial sexual exploitation offense, such as prostitution, loitering for prostitution, stripping, or posing for pictures. Agencies frequently said that information on sexual exploitation would be found only in the narrative of a child's files. Other agencies stated that given current caseloads they did not have anyone available to extract the information from the files. Confidentiality restrictions prohibited assigning non-agency staff to this task. In addition, staff, particularly in detention centers or probation agencies, reported that unless children were charged with an exploitation offense, the child would be unlikely to disclose the pertinent experiences to their agency.

This experience with recruitment of agencies and data collection is consistent with other recent surveys, including the Fourth National Incidence Study of Child Abuse and Neglect (NIS-4), conducted by Westat. NIS-4, congressionally mandated and administered by the U.S. Department of Health and Human Services, is conducted approximately every ten years and is considered the gold standard for developing national estimates on child abuse and neglect. Like the current study, NIS-4 is a prospective data collection effort in which both agencies and individual sentinels are recruited for participation. In NIS-4, it took staff on average 169 days from first contact to gain an agency's approval to participate and 215 days to get (or confirm) refusals.²⁶

Aware of these challenges, Westat and OCFS made every effort in designing the current study to address problems likely to cause the greatest delays in approval. By establishing an Advisory Group of representatives of many of the agencies expected to participate, Westat and OCFS hoped to gain buy-in for the study. OCFS also discussed the study in meetings involving agency representatives so that they would be prepared for it. The questionnaire requested *no* directly identifiable data (such as child's name, agency ID, or address), so that agencies would

²⁶ Gragg, F. et al. (2006) *Fourth National Incidence Study of Child Abuse and Neglect*. Conducted under contract with the U.S. Department of Health and Human Services. Washington, DC: Westat, p. 46.

not need to seek time-consuming approvals from Institutional Review Boards or research committees in order to collect the data. While these efforts were helpful, additional time to prepare agencies for such a collection and set up procedures would likely have produced better response rates and higher prevalence rates.

2.3.2 Qualitative Interviews

Twenty-one agencies were identified as good candidates for participation in the telephone interviews. Each served children in the study counties, although not all were actually located in them. Interviews were sought with all of these agencies; a few also participated in the mail questionnaire. Only one agency (which had been recommended by two agencies participating in the mail questionnaire) was later determined to be out-of-scope and eliminated from the interview list. It was a CAC that reported it did not see CSEC.²⁷ Of the remaining 20 agencies, 12 agreed to interviews, which were conducted in September, October, and November 2006 and January 2007. For the most part, refusals were passive; agencies did not say no, but no interview times could be arranged or calls were not returned. Agencies that were identified as key to working with CSEC in the sampled counties and agreed to participate are shown in Table 2.3.

Interviews with ACS in NYC and with DSS in each of the seven Upstate counties were also requested. These interviews were designed to provide information on what protocols and services existed in each county and additional context about the issue of CSEC. All eight agencies participated in interviews. They included:

- Administration for Children’s Services, Criminal Justice Division, NYC;
- Chautauqua County Department of Social Services, Family and Children’s Services;
- Erie County Department of Social Services, Child Protective Services;
- Oneida County Department of Social Services, Services Division;
- Onondaga County Department of Social Services, Child Welfare;
- Schenectady County Department of Social Services, Children and Family Services;
- Warren County Department of Social Services; and
- Washington County Department of Social Services.

²⁷ The agency stated that it would not refuse service to CSEC, but simply did not see children fitting the definition.

Table 2.3: Agencies Participating in Qualitative Interviews		
Agency	County	Agency Type
1. St Anne’s Institute	Albany	Congregate Care
2. Compass House	Erie	Runaway and Homeless Youth
3. Brooklyn District Attorney—Saving Teens at Risk (S.T.A.R.) Project	New York City	Youth-Serving
4. Coalition to Address the Sexual Exploitation of Children (CASEC) (Also known as the Mayor’s Task Force)	New York City	Coalition
5. Girls Education and Mentoring Service (GEMS)	New York City	Youth-Serving
6. Kingsbridge Heights Mental Health Center	New York City	Youth-Serving
7. Legal Aid	New York City	Youth-Serving
8. Sexual Assault and Violence Intervention Program (SAVI)	New York City	Rape Crisis and Sexual Assault
9. Oneida County CAC	Oneida	Child Advocacy Center
10. Vera House	Onondaga	Rape Crisis (Domestic and Sexual Violence)
11. Sexual Trauma and Recovery Services (STARS)	Washington	Rape Crisis and Sexual Assault
12. OCFS Facilities	State/All sampled counties	OCFS Female Juvenile Justice Facilities

2.4 Data Processing

Data processing involved careful review of the submitted data forms for clarity of responses and handwriting, consistency in counts entered, and fidelity to the study definition of commercial sexual exploitation. The first two tasks were relatively straightforward. The third task involved reviewing the case-level information on the survey and the description of exploitation to determine if the action described fit the definition used for the study. Nine agencies and five police/sheriff departments provided cases that fell outside of the commercial acts sought. Examples include sex with biological or stepfathers, brothers, or other family members and sex with a boyfriend in return for drugs. One case reported that a young girl had oral sex with her brother. In return, he protected his sister from others at school. Respondents indicated that these events were reported to child protective services, which removed the victim or perpetrator for

safety. The submission of such responses underscores the difficulty of conveying a clear definition of CSEC to agencies who work with these children. For these agencies, “exploitation” took precedence over “commercial” in understanding the definition. More lead time to work with and train agency staff prior to data collection would have improved the quality of the data.

Where discrepancies with the definition occurred, adjustments were made to the agency’s overall counts of CSEC, based on the child-level data. For example, if an agency identified ten children as sexually exploited during the reference period, provided five case-level descriptions, and one case was found ineligible because it lacked commercial aspects, Westat reduced the overall agency count by one-fifth. Prior to making this adjustment, every effort was made to contact the respondent to determine if the agency could provide revised estimates based on the correct definition. If the agency was unable to do so or could not be reached, adjustments were made as described above.

Given that data were collected from multiple agencies in the same counties, there also was a possibility of duplicating the children across study agencies. As discussed in the previous section, to meet the study timeframes, we found it necessary to avoid collection of identifiable information. At the outset, we had anticipated unduplicating cases that were referred by police, where the agency and the police were in the same county. However, given the time lapse between original arrest and intake at OCFS facilities, delays in providing youth with services (as reported by the agencies), and the likelihood of delays in disclosure of exploitation by children (unless charged with the offense), the decision was made to include all children identified by any agency. Consequently, we recognize that some duplication may exist.

2.5 Weights

In order to develop estimates of the prevalence of CSEC by geographic area and agency type, the sample responses were weighted for Upstate counties and then NYC boroughs. The estimates were developed by combining the aggregated counts of CSEC from all respondent agencies within the two geographic areas, Upstate and NYC. These weights were the product of four factors: (1) the inverse of the probability of selection of the agency (the agency factor), (2) an adjustment factor for agency nonresponse, (3) the inverse of the probability of the selection of the episode (the episode factor), and (4) a nonresponse adjustment factor for missing episode reports for some or all episodes from an agency.

A simple nonresponse adjustment factor was also applied. To compensate for agencies that refused to participate, weights were increased for similar agencies in the same geographic area (Upstate or NYC) as the refusal agency. Additionally, weights were added to the sample of children (or cases) identified by the agencies and described in Section III of the mail questionnaires. This sample was treated as a random sample of the total number of children (cases) identified within the agency. These case factors were applied as the ratio of the aggregated number of CSEC reported by the agency to the number of cases or sample CSEC. Child-level nonresponse adjustment cells were initially defined by each participating agency and then within the agency-level nonresponse adjustment cells described above.

Next, prevalence estimates and the child-level sample data based on the two-month reference period were annualized. Using data on arrests of juveniles for prostitution for 2001 and 2005, annualized rates of 5.5 for NYC and 4.5 for Upstate were applied. Note that the annualization factor was not applied to descriptive data about agencies (such as services provided, services needed, barriers to services, use of protocols). The annualization factor was applied to the aggregated estimates of children served by each agency and the child-level sample also provided by the agency.

The weighted estimates derived from these calculations—for agencies involved with CSEC by agency type and geographic area and for prevalence of CSEC—are presented in the next chapter as Tables 3.1 and 3.2.

2.6 Data Analysis

2.6.1 Analysis of Mail Questionnaires

The mail questionnaires produced a large amount of data on exploited children and youth, patterns of exploitation, the agencies themselves, and the services needed by and provided to the children and youth. The analyses attempted to answer the following research questions:

- I. **The youth:** What is the prevalence of sexually exploited children and youth in the study counties? Does the prevalence vary between New York City and the seven Upstate counties? Do the characteristics of sexually exploited children and youth vary significantly by these geographic areas? Is geographic area associated with particular types, patterns, or histories of sexual exploitation?

- II. **The exploitation:** What are the predominant types of sexual exploitation in the sample? What are the characteristics of the exploitation (e.g., use of force, identity of the exploiter(s), where the exploitation occurred, prior episodes, and ages of children and youth at earliest and most recent episodes)?
- III. **The agencies:** What types of agencies serve sexually exploited children and youth in the study counties? What services do they provide? What services are needed by sexually exploited children and youth? What are the barriers to serving the children and youth? How do service response and availability differ between geographic areas?

Data were provided at both the agency and child levels. To develop and apply weights, statisticians used WesVar, a Westat product that uses a flexible approach to replication variance estimation. WesVar uses three methods of jackknife replication and two versions of balanced repeated replication to create survey weights. WesVar creates a set of weights for each replicate subsample, such as the Upstate and NYC groupings in this study. It also permits the development of weights for nonresponse and annualization as discussed above.

2.6.2 Analysis of Qualitative Data

In analyzing the qualitative interviews and the focus group summaries, we focused on the following questions:

1. What patterns and common themes, both agency and county specific and cross-agency and county, emerge in interviewees' responses?
2. What responses deviate from these patterns, and what explains these atypical responses?
3. What interesting stories emerge and how do they help answer the research questions?
4. Do any of these findings indicate a need for additional research?

In this report the qualitative data are used to provide a fuller picture of the CSEC, coloring in the broad outline provided by the mail questionnaires.

In Chapter 3 we examine the prevalence rates for CSEC across all agency types and the two geographic areas targeted in the study. We also examine the variations by type of reporting agency and by geographic area.

3. FINDINGS ON COMMERCIALLY SEXUALLY EXPLOITED CHILDREN

We begin this chapter by presenting weighted annualized estimates of the prevalence of CSEC for sample counties. We then discuss the number of agencies that handled CSEC and the number of CSEC they identified, by agency type and geographic area. As discussed in Chapter 2, these are weighted estimates based on the agency samples drawn from four NYC and seven Upstate counties and the survey responses received. Next we briefly describe the diversity of agencies that responded to the survey, in terms of caseload size and age of youth served. We then examine the characteristics of the CSEC identified Upstate and in NYC, including their demographic characteristics, the details of the exploitation, how the children were identified, and their backgrounds. A brief summary of these findings concludes this chapter.

3.1 Prevalence Estimates of CSEC

Our estimates of the prevalence of CSEC are shown in Table 3.1. Based on data collected from the sampled agencies, we estimate that 2,253 CSEC are identified by the agencies annually in the four New York City boroughs participating in the study, and 399 CSEC are identified by the agencies annually in the seven Upstate counties. These annualized estimates are obtained by using the number of children identified by sampled agencies during the study's two-month reference period to estimate the number of CSEC identified in an entire year. Within NYC, New York County (Manhattan) has the highest number, with 945 CSEC identified annually (42 percent of the NYC CSEC). The Bronx has the lowest number, with 140 CSEC (six percent of the NYC CSEC). Erie County has the highest number among the seven Upstate counties (119 CSEC), followed closely by Schenectady (117 CSEC). Those two counties account for over half of the Upstate sample county cases. Chautauqua County has the lowest number, only 9 CSEC or two percent of the Upstate sample county cases. Overall, the NYC counties account for about 85 percent of the identified CSEC (2,253 out of a total of 2,652), while containing about 78 percent of the under-18 population for the entire study area (see Chapter 2, Table 2.1).

The estimated number of agencies on which the estimates are based is shown in Table 3.2, by agency type and geographic area. Note that in some cases, the agencies responded that they did not see any CSEC. Based on the county samples, we estimate that, over the course of a year, 88 agencies in NYC and 103 agencies in the seven Upstate counties identify CSEC

Table 3.1: Prevalence of CSEC by Sample Counties¹

County	Weighted, Annualized Estimates for CSEC:	
	Number	Percent
New York City Boroughs		
Bronx	140	6%
Kings (Brooklyn)	760	34%
New York (Manhattan)	945	42%
Queens	408	18%
Total for NYC²	2,253	100%
Large Upstate Sample Counties		
Erie	119	30%
Onondaga	18	5%
Medium Upstate Sample Counties		
Chautauqua	9	2%
Oneida	81	20%
Schenectady	117	29%
Small Upstate Sample Counties		
Warren, Washington ³	54	14%
Total for Upstate Counties	399	100%

¹The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for non-response, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.

²Although a total of 2,253 NYC CSEC are presented in this table, a total of 2,121 NYC CSEC appear in later tables that give detailed information on the child and sexual exploitation events. Other than demographics, no detailed child-level information was available from NYPD on the history of the child or the events, so the tables providing those details include 132 fewer weighted, annualized cases.

³Given the small population size of these counties, all data for these counties were handled as a single unit.

Table 3.2: Agencies Involved with CSEC in Sampled Counties by Geographic Area¹

Agencies	Weighted Agency Estimates in:	
	NYC (N=88)	Seven Upstate Counties (N=103)
Municipal and county police	1 (1%)	40 (39%)
Probation departments	1 (1%)	7 (7%)
Detention centers	15 (17%)	9 (9%)
OCFS female juvenile justice facilities	4 (5%)	7 (7%)
RHY shelters/TIL programs	4 (5%)	9 (9%)
Congregate care facilities	14 (16%)	16 (16%)
Rape crisis centers	16 (18%)	7 (7%)
Child advocacy centers	5 (6%)	5 (5%)
Youth-serving agencies	28 (32%)	3 (3%)

¹The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse.

among the children they serve. In NYC, youth-serving agencies make up the largest proportion (32 percent) of agencies likely to identify CSEC, while in the Upstate counties, municipal and county police make up the largest proportion (39 percent). These proportions reflect the fact that youth-serving and police agencies were the most numerous in the sampling frames for NYC and Upstate, respectively.

Table 3.3 shows weighted, annualized estimates of the number of CSEC identified by agency type and geographic area. In NYC, youth-serving agencies account for the overwhelming proportion of the children identified—79 percent—although they are only 32 percent of the reporting NYC agencies (compare Table 3.2). In the seven Upstate counties, congregate care facilities identify more than half the CSEC (55 percent of all those identified Upstate), even though these agencies comprise only 16 percent of reporting agencies (from Table 3.2). RHY shelters/TIL programs identify another 18 percent of the CSEC in the seven Upstate counties, although they are only 9 percent of reporting agencies (from Table 3.2). Rape crisis centers in the Upstate counties identify 11 percent of the CSEC, and comprise seven percent of reporting agencies. In contrast, rape crisis centers in NYC identify none of the CSEC. No other agency type, either Upstate or in NYC, identifies more than 6 percent of the CSEC. Although municipal and county police agencies are only 1 percent of the agencies identifying CSEC in NYC (as shown in Table 3.2), Table 3.3 shows that they identify 6 percent of the CSEC. Conversely, although municipal and county police agencies are 39 percent of agencies in the seven Upstate Counties (Table 3.2), Table 3.3 shows that they identify less than 1 percent of the CSEC.

Agencies	Weighted, Annualized CSEC Estimates in:	
	NYC (N=2,253)	Seven Upstate Counties (N=399)
Municipal and county police	132 (6%)	9 (<1%)
Probation departments	0 (0%)	22 (6%)
Detention centers	57 (3%)	13 (3%)
OCFS female juvenile justice facilities	33 (1%)	5 (<1%)
RHY shelters/TIL programs	88 (4%)	72 (18%)
Congregate care facilities	129 (6%)	221 (55%)
Rape crisis centers	0 (0%)	43 (11%)
Child advocacy centers	28 (1%)	0 (0%)
Youth-serving agencies	1,786 (79%)	14 (4%)

¹The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for non-response and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.

Data presented in the remainder of this chapter reflect the counts from Tables 3.1, 3.2, and 3.3. Note, however, that in discussing child-level data, only the table discussing demographic characteristics (Table 3.4) is based on the full number of CSEC shown in Table 3.1 ($n=2,652$). The remaining tables with child-level data are based on a slightly lower number ($n=2,520$). Tables with the lower number omit CSEC identified by the New York City Police Department (NYPD), because NYPD was unable to provide detailed child-level data (other than demographics) for them during the study timeframe. Thus, the remaining tables are based on $n=2,520$ (NYC, $n=2,121$ and Upstate, $n=399$).

3.2 Description of Agencies Participating in the Mail Survey

Before examining the data on CSEC and the service delivery system that handles them, it may be useful to briefly examine a few other characteristics of the agencies represented in the sample, based on information the agencies reported in the mail questionnaires. First, they are extremely diverse in terms of annual caseloads. The number of children and youth served by non-police agencies ranges from a low of 53 for a congregate care facility to 114,745 for a rape crisis center that pulls all cases for the hospital emergency room. The largest caseloads for each agency type are reported by agencies located in NYC.²⁸

An estimated three-fourths of the non-police agencies serve both males and females; 17 percent serve females only and the remainder serve males only. Police agencies obviously serve both males and females. Twenty-five percent of the agencies serve children from birth; another 60 percent report initiating services to children between the ages of one and 13. Only ten percent report initiating services after age 13. Most agencies extend services beyond the age of majority. Just 16 percent end service at 17 or younger, while 72 percent end service somewhere between ages 18 and 21. Seven percent report that they provide services beyond age 21.²⁹

²⁸ The caseload ranges for each agency type are: probation: 464 to 6,864; detention centers: 252 to 22,926; OCFS juvenile justice facilities: 234; RHY shelters/TIL programs: 398 to 22,440; congregate care facilities: 53 to 9,009; rape crisis centers: 545 to 114,745; child advocacy centers: 189 to 3,199; and youth-serving agencies: 493 to 21,067.

²⁹ Seven agencies (five percent) provided no information on this item.

3.3 Demographic Characteristics of CSEC

Table 3.4 shows the demographic characteristics of the children identified by the NYC and Upstate agencies. Detailed breakdowns by gender, age, and sexual orientation in this table show that:

- The large majority of the CSEC are female in both the NYC (85 percent) and the Upstate (77 percent) sample counties.
- Over half the CSEC identified by the agencies in NYC and a third of the CSEC in the seven Upstate counties are girls age 16 or 17 years old. Four percent in NYC and 16 percent in the Upstate counties are girls age 13 or younger.
- Among NYC agencies, 6 percent of the CSEC are boys age 16 or 17, compared to 4 percent in the seven Upstate counties. None of the CSEC in NYC but 13 percent of the CSEC in the Upstate counties are boys age 13 or younger.
- Upstate agencies identify more CSEC age 13 and under (113 boys and girls, versus 82 girls and no boys in NYC).
- Thirty-one transgender children are identified in NYC, all in the 16- to 17-year-old category. No transgender children are identified in the seven Upstate counties.
- Six percent of CSEC in NYC and two percent in the Upstate counties are identified as gay, lesbian, bisexual, or questioning (GLBQ).
- Information on age and gender is not reported for six percent of NYC and one percent of Upstate samples.

Race and ethnicity data show that:

- Two-thirds of the CSEC in NYC and one-third in the seven Upstate counties are Black/African American, while six percent in NYC and 47 percent in the Upstate counties are white.
- In NYC, the second most common racial identification, after Black/African American, is 16 percent who are “other.” “Other” comprises only six percent of the CSEC from the seven Upstate counties.
- For seven percent of the CSEC in NYC and eight percent in the Upstate counties, the race is unknown or not available.
- None of the CSEC is identified as American Indian/Alaska Native or Hawaiian/Pacific Islander.
- Only two percent of the CSEC in NYC and none of the CSEC in the Upstate counties are Asian.

Table 3.4: Characteristics of CSEC Identified by Agencies¹		
Characteristics	Number (Percentage) of CSEC Identified by Sampled Agencies in:	
	NYC (N=2,253)	Seven Upstate Counties (N=399)
Gender, Age, and Sexual Orientation		
Female:		
Under age 10	0 (0%)	25 (6%)
Age 10-11	0 (0%)	8 (2%)
Age 12-13	82 (4%)	30 (8%)
Age 14-15	622 (28%)	116 (29%)
Age 16-17	1,200 (53%)	127 (32%)
Subtotal	1,904 (85%)	306 (77%)
Male:		
Under age 10	0 (0%)	8 (2%)
Age 10-11	0 (0%)	24 (6%)
Age 12-13	0 (0%)	18 (5%)
Age 14-15	43 (2%)	22 (6%)
Age 16-17	140 (6%)	17 (4%)
Subtotal	183 (8%)	89 (22%)
Transgender:		
Age 16-17	31 (1%)	0 (0%)
Subtotal	31 (1%)	0 (0%)
Age and gender not reported		
	135 (6%)	4 (1%)
Identified as gay, lesbian, bisexual, or questioning (GLBQ)		
	135 (6%)	9 (2%)
Race²		
Am. Indian/Alaska Native	0 (0%)	0 (0%)
Asian	36 (2%)	0 (0%)
Hawaiian/Pac. Islander	0 (0%)	0 (0%)
Black/African American	1,500 (67%)	129 (32%)
White	142 (6%)	186 (47%)
Multi-Racial	62 (3%)	26 (7%)
Other	363 (16%)	25 (6%)
Unknown/not available	150 (7%)	33 (8%)
Ethnicity and Immigrant Status		
Hispanic/Latino	406 (18%)	41 (10%)
Chinese	0 (0%)	0 (0%)
Korean	31 (1%)	0 (0%)
Other/unknown	1,816 (81%)	358 (90%)
Immigrant		
	30 (1%)	0 (0%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.		
² Respondents could check more than one type of race, so percentages may total to more than 100 percent.		

- Agencies in NYC identify higher proportions of Hispanic/Latino children than agencies in the Upstate counties (18 percent versus 10 percent). Only one percent of the NYC CSEC are identified as Korean, and none is identified as Chinese.³⁰ Ethnicity is other or unknown (primarily other) for a high percentage in both NYC (81 percent) and Upstate (90 percent) counties.
- NYC agencies report that 30 children (one percent) were immigrants while none of the Upstate CSEC is classified as immigrant.

At the request of the Study Advisory Group, the data collection instrument also captured counts and demographic information on young adults ages 18 to 21. This was done primarily because children in the sex industry are believed to often provide false identification that indicates they are older. The Advisory Group believed that this age category would include unidentified CSEC. We have no way at this time to estimate how many such children may fall within this older age group. As Table 3.5 shows:

- The total number of 18- to 21-year-olds in NYC and the seven Upstate counties who are identified by the sampled agencies as commercially sexually exploited is estimated to be over three times the number for under-18 CSEC ($n=7,975$) in NYC and less than one-third the number for Upstate ($n=119$).
- Gender is unknown for a high percentage (56 percent) of the young people identified in the seven Upstate counties, but 93 percent in NYC are female (compared to 85 percent of the under-18 CSEC in Table 3.4).
- Data on race show that more of the older youth than the younger are white in both NYC (18 percent, compared to 6 percent of the CSEC in Table 3.4) and in the Upstate counties (74 percent, compared to 47 percent).
- A slightly higher percentage of the 18-to-21-year-olds in NYC is identified as Hispanic/Latino (22 percent, compared to 18 percent in Table 3.4), while none of the 18-to-21-year-olds in the Upstate counties are identified as Hispanic/Latino (compared to 10 percent of the CSEC).

³⁰ These ethnicity categories were recommended by members of the Advisory Board, based on anecdotal evidence suggesting that children with these ethnicities might likely be found among the CSEC population (particularly as a result of international sexual trafficking).

Table 3.5: Characteristics of Commercially Sexually Exploited 18- to 21-Year-Olds¹		
Characteristics	Number (Percentage) of Sexually Exploited 18- to 21-Year-Olds Identified by Sampled Agencies in:	
	NYC (N=7,975)	Seven Upstate Counties (N=119)
Gender		
Females	7,381 (93%)	43 (36%)
Males	418 (4%)	9 (7%)
Transgender	123 (2%)	0 (0%)
Unknown	53 (1%)	67 (56%)
Race²		
Am. Indian/Alaska Native	0 (0%)	0 (0%)
Asian	50 (1%)	0 (0%)
Hawaiian/Pac. Islander	0 (0%)	0 (0%)
Black/African American	4,971 (62%)	23 (19%)
White	1,425 (18%)	88 (74%)
Multi-Racial	281 (4%)	8 (7%)
Other	496 (6%)	0 (0%)
Unknown/not available	752 (9%)	0 (0%)
Ethnicity		
Hispanic/Latino	1,760 (22%)	0 (0%)
Chinese	44 (1%)	0 (0%)
Korean	0 (0%)	0 (0%)
Other/Unknown	6,171 (77%)	119 (100%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one type of race, so percentages may total to more than 100 percent.		

3.4 Backgrounds and Experiences of CSEC

Table 3.6 examines prior child welfare involvement of the CSEC, and shows findings that are consistent with the research literature discussed in Chapter 1:

- Among the CSEC identified by the NYC agencies, 85 percent had prior child welfare involvement; that proportion is 89 percent in the seven Upstate counties.
- Many CSEC have a history of childhood victimization: over two-thirds in NYC and 54 percent in the Upstate counties were known to have been the subject of a child abuse/neglect investigation.

- Three-quarters in NYC and nearly half in the Upstate counties had experienced placement in foster care.
- There are also indications of problems with parental/family supervision: 45 percent in NYC and 30 percent in the Upstate counties are known to have had a PINS placement or received PINS services.
- Over one-third (39 percent) in NYC and 29 percent in the Upstate counties had received some prevention services.

Table 3.6: Child Welfare Involvement of CSEC¹		
Child Welfare Involvement	Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any child welfare involvement	1,801 (85%)	355 (89%)
None	0 (0%)	20 (5%)
Unknown/missing	320 (15%)	24 (6%)
Types of Child Welfare Involvement²		
Child abuse/neglect investigation	1,466 (69%)	214 (54%)
Placement in foster care	1,599 (75%)	197 (49%)
PINS placement or services	952 (45%)	121 (30%)
Other Preventive Services	829 (39%)	117 (29%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one type of child welfare involvement, so percentages may total to more than 100 percent.		

Many CSEC also have been involved in the juvenile justice system. Table 3.7 indicates that over half of CSEC identified by NYC agencies, and 44 percent of those identified in the seven Upstate counties, had a juvenile justice placement (defined to include stays in detention facilities). Over one-fourth (26 percent) of the NYC CSEC had been in multiple types of placement, compared to seven percent of those Upstate. This difference in the Upstate and NYC CSEC samples, may be related to the fact that the NYC CSEC tend to be older, and older children are more likely to receive secure placement. On the other hand, the differences could reflect the fact that youth in NYC are more likely to be arrested for prostitution offenses or false personation (giving police a false name and /or age when police suspect the youth of prostitution activity), while the police in the Upstate counties are more likely to take similar “wayward” youth

Table 3.7: CSEC Placement in Juvenile Justice Settings¹		
Juvenile Justice Placement	Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any juvenile justice placements ²	1095 (52%)	176 (44%)
None	472 (22%)	180 (45%)
Unknown/missing	554 (26%)	43 (11%)
Types of Placements		
Secure juvenile justice facility only	126 (6%)	0 (0%)
Non-secure juvenile justice facility only	168 (8%)	4(1%)
Detention center only	204 (10%)	102 (26%)
Other placement only	41(2%)	43 (11%)
Multiple types of placements	556 (26%)	27 (7%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.		
² Includes stays in detention.		

to a service agency such as a runaway program to get them off the street.³¹ For those with more than one type of placement, the most typical pattern is a history of both detention center and secure juvenile facility placement (17 percent) (data not shown).

In a separate analysis, we examined the overlap between children with child welfare involvement and those with juvenile justice placement. We found that 48 percent of the CSEC overall have a history of both (data not shown).

3.5 Identification and Knowledge of CSEC within Agencies

Agencies were asked *How was the most recent exploitation first identified in your agency?* Table 3.8 shows the weighted responses. For these CSEC, their exploitation came to light in three main ways that were reported on the mail questionnaire: it is the reason the youth was referred to or served by the agency (for 38 percent in NYC and 15 percent in the seven Upstate counties); the youth disclose it while receiving services (29 percent in NYC and 16

³¹ Study Advisory Board members discussed the variation in how CSEC were handled by police in NYC and Upstate (specifically arrests versus referral to services). This was also mentioned by Upstate police agencies participating in the pilot test. These individuals also mentioned that some CSEC referred by Upstate police might not leave any paper trail if taken to social service agencies.

How Exploitation Was Identified	Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Reason for referral	810 (38%)	61 (15%)
Youth reported during assessment	273 (13%)	106 (27%)
Youth reported during services	617 (29%)	65 (16%)
Another youth reported	22 (1%)	16 (4%)
Adult reported	32 (2%)	18 (5%)
Other	131 (6%)	112 (28%)
Unknown/missing	236 (11%)	21 (5%)

¹The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.

percent Upstate), or the youth disclose it during assessment for services (13 percent in NYC and 27 percent Upstate). The exploitation is identified in some other way other for 28 percent of the CSEC in the seven Upstate counties, and six percent of those in NYC. Most respondents who checked “Other” on the forms did not fill in what the “Other” was; the few that did fill it in provided responses such as “hospital,” “child’s mother,” and “SPOA.”³²

Obviously, some children may be involved with more than one agency during the same time period, and other agencies may be aware of a child’s status as a CSEC. To explore this further, we asked in the mail questionnaires: (1) Was the youth referred to you by another agency? and (2) During July 15 - September 15, 2006, was the youth identified as sexually exploited by any other agency? Table 3.9 shows that 75 percent of CSEC in NYC and 69 percent in the seven Upstate counties were referred by other agencies. For NYC agencies, CSEC are more likely to be referred from the court or probation (28 percent). Upstate agencies receive the largest proportion of referrals from child welfare agencies (31 percent). The “Other” category, accounting for 40 percent of referrals in NYC and 10 percent in the Upstate counties, primarily comprises cases where “Other” was checked but the agency type was not specified, similar to the “Other” category in Table 3.8. A few are self-referrals by the child, as well as referrals by the child’s mother, a friend, a hospital, or another type of service agency.

³²In this case “SPOA” (Single Point of Access), refers to a New York City project that connects persons with psychiatric disabilities to services and housing programs. SPOA services facilitating access to mental health services exist across New York State.

Table 3.9: Source of Agency Referrals¹		
Referrals	Estimated Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Cases with referrals	1,596 (75%)	277 (69%)
None	95 (4%)	42 (11%)
Unknown/Missing ²	430 (20%)	80 (20%)
Referring Agencies³		
Police/Law Enforcement	75 (4%)	29 (7%)
Child Welfare Agency	89 (4%)	122 (31%)
Court/Probation	590 (28%)	44 (11%)
Foster Care Agency	31 (1%)	77 (19%)
Detention Center	126 (6%)	0 (0%)
RHY Shelters/TIL Programs	0 (0%)	8 (2%)
Other/agency type not provided ⁴	855 (40%)	39 (10%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² This category includes children reported and arrested by police agencies, who were not asked for information on referrals. ³ Respondents could indicate referrals from more than one agency, so percentages may total to more than 100 percent. ⁴ “Agency type not provided” means that the respondent indicated that the referral source was “Other” but did not specify what that “Other” was.		

The high rate of referrals shown above might suggest a high duplication rate by the study. However, based on a separate analysis that looked at whether the child was known to any other agencies (not just the referral agency) as commercially sexually exploited, this does not seem very likely (data not shown). Respondents report overall that other agencies are aware of the sexual exploitation for only about one-third (35 percent) of the children served. Overall, police agencies are the most commonly cited as knowing about commercial sexual exploitation (21 percent), followed by child welfare agencies (16 percent).

Of course, it is possible that other agencies might know of a child’s sexual exploitation, but not reveal it for various reasons (e.g., to protect a child’s privacy or because the child is being referred for reasons viewed as unrelated to the CSEC status). In Table 3.10 below, we examine whether the type of referring agency is related to whether a child is known to be commercially sexually exploited at the time of referral. The table shows that for about half of the CSEC referred by NYC agencies, their exploitation is known at the time of referral, while that

Table 3.10: Relationship Between Source of Agency Referral and Knowledge of Commercial Exploitation at Time of Referral¹

Referral Source	Number of CSEC Referred ²	Number of CSEC Whose Exploitation Was Known at Referral	Percentage of CSEC Whose Exploitation Was Known at Referral
NYC	1,596	810	51
Police/law enforcement	75	18	24
Child welfare agency	89	27	30
Court/probation	590	273	46
Foster care agency	31	0	0
Detention center	126	126	100
RHY shelters/TIL programs	0	0	0
Other	855	252	29
None	95	6	6
Unknown/missing	430	108	25
Seven Upstate Counties			
Seven Upstate Counties	277	61	22
Police/law enforcement	29	9	31
Child welfare agency	122	19	16
Court/probation	44	19	43
Foster care agency	77	0	0
Detention center	0	0	n/a
RHY shelters/TIL programs	8	0	0
Other	39	7	18
None	42	0	0
Unknown/missing	80	7	9

¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. The table omits 137 cases with no referral source.

² Respondents could indicate referrals from more than one agency, so percentages may total to more than 100 percent.

proportion for the CSEC in the seven Upstate counties is only 22 percent. The table also shows that:

- In NYC, referrals from the detention centers are the only cases where the receiving agencies always know about commercial sexual exploitation at the time of referral.
- In the Upstate agencies, the exploitation is most likely to be known when the referring agency is court/probation. Forty-three percent of the CSEC referred from those agencies are identified as exploited upon referral.
- In both NYC and the Upstate counties, the exploitation is never identified at referral when the referring agency is a foster care agency or a RHY shelter/TIL program.

- For CSEC referred by child welfare agencies, the proportions for whom the exploitation is known range from 16 percent in the Upstate counties to 30 percent in NYC.
- For CSEC referred by police/law enforcement, the proportions known as CSEC upon referral range from 31 percent Upstate to 24 percent in NYC.

3.6 Characteristics of the Exploitation

Agencies were also asked to describe characteristics of the most recent exploitation, who the youth was living with at the time, when the exploitation occurred, who the exploiter was, and whether there had been prior episodes of sexual exploitation.

As shown in Table 3.11, the most prevalent type of sexual exploitation among these children is a sexual act for money, reported for over 80 percent of both the NYC and the Upstate children. In NYC, the second most frequent type of exploitation involves loitering for prostitution, reported for 30 percent (compared to 5 percent reported in the seven Upstate counties). However, a separate analysis shows that 89 percent of those indicated as loitering for prostitution also are listed as engaging in a sexual act for money. In fact, for all categories of commercial sexual exploitation the majority of children also are listed as engaging in sex for money (data not shown). A sexual act in exchange for a place to stay is reported for 23 percent of CSEC in NYC and 17 percent in the Upstate counties. Stripping or performing in public is reported for 24 percent of CSEC in NYC and seven percent in the Upstate counties. No sexual acts filmed, photographed, or tape recorded were reported for CSEC in NYC, but these acts are reported for 17 percent of CSEC in the Upstate counties. Sexual acts for protection were uncommon in both geographic areas (less than one percent of CSEC in NYC and six percent Upstate).³³ No CSEC were involved in stripping/performing on the Internet.

Table 3.12 shows the places where commercial sexual exploitation takes place. In NYC, exploitation more frequently occurs in a hotel or motel (44 percent versus nine percent in the seven Upstate counties) or outside (30 percent versus two percent). In contrast, the commercial sexual exploitation in the Upstate counties occurs far more frequently in the child's own home (52 percent versus seven percent in NYC). The exploitation in NYC is slightly more

³³ Most of the children who were initially reported as exchanging sex for protection (with no other sexual exchange listed) failed to meet the commercial aspects of exploitation and were removed from the analysis.

Table 3.11: Type of Most Recent Sexual Exploitation¹		
Sexual Exploitation	Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any exploitation	1,994 (94%)	383 (96%)
Missing	127 (6%)	16 (4%)
Type of Exploitive Acts²		
Sexual act for money	1,737 (82%)	323 (81%)
Sexual act for place to stay	494 (23%)	66 (17%)
Loitering for prostitution	643 (30%)	18 (5%)
Sexual act for food or clothing	301 (14%)	59 (15%)
Sexual act for drugs	58 (3%)	51 (13%)
Sexual act for protection	9 (< 1%)	23 (6%)
Sexual act filmed, photographed, or tape recorded	0 (0%)	67 (17%)
Stripping/performing in public	503 (24%)	29 (7%)
Other exploitation	53 (2%)	4 (1%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one type of exploitive act, so percentages may total to more than 100 percent.		

Table 3.12: Where Most Recent Sexual Exploitation Occurred¹		
Where Exploitation Occurred	Number (Percentage) ² of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any location	1,936 (91%)	358 (90%)
Unknown/missing	185 (9%)	41 (10%)
Exploitation Locations		
Outside	639 (30%)	9 (2%)
Hotel or motel	934 (44%)	34 (9%)
Exploiter's home	603 (28%)	89 (22%)
Child's own home	148 (7%)	209 (52%)
Other person's home	126 (6%)	14 (4%)
Agency such as shelter	22 (1%)	0 (0%)
In a car	447 (21%)	9 (2%)
Public facility	148 (7%)	4 (1%)
Other	150 (7%)	13 (3%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one location, so percentages may total to more than 100 percent.		

likely to occur in the exploiter’s home (28 percent) than in it is in the Upstate counties (22 percent). For 21 percent of the CSEC in NYC, the exploitation occurs in a car, compared to two percent in the Upstate counties.

Table 3.13 presents information on the exploiters, and shows major differences between the CSEC reported by the NYC agencies and those reported by the agencies in the seven Upstate counties. In NYC, three quarters of the CSEC are exploited by adult strangers, compared to 28 percent in the Upstate counties. In the Upstate counties, 58 percent of the CSEC are exploited by an adult friend or acquaintance, compared to 24 percent in NYC. Also in the Upstate counties, 22 percent are exploited by minor (under-18) friends or acquaintances, compared to 1 percent in NYC. Finally, 16 percent of the CSEC Upstate are exploited by parents, parents’ partners, or family members, compared with seven percent in NYC.

Table 3.13: Identity of Sexual Exploiter¹		
Exploiter Identified	Number (Percentage) ² of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any exploiter	1,957 (92%)	369 (93%)
No exploiter specified/ exploiter unknown	0 (0%)	5 (1%)
Missing	164 (8%)	25 (6%)
Exploiter Identities		
Adult: stranger	1,598 (75%)	110 (28%)
Adult: friend or acquaintance	514 (24%)	233 (58%)
Adult: parent or parent substitute	22 (1%)	39 (10%)
Adult: parent’s partner	0 (0%)	9 (2%)
Adult: family member	126 (6%)	14 (4%)
Minor: stranger	0 (0%)	0 (0%)
Minor: friend or acquaintance	27 (1%)	87 (22%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one type of exploiter, so percentages may total to more than 100 percent.		

Table 3.14 presents information on where the CSEC are living when the commercial sexual exploitation occurs. It shows a large difference in the living situations between CSEC in NYC and in the Upstate counties: although the most prevalent living situation for both groups is with their family of origin or with relatives, only 32 percent of the NYC children are in this situation compared with 79 percent of the Upstate children. NYC CSEC are more likely to be

CSEC Was Living With:	Number (Percentage) of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Family of origin or relatives	669 (32%)	314 (79%)
Foster parents	148 (7%)	0 (0%)
Group foster care	376 (18%)	9 (2%)
Unrelated adult	179 (8%)	22 (6%)
Friend or boyfriend/girlfriend	157 (7%)	7 (2%)
Himself/herself	0 (0%)	5 (1%)
Other	324 (15%)	30 (8%)
Unknown/missing	268 (13%)	12 (3%)

¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFs identification of CSEC in prior years.

living in group foster care (18 percent) at the time of the exploitation than Upstate CSEC (two percent), or with foster parents (7 percent, compared to none of the CSEC in the Upstate counties). Fifteen percent of the NYC CSEC are living in an “Other” situation, compared to 8 percent of the CSEC in the Upstate counties. These situations include homeless children and those living in types of group homes other than foster care, as well as those where the “Other” situation was not specified.

Table 3.15 presents other characteristics of the CSEC’s most recent commercial sexual exploitation, as well as the prevalence of prior episodes and age at first episode. It shows that:

- The most recent commercial sexual exploitation occurred within New York State for the large majority of CSEC in both locations (locations were not provided when the exploitation occurred outside of New York State).
- For 58 percent of CSEC in NYC and 32 percent in the Upstate counties, force was used.³⁴
- Agency respondents believed the exploitation was still ongoing for four percent of these children in NYC and 3 percent in the Upstate counties.
- Around half of the CSEC in both groups had experienced prior episodes of exploitation.

³⁴ The question used in the survey, *Was force, coercion, or the threat of force used in this sexual exploitation?*, attempts to identify characteristics of this episode of commercial sexual exploitation. For many of the children, all aspects of being “in the life” are the result of force or implied force; the children do not see that they have any choice.

- For half of the Upstate children, the age at time of first sexual exploitation was 11 years old or younger. None of the NYC children was known to be exploited at this age. The most frequent age group for initiation in NYC was age 14-15 (43 percent); the most frequent age group in the Upstate CSEC was 10-11 (also 43 percent). Fifty-five percent of the NYC CSEC versus only 15 percent of Upstate children were initiated into commercial sexual exploitation at age 14 or older.

Table 3.15: Other Characteristics of Exploitation¹		
Characteristic	Number (Percentage) ² of CSEC in:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Most Recent Exploitation		
Exploitation occurred in New York State	1,956 (92%)	379 (95%)
Force was used	1,235 (58%)	129 (32%)
Exploitation still ongoing	92 (4%)	12 (3%)
Prior Episodes of Exploitation		
Prior episodes of exploitation	1,172 (55%)	194 (49%)
Age at first exploitation		
Less than 9 years old	0 (0%)	28 (7%)
10 to 11 years old	0 (0%)	170 (43%)
12 to 13 years old	399 (19%)	5 (1%)
14 to 15 years old	922 (43%)	45 (11%)
16 to 17 years old	261 (12%)	16 (4%)
Missing/Unknown	539 (25%)	135 (34%)
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Respondents could check more than one characteristic, so percentages may total to more than 100 percent.		

3.7 Measures Associated with the Exploitation Characteristics

We consider it important to take a closer look at what factors might be associated with commercial sexual exploitation other than geographic location and the agency identifying the youth. In particular, we are interested in whether gender, age, race, or ethnicity is related to characteristics of exploitation such as use of force, who the exploiters are, and where the exploitation occurs. There is little variation in the sample on many of these dependent variables, so we do not find significant associations for most of the investigated factors. Two significant correlations emerge based on gender, however: (1) females are more likely to encounter force or

coercion in the current commercial sexual exploitation; and (2) females are also more likely to be associated with a sexually exploitive act in a hotel or motel.³⁵

3.8 Summary and Discussion

Stepping back a moment, it may be useful to review findings shown above and summarize differences between exploitation in NYC and the seven Upstate counties. First, the distribution of respondents for the study differs between the Upstate and NYC counties. Most (91 percent) of the CSEC identified by NYC agencies are identified by youth-serving agencies, congregate care facilities, and police. Most (84 percent) of the CSEC identified by Upstate agencies are identified by congregate care agencies, RHY shelters/TIL programs, and rape crisis centers. Congruent with anecdotal reports from members of the Study Advisory Group, we believe this represents a real variation in who identifies these children and how cases of CSEC are handled in the two geographic areas. For example, as previously noted, police in NYC are reputed to be more likely to arrest youth picked up for prostitution, while police in the Upstate counties are more likely to take youth directly to service agencies. However, our ability to confirm this variation is constrained by the low response rates from NYC social service agencies, where data on the youth picked up by police might be available.

Demographically, there are significant variations between CSEC in NYC and Upstate. As might be expected from the state population overall, substantially more of the Upstate CSEC are white. Although the majority of the children identified in both areas are girls, commercially sexually exploited boys are more likely to be reported by agencies in the seven Upstate counties than by the NYC agencies. The Upstate children also are more likely to be younger (both at the time of the current episode and at first commercial exploitation) and nearly four-fifths are living with their family or relatives at the time of the current exploitation, compared to about one-third of the children in NYC. NYC children are more likely than those Upstate to be living in out-of-home settings such as foster care.

Differences in the characteristics of the commercial sexual exploitation between NYC and the Upstate counties are also evident. While a sex act in exchange for money is by far the most common type of exploitation, reported for over 80 percent of CSEC in both areas,

³⁵ The Pearson correlation between gender and force was $r=.407$ and for gender and hotel location was $r=.354$. The Pearson correlation coefficient can vary from -1 to 1, with a correlation of 0 indicating that there is no association between two variables. As each value increases toward 1, the ability to predict the characteristic on one item from the response on the other increases. We only considered correlations that were at least .25 (positive or negative).

loitering for prostitution is more often identified in NYC, while only the Upstate counties report involvement with sexual acts that are filmed, photographed or tape recorded. Also, in NYC the exploitation occurs most often in a hotel or motel or outside while Upstate the exploitation occurs most often in the child's home. The identity of the exploiters also differs between NYC and Upstate. For example, the majority of NYC exploiters are reportedly strangers, while the majority of Upstate exploiters are reported to be adult friends or acquaintances of the child.

Finally, it is important to mention what these children had in common. The overwhelming majority (at least 85 percent), regardless of geographic area, had prior child welfare involvement—typically in the form of child abuse and neglect allegations/investigations (69 percent of the NYC CSEC and 54 percent of those Upstate) and/or a foster care placement (75 percent of the NYC CSEC and 49 percent Upstate). A substantial proportion (over half of the NYC CSEC and 44 percent of those Upstate) had a prior juvenile justice placement, although secure placements were slightly more common among the NYC children.³⁶ For over 80 percent of CSEC in both areas, the exploitation involved a sexual act for money; in nearly all cases, the exploitation occurred in New York State; and around half in both groups had prior episodes of commercial sexual exploitation.

In the next chapter we take a closer look at a few of the CSEC to get a clearer picture of their everyday life and the issues they routinely face.

³⁶ Perhaps this is because the CSEC identified in NYC tended to be older, or perhaps because commercial sexual activity by a child is more likely to be viewed as a law enforcement matter in NYC while upstate it is more likely to be treated as a child welfare matter, or some combination of child age and system response.

4. A MORE IN-DEPTH LOOK AT CSEC

The numbers of CSEC and the characteristics outlined in the previous chapter do not provide a full picture of sexually exploited children. To more fully develop this picture, the study examined additional data from three sources. First, study staff reviewed data from three focus groups conducted with CSEC from NYC. Next, we examined OCFS intake data on adjudicated girls placed in OCFS juvenile justice facilities for a full year (including the two-month reference period). Last, study staff reviewed the prevalence data for CSEC on probation caseloads, collected by the New York State Division of Probation and Correctional Alternatives (DPCA) earlier in the reference year. Findings from each of these data sources are discussed below.

4.1 Focus Groups

Three focus groups were held between October 2006 and January 2007 with young people involved in commercial sexual exploitation in NYC. Requests for focus groups were sent to Upstate agencies as well; none were able to conduct focus groups for the study. (One Upstate agency expressed concern with identifying enough CSEC to develop a focus group.) Fifteen individuals participated in the focus groups—ten females, two gay males, and three transgender youth, ranging in age from 13 to 22 years old. All entered “the life” at a much younger age (10 to 17, with an average age of 13.8 years). Race was not identified for all participants; at least five were African American, two were from Caribbean islands, and one was of mixed race. Each participant received a \$15 gift card for participating in the focus group.³⁷

A number of topics arose in these focus group discussions, including the young people’s perception of their home environment when they entered “the life” and (in a few cases) when they returned to it; how they became involved in sexual exploitation; their experience on the street, particularly regarding violence and involvement with pimps and customers; leaving the life; and supports needed to succeed.

Note that the terminology used by the participants was different from that of the researchers. Participants never spoke of “sexual exploitation,” referring instead to escorting or working for an escort service, stripping, and pornography. The sex exchanges were negotiated on

³⁷ The focus groups were conducted by two agencies—one by a congregate care home, and the other two by a community-based agency working with CSEC.

the street, through pimps, on telephone chat lines, and over the Internet. Several participants commented that pimps advertised girls on Craig's List, in the *New York Daily News* classifieds, and in the *Village Voice*.

Participants cited a number of different reasons for getting into "the life."

- Love or at least someone paying attention to them—"Not just the pimps, even the tricks, having guys lined up to see you makes you feel special"(n=4),
- Enticement by friends (n=3),
- Money (n=3),
- An attempt to get parental attention (n=2),
- Survival (n=3),
- Kidnapping (n=2),³⁸ and
- Desperation/lack of acceptance—"Being trans, you can't get a job if you look like a girl, but your name is Brian" (n=3).

Many of these youth did not realize they had crossed a line or entered the sex industry. One youth commented "I didn't realize I was prostituting until I got to court and they read the charges out loud. I thought I was just making some money...well, making someone else money." Another commented "I never imagined I would end up in the life. I didn't believe it was really real. I thought pimps were just on TV." Participants from two different groups talked about the entry into the life as not being a real choice. One young girl said "It's not a choice. No one just wakes up and wants to do this." The gay and transgender participants concurred that this was "a choice, but not a choice," further explaining that the decision was made from a very limited set of options. Six of the participants referred to problems at home, including limited options and resources, past abuse, and not being accepted. Three had been homeless and described themselves as desperate. A common theme was not knowing whom to talk to about the problems and issues they faced.

Not all were runaways. Four of the focus group participants lived at home during the sexual exploitation. One youth stated "My mother never knew what I was doing, which is crazy. I was out every night, coming home at 9:00 am." Two of the youth said they were kidnapped and forced to enter "the life."

³⁸ No specific definition of kidnapping was provided in the focus group.

Participants reported being cajoled by pimps to enter into sexual exploitation. One girl explained “There are a million ways to tell a story. And they [pimps] come up with some type of way to tell you something.... For some reason you believe it because you want to believe so bad it is easier for you to fall into it because it sounds good. They find all your weaknesses...what makes you tick.” Still another girl remembered how her pimp would “whisper sweet nothings to make me feel special and loved.” Several of the participants talked about how pimps recruit at schools and at foster homes.

Most of the females had worked for at least one pimp. Several commented that initially they did not think the person they were talking to was a pimp. The people they spoke to were young (many commented they were getting younger all the time), dressed in jeans and t-shirts, had business cards, and called themselves money managers and entrepreneurs. They did not look like the TV version with “big hats and fur coats.”

Once in the life, the youth reported violence either from pimps, dates/customers, or both. Pimps were constantly using threats to keep the participants working the street. One reported “My pimp broke my face in a couple of places.” Another stated “I tried to leave and got beat with a suitcase.” Still another commented “he beat me everyday for nothing.” A fourth said the pimp “beat me with a belt buckle.”

Experience with dates covered a wide range of situations. “Bad” dates included instances of “being hung by the throat,” “cut on my back,” having “a gun pointed at me,” as well as being robbed, raped, gang raped, and locked in a home. Horror stories circulate throughout this community. Participants of one focus group knew the story of a sexually exploited child who “ended up chopped up in a hotel.” On the other hand, there were stories of dates helping participants out of a bad situation by dropping them at a police station. Sadly, one participant considered one of her dates helpful because he had not participated in a gang rape and “helped me find my clothes. I think he felt bad ‘cause I was crying.” In one focus group, the facilitator commented that the violent situations reported were clearly perceived by the participants as risks they might experience in everyday life.

Drug use was discussed in one focus group, where opinions were divided. One participant stated bluntly “I’m not going anywhere or doing anything unless I’m getting high.” Conversely, others in the group reported not taking drugs with clients because “you risk getting emotionally involved.”

The youth reported crossing State lines to work. They reported working in Jersey City, Atlantic City, and Elizabeth, New Jersey; Washington, DC; Detroit; Baltimore; and throughout Florida, specifically citing Miami.

Focus group participants made additional comments describing their experiences. Both males and females spoke of the importance of being or appearing “young” for the customers. Many customers asked them if they were 12 or 13 or asked them to act that age. Some would flatter them saying “you are too smart” or “you should go to school,” but always engaged in sex with them. A few gave examples of non-sexual encounters. One youth commented that “It didn’t always involve sex—I escort clients to fashion shows, parties, and dinner. Occasionally clients pay \$400 for me to sit and watch a movie. That’s all. He treats me with respect. But that only happens occasionally.” In one focus group, the participants talked about the sheer number of customers that they perceived were out there—“one in three men,” “a million,” and finally, “most guys are tricks.”

Nearly all of the participants had negative experiences with the criminal justice or social service systems. Two-thirds reported being arrested many times; one female reported being arrested “three to five times a month for four years.” They also reported lying about their age and no one questioning it. According to the participants, the pimp was rarely arrested or received less jail time than the focus group participant, even in an instance where the participant was identified as being 14 years old. Male facility and court staff as well as police officers reportedly propositioned them, made lewd comments, or ignored their plight. Female staff were often perceived as being very judgmental and derogatory. Most of the female youth reported trading sex with police officers to avoid arrests. None reported instances of help or assistance from adult strangers.

Exiting the life was described as difficult and often temporary. Not all participants *had* left. The pressures of making money some other way seemed frightening. One young girl described the money made in the life as an addiction. The family and hierarchy created with the pimp and the other girls and women who work for him create bonds that are difficult to break. When these participants attempted to break free and return home or to foster care, they found that people judged, looked down on, or failed to trust them:

- “They look at me as a ho, not as a person.”
- “My mother was more understanding, but the rest of my family disowned me.”

- “At my cousin’s baby shower, my other cousin said ‘You better not have no pimps come get you.’”
- “My mom won’t let me go anywhere.”
- “My grandmother wouldn’t let me take my sister anywhere.”
- “I tried to explain to my boyfriend, but he was like stuck.”
- “It’s hard coping in the real world. You learn a lot of defense mechanisms in the life that work there but it’s hard to let them go when you’re out. But they don’t work anymore.”

One of the focus group participants expressed concern about language used in the mainstream culture about “the life.” Speaking of people she now attends college with, she stated “They always make references or jokes about dirty prostitutes or ‘bitch better have my money.’ I get upset.”

Four participants commented on how people start and stop in the life. One stated that a person only stops “If something happened—bad.” Sadly enough, one youth looked for a fractured fairy tale ending—“When I meet the one client who gives me money and attention that would equal all the other clients.” Two participants who have exited the life commented that they were unable to sleep at night and had flashbacks.

These young people recommended a variety of services to help them transition from the life, including support from the agency holding the focus group. Several females were glad that their lawyer or counselor at a juvenile justice facility had told them about a particular program. Participants cited the need for services “specific to the life,” including peer-based counseling and working with counselors who had the same experiences. They had reservations about traditional therapy and medication. Participants also expressed needs for “comprehensive” services, trauma recovery, housing, and jobs. None of the participants mentioned preventive services as helpful to them before the commercial sexual exploitation occurred. However, in one focus group, participants stated that if things had been different at home or they had had more support, perhaps entry into the life might have been avoided. All agreed that age was a key factor. In one focus group, participants recommended commercials “like they do for smoking.” The ad line would be “The life.... Either it kills you or gets you locked up.” Another girl suggested that commercials should show what pimps are really like—“not glamorous.”

Again, these focus groups reflect the story in NYC. As shown in Chapter 3, many features of the exploitation were significantly different from Upstate, where exploitation was

more likely to occur in the child's home and the exploiter more likely to be known to the child. Future research efforts to examine the experiences of Upstate children in more detail would be warranted.

4.2 Girls in OCFS Custody

OCFS is responsible for (1) the care of youth who have been adjudicated juvenile delinquents by family court and (2) juvenile offenders convicted in criminal court for offenses committed when the children were age 15 or younger and ordered by the courts to be placed in OCFS juvenile justice facilities. OCFS operates separate reception facilities for males and females that receive and assess youth from across the State. At the reception facilities, youth are assessed for substance abuse and mental health issues, and receive medical examinations, dental services, counseling sessions, and health classes so that the best placement and program decisions can be made while the youth is in OCFS custody. OCFS reported data on seven females who were brought into the OCFS reception facility and met the age and county criteria for this study during the study's two-month reference period. These cases are included in all tables discussed in the previous chapter. However, OCFS made available additional data on its female service population, covering a full year and the entire State, that are worth examining in more detail. OCFS did not report data on males because there were none admitted to OCFS for prostitution-related offenses or the offense of promoting a child in a sexual performance during the study. Within the limited time available to conduct this study, the male Reception Assessment Reports (RARs) could not be manually searched for other hints of commercial sexual exploitation. In contrast, the female RARs were available on computer.

To locate all cases of sexual abuse (both commercial and other) between September 15, 2005 and September 15, 2006, OCFS conducted a word search of all RARs for girls admitted to the Tryon Girls Reception Facility in Johnstown, NY. First, OCFS searched for terms that might indicate commercial sexual exploitation (or at least warrant a closer look); these included prostitution, sexually abused, false personation, sexual acting out, sexually abused others, and pornography. In total, 86 cases were located, and individual files were then examined to find cases that met the study definition of commercially sexually exploited. OCFS determined that 27 cases (12 percent of all admissions) met the study criteria. Of these 27 cases, 23 (85 percent) involved girls from the counties and boroughs sampled for this study; 22 girls came from the NYC boroughs (four from the Bronx; six from Kings; four from New York; eight from Queens), and one from a medium-sized Upstate county. The remaining four came from Upstate counties

not included in the sample (1 each from a large and small population county, and two from medium-sized counties). The following analysis is based on all 27 girls identified for the entire year from the 234 girls admitted to the reception facility.³⁹ Tables compare the girls from NYC ($n=22$) and with the five girls from counties outside of New York City, hereafter referred to as Rest of State.

Girls are classified according to the county where they were arrested, adjudicated, and committed to OCFS. Of the 22 girls arrested in NYC, only 14 percent ($n=3$) resided outside NYC (two from Suffolk and one from out of state). All five of the girls adjudicated delinquent in counties outside NYC were committed by Family Court directly to placement in an OCFS facility. However, this was true for only half ($n=11$) of the girls adjudicated in NYC. For the other 50 percent ($n=11$), the Family Court had first placed the girls with a voluntary agency under OCFS custody, but changed their placements to a more secure OCFS facility after AWOL problems.

Table 4.1 summarizes the type of commercial sexual exploitation of the 27 girls identified statewide. By far the most common reason for identifying a girl as a CSEC was a charge of prostitution or false personation related to prostitution ($n=17$, all from NYC). Of the other five girls from NYC, two admitted to engaging in prostitution, while the case files of three girls had credible reports of prior prostitution activity, but the girls did not admit this behavior to the reception counselor, and there were not any known arrests. For at least three of the NYC girls, prior prostitution arrests were handled in the adult criminal justice system, as they had apparently falsely told the police that they were 16 years of age or older (data not shown).

Table 4.1: Type of Sexual Exploitation of OCFS Girls		
Offense	Number (Percentage) of OCFS Girls in:	
	NYC ($N=22$)	Rest of State ($N=5$)
Current charge for prostitution or false personation related to prostitution	17 (77%)	0 (0%)
Past arrest for prostitution	0 (0%)	1 (20%)
Admits to prostitution, no arrest	2 (9%)	1 (20%)
Traded sex for drugs or alcohol	0 (0%)	3 (60%)
Believable allegations of prostitution, she denies	3 (14%)	0 (0%)

³⁹ Information for this section of the report is based on data from an internal OCFS database, RARs, and personal communication from Joanne Ruppel, November 13, 2006.

For girls in the Rest of State, the most common type of commercial sexual exploitation was trading sex for drugs or alcohol. One girl admitted to engaging in sex for money, but had not been arrested for it, and one had previously been arrested for prostitution in NYC, and prosecuted as an adult as she had given a false older age.

In general, these findings are similar to those reported in Chapter 3 for the mail questionnaires. Most offenses were trading sex for money or other items. Also, trading sex for drugs involved a lower proportion of NYC children than Upstate children.

Table 4.2 shows the earliest known age of commercial exploitation. Although it was difficult to determine the precise date that the girls were first commercially sexually exploited, the girls in NYC were fairly evenly distributed across the ages of 12 through 15, while four of the five girls in the Rest of State were age 15. These data differ somewhat from the mail questionnaire data, where the majority of Upstate children were 13 or younger at the time of first exploitation while the majority of NYC children were 14 or older.

Table 4.2: Earliest Known Age of Commercial Sexual Exploitation of OCFS Girls		
Age	Number (Percentage) of OCFS Girls in:	
	NYC (N=22)	Rest of State (N=5)
12	5 (23%)	1 (20%)
13	8 (36%)	0 (0%)
14	5 (23%)	0 (0%)
15	4 (18%)	4 (80%)

Table 4.3 shows the age at placement and race/ethnicity of the 27 OCFS girls. Among the girls from NYC, 72% were Black Non-Hispanic and five percent were Black Hispanic, while 18 percent were White Hispanic. However, 80 percent of the girls from the Rest of State were White Non-Hispanic. These findings also parallel those from the mail questionnaire, where the majority of CSEC of color were identified by NYC agencies. Nearly 70 percent of the NYC girls and all of the girls from the Rest of State were 15 or 16 when they arrived at the OCFS reception facility. The age of placement into OCFS custody was fairly evenly distributed for girls in NYC but for the girls from the Rest of State it was solely at age 15 or 16.

Table 4.3: Race/Ethnicity, Age at Admission and OCFS Custody for Sexually Exploited OCFS Girls		
Characteristics	Number (Percentage) of OCFS Girls in:	
	NYC (N=22)	Rest of State (N=5)
Race/Ethnicity		
Black Non-Hispanic	16 (72%)	1 (20%)
Black Hispanic	1 (5%)	0 (0%)
White Non-Hispanic	0 (0%)	4 (80%)
White Hispanic	4 (18%)	0 (0%)
Other Hispanic	1 (5%)	0 (0%)
Age at OCFS Admission		
13	3 (14%)	0 (0%)
14	4 (18%)	0 (0%)
15	8 (36%)	2 (40%)
16	7 (32%)	3 (60%)
Age at Placement into OCFS Custody		
13	5 (23%)	0 (0%)
14	5 (23%)	0 (0%)
15	8 (36%)	2 (40%)
16	4 (18%)	3 (60%)

All but one of the NYC girls identified as CSEC by the reception facility had a history of placements outside the home and all of the girls from the Rest of State had prior placements (Table 4.4). Eighty percent of the girls from the Rest of State had a history of juvenile justice placements plus foster care, and just 20 percent had a history of juvenile justice placement only. The NYC girls were more diverse. Forty-five percent of these CSEC had a history of both foster care and juvenile justice placement, 41 percent had juvenile justice placements (one or more) but no foster care history, and nine percent had a foster care history only. All of the girls with prior placements had histories of going AWOL from the placements, many repeatedly, and some for long periods of time. All 27 appear to have run away from home at least once. Most of the sexual exploitation occurred while AWOL or away from home. In a few cases, some of the sexual exploitation also occurred when the girls were still living at home. The one girl with no prior placement history was a runaway from another state who was arrested for prostitution in NYC.

In both NYC and the Rest of State, all but one of the girls had experienced some type of prior abuse, as reported in their RAR. (Table 4.5). Child sexual abuse was reported in 50 percent of the cases in NYC and in 80 percent of the cases in the Rest of State.

Table 4.4: Prior Placements for OCFS Girls		
Prior Placement ¹	Number (Percentage) of OCFS Girls in:	
	NYC (N=22)	Rest of State (N=5)
Any placements	21 (95%)	5 (100%)
No prior placements	1 (5%)	0 (0%)
Type of Prior Placement		
Foster care placement only	2 (9%)	0 (0%)
Juvenile Justice placement only	9(41%)	1 (20%)
Foster care placement and Juvenile Justice placement	10 (45%)	4 (80%)
¹ Does not include detention stays.		

Table 4.5: Prior Child Abuse/Neglect of OCFS Girls		
Abuse/Neglect	Number (Percentage) ¹ of OCFS Girls in:	
	NYC (N=22)	Rest of State (N=5)
Any child abuse/neglect	21 (95%)	4 (80%)
No child abuse/neglect known	1 (5%)	1 (20%)
Type of Abuse/Neglect		
Child sexual abuse	11 (50%)	4 (80%)
Child neglect	7 (32%)	3 (60%)
Child physical abuse	13 (59%)	3 (60%)
Witnessed domestic violence	1 (5%)	1 (20%)
¹ Percentages will exceed 100% because youth could be involved in multiple types of abuse and neglect.		

Not all of the prior abuse was sexual. Physical abuse at home was found for 59 percent of the girls in NYC and 60 percent of the cases in the Rest of State. About a third of the NYC girls and 60 percent of those in the Rest of State had been victims of child neglect. In both NYC and the Rest of State there was one reported case of witnessing domestic violence.

Among girls with a history of sexual abuse, 54 percent of those in NYC and 50 percent of those in the Rest of State were first abused at age 12 or younger (see Table 4.6). In NYC 45 percent were first sexually abused at ages 13 to 16.

Age	Number (Percentage) of OCFS Girls in:	
	NYC (N=11)	Rest of State (N=4)
Age 7 or younger	2 (18%)	1 (25%)
Age 8 to 11	1 (9%)	1 (25%)
Age 12	3 (27%)	0 (0%)
Age 13-16	5 (45%)	0 (0%)
Unknown but prior to age 16	0 (0%)	2 (50%)

To shed more light on some of the issues these children face, Table 4.7 lists five mental health issues identified at assessment. Interestingly, grief caused by the loss of or separation from a family member of significance was present in 68 percent of the NYC cases but none of the cases from the Rest of State. However, 68 percent of the NYC girls and 60 percent of the girls from the Rest of State had indications of depression. All but two girls, both from NYC, had records of previous mental health treatment. Drug use was common, recorded for 73 percent of the children in NYC and all of the children from the Rest of State.

Type of Abuse/Neglect	Number (Percentage) ¹ of OCFS Girls in:	
	NYC (N=22)	Rest of State (N=5)
Grief- loss of/separation from a significant family member	15 (68%)	0 (0%)
Depression- either self reported or clinically measured	15 (68%)	3 (60%)
Drug use by family member	11 (50%)	4 (80%)
Drug use by child	16 (73%)	5 (100%)
Previous mental health treatment (in records)	20 (91%)	5 (100%)

¹ Respondents could have more than one factor indicated, so percentages may total to more than 100 percent.

Given this profile, it is not surprising that 59 percent of the girls in NYC and 100 percent of the girls in the Rest of State exhibited significant or substantial substance abuse service needs (Table 4.8), according to OCFS. Additionally, 73 percent of NYC girls and 100 percent of the Rest of State girls exhibited significant mental health service needs. Two girls, both from the Rest of State, had previously attempted suicide, and an additional seven girls (four from NYC and three from the Rest of State) had previously expressed suicidal ideation or threats. Three girls (one from NYC and two from Rest of State) admitted to having engaged in cutting or self-mutilating behavior (data not shown.)

Table 4.8: Mental Health and Substance Abuse Service Needs of OCFS Girls		
Service Needs	Number (Percentage) of OCFS Girls in:	
	NYC (N=22)	7 Upstate Counties (N=5)
Substance Abuse Service Needs		
Substantial need	3 (14%)	2 (40%)
Significant need	10 (45%)	3 (60%)
Minimal need	5 (23%)	0 (0%)
No need	4 (18%)	0 (0%)
Mental Health Service Need		
Significant	16 (73%)	5 (100%)
Minimal	5 (23%)	0 (0%)
No Need	1 (5%)	0 (0%)

Several other background factors of note were found in the RARs but are not reflected in tables. Five of the girls were pregnant at reception and two others already had children. All seven of these girls were from NYC. Also, eight of the girls from NYC and two of the girls from the Rest of State were either members of a gang or had a history of close association with gang members.

Finally, there were ample indicators that working the streets is dangerous. In 14 cases (13 from NYC and one from Rest of State), the records noted physical violence (punching in the face, threats with guns, cutting of hair, and bleeding from the vagina), threats, or coercion by the pimps and/or customers against the girls. This number may be an underestimate because in some case records this question was not specifically addressed. All but one of the 27 girls had multiple incidents of being commercially sexually exploited. The remaining girl was from NYC and had been a runaway from home for five weeks when the prostitution arrest occurred. She reported that she had only tried prostitution that one time.

4.3 Youth on Probation

In June 2006, at the request of the New York State Division of Probation and Correctional Alternatives, probation agencies submitted information on the children and youth currently under supervision who had been identified as commercially sexually exploited. Note that the same challenges to collecting the survey data discussed previously apply to the probation data: inconsistent definitions of sexual exploitation, mistakenly defining sexually abused children

as commercially sexually exploited, and failure to identify commercial sexual exploitation because children were reluctant to mention it. In addition, no New York City agencies submitted data. Among the seven Upstate counties, a total of 12 females and six males under current supervision were identified as sexually exploited.⁴⁰ These figures for a single point-in-time suggest that our annualized estimates for Upstate probation offices may be low at 22. No information was available on the characteristics of these CSEC or the details of the sexual exploitation.

⁴⁰ Krueger, J. (personal communication, December 13, 2006).

5. SERVICE CAPABILITY AND DEFICITS

A number of questions in the mail surveys and the qualitative interviews were designed to capture information on services currently available and provided to CSEC, services particularly needed for CSEC, and any barriers or limitations to providing those services. The sections below provide findings from these data sources.

5.1 Services Provided to All Children (both CSEC and Non-CSEC) by Agencies

First, respondents to the Agency questionnaires were asked: *What services do you provide to children and youth?* Non-police agencies were presented with a list of 20 different service categories. Note that, except for one NYC agency that exclusively serves commercially exploited children, all these agencies serve a mix of CSEC and other children. We initiate the discussion of services by examining those available from non-police agencies, regardless of geographic location. (See Table 5.1.) To highlight services that are most commonly available, cells in Table 5.1 are shaded whenever the percentage of agencies providing a particular service is 50 percent or more.

The average number of services provided by non-police agencies ranged from 4.6 for probation departments to 15 for OCFS facilities. Three services categories — assessment, case management, and mental health counseling — are the most commonly offered across types of service agencies. Not surprisingly, food and clothing are typically provided by agencies that supported children in a residential environment, including as detention centers, RHY shelters/TIL programs, OCFS facilities, and congregate care facilities. Interestingly, a majority of youth-serving agencies also provide food and clothing, although they are less likely to be providers of residential services.

Overall, OCFS facilities, congregate care agencies and youth-serving agencies typically provided the largest range of services. In addition to the services mentioned above, a majority of these types of agencies provided transportation, substance abuse screening, medical care, education, and advocacy. Ninety percent of congregate care facilities also provided family reunification services and two-thirds provided dental care. Youth-serving agencies were by far the most likely to provide legal services (58 percent) and street outreach (55 percent). RHY

Services	Number (Percentage) ² of Weighted Agencies in Sampled Counties:							
	Probation Departments (N=8)	Detention Centers (N=24)	OCFS JJ Facilities (N=11)	RHY Shelters/ TIL Programs (N=13)	Congregate Care Facilities (N=30)	Rape Crisis Centers (N=23)	Child Advocacy Center (CAC) (N=10)	Youth-Serving (N=31)
Any services	8 (100.0%)	22 (92%)	11 (100%)	11 (85%)	30 (100%)	23 (100%)	10 (100%)	31 (100%)
None/missing	0 (0%)	2 (8%)	0 (0%)	2 (15%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Type of Direct Services								
Crisis shelter	0 (0%)	0 (0%)	0 (0%)	10 (77%)	1 (3%)	2 (9%)	2 (20%)	9 (29%)
Long-term shelter	0 (0%)	0 (0%)	11 (100%)	2 (15%)	5 (17%)	0 (0%)	0 (0%)	6 (19%)
Residential services	0 (0%)	6 (25%)	11 (100%)	2 (15%)	23 (77%)	2 (9%)	0 (0%)	12 (39%)
Food	0 (0%)	20 (83%)	11 (100%)	11 (85%)	25 (83%)	3 (13%)	0 (0%)	25 (81%)
Clothing	1 (13%)	20 (83%)	11 (100%)	11 (85%)	25 (83%)	3 (13%)	0 (0%)	25 (81%)
Transportation	2 (25%)	6 (25%)	11 (100%)	10 (77%)	25 (83%)	5 (22%)	4 (40%)	24 (77%)
Assessment	5 (63%)	17 (71%)	11 (100%)	6 (46%)	24 (80%)	7 (30%)	7 (70%)	20 (65%)
Case management	7 (88%)	19 (79%)	11 (100%)	11 (85%)	30 (100%)	8 (35%)	4 (40%)	25 (81%)
Substance abuse screening	5 (63%)	16 (67%)	11 (100%)	1 (8%)	16 (53%)	0 (0%)	0 (0%)	19 (61%)
Detoxification or substance abuse counseling/ treatment	0 (0%)	2 (8%)	11 (100%)	0 (0%)	3 (10%)	0 (0%)	0 (0%)	18 (58%)
Mental health counseling	2 (25%)	14 (58%)	11 (100%)	4 (31%)	27 (90%)	23 (100%)	8 (80%)	24 (77%)
Medical care	0 (0%)	20 (83%)	11 (100%)	4 (31%)	18 (60%)	7 (30%)	8 (80%)	17 (55%)
Dental care	0 (0%)	19 (79%)	11 (100%)	1 (8%)	20 (67%)	0 (0%)	0 (0%)	6 (19%)
Education	1 (13%)	20 (83%)	11 (100%)	1 (8%)	21 (70%)	15 (65%)	4 (40%)	23 (74%)
Legal services	1 (13%)	2 (8%)	0 (0%)	0 (0%)	4 (13%)	2 (9%)	4 (40%)	18 (58%)
Advocacy	3 (38%)	7 (29%)	0 (0%)	10 (77%)	22 (73%)	17 (74%)	10 (100%)	29 (94%)
Child welfare/ child protection	3 (38%)	4 (17%)	0 (0%)	0 (0%)	10 (33%)	4 (17%)	5 (50%)	8 (26%)
Family reunification	1 (13%)	2 (8%)	10 (91%)	8 (62%)	27 (90%)	0 (0%)	0 (0%)	14 (45%)
Street outreach	1 (13%)	0 (0%)	0 (0%)	5 (38%)	0 (0%)	0 (0%)	0 (0%)	17 (55%)

Table 5.1: Direct Services Provided to All Children by Type of Agency¹ (continued)								
Referrals	2 (25%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	11 (48%)	1 (10%)	0 (0%)
Other ³	3 (38%)	1 (4%)	0 (0%)	0 (0%)	3 (10%)	4 (17%)	1 (10%)	12 (39%)
Avg. no. of services provided	4.6	8.1	15.0	7.5	11.1	4.9	5.9	11.3
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse. ² Column percentages may exceed 100 percent because agencies could indicate more than one service provided. The shading highlights services provided by 50 percent or more of agencies in a category. ³ Other services included recreation, prevention services, and service coordination.								

shelters/TILP programs were the only other agency type with significant involvement in street outreach (38 percent). OCFS facilities provided the same services across nearly all facilities, which included most of the listed services in the survey, except for crisis shelter, legal services, advocacy, child welfare, and street outreach.

A few agency types offered a more limited set of core services. For example, rape crisis centers in the study offered mental health counseling (100 percent), advocacy (74 percent), and education (65 percent). All other services were provided by a minority of rape crisis centers. The pattern was similar for CACs. Services offered by the majority of CACs included advocacy (100 percent), mental health counseling (80), medical care (80 percent), assessment (70 percent), and child welfare/child protection (50 percent).

Across agency types, survey respondents were least likely to report providing referral, street outreach, crisis shelter, and long-term shelter. The data probably understate the proportion of agencies providing referrals, however, because “referral” was not offered as a response option on the survey. We created a separate category for it in the table because over 9 percent of agencies wrote in that service under “Other.”

Indeed we assume that many agencies, particularly police, use referrals to meet the constellation of needs identified for children under their custody. A question on the police questionnaire asked respondents to identify the referrals typically made for children and youth. The most common referrals listed by police agencies were to:

- Child welfare/child protective services (n=36 out of 41 law enforcement agencies),
- Medical care (n=33),
- Crisis shelters (n=27),
- Mental health counseling (n=26),
- Case management (n=25), and
- Substance abuse screening (n=23).

We next compare the types of services offered in NYC and the seven Upstate counties (Table 5.2). For over half of the services, a higher proportion of NYC than Upstate agencies reported providing the service. In some instances, the differences are small. However,

Table 5.2: Direct Services Provided by Geographic Area¹		
Services	Number (Percentage) ² of Weighted Agencies in Sampled Counties:	
	NYC (N=87)	Seven Upstate Counties (N=63)
Any direct services	87 (100%)	59 (94%)
None	0 (0%)	(6%)
Type of Direct Services		
Crisis shelter	11 (13%)	12 (19%)
Long-term shelter	14 (16%)	10 (16%)
Residential services	29 (33%)	27 (43%)
Food	57 (55%)	37 (39%)
Clothing	57 (66%)	39 (62%)
Transportation	50 (57%)	37 (59%)
Assessment	61 (70%)	36 (52%)
Case management	65 (75%)	50 (79%)
Substance abuse screening	43 (49%)	25 (40%)
Detoxification or substance abuse counseling/treatment	23 (26%)	11 (17%)
Mental health counseling	78 (90%)	35 (56%)
Medical care	57 (66%)	28 (40%)
Dental care	32 (37%)	26 (41%)
Education	60 (69%)	35 (56%)
Legal services	20 (23%)	11 (17%)
Advocacy	64 (74%)	34 (54%)
Child welfare/child protection	20 (23%)	14 (22%)
Family reunification	32 (37%)	30 (48%)
Vocational training	4 (5%)	7 (11%)
Referral	10 (11%)	4 (6%)
Street outreach	21 (24%)	3 (5%)
Other ³	12 (14%)	11 (17%)
¹ The weighted estimates in this table are based on data collected from sampled non-police agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Percentages may exceed 100 percent because agencies could indicate more than one service provided. ³ Other services included recreation, prevention services, and service coordination.		

there are large proportional differences—of 20 percent or greater—for three service categories: mental health counseling, provided by 90 percent of the NYC agencies versus 56 percent of the Upstate agencies; medical care (66 percent in NYC versus 40 percent Upstate); and advocacy (74 percent versus 54 percent). Where the proportions for Upstate exceed those for NYC, none of the differences come close to this magnitude. (The largest occurs for family reunification, provided by 48 percent of the Upstate agencies versus 37 percent in NYC.)

5.2 Service Delivery to CSEC

Tables 5.1 and 5.2 pertain to services available for the entire caseload of youth. Tables 5.3 and 5.4 show annual estimates of the services assigned and referrals made for CSEC in the four NYC boroughs and the seven Upstate counties, based on the sample child cases identified in the mail surveys. As shown in Table 5.3, on average, CSEC identified by NYC agencies received an average of 7.6 services, compared to 5.8 services for children identified by agencies Upstate.

Based on service information for 94 percent of the children identified as commercially sexually exploited, two of the services—case management and mental health counseling—were provided to the majority of CSEC both in NYC and Upstate. The only other service provided to the majority of CSEC Upstate was residential service (61 percent). Conversely, a number of services were provided to a majority of CSEC in NYC:

- Food (66 percent),
- Clothing (59 percent),
- Transportation (70 percent),
- Assessment (84 percent), and
- Advocacy (71 percent).

In fact advocacy services accounted for the largest proportional difference between the two areas (provided to 71 percent of NYC youth and 28 percent of those Upstate). Other services with a proportional difference of 20 percentage points or more in favor of NYC include food, transportation, assessment, medical care, and legal services. For two services, the percentage of children served was substantially higher in Upstate than in NYC: residential

Table 5.3: Direct Services Provided to CSEC by Geographic Area¹

Services	Number (Percentage) ² Provided to CSEC:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any direct services	1,995 (94%)	373 (93%)
Missing	126 (6%)	26 (7%)
Type of Direct Services		
Crisis shelter	304 (14%)	5 (1%)
Long-term shelter	410 (19%)	5 (1%)
Residential services	655 (31%)	244 (61%)
Food	1,408 (66%)	180 (45%)
Clothing	1,261 (59%)	184 (46%)
Transportation	1,484 (70%)	189 (47%)
Assessment	1,790 (84%)	181 (45%)
Case management	1,884 (89%)	297 (74%)
Substance abuse screening	202 (10%)	47 (12%)
Detoxification or substance abuse counseling/treatment	17 (1%)	9 (2%)
Mental health counseling	1,221 (58%)	256 (64%)
Medical care	796 (38%)	48 (12%)
Dental care	182 (9%)	57 (14%)
Education	302 (14%)	159 (40%)
Legal services	682 (32%)	37 (9%)
Advocacy	1,498 (71%)	111 (28%)
Child welfare/child protection	283 (13%)	41 (10%)
Family reunification	344 (16%)	117 (29%)
Street outreach	271 (13%)	0 (0%)
Other ³	148 (7%)	29 (7%)
Average no. of services provided	7.6	5.8
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years. ² Column percentages may exceed 100 percent because agencies could indicate more than one service provided. ³ Other services included recreation, prevention services, and service coordination.		

Table 5.4: Service Referrals for CSEC by Geographic Area¹		
Service Referrals	Number (Percentage) ² Referred to CSEC:	
	NYC (N=2,121)	Seven Upstate Counties (N=399)
Any direct services	1,829 (86%)	181 (45%)
None	49 (2%)	96 (24%)
Missing	243 (11%)	122 (31%)
Type of Service Referrals		
Crisis shelter	178 (8%)	4 (1%)
Long-term shelter	204 (10%)	0 (0%)
Residential services	525 (25%)	5 (1%)
Food	148 (7%)	4 (1%)
Clothing	399 (19%)	5 (1%)
Transportation	157 (7%)	4 (1%)
Assessment	461 (22%)	16 (4%)
Case management	282 (13%)	18 (5%)
Substance abuse screening	126 (6%)	119 (30%)
Detoxification or substance abuse counseling/treatment	31 (1%)	14 (4%)
Mental health counseling	1,443 (68%)	89 (22%)
Medical care	1,498 (71%)	55 (14%)
Dental care	0 (0%)	35 (9%)
Education	557 (26%)	39 (10%)
Legal services	626 (30%)	62 (16%)
Advocacy	271 (13%)	28 (7%)
Child welfare/child protection	1,056 (50%)	47 (12%)
Family reunification	32 (2%)	9 (2%)
Street outreach	126 (6%)	0 (0%)
Other ³	85 (4%)	35 (9%)

¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design, adjustments for nonresponse, and an annualization factor based on the distribution of arrests and OCFS identification of CSEC in prior years.

² Column percentages may exceed 100 percent because agencies could indicate more than one service provided.

³ Other services included recreation, prevention services, and service coordination.

services (31 percent in NYC and 61 percent Upstate) and education (14 percent in NYC and 40 percent Upstate). The difference for residential services is not surprising given that 55 percent of all Upstate CSEC were identified by congregate care facilities. A few services were rarely provided to Upstate CSEC, including street outreach (0 percent), crisis shelter (1 percent), and long-term shelter (1 percent), but were provided to 13 percent or more of the CSEC in NYC. Detoxification or substance abuse counseling/treatment was rarely provided in either geographic area (1 percent in NYC and 2 percent Upstate).

Table 5.4 shows the types of referrals made for CSEC and compares them across geographic areas. The majority of CSEC in NYC (86 percent) and a large minority in Upstate (45 percent) received at least one service referral. (Note that data on referrals for Upstate children was missing in 31 percent of all cases.) Medical care and mental health referrals were the most common in NYC, made for 71 percent and 68 percent of the CSEC, respectively. In Upstate, substance abuse screening was by far the most common referral (30 percent) but among the least common in NYC (6 percent). Other large differences in referrals between NYC and Upstate occurred for medical care (71 percent in NYC versus 14 percent Upstate), child welfare services (50 percent in NYC and 12 percent Upstate), and residential services (25 percent in NYC and 1 percent Upstate). Some of these differences may be attributable to the different types of agencies identifying CSEC in NYC and Upstate. Some differences may also be exaggerated because of missing referral data.

The survey responses do not provide any detail about the quality or intensity of the services provided. For that, we gleaned additional information from 12 qualitative interviews conducted with non-police agencies. These interviews make clear that services with the same label can vary considerably. For example, some agencies that reported providing mental health counseling provide only a mental health assessment in order to determine the extent of mental health needs. If indicated, the child is then referred for more in-depth counseling by a mental health agency.

According to interviewees, agency intake and needs assessment processes also differ, although they typically involve a variety of activities, such as individual interviews, home assessments, mental health assessment, medical screening, and forensic examination. Regardless of geographic area, assessment includes talking with other agencies—law enforcement, the Administration for Children’s Services and other DSS agencies, OCFS, and service providers. Many agencies also do a safety screening. One agency mentioned that its comprehensive assessment includes assessing immediate crisis needs. Another mentioned that staff use group

play and dynamic observation as part of the assessment. Several agencies indicated that assessment also included identifying perpetrators, with the hope that they will be prosecuted.

The programs provided by these agencies varied in length of stay by geographic area and program type. In NYC typical programs for CSEC ranged in length from six weeks to nine to 12 months. One program reported working with the child until he/she reaches 21 years old. Several also mentioned followup and working with children until all needs are met. One NYC agency reported working with CSEC for four to five years. Upstate agencies showed similar variations, with programs ranging from ten days to ten months. Upstate agencies more often volunteered information that there were exceptions to those average stays. For example, a shelter stated that while its average stay was ten days, some children (around 19 percent of the caseload) only stayed one or two nights, while others stayed one to two months. A congregate care program that also provides an intensive mental health program reported an eight to ten month average, expanding to 18 to 24 months for the intensive program. Note that the variations in the length of stay between NYC and Upstate agencies may be associated with the number of CSEC encountered. The NYC agencies interviewed reported seeing from 12 CSEC a year to 2000, compared with two to 27 CSEC Upstate.

Two agencies (one in NYC and one Upstate) reported that involvement with children, particularly those who are CSEC, is intermittent. These children often move back and forth from the sex industry to services. One NYC agency reported about a 50 percent success rate in breaking the cycle of girls returning to their pimps. The respondent stated that the intervention frequently does not work. For most girls, it takes multiple attempts to leave (often three) for the girls to acquire the necessary tools to set up a stable alternate life situation. The tools include recognizing the various forms of exploitation and gaining the vocabulary, ability, and life skills to say no.

5.3 Specialized Services Needed by CSEC

Both the Agency and Police mail questionnaires included an open-ended question on service needs: *Based on your experiences, what specialized services do commercially sexually exploited youth need?* More than half of the respondents (62 percent) volunteered information on this question. We sorted these responses into eight categories, patterned on the service types used in previous tables. The “Other” category incorporates a variety of responses—none mentioned by more than a handful of respondents—that were broken out on earlier tables. They include street

outreach, detoxification and/or substance abuse counseling/treatment, family reunification, mentoring, child welfare/child protective services, transportation, and referrals.

On average, respondents identified 2.3 different specialized service needs for this population (data not shown). While NYC respondents reported providing more types of services than those from the Upstate counties (Table 5.2 above), Table 5.5 shows that they also reported more special service needs—3.1 on average in NYC and 1.6 in the Upstate counties. Eighty-three percent of the NYC agencies identified at least one specialized service need versus 68 percent of the Upstate respondents (Table 5.6). Mental health counseling⁴¹ was the most prevalent need in both areas, reported by 72 percent of NYC respondents and 64 percent of Upstate respondents. In three categories, there were large proportional differences between geographic areas, with needs more often identified by NYC agencies: medical care⁴² (identified as a need by 59 percent in NYC versus 25 percent Upstate), crisis shelter (27 percent versus 9 percent) and “Other” (40 percent versus 23 percent). The service need mentioned least often in NYC was education (by eight percent), similar to Upstate (seven percent). Besides education, case management (0 percent), residential services (four percent), and crisis shelter (nine percent) were also mentioned infrequently Upstate.

As seen in Table 5.6, which further breaks down the results by type of agency, youth-serving agencies specified the highest average number of service needs—3.4. Mental health counseling and medical care, the two areas of need most often cited in Table 5.5, were particularly common responses from certain types of agencies, regardless of location. These included youth-serving agencies, RHY shelters/TIL programs, detention centers, congregate care facilities, and child advocacy centers. Rape crisis centers and CACs were the most likely to mention legal/advocacy needs in both geographic areas. Along with RHY shelters/TIL programs, they also were the most likely to mention needs for crisis shelter.

⁴¹ We included a variety of more specific responses in this category, including rape crisis, one-on-one, peer group, home-based, and community counseling; family therapy; crisis and trauma intervention; and support groups.

⁴² Medical care was typically described by respondents as testing/screening for sexually transmitted diseases, substance abuse, and injuries; prevention checkups; alternative medicine, such as acupuncture; and provision of health information.

Table 5.5: Specialized Services Needed by CSEC by Geographic Area¹		
Specialized Services Needed	Number (Percentage) ² of Weighted Agencies in Sample Counties:	
	NYC (N=83)	Seven Upstate Counties (N=56)
Reported need for specialized services	69 (83%)	38 (68%)
None specified	14 (17%)	18 (32%)
Type of Specialized Services Needed		
Crisis shelter	22 (27%)	5 (9%)
Residential services	11 (13%)	2(4%)
Mental health counseling	60 (72%)	36 (64%)
Medical care	49 (59%)	14 (25%)
Legal services/advocacy	10 (12%)	11 (20%)
Case management	11 (13%)	0 (0%)
Education services	7 (8%)	4 (7%)
Other services	33(40%)	13 (23%)
Avg. no. services specified	3.1	1.6
¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse. ² Total percentages may exceed 100 percent because agencies could specify more than one service needed for CSEC.		

Specialized Services	Number (Percentage) ² of Weighted Agencies in Sample Counties:						
	Probation Department (N=8)	Detention Center (N=24)	RHY Shelters/TIL Programs (N=13)	Congregate Care (N=30)	Rape Crisis Center (N=23)	Child Advocacy Centers (CAC) (N=10)	Youth Serving Agencies (N=31)
NYC							
Reporting service needs	1 (100%)	15 (100%)	4 (100%)	11 (79%)	10 (66%)	5 (100%)	22 (79%)
None specified	0 (0%)	0 (0%)	0 (0%)	3 (21%)	5 (33%)	0 (0%)	6 (21%)
Crisis shelter	0 (0%)	0 (0%)	4 (100%)	5 (36%)	6 (40%)	2 (60%)	5 (18%)
Residential services	0 (0%)	0 (0%)	0 (0%)	6 (43%)	0 (0%)	0 (0%)	5 (18%)
Mental health counseling	1 (100%)	13 (87%)	4 (100%)	11 (79%)	4 (27%)	5 (100%)	22 (79%)
Medical care	0 (0%)	13 (87%)	4 (100%)	5 (36%)	6 (40%)	5 (100%)	16 (57%)
Legal/advocacy	0 (0%)	0 (0%)	0 (0%)	0 (0%)	7 (47%)	3 (60%)	0 (0%)
Case management	0 (0%)	0 (0%)	4 (100%)	0 (0%)	0 (0%)	2 (20%)	5 (18%)
Education services	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (40%)	5 (18%)
Other services	0 (0%)	0 (0%)	4 (100%)	11 (79%)	4 (27%)	3 (60%)	11 (39%)
Seven Upstate Counties							
Reporting service needs	4 (57%)	6 (60%)	6 (67%)	11 (73%)	5 (63%)	2 (50%)	3 (100%)
None specified	3 (43%)	4 (40%)	3 (33%)	4 (27%)	3 (37%)	2 (50%)	0 (%)
Crisis shelter	0 (0%)	0 (0%)	2 (22%)	0 (0%)	1 (13%)	1 (25%)	1 (3%)
Residential services	1 (14%)	1 (10%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Mental health counseling	3 (43%)	6 (60%)	6 (67%)	11 (73%)	5 (63%)	2 (50%)	3 (100%)
Medical care	0 (0%)	5 (50%)	3 (33%)	3 (20%)	2 (25%)	1 (25%)	1 (33%)
Legal/advocacy	1 (14%)	0 (0%)	2 (22%)	2 (13%)	3 (37%)	2 (50%)	1 (33%)
Case management	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Education services	0 (0%)	0 (0%)	0 (0%)	2 (13%)	1 (13%)	0 (0%)	1 (33%)
Other services	3 (43%)	1 (10%)	3 (33%)	4 (7%)	1 (13%)	0 (0%)	1 (33%)
Avg. no. of services identified by agency type	1.9	2.5	3.1	2.9	2.6	3.1	3.4

¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept. 15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse.

² Column percentages may exceed 100 percent because agencies could specify more than one service needed for CSEC.

5.4 Barriers to Service Provision (Mail Questionnaires)

For each specialized service need volunteered on the mail surveys, respondents were also asked to indicate whether the service was available in the community and if so, from whom, and what barriers existed to service provision. Table 5.7 shows the availability of agencies in the community to provide the service. In NYC, a majority of respondents (55 percent) reported that the needed residential services were not available in the community. Also, all NYC respondents indicating the need for education services reported that these services were not available. Upstate respondents were less likely to indicate services were not available in the community.⁴³

However, even when agencies are available to provide a specialized service, there are limitations. Table 5.8 shows the limitations/barriers reported by the survey respondents. Respondents could identify up to two barriers per service, but for many of the services, a significant number of respondents did not provide any information. Not surprisingly, the type of barriers that were identified differed by both service category and geographic area. In NYC, an insufficient number of beds/slots were the most common barrier cited for crisis shelters (41 percent). Residential services were limited by restrictions on non-county youth (55 percent) and “other” barriers (55 percent). Limited funding was the most frequently cited problem for medical care (43 percent), legal services and advocacy (60 percent), case management (55 percent), and services grouped as “other” (e.g., outreach, substance abuse screening, child welfare, and transportation). The lack of staff or trained staff was specified by NYC respondents for case management (55 percent), mental health counseling (23 percent), medical care (12 percent), and “other” services (nine percent). Upstate, where fewer respondents answered survey items about service needs and barriers, it is harder to describe the patterns because of small cell sizes. One exception is mental health counseling, where respondents identified not enough slots/beds (25 percent) and “Other” (42 percent) as the key barriers. Most of the barriers identified for other service needs also Upstate fell into the “Other” category.

⁴³ There are some indications that respondents may overestimate the availability of services. Elsewhere in the survey form, respondents were asked to name local agencies that provided services specifically for CSEC. In following up with some of the named agencies, study staff were told that the agency rarely or, in one case, never worked with CSEC.

5.7: Availability of Needed Services From Community Agencies¹

Services Needed	Number (Percentage) of Weighted Agencies in Sampled Counties:				
	Not available in the community	Available from Respondent Agency Only	Available from Respondent and Other Agencies in Community	None Specified	Total
NYC (n=83)					
Crisis shelter	2 (10%)	10 (45%)	10 (45%)	0 (0%)	22 (100%)
Residential services	6 (55%)	0 (0%)	5 (45%)	0 (0%)	11 (100%)
Mental health counseling	2 (3%)	12 (20%)	46 (77%)	0 (0%)	60 (100%)
Medical care	0 (0%)	18 (37%)	31 (63%)	0 (0%)	49 (100%)
Legal services/advocacy	0 (0%)	8 (80%)	2 (20%)	0 (0%)	10 (100%)
Case management	0 (0%)	10 (91%)	1 (9%)	0 (0%)	11 (100%)
Education services	7 (100%)	0 (0%)	0 (0%)	0 (0%)	7 (100%)
Other services ²	6 (11%)	4 (12%)	18 (55%)	11 (33%)	33 (100%)
Upstate (n=56)					
Crisis shelter	1 (20%)	2 (40%)	2 (40%)	0 (0%)	5 (100%)
Residential services	0 (0%)	0 (0%)	2 (100%)	0 (0%)	2 (100%)
Mental health counseling	2 (6%)	4 (11%)	26 (72%)	4 (11%)	36 (100%)
Medical care	0 (0%)	3 (21%)	10 (71%)	1 (7%)	14 (100%)
Legal services/advocacy	0 (0%)	3 (27%)	7(64%)	1 (9%)	11 (100%)
Case management	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (100%)
Education services	0 (0%)	0 (0%)	2 (50%)	2 (50%)	4 (100%)
Other services ²	0 (0%)	3 (23%)	7 (54%)	3 (23%)	13 (100%)

¹The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept.15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse.

² Other services include street outreach, detoxification, substance abuse counseling and treatment, mentoring, transportation, family reunification, child welfare/child protective services, recreation programs, general services, and referrals.

5.8: Barriers to Services Needed in the Community by Geographic Area¹

Services needed	Number (Percentage) ² of Weighted Agencies in Sampled Counties:								
	Limited Funding	Not Enough Slots/Beds	Not Available to Non-County Youth	Limited Staff/ Trained Staff	Limited Access to Services ³	Lack of Community Awareness	Other Barriers ⁴	None Specified	Total
NYC									
Crisis shelter	6 (27%)	9 (41%)	0 (0%)	0 (0%)	6 (27%)	0 (0%)	2 (9%)	5 (23%)	22 (100%)
Residential services	0 (0%)	0 (0%)	6 (55%)	0 (0%)	0 (0%)	0 (0%)	6 (55%)	5 (45%)	11 (100%)
Mental health counseling	6 (10%)	8 (13%)	10 (17%)	14 (23%)	6 (10%)	3 (5%)	8 (13%)	16 (27%)	60 (100%)
Medical care	21 (43%)	6 (12%)	0 (0%)	6 (12%)	0 (0%)	10 (20%)	12 (24%)	6 (12%)	49 (100%)
Legal services/ advocacy	6 (60%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	4 (40%)	10 (100%)
Case management	6 (55%)	4 (36%)	0 (0%)	6 (55%)	0 (0%)	0 (0%)	2 (18%)	0 (0%)	11 (100%)
Education services	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	7 (100%)	7 (100%)
Other services ⁵	7 (21%)	0 (0%)	4 (12%)	3 (9%)	0 (0%)	0 (0%)	0 (0%)	19 (58%)	33 (100%)
Seven Upstate Counties									
Crisis shelter	0 (0%)	1 (20%)	0 (0%)	0 (0%)	0 (0%)	1 (20%)	0 (0%)	3 (60%)	5 (100%)
Residential services	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (100%)	0 (0%)	2 (100%)
Mental health counseling	5 (14%)	9 (25%)	2 (6%)	3 (8%)	0 (0%)	3 (8%)	15 (42%)	8 (22%)	36 (100%)
Medical care	2 (14%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	10 (71%)	7 (50%)	14 (100%)
Legal services/ advocacy	0 (0%)	0 (0%)	0 (0%)	2 (18%)	2 (18%)	4 (36%)	0 (0%)	5 (45%)	11 (100%)
Case management	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (100%)
Education services	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (25%)	2 (50%)	3 (75%)	0 (0%)	4 (100%)
Other services ⁵	5 (38%)	2 (15%)	0 (0%)	2 (15%)	0 (0%)	0 (0%)	0 (0%)	4 (30%)	13 (100%)

¹ The weighted estimates in this table are based on data collected from sampled agencies for a two-month reference period (July 15 through Sept. 15, 2006). The weights reflect the probabilities of selection for the sample design and adjustments for nonresponse.

² Percentages may exceed 100 percent because respondents could indicate up to two barriers for each service.

³ This category includes agencies that had limited hours of operation or program constraints (only served children of a certain age or sex or had mandated clientele).

⁴ Other barriers included lack of insurance, limited transportation available, general lack of resources, resistance to program or therapy by the child, and unwillingness to disclose exploitation.

⁵ Other services include street outreach, detoxification/substance abuse counseling and treatment, family reunification, mentoring, child welfare/child protective services, recreation programs, transportation, general services, and referrals.

5.5 Other Service Needs and Barriers (Qualitative Interviews)

The qualitative interviews provided an opportunity to further explore the service needs and barriers from the perspective of agencies that frequently work with CSEC. These interviews were conducted with 12 non-DSS agencies (six from NYC and six from Upstate). The interviews asked Do the needs of commercially sexually exploited youth differ from those of the rest of your population? Regardless of geographic area, respondents mentioned the intensity of the services needs for CSEC. For all NYC agencies, housing emerged as a particular concern, but concern was also expressed by two upstate agencies. Respondents described several challenges regarding housing for CSEC: (1) finding physical space and funding, (2) securing safe housing, (3) housing CSEC with other children, (4) securing transitional housing to move CSEC into a more normal living environment, and (5) securing long-term housing. Three of the NYC agencies also emphasized the problems of mixing CSEC with other children who may mock or look down on them, a theme that also emerged in the focus group sessions. One NYC agency had recently increased the number of beds for target youth through a NYC Department of Youth and Community Development grant. However, the number of beds provided remains small.

NYC agencies also stressed the vulnerability of the CSEC. The safety issue surrounding CSEC is particularly complex, given the structure of the sex industry as it exists in NYC. The information below about the structure of sex industry comes from agency respondents who work most closely with youth involved in street prostitution organized by pimps who prey on young girls in NYC. It is unknown if similar dynamics are at work in smaller communities Upstate when children are sexually exploited for commercial purposes. The discussion also does not explain youth who are engaged in commercial sex work without a pimp, as many runaway and homeless youth appear to act as free agents, making money for survival needs.

Several respondents from NYC commented that the pimp is not the only one that agencies have to guard against. They describe the social structure of the sex industry as a family, with the pimp as the head of household. Most families have several children. The pimp exerts remarkable control over them, supported by the group. Attempts to leave the group, causing a financial loss to the pimp, are considered betrayals. Not just the pimp, but other children working for the pimp try to bring back any victim who attempts to break free or is arrested. Two respondents described a “head” prostitute who serves in a mother/first wife role, sometimes referred to in the literature as the “wife-in-law.”⁴⁴ If a child is picked up for prostitution, this

⁴⁴ Williamson, C., Cluse-Tolar, T. op.cit. 1084.

individual will visit the child in jail, detention, at law offices, or in foster or congregate care, encouraging the child to come back to the pimp or cautioning the child not to testify against him. These communications are difficult to stop since the victim may consider these individuals close friends.

Upstate agencies mentioned the need for intensive therapy to help CSEC address their confusion over roles and family issues. Upstate agencies also talked about the difficulty of achieving permanent placements for these children, because of their independence and lack of community attachment. These respondents also talked about the need to be flexible when working with CSEC to accommodate their sense of independence. Only three of the six Upstate respondents mentioned the need for housing for these youth; again, this may be a result of the smaller number of CSEC in the Upstate counties. A rape crisis center, congregate care facility, and runaway shelter commented on the need for long-term residential support, safe shelter, and independent living space.

Some respondents discussed how service limitations and barriers can exacerbate the problem if children are put on long waiting lists for services, until beds open up or staff become available. According to NYC respondents, these waits can be from one to six months. Such a wait often means the child will move back in with the pimp and “family” of prostitutes living together. One Upstate respondent also commented on the need to closely supervise CSEC as they move through the system from one placement, therapist, or program to another.

Other deficits mentioned by individual agencies in the interviews included medical care; counseling; legal support; follow-up services; treatment for juvenile sex offenders; and the lack of a system-wide or consistent response to CSEC. One Upstate agency noted a lack of transportation in rural areas and the need to expand services to the gay, lesbian, bisexual, and transgender population.

These same agencies were asked to discuss service needs in light of the outcomes they wanted to achieve for CSEC clients. These responses varied little by geographic area and focused on getting youth to a “safe place.” To achieve this goal, the agencies described a two-pronged approach: (1) identifying factors that put children at risk and (2) increasing children’s involvement in developmentally appropriate activities—attending school, working, and involvement in community, church and/or family activities. Similar objectives and approaches were identified for children at risk of sexual exploitation, but not yet involved in it. Several interviewees thought that the children at greatest risk are those who are most isolated, such as

victims of bullying at school, children with special education needs that make them feel different, or children with something else that sets them apart from their peers. One NYC agency said that pimps send youth out to recruit others who are alone and not where they should be (e.g., at a train station during school hours). Developing strategies that help these youth integrate into age-appropriate, positive social groups and expose them to positive adult role models was considered to be an extremely important factor in reducing their vulnerability to commercial sexual exploitation.

Interviewees also identified individualized follow-up as critical to helping CSEC reintegrate into the community and involve themselves in age-appropriate activities. Five of the 12 agencies (two in NYC and three in Upstate) reported doing follow-up on a routine basis. However, even in these agencies, follow-up was provided on a case-by-case basis. One respondent reported that she was the only staff member for the entire program and that she lacked the time to provide follow-up. Another agency that draws youth from around the State returns the youth to their home county for outpatient services and reintegration into the community. An Upstate agency described clients as “family” and said that some clients who are now in their 30’s still return to the agency for advice, service referrals, and other assistance.

The qualitative interviews described many of the same types of service barriers as the mail surveys, with the most significant agency constraints being insufficient budgets (cited by three respondents from NYC and three from Upstate) and staffing (two from NYC and three from Upstate). One Upstate agency commented that government funding for its program, which constitutes 70 percent of the budget, has not increased since 1989. This same agency mentioned a 12 percent loss of county funding in the past year. One NYC agency commented that it could no longer serve at-risk children, given the high demand for services from CSEC. Another agency discussed how difficult it is to get money from private foundations that do not want to hear about this issue. That respondent reported educating foundations by talking to their boards and discussing the experiences of these children.

Many agency interviewees mentioned the need for more professional education as a way to help remediate service deficits. Particularly cited was the need to better educate police departments (mentioned by four of the seven NYC agencies and nine of the 13 upstate agencies), focusing on awareness, identification, and sensitivity. Training deficits were also cited (again by the majority of agencies in NYC and Upstate) for all types of service personnel working with CSEC, ranging from clinicians and voluntary staff, judges and all individuals working with CSEC. The emphasis on professional education echoed the findings of a recent report by the

Citizens' Commission for Children about girls in the juvenile justice system, which recommended "improved training for all professional staff that come in contact with court involved girls, from court personnel to attorneys and frontline caregivers in detention and placement settings."⁴⁵

Two NYC respondents spoke about the barriers caused by the public perception of CSEC as criminals. Such a perception exacerbates many of the existing barriers—funding, staffing, and reintegrating CSEC into the community. Two NYC agencies and one Upstate agency mentioned the problem of gaining the child's trust in order to provide needed services. As one NYC respondent stated, "agencies have to compete with pimps to get the child's attention and trust."

Respondents from one NYC agency and one Upstate agency identified poor communication—among federal, state, and local agencies; among service agencies, police, district attorneys, and judges; between family and criminal courts; and among borough jurisdictions—as a key barrier to service provision. Lack of coordination and communication was cited as making it more difficult to facilitate child safety. Furthermore, when communication is actively established between agencies, it is often personnel-specific rather than agency-specific. If an individual leaves, then a new connection has to be established. Two Upstate agency interviewees, along with several Study Advisory Group members, said that communication is also hampered by the lack of a good tool or protocol to identify CSEC and share information on sexual exploitation without betraying the trust of the child.

⁴⁵ Citizen's Committee for Children of New York Inc. (2006) *Girls in the Juvenile Justice System: Understanding Service Needs and Experiences*. New York, NY, p. 25.

6. WORKING WITH COMMERCIAL SEXUALLY EXPLOITED CHILDREN

As stated in Chapter 2, the agencies included in this study were those deemed most likely to see and serve CSEC. Twenty non-law enforcement agencies participated in the qualitative interviews, including eight DSS agencies (including NYC ACS), three youth-serving agencies, three rape crisis centers, one CAC, one RHY shelter/TIL program, one congregate care facility, one OCFS juvenile justice facility, and one NYC coalition addressing commercial sexual exploitation of children. Seven agencies were from NYC; 13 were from Upstate.

Among the non-DSS agencies, there was a wide variation in how long they have been operating. The oldest agency has been in existence for 120 years and the second oldest began 75 years ago. The youngest agency opened in 1999. Among the remaining agencies, three started in the 1970s and two in the 1980s. All but three interviewed had been working with CSEC for at least five years, and these three were all based in NYC and were part of new initiatives to address the problem of the commercial sexual exploitation of children.

The non-DSS agencies were asked to estimate the number of CSEC seen in a year. This marked the biggest distinction between the NYC agencies and those found Upstate. As stated in the Chapter 5, six Upstate agencies reported seeing two to 27 CSEC a year, for an estimated annual total of 97. In NYC, agencies estimated seeing between 12 and 2000 for a total of 2,385. The larger numbers were seen by legal services agencies. Several agencies commented that it was difficult to say how many children were under 18 because these youth often lied about their age and gave false identities. Several respondents noted that they based their figures on “known” cases; other children served by their agency might also be commercially sexually exploited but not identified as such.

Below we further discuss the experiences of these agencies in working with CSEC.

6.1 Community and Agency Protocols for Working with CSEC

The eight DSS agencies were included in the interviews to serve as a touchstone or basis to compare experiences in each of the different sample counties. When asked about their definition of commercial sexual exploitation, three agencies (one from NYC and two from Upstate) reported that their definition was consistent with that of the study. The other Upstate

DSS agencies reported that their definition basically covered sex abuse by a parent or caretaker (or lack of supervision by a parent or caretaker which permitted the sexual abuse). This is consistent with their traditional roles in addressing child abuse and neglect.

All non-DSS agencies reported seeing CSEC who fit the specific definition used by this study, although in some agencies their specific definition differed from that of the study, such that CSEC might be subsumed under a larger definition, as in the case of several DSS agencies. For NYC agencies, five agreed with the definition. However, one agency commented that by including protection in the definition more cases would be included that did not fit the commercial definition. We found that to be true in the mail questionnaire and had to remove most cases involving a sexual act for protection because of the lack of commercial aspect. One NYC agency cast a broader net looking at all sexual exploitation regardless of compensation. Three of the Upstate agencies concurred with the study definition, while three also cast broader nets looking at all sexual exploitation, regardless of commercial aspects.

The DSS agencies, regardless of geographic area, described similar protocols for working with CSEC.⁴⁶ These protocols were basically those that covered child abuse and neglect cases, which would also encompass the CSEC. These protocols covered joint investigations with police and working with district attorneys as needed. The protocols mentioned involvement with CACs and other service providers. ACS particularly mentioned working with police when targeting CSEC cases.

Most of the non-DSS agencies stated that there was at least an informal agency protocol, but there were no community-wide protocols for dealing with CSEC. As with DSS agencies, these protocols tend to be the same ones used for child abuse or any rape victims or child offenders, but several agencies stated that services (educational and case management) are more intense for CSEC. One state-level respondent stated that its protocol for dealing with male sexual offenders is much better articulated than it is for CSEC. Boys who are labeled as sex offenders go through extensive and validated evaluation assessments.

⁴⁶ The mail questionnaire asked police agencies about protocols for dealing with CSEC. Twenty-five of the 32 police agencies reporting using protocols, which were broadly worded to encompass the spectrum of sex-related cases. Protocols included specific procedures for intake, gathering evidence, and considering the necessary next steps (testing for rape, counseling, and other follow-up services) for the child.

6.2 Connecting and Identifying CSEC

Both DSS and non-police agencies described a variety of ways that clients enter services. DSS agencies use the same approach for CSEC as they do for children in child abuse and maltreatment cases. They receive reports/referrals through the Statewide Central Registry for Child Abuse and Maltreatment (SCR) and the child abuse hotline, which transfers them to the appropriate district. Three DSS agencies also mentioned receiving direct referrals from law enforcement and/or the juvenile justice system. Other referrals come from the courts, schools, OCFS, and family members. A few also come from client disclosures. Two of the New York City agencies locate CSEC through street outreach. One agency passes out cards that are imprinted with “Confidential Outreach Services,” which then leads youth to pass service information by word of mouth. Two other agencies from Upstate mentioned doing outreach to schools, and one agency approaches sentinels, such as counselors, agencies, and police and encourages them to refer CSEC.

Of the two agencies (both in NYC) with specialized protocols for working with CSEC, one specified that upon identification, the child is referred to an agency that works specifically with CSEC, while the other uses a specialized intake form that focuses on identifying police harassment, pimp involvement, and safety issues. Agencies reported the difficulty of identifying CSEC unless the child is found by police or outreach workers stripping or being prostituted. Often the agency does not know about the exploitation at the point of intake, where services are most likely to be established. This coincides with findings from the mail questionnaire which found that sexual exploitation was known at time of referral for only 35 percent of the children. An additional 15 percent were identified as CSEC during assessment. Identification for the other 50 percent of children occurred later in the process.

One NYC agency that works exclusively with CSEC commented that the youth know their agency and whom it serves, so counselors are more forthright in questioning children about their involvement in the sex industry. Other agencies must somehow elicit a disclosure. Another NYC agency uses a developmental assessment (the DSM Family Assessment). A third described a special psycho-educational curriculum for females in an Upstate facility that may elicit disclosures. Respondents from other agencies commented that there are few disclosures from these children, and the agency may know about the problem only because of the referral charge (e.g., from police).

Staff in these agencies mentioned a number of other challenges in working with CSEC, beyond simply identifying them. These challenges crossed geographic borders. Building trust was a major one. The difficulty can be more severe if the child has been dealing with commercial sexual exploitation for some time and if he or she was abused prior to going into the sex industry, a description that fits the majority of children identified in this study. In addition, agencies find themselves working with children with severe mental health issues or limited cognitive functioning. Another challenge is getting the children's families involved, assuming that it is desirable. Agencies commented that the lack of involvement by the family is often part of the reason the child became involved in the sex industry. One Upstate agency reported seeing increases in the number of youth referred from the court because parents have taken out a protection order against the child. Another mentioned that the parent's statement to the court that the home is safe may be given more credence than the youth's statement about the presence of an active abuser. This scenario may occur when an agency attempts to return a runaway child involved in commercial sexual exploitation to the home, a home that the child fled in the first place because of abuse.

One model program for female victims of sexual abuse or assault is currently operating in the OCFS Harriet Tubman Facility. This program provides one-on-one counseling following disclosure.

6.3 Staff Training

Staff training is considered critical in dealing with these challenges. All DSS agencies have required training for staff. Most of the non-DSS agencies have some staff training, which varies from general agency in-service (covering topics such as crisis management, rape crisis, child advocacy, mental health issues, interview training, sexuality, and team building) to 40 hours per year of training on working with and reporting abused children. The latter training usually covers information about HIV/AIDS, runaway/homeless youth, and the legal requirements for mandatory reporting of child abuse and neglect.

Few agencies reported receiving specialized training for CSEC. One NYC agency mentioned conducting comprehensive staff training on working with CSEC; another statewide agency mentioned specialized training for sex offender staff and training in a special curriculum. Another NYC agency mentioned that a State attorney attended training on CSEC sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Training sources included

OCFS, Girls Education and Mentoring Service (GEMS), child protective services, Planned Parenthood, the Empire State Coalition of Youth and Family Services, various other agencies, and conferences. However, few training resources specific to CSEC were identified, and none based Upstate. GEMS was the most commonly mentioned agency with training expertise in this topic area.

DSS agencies were asked if training for law enforcement was needed on the commercial sexual exploitation of children. Six of the eight agencies agreed. However, one concern raised was the constant problem that when training occurs, officers must be taken off the street. This balance between having officers on the street or in training is a constant issue. One Upstate agency felt that training on CSEC was needed by all involved with these children.

6.4 Recent Changes

Both DSS and non-DSS agencies reported that in recent years there had been a few changes—increased resources, improved protocols, new curricula—addressing CSEC. Changes in training seemed to be the most common. Two NYC agencies mentioned that they had received funding for training and attending workshops. Two agencies mentioned developing a new “train the trainer” program. Three NYC agencies reported getting a least one new staff member to work with CSEC, but in at least one case, additional funding will be needed eventually to sustain the position. Other changes, each mentioned by one agency, included:

- A new grant for prevention/peer leadership in high schools (in NYC),
- Improved ability to work with bisexual youth (statewide agency),
- Increased community education (Upstate),
- Increased coordination between rape crisis and domestic violence providers, enabling identification of CSEC through domestic violence intake (Upstate), and
- A new sex abuse unit (Upstate).

Four Upstate agencies reported no real changes in the past few years.

From a broader perspective, it appears that the recognition of the problem of CSEC has increased. Certainly, the efforts by the New York State Legislature (such as funding for this

study and the reintroduction of the Safe Harbour bill), provide powerful evidence of this. Other efforts focus largely on NYC. Federal agencies, such as OJJDP and the Bureau of Justice Assistance (BJA) within the U.S. Department of Justice (DOJ), have paid increased attention to CSEC. New York City was one of two cities to receive an OJJDP grant in 2003, which is funding the Coalition to Address the Sexual Exploitation of Children (discussed below in more detail). In addition to the Coalition, this grant is supporting development of a three-pronged approach called Operation Guardian. The first piece, located in the Queens District Attorney's Office, focuses on child prostitution and the prosecution of pimps. The second component provides around-the-clock support to CSEC who cooperate with the prosecution, by providing certified counselors from the Sexual Assault Violence Intervention (SAVI) program. The third component is the development of a residential placement facility specifically for the victims of sexual exploitation. Additionally, prevention programs are being planned to support at-risk youth. Through the same grant, researchers at John Jay College are conducting a census of CSEC youth in New York City. The findings from this census are scheduled for publication at the end of 2007. Meanwhile, BJA has funded two task forces in New York State on human trafficking, which encompasses CSEC. These task forces are located in Suffolk and Nassau counties.

Another DOJ grant, announced in December 2006, was given to the Salvation Army to develop a national, multi-site training and technical assistance project in Atlantic City, Chicago, Denver, San Diego, and Washington, DC. While New York is not a direct beneficiary, the New York City-based GEMS is one of the partners to the award, lending its support to training efforts.

6.5 Collaborative Activities

Interviewees identified a number of collaborative activities around CSEC issues. Five Upstate respondents reported that collaboration was one of the strengths of their community in addressing CSEC. Collaboration efforts included multi-agency staffing of Children's Advocacy Centers (CACs) and multidisciplinary teams, joint investigations between child welfare and the police, cross-agency training, and a partnership between a rape crisis center and a community street outreach program. Still another agency described collaborative efforts between child welfare and domestic violence advocates.

DSS agencies were likely to cite multidisciplinary meetings within the CACs as a vehicle for collaboration, particularly with law enforcement, the district attorney, and direct

service providers. Several Upstate agencies mentioned coordinating treatment, getting releases to share information with other agencies, and attending court hearings and school meetings. Seven agencies (five in NYC and two Upstate) reported that they participate in various task forces and collaborative meetings such as the New York City Task Force Against the Sexual Exploitation of Young People (formed in 2000 by ECPAT-USA), GEMS, the International Organization for Adolescents, and DSS monthly CARE center meetings. Other groups and meetings mentioned were the Anti-Stalking Group Task Force, the Prevention Coalition, and the OCFS Girls Task Force. Two NYC agencies mentioned that they share training with other agencies. One Upstate agency described a collaborative effort with approximately 50 agencies in the community, involving a variety of joint community education activities (e.g. counseling, eating disorders, etc.). Two Upstate agencies said they were housed in the local community center and therefore shared a variety of resources with the center. Finally, several agencies mentioned attending interagency meetings several times a year to network with others.

Two collaborative bodies were frequently mentioned during the interviews, as well as by the Study Advisory Group. The Coalition to Address the Sexual Exploitation of Children, funded by OJJDP, is specific to New York City. Its multidisciplinary membership includes:

- *Law Enforcement*—New York City Police Department, FBI, New York Port Authority Police Department, District Attorneys, Assistant U.S. Attorneys, NYC Law Department;
- *Social Service Providers*—GEMS, Mt. Sinai SAVI, Paul and Lisa Program, Safe Horizon, Jewish Child Care Association (JCCA), the STAR Program; and
- *Other Agencies*—Probation, Department of Juvenile Justice, Legal Aid, Administration for Children’s Services, OCFS, Department of Education, Department of Youth and Community Development, Family Court Judges, and Midtown Community Court.

This coalition meets about five times a year. Staff associated with the coalition report good attendance and a growth in the collaborative spirit across agencies as a result of participation in the coalition.

The second collaboration often mentioned was the Juvenile Justice Coalition (JJC), which is state-based. This coalition, formed in 1997, is a network of child advocacy groups, legal service providers, alternative sentencing programs, and community-based organizations working on juvenile justice issues. Its specific goals are to: decrease the number of New York youth going to jails and prisons; reduce the disproportionate incarceration of youth of color; ensure the legal

rights of all court-involved youth; improve outcomes for young people confined in juvenile justice institutions; and promote a youth development approach to juvenile justice. The Correctional Association of New York's Juvenile Justice Project coordinates JJC and staffs its five working groups, one of which focuses on sexually exploited youth.

7. SUMMARY AND RECOMMENDATIONS

In this chapter, we summarize our findings, discuss limitations to this study, and provide recommendations based on the findings and the expertise of participating agencies and the Study Advisory Group.

7.1 Summary of Findings

The New York prevalence study of CSEC, conducted for OCFS at the request of the New York State Legislature, was based on a purposive sample of 11 counties, seven in upstate New York (Chautauqua, Erie, Oneida, Onondaga, Schenectady, Warren, and Washington) and four NYC boroughs (Bronx, Manhattan, Brooklyn, and Queens). Ten different types of agencies—county law enforcement, municipal police departments, probation offices, detention centers, OCFS female juvenile justice facilities, RHY shelters/TIL programs, child advocacy centers, congregate care facilities, rape crisis centers, and youth-serving agencies—were selected (n=159). Agencies received a mail survey requesting information about their experience with CSEC and specific child-level information for CSEC identified during a two-month period from July 15 through September 15, 2006. Ninety-seven of the agencies returned the mail survey, for a response rate of 81.0 percent from the seven Upstate counties and 45.2 percent in the four NYC boroughs. In addition, 20 non-police agencies—the eight DSS agencies responsible for the counties covered by the mail survey and 12 other service agencies—participated in qualitative interviews. Finally, three focus groups with CSEC were conducted with NYC commercially exploited children.

The data provided by the agencies responding to the mail surveys were first weighted to provide estimates for the two-month reference period for NYC and the seven Upstate counties. Then, using data on the quarterly distribution of prostitution arrests (in 2001 and 2005) and the number of females identified as CSEC by the OCFS intake facility in the year that included the reference period, the data were again weighted to provide an annual estimate of the numbers of CSEC identified and the number of agencies involved in identifying them. The data reported throughout this study represent weighted estimates of the identified CSEC receiving services for a year for NYC and the seven Upstate counties.

7.1.1 Prevalence Estimates for CSEC and Exploitation Events

The number of CSEC identified in NYC is estimated at over five times the number for the seven Upstate counties (2,253 identified in NYC versus 399 in Upstate) on an annual basis. This ratio is similar to that for commercially exploited girls committed to OCFS custody (22 girls were identified for NYC, while 5 were identified for the Rest of the State). The mail surveys of agencies also collected counts of youth 18 to 21 years old who were involved in the sex industry. This was done because the Study Advisory Group believed this age group would likely include CSEC with false IDs. Most of these youth were also identified in NYC (7,975 in NYC versus 119 Upstate).

The study found distinct differences between CSEC identified in the four NYC boroughs and the seven Upstate counties.

Characteristics of CSEC identified in NYC. In NYC, CSEC were predominantly female (85 percent), Black/African American (67 percent), and 16 to 17 years old (59 percent). Just 4 percent, all girls, were age 13 or under. NYC had the only children who identified as transgender ($n=31$), and the majority of children identifying as gay, lesbian, bisexual, and questioning. Nearly one fifth of the NYC children were Hispanic/Latino. Only one percent of the children were recorded as immigrants.

Eighty-five percent of the NYC children in the study had a history of some type of child welfare involvement, such as an abuse/neglect allegation or investigation (69 percent), placement in foster care (75 percent), or PINS placement (45 percent). This is consistent with other research on CSEC. Over half also had a prior juvenile justice placement, and 26 percent had been in more than one type of juvenile justice placement (secure, non-secure, or detention).

Court or probation was the most common source of referrals for NYC and the identification of commercial sexual exploitation was the reason for referral for over one-third of these children (38 percent). The majority of CSEC (55 percent) in NYC had prior episodes of exploitation.

For the majority of CSEC in NYC, the commercial sexual exploitation involved a sexual act for money (82 percent). These children were also often charged with loitering for prostitution (30 percent), stripping or performing in public (24 percent), and committing a sexual act for a place to stay (23 percent). These acts were committed most commonly in a hotel or

motel (44 percent) or outside (30 percent) and involved adult strangers (75 percent). Force was used in 58 percent of the situations.

Characteristics of CSEC identified in the seven Upstate counties. The profiles and experiences of CSEC in the seven Upstate counties are different. While the majority of Upstate children were females (77 percent), there was a significant male minority (22 percent). Upstate children were also younger; only 36 percent were 16 to 17 years old and 28 percent were 13 or younger. Only two percent identified themselves as gay, lesbian, bisexual, or questioning, and none were transgender. The largest racial group was white (47 percent). Ten percent were Hispanic/Latino.

Comparable to NYC, a large majority (89 percent) had a history of prior child welfare involvement, such as an abuse allegation or investigation (54 percent), placement in foster care (49 percent), or a PINS petition (30 percent). Proportionately fewer Upstate CSEC had prior juvenile justice placements (44 percent). Only seven percent of those youth had multiple types of juvenile justice placements. The difference in juvenile justice placements between NYC and Upstate youth could be a function of the difference in age for the two samples or could reflect the difference in police practices between NYC and Upstate. It is believed that the NYPD is more likely to arrest CSEC, while Upstate police are more likely to refer them to social services.

The characteristics of the exploitation were also different for Upstate children. As with NYC, the majority of youth engaged in a sexual act for money (81 percent); however, only Upstate CSEC were filmed or photographed in a sexual act (17 percent). In the majority of cases (52 percent), the exploitation occurred in the child's home and was perpetrated by an adult friend or acquaintance (58 percent). The majority of Upstate children (79 percent) were living with their family or relatives at the time the exploitation took place.

The most common referral source for Upstate children was child welfare agencies (31 percent). Commercial exploitation was the reason for referral to the identifying agency for only 15 percent of the Upstate CSEC.

The differences between CSEC in NYC and the Upstate counties, both in terms of demographics and the characteristics of the exploitation, may be related in part to: (1) greater success in identifying sexual exploitation at young ages in Upstate, less urban areas, (2) differing enforcement and outreach priorities in the two areas, and (3) a less organized sex industry in the Upstate counties. Additional research would be required to explore these factors.

7.1.2 Service Estimates

Typically, CSEC in NYC received more different types of services (on average 7.6) than did CSEC in the Upstate counties (on average 5.8). Mental health counseling and case management were provided to the majority of CSEC in both geographic areas. A majority of CSEC in NYC also received food, clothing, transportation, assessment, and advocacy. The majority identified Upstate also received residential services. Service referrals, made for 86 percent of the NYC children and at least 45 percent of those Upstate, were also critical to the constellation of services available. Medical care (71 percent) and mental health counseling (68 percent) were the most common referrals by NYC agencies. Substance abuse screening (30 percent) was the most common service referral Upstate.

While NYC agencies reported providing more types of services than agencies from Upstate counties, they also reported more specialized services needed for CSEC—3.1 on average versus 1.6 Upstate. Mental health counseling was the most prevalent need identified in both areas (72 percent in NYC and 64 percent Upstate). The largest proportional difference between the two geographic areas occurred for medical care (identified as a need by 59 percent in NYC versus 25 percent in Upstate) and crisis shelter (27 percent versus 9 percent).

Agencies were also asked about service barriers. The type of barriers that were identified differed by both service category and geographic area. NYC respondents most commonly cited an insufficient number of beds for crisis shelter and restrictions on non-county youth for residential services. Limited funding and lack of staff or staff training were typically cited for other service needs. Upstate, concern centered on insufficient slots or beds for mental health counseling. “Other” barriers were the most typically cited for other services needs identified Upstate. These barriers included lack of insurance, limited transportation, and general lack of resources.

The study found that in general and with a few exceptions, such as services provided by GEMS, Legal Aid, and a program in the OCFS Harriet Tubman Facility, most CSEC services and protocols address sexual offenses in general. These protocols cover victims and offenders, males and females, victims of sexual abuse by a parent or caretaker, victims of rape by a stranger or friend, and CSEC.

In discussing service gaps and barriers, interviewees from DSS and other service agencies echoed many of these concerns, but specified finding and funding safe housing as a

particular challenge. Many interviewees were concerned about training deficits for personnel who work with CSEC, ranging from clinical staff to police and judges who handle CSEC cases.

7.2 Limits to the Study

To meet the requirements set down by the Legislature, data collection and analysis for this report were completed within a very short timeframe, approximately eight months. Under the circumstances, there were limits to what could be accomplished. For example, we were unable to gain the participation of two large law enforcement agencies, the Buffalo Police Department and the New York Port Authority Police, as well as legal service agencies likely to represent CSEC—all of whom could have contributed to the prevalence estimates.

Our experience confirms that collecting data of the type needed for this study requires significant time to set up data collection arrangements with sampled agencies. The process involves identifying the right person to complete the agency's survey, providing that person with information about the study, and answering questions about the instrument. As mentioned below under *Recommendations*, future studies need considerably more lead time to negotiate these arrangements. In the Fourth National Incidence Study of Child Abuse and Neglect, Westat had one year to recruit 1,700 agencies to participate in the prospective study. Given low initial response rates, a second data collection period was designated so that an additional six months could be used to recruit agencies. Although fewer agencies were involved in the current study, the preparation time needed per agency is comparable.

This study collected data on CSEC recognized by sentinel agencies—agencies deemed especially likely to come in contact with these youths. Because of the limited timeframe for study, we focused on a two-month reference period. However, estimates of CSEC based on a two-month period may be flawed if there are seasonal patterns in exploitation or its disclosure. Some agencies told us our two-month reference period was their busiest time working with CSEC; others said this was a slow time.

Finally, it is important to reiterate that all estimates are based on *identified* cases. Previous studies and interviews with agency personnel indicated that CSEC are not quick to disclose their exploitation, unless that is the only way to get services or immediate protection. For these and other reasons discussed further below, it is certain that all CSEC served by these agencies were not identified.

Additionally, the reader is cautioned to examine the data on the basis of location. Because of the purposive sample design, which chose counties based on expected high prostitution rates, applying these rates statewide would overestimate the prevalence of CSEC. In particular, NYC numbers are unlikely to be replicated elsewhere in the State. It would also be misleading to add estimates from NYC and the seven Upstate counties together, obscuring the differences observed between the characteristics of CSEC and exploitation experiences in the different areas. These differences suggest that there may be different pathways or tracks to commercial sexual exploitation in the two areas, but future research is necessary to more fully explore those tracks.

7.3 Recommendations

The recommendations are based on several sources: (1) a series of questions in the qualitative interviews about what changes are needed to prevent commercial sexual exploitation or to improve services to CSEC, (2) discussions with the Study Advisory Group in January 2007, and (3) findings from the mail surveys and the OCFS data review. Below we discuss the recommendations related to State law, policy and practice changes, and other recommendations based on the findings. Most recommendations cut across agency type and location. If the recommendations made were made only by respondents in one geographic area, that is indicated.

7.3.1 Changes to State Law

Several changes to State law have been recommended in connection with the Safe Harbour bill, which was introduced in the 2005 legislative session and reintroduced with changes in both 2006 and 2007. Among them are: increased funding for residential programs, changes in definitions (both for PINS and juvenile delinquency), changes in statutes governing prostitution by 16- and 17-year olds, and implementation of annual counts of CSEC. The qualitative interviews with DSS agencies and other service agencies involved with CSEC asked:

What changes do you think are needed to prevent sexual exploitation or to improve services for or community response to CSEC? Are changes needed in State law? Are you familiar with the proposed legislation Safe Harbour for Exploited Children Bill (availability of safe house or other placement for short and long-term placement, determination of number of CSEC annually in programs, changing PINS to include 16 and 17 year olds engaged in

prostitution, and excluding children under 16 engaged in prostitution offenses from juvenile delinquent status)?

Availability of Safe House/Other Placement. The proposed support for both short-term crisis housing and long-term safe houses in the Safe Harbour bill was fully supported by the study findings. Eight agencies responding to the qualitative survey reported that housing was the most critical need for CSEC. At least three NYC agencies commented that dedicated housing was particularly critical for these youth, given the stigma attached to the sex industry. Needs for crisis shelter, residential services, and more beds were also reported in the mail surveys, and echoed in the focus group discussions. The Coalition to Address the Sexual Exploitation of Children in New York City was able to report working on a new facility dedicated to CSEC.

Changing PINS and/or the Prostitution Statutes. Several respondents were concerned by apparent conflicts between child welfare and criminal justice statutes. For example, three respondents commented that since children under the age of 17 cannot consent to a sexual relationship, the sexual acts covered by the study should be viewed as a reflection of their survival needs (presumably on the streets) rather than as a crime. Currently, however, criminal statutes permit 16- and 17-year-olds to be prosecuted as adults for prostitution. One proposed legislative change to the Safe Harbour bill would exclude children under 16 from being charged under delinquency statutes when they engage in prostitution and would redefine 16- and 17-year-olds engaged in prostitution as PINS. Six agencies agreed with changing delinquency statutes governing prostitution. Ten agencies supported changing the PINS definition. Three agencies did not.

The Study Advisory Group also debated these issues in its January 2007 meeting. Throughout that discussion, members emphasized the need to work with children as individuals, supporting their unique constellation of needs, regardless of the label applied to the child. The Group was divided on whether CSEC were best served through the Criminal or Family Court or even directly through the child welfare system. Like delinquents, children brought in as PINS go through Family Court rather than the Criminal Court. However, children handled as juvenile delinquents can get services in a secure environment, safeguarded from the predatory pimps who unfortunately have readier access to children in social service settings where an open-door policy prevails. The Advisory Group was concerned that the dearth of secure housing mentioned by many respondents may by definition force the child into the juvenile justice arena. At this meeting the Group did agree on two points: (1) the children need a safe environment that includes counseling and other “tailored” services, and (2) the severity of the sanctions for pimps should be

increased. The Group characterized current punishment for pimps as little more than “a slap on the wrist.”

The Advisory Group, as well as several respondents to the qualitative interviews, continued to urge greater efforts by criminal justice agencies to target pimps, johns, strip clubs, and others who facilitate the exploitation of children, rather than target the child victims themselves.

7.3.2 Annual Counts of CSEC

Making an annual determination of the number of CSEC in service programs—as proposed by the 2005 Safe Harbour bill—would be useful in determining service needs for this target population, but it would also be a challenge, judging from our own experience. First, reporting agencies would have to use a consistent definition of commercial sexual exploitation. Even though most agencies agreed with our definition, we found that a number did not apply it correctly. In some cases, agencies over counted CSEC; that is, they reported cases that did not meet the commercial aspect of the exploitation.

One issue raised by the Advisory Group was whether the operational definition being used in the Safe Harbour bill meets the needs of CSEC. In brief, these members discussed the value of distinguishing between commercial and other sexual abuse or exploitation. Several members thought that removing the “commercial” label from the child could remove some of the negative connotations and attitudes as well. Certainly throughout this study, we identified instances of overlap between child abuse and commercial sexual exploitation. The co-occurrence of commercial sexual exploitation and a history of child abuse support this approach. Ensuring that appropriate service strategies are provided to children, regardless of the exploitation type, was supported by all members of the Advisory Group. No final consensus was reached. However, both the Study Advisory Group and the respondents to the qualitative interviews stressed the need for an effective tool to help agencies identify those children who are commercially sexually exploited.

We expect that this study significantly undercounted CSEC. These undercounts were in part a function of the short timeframe allowed for the data collection. As stated earlier, most agencies reported needing a longer lead time to prepare for data collection, so they could include the necessary record-keeping as part of their routine business, rather than undertake the

burdensome task of combing through extensive files for each child. CSEC status is not a data element—it is not flagged as a separate category—in any agency’s current data system. Two agencies (one in NYC and one Upstate) expressed concern over labeling children in this way, however; clear confidentiality procedures must be in place defining how this information might be used. Some agencies may simply not record information on commercial sexual exploitation anywhere in their files.

Another source of undercounting involves the issue of whether the incident is considered exploitative by the reporter (i.e., a police officer or agency staffer). In the study, several respondents noted that they did not believe a particular act was exploitative though it fit the study definition, because they felt that the child was not harmed. This included such acts as a ten-year-old being paid to perform oral sex. Obviously, this case was reported and counted by the study. However, we assume that there may have been other cases that were not submitted because the respondent did not believe the child was harmed. Sometimes the child’s own characterization of the exploitation might produce underreporting. If agencies are influenced by the way that children describe their own experiences, the current counts of CSEC may represent only the tip of the iceberg.

A key issue for counting CSEC on an annual basis is which agencies should report. We identified ten types of agencies that we believed were most likely to see these children. The list may not be exhaustive, but it seems like a reasonable place to start. When working with reporting agencies, consideration also should be given to identifying sentinels within the agency who are most likely to work with CSEC, so that forms can be sent directly to these individuals rather than the agency’s “number cruncher” or even the executive director, who may or may not know about commercial sexual exploitation for any given child.

Other issues were identified by agencies regarding an annual count of CSEC. Two respondents said that in order to count CSEC, they needed a way to work with law enforcement and foster care agencies to confirm their information, and one also expressed the need for technical support to manipulate the data.

Of course, reliance on agency reporting—even with ample lead time and training support—would limit the data to the children who are already receiving some services. A periodic survey to identify those children who do not make it into services also needs to be considered. There are some precedents. A census being conducted by John Jay College goes directly to street youth, some of whom may not be involved with an agency.

The challenges of surveying children directly should not be underestimated. On the technical side, there are the difficulties of selecting a sample, designing appropriate survey questions, and administering the survey in a way that maximizes children's willingness to report sensitive information. In addition, there are ethical and legal challenges. Who can or must give permission for children to participate in such a survey? How can we ensure that children are not placed at risk by their participation? How will the participants' privacy and confidentiality be protected? A particularly thorny question involves how to handle disclosures of sexual exploitation that are made to researchers. What is the researcher's ethical and legal obligation to report the abuse? These challenges are not insurmountable, as Westat has demonstrated in the context of studies such as the Survey of Youth in Residential Facilities and the National Evaluation of Runaway and Homeless Youth Followup Study. Such endeavors require careful planning and, often, extensive interaction with Institutional Review Boards and the use of innovative technology, such as computer-assisted self-administered interviews.

7.3.3 Policy and Practice Changes and Recommendations

A number of policy and practice recommendations emerge from these findings. First, these children often present with multiple problems, as evidenced by both the OCFS intake assessments and the histories of abuse and neglect, juvenile justice placements, and commercial sexual exploitation reported for the CSEC identified by the mail questionnaires. Participating agencies overwhelmingly stressed the need for mental health counseling. Thus, programs targeting CSEC need to factor in the multiplicity and intensity of the service needs.

Respondents to qualitative interviews and the Study Advisory Group were asked to identify recommendations for preventing commercial sexual exploitation or improving services for or community response to commercial sexual exploitation. Several agencies stated that strategies needed to be developed to help youth integrate into age-appropriate, positive social groups and expose them to positive adult role models. This was seen as a preventive strategy to reduce the vulnerability of children to commercial sexual exploitation. Many mentioned the need to increase services, staff, or treatment slots. Eight agencies mentioned the need for more training, and of these, five mentioned training of law enforcement agencies specifically. Another mentioned the need to train staff in the courts.

Training offers a particular challenge. The focus groups mentioned derogatory comments, actions, and attitudes of both court personnel and police. The participants numbered

only 15, so their comments alone cannot be considered definitive. However, taken together with responses from the interviews and surveys, they suggest work is needed to train and educate staff who encounter CSEC. Placing the CSEC's current behavior in the context of a history of victimization may help to change the image from "bad" kid to child victim. Better and more positive responses toward these children could also, hopefully, increase their help-seeking behavior.

Other recommendations that were supported by the Study Advisory Group included:

- A written protocol or community plan for dealing with CSEC,
- A tool for identifying CSEC among children referred to an agency,
- Increased public education and awareness,
- Consistent response between the courts and law enforcement,
- Placing a victim advocate in the law enforcement system,
- Mandated joint investigations,
- Mandatory sentences for abusers,
- More after-school activities, youth centers, and outreach workers, and
- Improved procedures for information sharing.

In addition, given findings suggesting that NYC has large numbers of youth exploited through street prostitution who become involved with the police and juvenile justice system (compared to the Upstate counties), policy, practice, and staff training changes are more urgently needed in NYC.

The prevalence of child welfare histories in the identified CSEC also suggest the importance of continued attention to primary prevention and early intervention in family difficulties that may put children on the path to exploitation. For children already in the child welfare or juvenile justice systems, the data suggest the importance of services designed to ensure a smooth and seamless transition from child welfare and juvenile justice to the next stage of a child's life. These children may have an ongoing need for supports (or perhaps graduated supports) to ensure their safety and ability to cope with their past experiences once they leave foster care or the custody of OCFS. GEMS, which works exclusively with CSEC, commented that many of its clients check in with them on an ongoing basis after returning home, going to

college, and even into their 30s. One of the Upstate foster care agencies reported similar experiences.

The report by the Citizens' Committee for Children of New York, *Girls in the Juvenile Justice System*, recommended three actions that are equally applicable to findings from this study:⁴⁷

1. *Develop a continuum of gender-responsive programs and services that address educational, health and mental health, and youth development needs.* Each of these program areas was considered a need by agencies serving CSEC in the current study. CSEC also have the need for dedicated housing (both crisis and long-term) that allows them to develop self-esteem, build trusting relationships with adults, and establish an identity distinct from their involvement in the sex industry.
2. *Using best practice standards, programs and services should be developed jointly among facilities and community-based service providers.* Information is growing about this “hidden” population of children and the issues and problems they face. Both the research and the findings need wide circulation. Furthermore we know, at least from the qualitative surveys, that these children frequently fall through the cracks when forced to go on waiting lists or when passed from one agency to another. For CSEC, it is not just that the child might fall prey to the wrong people; CSEC have existing predators, ready to bring them back under their domination. Not only do programs need to be jointly developed, they also need to be jointly implemented to ensure seamless transitions as youth move from one stage, program, or facility.
3. *Interdisciplinary and cross-disciplinary training is essential to enable professionals—judges, attorneys, social workers, direct care staff—to understand the multiple challenges faced.* CSEC represent at least one of the challenges faced by those professionals. Training topics for CSEC suggested by the agencies include how to identify children (particularly males) that are reluctant to disclose exploitation, build trust between the exploited child and adults, and break the connection between the child and the pimp and other prostitutes who constitute the child’s “family.” Respondents interviewed commented that collaboration among agencies is a strength in many of the sampled counties. Agencies can build on and reinforce this strength by developing cross-training programs across service agencies working with CSEC, such as mental health, housing, education, and health.

In short, we need to ensure that the response to CSEC does not fall into a “one-size fits all” category. Service that is responsive to gender, background/experience, and need should be available. We know how difficult it is for CSEC to break free from the life. Many of the children identified in the service sector have made that step. Supporting children at this first step--

⁴⁷ Citizens' Committee for Children of New York, op cit., 6-7.

with positive attitudes and tailored services—can help them break the bonds that hold them in the sex industry.

IN OUR OWN BACKYARDS: THE NEED FOR A COORDINATED JUDICIAL RESPONSE TO HUMAN TRAFFICKING

HON. TOKO SERITA*

I. INTRODUCTION

In a relatively short period of time, New York State has put itself at the vanguard of the battle against human trafficking. New York has passed several laws criminalizing sex and labor trafficking,¹ recognized that anyone younger than eighteen years of age arrested on prostitution charges is a “sexually exploited child” and a “victim of a severe form of trafficking,”² and, most recently, provided a way for sex trafficking victims to vacate their prostitution convictions.³ In the years since these laws took effect, I have observed that our understanding of the dynamics of domestic and foreign sex trafficking, both locally and domestically, has improved. The trafficking cases that are seen in the Human Trafficking Intervention Court (HTIC),⁴ over which I preside,⁵ provide a glimpse of this expanded understanding. These cases discredit the popular notion that modern day slavery and the sexual enslavement of girls, women, and foreign undocumented persons do not occur “in our own backyards.”⁶ And yet, despite

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1. New York’s Anti-Human Trafficking Act of 2006, 2007 N.Y. Sess. Laws 597 (McKinney) (effective Nov. 1, 2007) (commonly known as the human trafficking laws).

2. Safe Harbor for Exploited Children Act, 2008 N.Y. Sess. Laws 1461 (McKinney).

3. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney Supp. 2012).

4. The HTIC was previously called the Queens Prostitution Diversion Court. The name was changed in October 2012 to better reflect the mission of the court. The name change did not represent any changes in practices or other substantive elements of the court.

5. The HTIC provides alternatives to incarceration for people arrested on prostitution-related charges, premised upon the understanding that many of the defendants are victims of sex trafficking. Thus, the objective of this court is to provide supportive services to enable these defendants to leave the commercial sex trade.

6. See KEVIN BALES & RON SOODALTER, *THE SLAVE NEXT DOOR: HUMAN TRAFFICKING AND*

this improved understanding, defendants arrested on prostitution charges are not generally recognized as victims, but are charged as criminals. The criminal justice system has been unable to adequately identify those defendants that might be victims of trafficking. To date, there has been very little scholarship analyzing either New York's human trafficking laws or the role prostitution diversion courts play in identifying trafficking victims and providing alternatives to incarceration. This article addresses the different types of trafficking cases that are intercepted through the criminal justice system, the current state of sex trafficking law in New York, and, finally, the role of the HTIC in identifying and providing solutions for trafficking victims. It also addresses the necessity of creating a coordinated judicial response to this human rights problem, and recommends ways that this can be accomplished.

II.

THE DIFFERENT FACES OF HUMAN TRAFFICKING IN NEW YORK CITY

A. *Overview of Global Trafficking*

Human trafficking has been described as a form of “modern day slavery.”⁷ At any given time, 2.4 million people are victims of human trafficking.⁸ Of the individuals trafficked, 80% are women and girls, of which 70% are trafficked into the commercial sex trade.⁹ The United Nations defines human trafficking 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.¹⁰

The United States is considered a major destination country for traffickers, into which approximately 14,500–17,500 people are trafficked every year.¹¹ Sex

SLAVERY IN AMERICA TODAY 91 (2009) (stating that, according to former Assistant Attorney General for the Civil Rights Division of the United States Department of Justice, Wan J. Kim, “[a]ll too often, [domestic trafficking cases] occur right in our own backyards.”) (emphasis added).

7. Theodore R. Sangalis, *Elusive Empowerment: Compensating the Sex Trafficked Person Under the Trafficking Victims Protection Act*, 80 *FORDHAM L. REV.* 403, 407 (2011).

8. *UN Senior Officials Urge Countries to Boost Their Efforts to Combat Human Trafficking*, U.N. NEWS CENTRE (Apr. 3, 2012), www.un.org/ga/61/news/news.asp?NewsID=41696. *But see* Sangalis, *supra* note 7, at 408 n.36 (noting that estimates vary widely and that the U.S. Department of State estimates that there are 12.3 million trafficked individuals worldwide).

9. Sangalis, *supra* note 7, at 409. Although boys and men are sometimes victims of sex trafficking, this article will refer mostly to girls and women as they are the primary victims of sex trafficking.

10. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention Against Organized Crime, *adopted* Nov. 15, 2000, 2237 U.N.T.S. 319 (entered into force Dec. 25, 2003).

11. Sangalis, *supra* note 7, at 409.

trafficking is an incredibly lucrative business that brings in anywhere from seven to nineteen billion dollars each year. Sex trafficking is tied with weapons trafficking as the second largest illegal enterprise in the US after drug trafficking.¹²

The human trafficking industry is able to flourish because of a “global demand for cheap labor and prostitution, combined with an ample supply of victims.”¹³ Factors that contribute to human trafficking include poverty, illiteracy, gender inequality, economic crises, globalization, and armed conflict.¹⁴ Developments in modern technology have facilitated seamless global interconnectivity through social media networks and the Internet, making sex trafficking “increasingly accessible, affordable and efficient.”¹⁵ As a result of these developments, the commercial sex industry has expanded both domestically and internationally.

B. Shifting Perceptions of Trafficking Victims in the United States

In the United States, sex trafficking occurs mostly in large metropolitan areas with significant immigrant populations, including New York City.¹⁶ Domestic sex trafficking is a huge problem in this country, but not many people understand its scope or magnitude. The stereotypical image of a trafficking victim is that of a foreign victim who is first transported across international and/or state lines and then sold into sexual slavery.¹⁷ While this image certainly captures one type of trafficking that occurs regularly in New York City, domestic trafficking is also prevalent.

My own experiences as a judge provide an illustration of how significantly judicial treatment of sex trafficking victims has changed in the past several years. The HTIC was initially created to deal with sexually exploited youth arrested on prostitution charges. When I became the judge of the HTIC in 2008, it was not considered a “trafficking” part, nor were the defendants considered victims of trafficking, since the accepted image of trafficking victims did not include Americans.

12. *Id.* (citing U.S. Department of Justice figures from 2008). *But see* Marisa Nack, *The Next Step: The Future of New York State’s Human Trafficking Law*, 18 J.L. & POL’Y 817, 822 (2010) (according to the U.S. Department of Justice, sex trafficking was the third largest illegal enterprise in the United States behind both drug and weapon trafficking as of 2009).

13. Nack, *supra* note 12, at 824.

14. Sangalis, *supra* note 7, at 410. On an individual level, age, gender, poverty, and alienation from family and community can also make people vulnerable to trafficking. *See* Jill Laurie Goodman, *What We Know About Human Trafficking: Research and Resources*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 1, 7 (Jill Goodman & Dorchen A. Leidholdt eds., 2011).

15. Nack, *supra* note 12, at 825.

16. Sangalis, *supra* note 7, at 410.

17. *See* Nicholas D. Kristof, *What About American Girls Sold on the Streets?*, N.Y. TIMES, Apr. 24, 2011, at WK10 [hereinafter “*American Girls*”] (“Americans often think that ‘trafficking’ is about Mexican or Korean or Russian women smuggled into brothels in the United States.”).

I think there were three reasons for this failure of identification. First, New York's sex and labor trafficking statutes had just been enacted the year before I took over the HTIC.¹⁸ It was not until 2009 that the first sex trafficking conviction would be obtained.¹⁹ Until then, the operative statute was the 2000 Federal Trafficking Victims Protection Act (TVPA).²⁰ While nothing in the TVPA limited its application to foreign sex trafficking victims, most of the emphasis was on foreign nationals, not on prostituted American women.²¹

Second, when I took over the HTIC there was a perception of what "true victims" of sex trafficking should look like, and it did not include poor, young prostitutes of color on the streets of New York City, or local "home-grown American runawa[ys]."²² In *Girls Like Us*,²³ Rachel Lloyd, the founder and executive director of the Girls Educational Mentoring Service (GEMS),²⁴ who herself is a survivor of the commercial sex trade, describes what, for many years, had been a two-tiered system of victims. She explains that the system was divided between "those who were seen as 'real' trafficking victims—internationally trafficked children and women—and those who were seen as 'child/teen prostitutes'—girls and young women from the United States."²⁵ American girls enslaved and forced into prostitution, as well as young women of color on the streets of New York City subjected to violent pimp-controlled prostitution, were not considered "trafficked," or victims of human rights violations.²⁶ Nicholas Kristof, a New York Times writer and longtime advocate

18. 2007 N.Y. Sess. Laws 597 (McKinney).

19. Press Release, Queens Cnty. Dist. Att'y's Office, Queens Man First in New York State to be Sentenced Under Sex Trafficking Statute (Feb. 9, 2010), available at http://www.queensda.org/newpressreleases/2010/february/brown_sen_2_9_2010.pdf [hereinafter "Queens Man First in New York State"].

20. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Division A, 114 Stat. 1464 (2000) (codified as amended in scattered sections of 8, 18, 20, 22, 28, and 44 U.S.C.). Division A of the 2000 Act is entitled the Trafficking Victims Protection Act (TVPA), and found at 22 U.S.C. § 7101. Since its adoption in 2000, Congress has reauthorized the Act periodically. See Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008).

21. See BALES & SOODALTER, *supra* note 6, at 102–05 (noting that in terms of prosecutions under the TVPA and funding for victims, the federal government places more emphasis on foreign sex trafficking victims than on domestic victims).

22. *American Girls*, *supra* note 17, at WK10.

23. RACHEL LLOYD, *GIRLS LIKE US: FIGHTING FOR A WORLD WHERE GIRLS ARE NOT FOR SALE* (2011).

24. See GIRLS EDUCATION AND MENTORING SERVICES, www.gems-girls.org (last visited Oct. 12, 2012) (explaining that GEMS is the "only organization in New York State specifically designed to serve girls and young women who have experienced commercial sexual exploitation and domestic trafficking."). The HTIC was originally founded as a partnership with GEMS, and was known as the "GEMS Part."

25. LLOYD, *supra* note 23, at 217.

26. See *American Girls*, *supra* note 17 ("From johns to judges, Americans often suffer from a profound misunderstanding of how [domestic] teenage prostitution actually works – and fail to

against global trafficking, describes this phenomenon. He writes:

[w]hen we hear about human trafficking in India or Cambodia, our hearts melt. The victim has sometimes been kidnapped and imprisoned, even caged, in a way that conjures our images of slavery. But in the United States we see girls all the time who have been trafficked – and our hearts harden. The problem is that these girls aren't locked in cages. Rather, they're often runaways out on the street wearing short skirts or busting out of low-cut tops, and many Americans perceive them not as trafficking victims but as miscreants who have chosen their way of life. So even when they're 14 years old, we often arrest and prosecute them, even as the trafficker goes free.²⁷

The final reason why I believe that the HTIC was not considered a trafficking court in 2008 was that, even though there were many foreign-born defendants in my courtroom who may have been trafficking victims, they were impossible to identify at first because of several obstacles. Given the underground nature of trafficking, defendants would never disclose to law enforcement or any other governmental entity that they had been trafficked. Traffickers had indoctrinated their victims to keep silent under threat of retribution, death, or harm to their families back home. The identification of trafficking victims did not occur until much later when the court began to collaborate with Chinese-, Korean- and Spanish-speaking service providers.

C. Trafficking in New York City

The first sex trafficking conviction in New York State occurred in Queens County in 2010. David Brown received twenty-five years to life in prison for trafficking and kidnapping a nineteen-year-old woman, whom he forced into prostitution. Brown purchased his victim from his ex-girlfriend, who was an acquaintance of the victim, for two thousand dollars. Brown then advertised his victim's services on Craigslist, forced her into prostitution, and required her to give him all her earnings, including all profits from a twelve-day period in which she was forced to have sex with thirty men. He forbade her from having any contact with friends or family, kept her under constant surveillance, and threatened that if she tried to leave his apartment, he would beat her or cut her up into pieces so that her body could not be found.²⁸ After one escape attempt, Brown and another individual found her, kidnapped her at gunpoint, and brought her back to his apartment, where they hit her, choked her, and raped her.²⁹

Since Brown's conviction, the Special Proceedings Bureau of the Queens

appreciate that it's one of our country's biggest human rights problems").

27. *Id.*

28. Queens Man First in New York State, *supra* note 19, at 1.

29. Nack, *supra* note 12, at 819.

District Attorney's Office³⁰ has been responsible for eight sex trafficking convictions.³¹ These cases typify the brutal enslavement that victims, whether they are minors or young women, endure when they are forced into the commercial sex trade.³² On any given Friday in my courtroom,³³ you will see rows and rows of female and, occasionally, transgender defendants who are present to answer to prostitution charges. The majority are American-born young black or Latina women, or older foreign-born Asian women. There is also a growing number of gay male and transgender female defendants. In 2010, over 2,700 individuals were arrested in New York City on prostitution or loitering charges, 814 of who were arrested in Queens County.³⁴ Virtually all of the cases before my court involve low-level prostitution offenses taking place on the street, or in brothels, massage parlors, and hotels targeted by law enforcement. It is in these areas, the lowest rungs of the sex trade subculture, where most sex-trafficking victims can be found.³⁵

1. *Domestic Trafficking of Minors*

The issue of domestic trafficking—particularly the trafficking of female children—has recently taken the national stage. Trafficking issues have permeated mainstream discourse and “law enforcement officials report that in cities across America, pimps are selling children for sex.”³⁶ A 2001 estimate puts the number of youths involved in prostitution in New York City at five thousand.³⁷ The average age of entry into prostitution in this country is twelve-

30. The Special Proceedings Bureau of the Queens County District Attorney's Office is responsible for Sex Trafficking, Promoting Prostitution, Internet Child Luring, and Child Pornography cases. There are currently sixty-five defendants being prosecuted in these cases. Anthony Communiello, Jr., Bureau Chief, Special Proceedings Bureau, Queens Cnty. Dist. Att'y's Office, Testimony before New York City Council Committees on Women's Issues & Public Safety (Oct. 19, 2011).

31. Press Release, Queens Cnty. Dist. Att'y's Office, Two Men Plead Guilty to Sex Trafficking for Forcing 14 Year-Old Girl into Prostitution (Oct. 4, 2012) [hereinafter “Two Men Plead Guilty”] (describing convictions of Shaquan Gould and Evan Harrington and noting there have been a total of eight convictions obtained in Queens) (on file with author).

32. *See, e.g., id.* (stating victim was told that she could not leave the prostitution trade and was beaten when she told her pimps that she no longer wanted to be a prostitute); Queens Man First in New York State, *supra* note 19, at 1 (explaining victim was kept under constant surveillance, beaten, raped, and forced into prostitution by her pimp).

33. The HTIC operates on Fridays.

34. E-mail from Marge Cohen, New York State Division of Criminal Justice Services, Office of Justice Research and Performance, to author (Sept. 20, 2012) (on file with author).

35. Nack, *supra* note 12, at 822. *See also* Marisa Silenzi Cianciarulo, *What is Choice? Examining Sex Trafficking Legislation Through the Lenses of Rape Law and Prostitution*, 6 U. ST. THOMAS L.J. 54, 59 (“Many sex-trafficking victims are found in brothels, strip clubs, and outwardly legitimate businesses such as massage parlors and escort services.”).

36. Jeannine Amber, *Black Girls for Sale*, ESSENCE, Oct. 2010, at 164, 166 [hereinafter “Black Girls”].

37. MIA SPANGENBERG, PROSTITUTED YOUTH IN NEW YORK CITY: AN OVERVIEW 2 (ECPAT-USA, 2001), available at <http://ecpatusa.org/wp-content/uploads/2010/11/>

to fourteen-years-old.³⁸ Several different studies have shown that a majority of children lured into the commercial sex trade are runaways, street youth, or children who come “from dysfunctional homes where they have suffered physical, psychological and sexual abuse.”³⁹ Sexual abuse is considered a leading cause of entry into the sex trade.⁴⁰ Traffickers consider young women with histories of sexual abuse or childhood trauma to be perfect prey given these women’s profound vulnerability and powerlessness.

Girls are recruited and sometimes kidnapped by pimps,⁴¹ who use a variety of methods to coerce, cajole, or force girls into prostitution.⁴² These girls are often drugged, kept in isolation, brainwashed by a combination of mixed affection and violence, and then sold for sex over the internet, on the “track,”⁴³ in hotel rooms, and at sex parties.

Jamaal Watkins’ case illustrates the strategies that pimps use to manipulate child victims. Watkins pled guilty in Queens in 2009 to promoting the prostitution of a fourteen-year-old he met on a social networking site. Watkins convinced her to run away from a group home in a different state then forced her to have sex five hundred times with different men during a two-month period.⁴⁴ Another illustrative case involved the 2012 indictment of five men and one woman in Queens for kidnapping a fifteen-year-old girl, drugging and gang-raping her, posting naked pictures of her online, and forcing her to have sex with numerous men during a one-week period before she was able to escape.⁴⁵

Prostituted-Youth-in-NYC1.pdf.

38. Dorchen A. Leidholdt & Katherine P. Scully, *Defining and Identifying Human Trafficking*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 27, 33 (Jill Goodman & Dorchen A. Leidholdt, eds., 2011).

39. LLOYD, *supra* note 23, at 74; SPANGENBERG, *supra* note 37, at 8.

40. SPANGENBERG, *supra* note 37, at 8.

41. My definition of the word “pimp” throughout this article conforms to the definition provided in Alexis Kennedy, Carolin Klein, Jessica T.K. Bristowe, Barry S. Cooper & John Yuille, *Routes of Recruitment: Pimps’ Techniques and Other Circumstances that Lead to Street Prostitution*, 15 *J. AGGRESSION, MALTREATMENT & TRAUMA* 1, 4 (2007), available at <http://alexiskennedy0.tripod.com/lab/id21.html> (“Black’s (1990) law dictionary simply defines a pimp as someone who obtains customers for a prostitute. The reality of most pimps, however, is that they use manipulation, threats, and violence to keep prostitutes from leaving the trade and live entirely off the women they recruit into prostitution.”).

42. See Youth Radio, *Trafficked Teen Girls Describe Life in “The Game,”* NAT’L PUB. RADIO (Dec. 6, 2010), available at <http://www.npr.org/2010/12/06/131757019/youth-radio-trafficked-teen-girls-describe-life-in-the-game> (describing two methods used by pimps to force girls into prostitution—the “guerilla” method, which is characterized by physical force, and the “Romeo” method, where a pimp romances a young girl and then convinces her to sleep with other men to earn money).

43. Term for streets known for high prostitution activity outdoors.

44. Press Release, Queens Cnty. Dist. Att’y’s Office, Queens Pimp Pleads Guilty To Promoting Prostitution (Aug. 13, 2009), available at http://queensda.org/newpressreleases/2009/august/watkins_08_13_09_ple.pdf.

45. See Press Release, Queens Cnty. Dist. Att’y’s Office, Five Men and One Woman Indicted in Connection with Imprisonment, Rape and Sex Trafficking of 15 Year-Old Runaway (Mar. 8, 2012), available at http://queensda.org/newpressreleases/2012/march/council_3_08_2012_ind.pdf;

The increase in child sex trafficking has led to disturbing trends, including recruitment in middle schools and high schools and gang involvement in trafficking.⁴⁶ For example, eight people, some of whom were reputed members of the Bloods gang, were charged with sex trafficking in Brooklyn in 2010 for allegedly forcing at least fifteen girls into prostitution. They recruited girls from high schools in Brownsville and Bushwick by promising many of them cash and a “generous lifestyle.” If these girls did not meet their daily five-hundred-dollar quota, the alleged gang members threatened them with violence.⁴⁷

2. *Pimp-Controlled Prostitution*

Pimp-controlled prostitution is not limited to child prostitution. A significant portion of street-level prostitution of adult women is pimp-controlled.⁴⁸ It has been reported that “the majority of women in prostitution at some point are under the control of a pimp.”⁴⁹ Street-level prostitution “represents that segment of the prostitution industry where there is the most violence.”⁵⁰ Indeed, violence, subjugation, and control are integral aspects of pimp-controlled prostitution,⁵¹ and, therefore, constitute another form of domestic sex trafficking in the United States.

The true culture of pimping is far removed from the glorified portrayal of pimps popularized by the mass media. The “pimping game” includes standardized business practices and strict adherence by both the pimp and the prostitutes he controls to the rules of “the game.”⁵² One commentator notes that

Nicholas D. Kristof, *Where Pimps Peddle Their Goods*, N.Y. TIMES, Mar. 17, 2012, at SR1, available at http://www.nytimes.com/2012/03/18/opinion/sunday/kristof-where-pimps-peddle-their-goods.html?_r=0.

46. See Karen Zraick, *8 Charged in Brooklyn Sex-Trafficking Case*, N.Y. TIMES, June 3, 2010 at A28 (describing eight people charged with sex-trafficking related crimes after an investigation into allegations of sex trafficking at a Brooklyn middle school).

47. *Id.*

48. ‘Street level prostitution’ “entails sexual acts for money or for barter that occur on and off the streets and include sexual activities in cars and motels, as dancers in gentlemen’s clubs, massage parlor, work, truck stops, and crack house work.” Celia Williamson & Terry Cluse-Tolar, *Pimp-Controlled Prostitution: Still an Integral Part of Street Life*, 8 VIOLENCE AGAINST WOMEN 1074, 1074 (Sept. 2002). It is rare that a defendant in the HTIC works “the streets” on her own without a pimp. These independent operators, or “renegades,” often face too much danger on the streets without the protection of a pimp. However, commentators have noted that, “street-level prostitution is comprised of both pimp-controlled prostitution and independent entrepreneurial prostitution.” *Id.*

49. Leidholdt & Scully, *supra* note 38, at 33. In one study, it was reported that “53% of women entered prostitution with a pimp, and more than 80% became involved with pimps over time.” Williamson & Cluse-Tolar, *supra* note 48 at 1075. The US Department of Justice estimates that anywhere from 75% to 95% of prostitution is pimp-controlled. See Child Exploitation and Obscenity Section (CEOS), U.S. Dept. of Justice, Child Prostitution, <http://www.justice.gov/criminal/ceos/prostitution.html>.

50. Williamson & Cruse-Tolar, *supra* note 48, at 1074.

51. See *id.* at 1076.

52. *Id.* at 1078.

pimps live by “myriad rules and codes – all designed to break down the individual will [of a prostitute].”⁵³ Prostituted women who fail to abide by “the rules” of the “game” are severely punished. They may be beaten for not making their “quotas,” looking another pimp directly in the eye, or disagreeing with their pimps.⁵⁴ In some instances, pimps will even brand or tattoo their victims with the pimps’ name or some other identifying marker in order to reinforce their complete domination over their victims.⁵⁵

The dynamics of pimp-controlled prostitution can be very complicated because a pimp may have sexual relationships with many of the women in his “family”⁵⁶ and the victims may even have children by their pimps. In this regard, pimps resemble domestic batterers because the power and control they maintain over women in their stable is similar to the power that domestic batterers often retain over their intimate partners.⁵⁷ Women under the control of a pimp may also resemble victims of domestic violence in that they “often express feelings of love and admiration for the pimp, have their freedom and finances controlled, and may feel they somehow deserve the violence they are dealt.”⁵⁸ This emotional control may help explain why it is often difficult for prostitutes to leave their pimps.

Pimp-controlled women are primarily poor and are particularly vulnerable to exploitation because they are without stable families, jobs, and educational prospects.⁵⁹ Although there are distinct differences in the experiences of domestic and foreign trafficking victims, “[i]n many ways, the process of sexual enslavement for a U.S. citizen parallels that of the foreign-born victim: often her documents are confiscated by her pimp or trafficker, she is taken from her home, initiated—or, “seasoned”—through gang rapes and beatings, assigned a quota to be filled nightly, and held through both threatened and real violence.”⁶⁰

53. *Id.*

54. LLOYD, *supra* note 23, at 96.

55. *See id.* at 244–45.

56. “Family” is a term used by pimps to refer to the group of women that prostitute for them. Personal conversation with A.D.A. Oscar Ruiz, Deputy Bureau Chief, Special Proceedings Bureau, Queens Cnty. Dist. Att’y’s Office (Oct. 20, 2012).

57. Amy Barasch & Barbara C. Kryszko, *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 83, 84 (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011); *see also* Leidholdt and Scully, *supra* note 38, at 33 (“Pimps are usually simultaneously sex traffickers and intimate partner batterers and almost invariably enter into sexual relationships with their victims through acts of sexual and physical abuse, promises of protection, devotion, and love, and often through a combination of violence and romance. After they establish their dominance, they “turn out” their victims into prostitution”).

58. Williamson & Cluse-Tolar, *supra* note 48, at 1089.

59. *See* Goodman, *supra* note 14, at 7–8.

60. BALES & SOODALTER, *supra* note 6, at 103.

3. Foreign Sex Trafficking

New York City is not only a destination for pervasive domestic trafficking, it is also a major point of entry for sex traffickers bringing foreign victims into the United States.⁶¹ Queens County, in particular, is a major transportation hub, as both of New York City's airports are located there. In the words of Queens District Attorney Richard Brown, Queens has become "a gateway for sex and human trafficking."⁶² In fact, Queens has been described as the "new epicenter of prostitution in New York City."⁶³

Foreign sex trafficking is aided by poverty and increased migration.⁶⁴ Many trafficked women are lured from impoverished countries by fraudulent offers of legitimate employment, only to be forced into prostitution once they have arrived in the United States.⁶⁵ One famous example of foreign sex trafficking into Queens is the federal prosecution under the TVPA of the Flores-Carreto family, members of which were accused of trafficking Mexican women into New York. The traffickers used tactics including seduction and false employment offers to convince young women to migrate from Mexico to Queens, only to force them into prostitution through beatings and threats against their families once they arrived.⁶⁶ The Flores-Carreto case is one example of a systemic problem in New York City.

In my time at the HTIC, I have seen trafficking activity within both the Latino and Asian immigrant communities. Restore,⁶⁷ an anti-trafficking organization that provides services to Asian defendants referred by the HTIC, identified seven out of the seventy-five court-referred women in 2010 as trafficking victims.⁶⁸ Based on my discussions with service providers from

61. See Janice Phaik Lin Goh, *Deterritorialized Women in the Global City: An Analysis of Sex Trafficking in Dubai, Tokyo and New York*, 10 INTERSECTIONS 271, 296 (2009) (describing New York as a destination for 70,000 migrants every year, including those who are brought here as victims of sex trafficking).

62. Anna Gustafson, *Boro Sex Trafficker Sentenced to Prison*, QUEENS CHRON., Feb. 10, 2011.

63. *Sex Trafficking of Women has Nexus in Queens Borough of New York City*, PUB. RADIO INT'L (May 25, 2011), www.pri.org/stories/politics-society/women-trafficked-mexico-queens-10015.html.

64. See Goh, *supra* note 61, at 276.

65. See Goodman, *supra* note 14, at 8–9 ("Women may respond to internet or newspaper advertisements offering opportunities for marriage abroad or positions as nannies, maids, waitresses, dancers, or models, only to discover too late that the agencies that placed the ads are fronts for sex traffickers.")

66. See Goh, *supra* note 61, at 298.

67. Restore works with foreign-national sex trafficking survivors in an attempt to end sex trafficking in New York City. It provides holistic services to address the physical, emotional, and spiritual needs of sex trafficking survivors. Restore also partners with various organizations to advocate on behalf of trafficking survivors. See RESTORE, <http://restorenyc.org/about-us/> (last visited Oct. 12, 2012).

68. Christina Chang, Case Manager, *2010 Year-End Report for Part T-2G [HTIC]*, Restore (Mar. 11, 2011).

Mount Sinai's Sexual Violence Intervention (SAVI) Program,⁶⁹ who also work with Spanish-speaking defendants, I have learned that, in the same year, they identified approximately 10% of the defendants referred to them as trafficking victims.

III.

A REVIEW OF NEW YORK STATE'S ANTI-TRAFFICKING LEGISLATION AND ITS IMPACT ON TRAFFICKING VICTIMS IN THE CRIMINAL JUSTICE SYSTEM

New York State has recently placed itself at the forefront of the fight against human trafficking. In 2007, it enacted the New York's Anti-Human Trafficking Act of 2006, the comprehensive human trafficking laws that criminalized labor and sex trafficking.⁷⁰ In 2008, it enacted the Safe Harbor for Exploited Children Act (SHA) that defined a prostituted minor as a "sexually exploited child" who was entitled to services, rather than deserving of criminal prosecution.⁷¹ Finally, in 2010, New York passed a law that allowed sex trafficking victims to vacate their prostitution convictions. This section discusses these and other laws that shape the treatment of trafficking victims in the criminal justice system. It also discusses some of the inconsistencies among the various anti-trafficking statutes and how those inconsistencies affect sex trafficking victims in New York.

A. Federal Trafficking Laws: The Trafficking Victims Protection Act

Any summary of the legislation that affects trafficking victims in New York would be incomplete without a discussion of the federal anti-trafficking statute. The Trafficking Victims Protection Act (TVPA) of 2000,⁷² and the subsequent Trafficking Victims Protection Reauthorization Acts of 2003, 2005, and 2008,⁷³ represent an ambitious endeavor by Congress to combat human trafficking in the United States and abroad by taking a "holistic approach" to the problem.⁷⁴ This

69. The Mount Sinai SAVI Program works with victims of domestic violence and sex trafficking who have limited resources or limited access to services. The SAVI Program provides a variety of services that include, but are not limited to, counseling, emergency room advocacy, legal support, education, and training to survivors in Queens, East Harlem, and the Upper East Side. See MOUNT SINAI SCHOOL OF MEDICINE, www.mssm.edu/savi/ (follow "About Us" hyperlink) (last visited Oct. 12, 2012).

70. 2007 N.Y. Sess. Laws 597 (McKinney).

71. 2008 N.Y. Sess. Laws 1461 (McKinney).

72. Pub. L. No. 106-386, Division A, 114 Stat. 1464 (2000).

73. Pub. L. No. 108-193, 117 Stat. 2875 (2003); Pub. L. No. 109-164, 119 Stat. 3558 (2005); Pub. L. No. 110-457, 122 Stat. 5044 (2008). See generally Pamela Chen & Monica Ryan, *Federal Prosecution of Human Traffickers*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 271, 271 (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011) ("With each reauthorization and amendment of the TVPA in legislation known as the Trafficking Victims Protection Reauthorization Act (TVPRA), Congress has strengthened and fine-tuned its provisions, as well as extended the reach of its criminal statutes."); Sangalis, *supra* note 7, at 420-24 (discussing each reauthorization act).

74. Chen & Ryan, *supra* note 73, at 271; Sangalis, *supra* note 7, at 417.

was done by focusing on the “three P’s”—prosecuting traffickers, protecting victims of trafficking, and preventing the practice of trafficking.⁷⁵ One relevant portion of the TVPA is its definition of “severe” sex trafficking as “the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act”⁷⁶ where such an act is “induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained eighteen years of age.”⁷⁷

B. New York State Human Trafficking Laws

In 2007, several years after the passage of the TVPA, the New York human trafficking laws were enacted.⁷⁸ These laws were considered “groundbreaking” legislation and a model for other states and countries.⁷⁹ Advocates have described them as “the most comprehensive human trafficking laws in the nation.”⁸⁰ The New York laws made sex and labor trafficking new offenses,⁸¹ modified previous laws to strengthen the criminal justice response to buyers of commercial sex,⁸² and created mechanisms for providing services and assistance to human trafficking victims.⁸³ These laws aimed to “shift . . . the paradigm from arresting trafficking victims to protecting them and prosecuting their traffickers.”⁸⁴

The importance of this statute has been demonstrated even during its short existence. As of January 2012, there had been a total of ninety-six arrests for sex and labor trafficking and, since the laws went into effect in 2007, there had been thirty-one convictions.⁸⁵ Eighty-seven of the arrests occurred in New York City.⁸⁶ Queens alone has had eight sex trafficking convictions as of October 2012.⁸⁷ Additionally, New York’s human trafficking laws now allow state and local law enforcement officers to arrest and state prosecutors to charge people for smaller-scale sex trafficking offenses that federal prosecutors would not have

75. Sangalis, *supra* note 7, at 420.

76. 22 U.S.C. § 7102(9) (2008).

77. *Id.* § 7102(8)(A).

78. 2007 N.Y. Sess. Laws 597 (McKinney).

79. BALES & SOODALTER, *supra* note 6, at 114.

80. Andra Ackerman & Christa Stewart, *New York State’s Human Trafficking Law*, in *LAWYER’S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 51, 51 (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011); Nack, *supra* note 12, at 821.

81. 2007 N.Y. Sess. Laws 597 Ch. 74 §§ 2, 3 (McKinney).

82. *Id.* at § 5.

83. *Id.* at § 11.

84. Nack, *supra* note 12, at 829.

85. Mirela Iverac, *Even as Arrests Increase, Human Trafficking Remains a Problem*, WNYC NEWS (Jan. 31, 2012), <http://www.wnyc.org/articles/wnyc-news/2012/jan/31/trafficking-remains-problem/>.

86. *Id.*

87. Two Men Plead Guilty, *supra* note 31, at 1.

spent the resources to prosecute under the TVPA.⁸⁸

Under New York anti-trafficking laws, a person is guilty of sex trafficking if he or she “intentionally advances or profits from prostitution” by any one of a number of specified means, including: (1) unlawfully providing drugs with the intent to impair a person’s judgment; (2) making material false statements or omissions to persuade a person to engage, or continue to engage, in prostitution; (3) withholding, destroying, or confiscating any government identification with the intent to impair that person’s freedom of movement; (4) requiring prostitution be performed to repay a real or purported debt; and (5) using force or threats to instill fear that the trafficker will cause certain types of harm to compel a victim’s participation in prostitution.⁸⁹ Sex trafficking is a class B felony,⁹⁰ carrying a maximum sentence of 25 years imprisonment.⁹¹

Notwithstanding the detailed formulation of New York’s sex trafficking laws, there are some notable omissions that merit closer examination. Most importantly, New York does not define “trafficking victim” in the Penal Law, as the federal government has in the TVPA. Part of the federal definition includes a *per se* finding that anyone under the age of eighteen is a victim of a severe form of trafficking if she takes part in a commercial sexual act.⁹² This means that, under federal law, a victim’s age automatically renders her a sex trafficking victim without the necessity of proving “force, fraud or coercion.”⁹³ New York law, on the other hand, does not have a similar provision governing the trafficking of minors. As a result, promoting or advancing the prostitution of a minor does not qualify as sex trafficking unless one of the other provisions in the statute is met. Force, fraud, or coercion must, therefore, be proved in all cases in order to establish the offense of sex trafficking, even when the trafficked person is younger than eighteen-years-old.⁹⁴

88. See generally Nack, *supra* note 12, at 828 (discussing policy reasons for the enactment of state human trafficking laws to fill in gaps left open by the federal law).

89. N.Y. PENAL LAW § 230.34 (McKinney 2008) (explaining that the “certain types of harm” enumerated by Subdivision 5 are to, “(a) cause physical injury, serious physical injury, or death to a person; (b) cause damage to property, other than the property of the actor; (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree . . . ; (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person . . . ; (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; (f) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense; (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.”).

90. *Id.*

91. N.Y. PENAL LAW § 70.00 (McKinney 2009).

92. 22 U.S.C. § 7102(13) (2008).

93. *Id.* § 7102(8)(A).

94. See N.Y. PENAL LAW § 230.34 (McKinney 2008).

C. The Safe Harbor for Exploited Children Act

One year after the state sex trafficking statute became law, New York's inadequate protection of trafficked juveniles was indirectly addressed by the passage of the Safe Harbor Act (SHA).⁹⁵ The SHA amended provisions of the Family Court Act and the Social Services Law to provide rehabilitative services to sexually exploited youth under the age of eighteen.⁹⁶ For the first time, the New York Legislature recognized that any child under the age of eighteen arrested on prostitution charges was a "sexually exploited child,"⁹⁷ and created a presumption that this child was a victim of severe trafficking as defined by federal law.⁹⁸ The clear import of the SHA is that youths who engage in commercial sex must be treated as victims, not perpetrators, of crimes, and that they are in need of services instead of criminal prosecution.⁹⁹

Despite the profound implications of the SHA, there has been no corresponding amendment to New York's Penal Law.¹⁰⁰ Although the New York legislature has declared that any child arrested for prostitution is a trafficking victim, it has not carried this recognition to its logical conclusion by amending the criminal laws to prohibit prosecution of minors for prostitution. As a result, sixteen- and seventeen-year-olds charged with prostitution offenses may be prosecuted as adults in criminal court,¹⁰¹ where they are treated as criminal defendants instead of as sexually exploited youth.¹⁰²

This was the precise problem faced by a New York City criminal court that considered prostitution charges against a minor in *People v. Samatha R.* The sixteen-year-old defendant in the case was arrested for loitering with the purpose of engaging in prostitution. The issue before that court was whether to dismiss the case, either in light of the legislative intent underlying the enactment of the SHA¹⁰³ or based on its interest in justice jurisdiction.¹⁰⁴ Regarding the former,

95. 2007 N.Y. Sess. Laws 597 (McKinney).

96. *Id.*

97. N.Y. SOC. SERV. LAW § 447-a (McKinney 2010).

98. N.Y. FAMILY CT. ACT LAW § 311.4(3) (McKinney 2010) (creating a presumption that a respondent brought to Family Court for a prostitution-related offense meets the federal TVPA definition).

99. Katherine Mullen & Rachael Lloyd, *The Passage of the Safe Harbor Act and the Voices of Sexually Exploited Youth*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 129, 131 (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011).

100. The sole exception is N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney Supp. 2012). *See infra* Part II(D).

101. *See* N.Y. PENAL LAW § 30.00 (McKinney 2009) (stating that "a person less than sixteen years old is not criminally responsible for conduct.").

102. One of the top priorities of the Chief Judge of New York, Hon. Jonathan Lippman, is the creation of a youth court that would remove all non-violent criminal offenses committed by sixteen- and seventeen-year-olds from criminal court. Instead, their charges would be adjudicated in a hybrid family/criminal court, with an emphasis on rehabilitation, rather than incarceration. *See* John Caher, *Youth Court, DNA Top Lippman's Agenda*, N.Y. L.J., Feb. 15, 2012, at 1.

103. *People v. Samantha R.*, No. 2011KN092555, 2011 WL 6303402 (N.Y. Crim. Ct. Dec. 16, 2011).

while the court acknowledged that the SHA did not amend the Penal Law, it nevertheless reasoned that a criminal prosecution of a sixteen- or seventeen-year-old, whom the New York Legislature defined as a “sexually exploited child” by virtue of her age, was “inconsistent with the ameliorative intent” of the SHA, as well as with other statutes relating to the trafficking of minors.¹⁰⁵ The court emphasized that the legislative sponsors of the SHA recognized the harm caused by prosecuting children for these types of offenses. The court explained,

arresting, prosecuting and incarcerating victimized youth serves to re-traumatize them and to increase their feelings of low self-esteem. This only makes the process of recovery more difficult. Appropriate services for sexually exploited youth do not exist in the juvenile justice system and both federal and international law recognize that sexually exploited youth are the victims of crime and should be treated as such. Therefore, sexually exploited youth should not be prosecuted under the Penal Law for acts of prostitution. Instead services should be created to meet the needs of these youth outside of the justice system.¹⁰⁶

The court further found that the combined impact of the various laws relating to the sex trafficking of minors “would strongly suggest that a criminal prosecution of a sixteen- or seventeen-year-old for a prostitution offense is inappropriate, and that the right response of law enforcement would be to bring the child before Family Court.”¹⁰⁷ The court nevertheless ruled on the more narrow grounds of its interest of justice jurisdiction to dismiss the case against the defendant.¹⁰⁸

A different result, however, was reached in *People v. Lewis*, in which another New York criminal court of concurrent jurisdiction denied an application to dismiss the criminal prosecution of a seventeen-year-old defendant arrested for prostitution. The court reasoned that while the various anti-trafficking statutes cited by the defendant in support of her motion made a convincing case that prostituted children should not be prosecuted in criminal court, it could not conclude that the statutes amounted to a “statutory prohibition” against the prosecution of all minors on prostitution-related charges.¹⁰⁹ The court ruled that to “categorically exempt [minors] from prosecution is beyond the power of this Court” and that such an exemption has to come from the legislature.¹¹⁰

104. N.Y. CRIM. PROC. LAW § 170.40 (McKinney 2007).

105. Samantha R., 2011 WL 6303402, at *5–6. The other laws that the court relied on were the TVPA, New York’s Anti-Human Trafficking Act of 2006, N.Y. CRIM. PROC. LAW § 440.10, and amendments to the immigration code that provided avenues of immigration relief for minor victims of sex trafficking. Samantha R., 2011 WL 6303402, at *2.

106. Samantha R., 2011 WL 6303402, at *1 (citing Sponsor’s Mem, Bill Jacket, Safe Harbor Act, L. 2008, ch. 5690).

107. *Id.* at *4.

108. *Id.*

109. *People v. Lewis*, N.Y. L.J., 1202502663175, at *4 (N.Y. Crim. Ct. July 12, 2011).

110. *Id.*

D. Criminal Procedure Law § 440.10(1)(i)

In August 2010, New York enacted its third, and perhaps most significant, piece of legislation for sex trafficking victims by amending its post-conviction relief statute, Criminal Procedure Law (CPL) § 440.10. The first law of its kind in the country,¹¹¹ CPL § 440.10(1)(i) allows judges to vacate convictions for prostitution or loitering for the purpose of engaging in a prostitution offense if the arrest “was a result of having been a victim of sex trafficking under [the New York statute] or of trafficking in persons under the [TVPA].”¹¹² By explicitly incorporating the federal definition of a trafficking victim, this new post-conviction statute also provides relief to any prostituted minor who can establish that she was a minor at the time of her arrest.

The underlying rationale for CPL § 440.10(1)(i) was concern about the damaging effects of criminal convictions on the lives of trafficking victims. The New York Legislature recognized that

[v]ictims of sex trafficking who are forced into prostitution are frequently arrested for prostitution-related offenses and are saddled with criminal records. They are blocked from decent jobs and other prospects for rebuilding their lives. Even after they escape from sex trafficking, the criminal record victimizes them for life.¹¹³

Since its enactment in 2010, several convictions have already been vacated under CPL § 440.10(1)(i). As of September 2012, there have been eleven cases in which sex trafficking victims’ convictions were dismissed.¹¹⁴ The first published decision to address this new post-conviction legislation was *People v. G.M.*, in which I vacated six prior convictions of a woman from the Dominican Republic who had been trafficked by her husband/pimp and who had been previously designated as a sex trafficking victim by the federal government.¹¹⁵ Likewise, in *People v. Silvia Gonzalez*, the New York County Criminal Court dismissed the defendant’s eighty-six prostitution convictions, incurred over a two-year period, after finding that the defendant, a Brazilian citizen, was a sex

111. Press Release, Urban Justice Center, Governor Patterson Signs First in the Nation Bill Allowing Survivors of Sex Trafficking to Clear Prostitution Convictions (Aug. 16, 2010), available at <http://www.sexworkersproject.org/press/releases/swp-press-release-20100816.html>.

112. N.Y. CRIM. PROC. LAW § 440.10(1)(i) (McKinney Supp. 2012) (stating that a court may vacate a conviction if “[t]he judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the Penal Law, and the defendant’s participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the Penal Law or trafficking in persons under the Trafficking Victims Protection Act.”).

113. Sponsor’s Mem, 2010 N.Y. Assembly Bill A7670.

114. Erica Pearson, *New Law Lets Sex Trafficking Victims Clear Their Convictions*, N.Y. DAILY NEWS (Sept. 8, 2012), http://articles.nydailynews.com/2012-09-08/news/33701041_1_kate-mogulescu-convictions-prostitution.

115. *People v. G.M.*, 922 N.Y.S.2d 761 (Crim. Ct. 2011).

trafficking victim.¹¹⁶

More recently, in *People v. Jane Doe*, the Bronx County Supreme Court dismissed the three prostitution convictions of a defendant who was seventeen-years-old at the time of her arrests.¹¹⁷ “Leni Johnson,”¹¹⁸ twenty-two years old at the time her convictions were dismissed, was first trafficked when she was only thirteen years of age. For the next eight years, she was “sold by men to men,” sometimes bringing in 1,600-2,500 dollars a night, all of which went to her various pimps.¹¹⁹ One of her pimps trafficked her to Washington, D.C, Virginia, and Florida, using “physical violence, degradation and other coercive tactics to control [her],” exemplified by him having his nickname tattooed on her forearm so that “everyone would know she belonged to him.”¹²⁰ Describing the post-conviction relief granted in her case as “part of a small, vital revolution in New York State,” New York Times writer Jim Dwyer explained that this new law “recognizes that children and minors who perform sex for money are not criminals but victims [who] . . . should not bear the residual burden of convictions.”¹²¹

CPL § 440.10(1)(i) illustrates a contradiction in the treatment of trafficked youth in the criminal justice system, however. The cruel irony is that while the law explicitly recognizes that children under the age of eighteen are trafficking victims entitled to retroactive relief through the dismissal of their convictions, there are no legal grounds to protect juveniles when they are initially being prosecuted on prostitution charges. It is only post-conviction that courts recognize prostituted minors as trafficking victims.

Another contradiction in the treatment of minors under New York laws is that a minor can be prosecuted for prostitution despite the fact that under the criminal laws a child younger than seventeen-years-old cannot legally consent to any sex act because of infancy.¹²² In New York, a sixteen-year-old who has sex with an adult is deemed legally incapable of giving consent, regardless of whether the sex is actually consensual. A sixteen-year-old is, therefore, considered a victim of rape if she has sex with an adult who is over twenty-one years of age.¹²³ That sixteen-year-old can, however, be arrested for prostitution under the same scenario if there is an exchange of sex for money.¹²⁴ A child who is legally incapable of consenting to sexual intercourse cannot logically be deemed capable of consenting to the crime of prostitution simply because money

116. *People v. Gonzales*, 927 N.Y.S.2d 567 (Crim. Ct. 2011).

117. *People v. Jane Doe*, 935 N.Y.S.2d 481 (Sup. Ct. 2011).

118. Leni Johnson is not her real name. Jim Dwyer, *Snared into Prostitution at 13, and Now Given a Chance for a Clean Legal Slate*, N.Y. TIMES, Sept. 20, 2011, at A22.

119. *Id.*

120. *Jane Doe*, 935 N.Y.S.2d at 482–83.

121. Dwyer, *supra* note 118.

122. N.Y. PENAL LAW § 130.05 (McKinney 2009).

123. N.Y. PENAL LAW § 130.25(2) (McKinney 2009).

124. N.Y. PENAL LAW § 230.00 (McKinney 2008).

is exchanged.

These contradictions demonstrate that, despite the recent protections given to trafficking victims, current laws provide only partial relief to victims navigating the criminal justice system. The new anti-trafficking laws are impressive in their reach and visionary in their recognition of victims of trafficking. On a practical level, however, there has been little impact on the actual experience of trafficking victims in local criminal courts who continue to face repeated arrests and prosecution. Unfortunately, members of this vulnerable group, whether minors or adults, are not treated as potential trafficking victims by law enforcement, prosecutors, or judges; their criminal cases are not dismissed; and they are not provided with the necessary services to aid in their rehabilitation or recovery. The only practical relief they are now entitled to occurs after they have gone through the traumatic experience of being criminally convicted.

IV.

DEVELOPING A COORDINATED JUDICIAL RESPONSE TO HUMAN TRAFFICKING

A. The Human Trafficking Intervention Court—One Judicial Response to Human Trafficking in New York

Justice Fernando Camacho started the HTIC in 2004 when he was a criminal court judge in Queens County.¹²⁵ At that time, there were no other courts in New York that addressed the issue of underage sex trafficking. Justice Camacho sought to address this problem by providing alternatives to criminal punishment for minors accused of prostitution offenses.¹²⁶ He initially partnered with the Girls Educational Mentoring Services (GEMS), which is devoted to providing services for sexually trafficked girls and young women aged twenty-one and younger.¹²⁷ Before long, the court began to provide services for adult women charged with prostitution offenses as well, and partnered with SAVI to provide alternatives to incarceration for those over the age of twenty-one. The HTIC flourished over time, even without additional staff, funding, or institutional intervention.

Today, the HTIC handles most of the prostitution cases in Queens County. Representing a dynamic collaboration between the court, the District Attorney's office, the defense bar, and several trafficking victim service providers, the HTIC is designed to provide meaningful intervention and comprehensive

125. Justice Camacho is now the Administrative Judge of Queens County, Supreme Court, Criminal Term.

126. For a detailed look at the origins of the HTIC, see Fernando Camacho, *Sexually Exploited Youth: A View From the Bench*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 141, 141–47 (Jill Laurie Goodman & Dorchen A. Leidholdt, eds., 2011).

127. The court part became known as the "GEMS Part." That title stuck long after the court no longer dealt solely with underage trafficking victims, even after I took over the court in 2008.

services for individuals arrested on prostitution charges, including victims of trafficking. The underlying premise of the court is that those arrested on prostitution charges should not be treated as criminals, but as victims and survivors of commercial sexual exploitation and trafficking.

The HTIC meets once a week and hears only cases involving people arrested on prostitution or loitering charges.¹²⁸ Most of the prostitution cases in Queens are adjourned directly from arraignments into the HTIC, where all parties attempt to work out a favorable disposition for the defendant, including providing her with services that will meet her needs. The HTIC focuses on connecting defendants to services that are appropriate for their individual situations, including counseling, job training, education, housing, medical assistance, immigration services, as well as substance abuse and mental health treatment. If a defendant is not interested in services, her case will be sent to an all-purpose criminal court part.

There is extensive collaboration between the court, the District Attorney's office, the defense bar, and service providers. The court consists of a dedicated judge and prosecutor, two dedicated defense attorneys, and a variety of service providers, who appear regularly in court as advocates/counselors. In their role as in-court advocates, these service providers not only provide counseling and supportive services to clients, but also offer valuable information about their clients to the court and prosecutor through written updates describing clients' compliance with programs.¹²⁹ The consistent support of service providers contributes to the recovery process of many trafficking victims facing prostitution charges.

There is a regularly assigned prosecutor for the HTIC who has established guidelines governing defendants' eligibility for, and participation in, the HTIC.¹³⁰ Under these guidelines, a defendant may be eligible for an eventual dismissal of the charges for her first arrest if she completes five sessions of a rehabilitation program and does not get rearrested within the subsequent six months.¹³¹ A defendant with more than one arrest may be offered a plea

128. The court does not deal with sex trafficking prosecutions or with cases involving the defendants charged with purchasing commercial sex. Sex trafficking prosecutions and buyers of commercial sex are outside of the scope of this article.

129. The importance of in-court advocacy by the service providers was especially pronounced because we were without any dedicated defense attorneys in our court for several years. For those years, the service providers, rather than the assigned attorney, were the most vocal advocates on behalf of many defendants. It was not until mid-2012 that two defender organizations, the Legal Aid Society and Queens Law Associates, assigned dedicated attorneys to deal with prostitution cases in the HTIC.

130. Those defendants with extensive criminal histories, including prostitution arrests, are generally considered to be outside of the guidelines and are not eligible for participation in the court. The court is not bound by this, however, and may offer a program if the defendant, despite her criminal record, states that she is very interested in services.

131. This is referred to as an "ACD," an Adjournment in Contemplation of Dismissal, pursuant to N.Y. CRIM. PROC. LAW § 170.55 (McKinney 2007).

requiring additional court-mandated sessions, or a plea to a higher charge, depending upon the circumstances.¹³² A defendant with several open cases before the court may be required to complete ten to fifteen program sessions in order to satisfy her court mandate.

There is great diversity among the defendants before the HTIC and it is imperative to match defendants with culturally sensitive and language-specific services. For example, female defendants that are twenty-one years of age and younger are referred to GEMS, while SAVI offers services for female defendants over 21, foreign-born Latinas, and LGBT and/or transgender. The HTIC has also collaborated with Midtown Community Court to provide services for transgender defendants.¹³³ Restore and the New York Asian Women's Center¹³⁴ both work extensively with trafficking victims of Asian descent. It is important that any organization to which a defendant is referred has extensive experience working with victims of trafficking.¹³⁵

Certain features of the HTIC have, I believe, been key to its success. First, designating a judge, a prosecutor, defense attorneys, and service providers is important because consistency ensures a deeper understanding of the issues facing defendants. Second, the assignment of a prosecutor with supervisory authority is critical in many of these cases because she is able to depart from the guidelines, when appropriate, she can review each case individually, and she can offer dispositions tailored to its unique facts.¹³⁶ Finally, it is essential that the prosecutor, the defense attorneys, and the court fully understand the dynamics of sex trafficking, the realities of the defendants' lives, and the difficulties of

132. For example, as defendants accrue more arrests, the offense offered for the plea bargain may go from a non-criminal disposition, such as disorderly conduct (N.Y. PENAL LAW § 240.20 (McKinney 2008)), to a non-criminal violation such as loitering for prostitution (N.Y. PENAL LAW § 240.37 (McKinney 2008)), to misdemeanors such as loitering for prostitution and prostitution (N.Y. PENAL LAW §§ 240.37, 230.00 (McKinney 2008)). It should be noted, however, that these are not fixed, rigid guidelines, and the dispositions are based on extensive review of each individual case.

133. Through a partnership with Midtown Community Court, the HTIC developed specific programs for English- and Spanish-speaking defendants as well as for transgender defendants. Tranciones is a program for Spanish-speaking transgender defendants, and Transwomen Empowerment is designed for English-speaking transgender defendants.

134. "The New York Asian Women's Center helps women and their children overcome domestic violence and other forms of abuse by empowering them to govern their own lives. The Center provides a safe haven through multi-lingual support programs and shelter services. In addition, the Center works to raise public awareness about violence against women, advocates for the rights of survivors, and acts as an agent of social change." N.Y. ASIAN WOMEN'S CENTER, <http://www.nyawc.org/> (last visited Oct. 12, 2012).

135. In addition to the organizations mentioned above, the HTIC has also partnered with Sanctuary for Families, the Sylvia Rivera Law Project, and the Sex Workers Project of the Urban Justice Center. *See generally* SANCTUARY FOR FAMILIES, <http://www.sanctuaryforfamilies.org/> (last visited Oct. 12, 2012); SYLVIA RIVERA L. PROJECT, <http://srlp.org/> (last visited Oct. 12, 2012); SEX WORKERS PROJECT, <http://www.sexworkersproject.org/> (last visited Oct. 12, 2012).

136. The regularly assigned prosecutor in HTIC is ADA Kimberly Affronti, the Deputy Bureau Chief of the Criminal Court.

escaping the commercial sex trade.¹³⁷

All persons working in the HTIC recognize that prostituted women suffer a myriad of afflictions. These include long-term physical and psychological trauma,¹³⁸ post-traumatic stress disorder,¹³⁹ high rates of health problems and infections, and mental health and substance abuse issues.¹⁴⁰ Physical violence at the hands of a trafficker is “almost always the rule.”¹⁴¹ Many defendants in the HTIC come from unstable homes and lack safety nets in the form of family ties, housing, or any type of solid support network.¹⁴² Often, they lack even basic documentation, such as identification papers or birth certificates, which their pimps have taken as a mechanism of control.¹⁴³

We are also aware of the practical obstacles that make it difficult for girls and young women to take advantage of the services offered to them. One of the most significant obstacles is the “coercive and controlling nature of the traffickers.”¹⁴⁴ Many women are still “in the game”¹⁴⁵ while their cases are pending, sometimes having to put in long hours late at night and then go to their sessions during the day while completely sleep deprived. Sometimes a defendant’s pimp will prevent her from going to her sessions, or call her incessantly during these sessions, controlling her every movement, both physically and psychologically.¹⁴⁶

Furthermore, when it comes to adult defendants in the HTIC, we recognize that the majority of adults in prostitution were initially prostituted as children

137. It is important to note that the prosecutor never requires that defendants cooperate with the prosecutions of their traffickers in order to receive a better plea deal. This removes an element of coercion from the plea bargaining process.

138. Rebecca J. Macy & Natalie Johns, *Aftercare Services for international Sex Trafficking Survivors: Informing U.S. Service and Program Development in an Emerging Practice Area*, 13 no.2 TRAUMA, VIOLENCE & ABUSE 87, 88 (2011), available at <http://tva.sagepub.com/content/12/2/87>; GREGORY M. MANEY, TINEKA BROWN, TAYLOR GREGORY, RAFIA MALLICK, STEVEN SIMONESCHI, CHARISSE WHEBY, NICOLE WIKTOR, MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS IN THE NEW YORK CITY METROPOLITAN AREA: ASSESSMENT AND RECOMMENDATIONS 13 (Hofstra Univ. 2011), available at <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf> [hereinafter “MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS”].

139. See Macy & Johns, *supra* note 138, at 88; MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS, *supra* note 138, at 13; SPANGENBERG, *supra* note 37, at 8.

140. See Macy & Johns, *supra* note 138, at 88; SPANGENBERG, *supra* note 37, at 2.

141. Ruiz, *supra* note 56.

142. See Zena Watson, ATI Coordinator, *GEMS 2010 T-2G [HTIC] Services Provided*, Girls Educational Mentoring Services (GEMS) (Feb. 2011) (noting that most GEMS clients are “runaways, throwaways, or street homeless”).

143. *Id.*

144. *Id.*

145. A term for being involved in prostitution activity.

146. Watson, *supra* note 142. I have also had defendants in my court appear with bruises on their faces. Some have needed to be escorted by their service provider to the emergency room of a hospital. In other instances, defendants have called their counselors to report that they had been kidnapped by a pimp/trafficker, locked inside of hotels, or feared for their lives.

(seventeen-years-old or younger).¹⁴⁷ But after many years of being in the game, adult defendants have aged out of consideration for many programs that are directed towards young women and girls, as well as sympathy by an unsparing public. They likely have more arrests and convictions than younger victims and few or no educational prospects or skills. They have been in “the life” for so long that they have been deprived of any other opportunities for growth.¹⁴⁸ Reintegration into society is incredibly difficult for these women, who are often without any of the basic tools or resources necessary for participation in society that most “average” citizens take for granted.

Another common feature of HTIC defendants is their recidivism. Recidivism and multiple arrests are often unavoidable, especially for women who are still under the control of a trafficker. The HTIC recognizes that a zero tolerance approach does not work, and that it is often counterproductive to penalize an individual for having more than one prostitution arrest. Based on our work in the diversion court, we have found that, for many individuals who are entrenched in “the life,” it may take longer than and more arrests than one anticipates before they can successfully exit from the commercial sex trade. However, when defendants in the HTIC have been given resources and opportunities to thrive, many have shown their resilience as survivors. I have seen countless defendants in the HTIC regain control over important aspects of their lives, including leaving their pimps, returning to school or to their families, and regaining custody of their children.

*B. Recommendations for a Coordinated Judicial Response
to Human Trafficking*

In order to effectively address the problem of sex trafficking, it is necessary to develop a coordinated response that acknowledges weaknesses and opportunities for improvement at all levels of the criminal justice system. There needs to be holistic reform of the criminal justice system’s treatment and criminalization of prostitutes and consideration of the consequences of its failure to identify trafficking victims among this population. Throughout the years of my involvement with the HTIC, it has become evident that we need to develop a much more systematic and comprehensive approach to the issue of trafficking in the courts.

Sex trafficking laws need to place a greater emphasis on identifying and helping sex trafficking victims. One of the principle criticisms of the federal anti-trafficking legislation is its “over-emphasis on prosecution and under-emphasis on protection.”¹⁴⁹ Some have argued that “the protection and

147. Leidholdt & Scully, *supra* note 38, at 33.

148. DANIELLE LATIMER, SAVI 2010 SUMMARY FOR THE HTIC, Mount Sinai Sexual Assault and Violence Intervention (SAVI) Program (Feb. 2011).

149. Sangalis, *supra* note 7, at 424. *See also* Goh, *supra* 61, at 283 (“The growing body of anti-trafficking legislation has prioritized crime, punishment and immigration control instead of

rehabilitation of victims should take priority over pursuing prosecutions.”¹⁵⁰ While the prosecution of sex traffickers may be an important goal, in New York it should not come at the expense of helping trafficking victims.

First, law enforcement and prosecutors should make it a priority to identify potential victims of trafficking. Trafficking victims are routinely arrested and prosecuted without regard to whether they are being trafficked, resulting in a “criminal justice system [that] continues to systematically criminalize victims of trafficking.”¹⁵¹ Indeed, out of the 139 defendants represented by the Legal Aid Society’s Trafficking Victims Legal Defense & Advocacy Project¹⁵² between March and October 2011, 40 of them were identified as victims of trafficking.¹⁵³ Trafficking victims face continued arrests, numerous convictions, and re-victimization by the criminal justice system, in addition to the trauma and brutal exploitation they experience at the hands of their traffickers.¹⁵⁴ Arrest and prosecution can be traumatizing, and make it less likely that trafficking victims will confide in law enforcement officers that they have been trafficked.¹⁵⁵ This problem is exacerbated by the fact that traffickers “teach victims to instinctively distrust anyone connected to law enforcement.”¹⁵⁶ Law enforcement must, therefore, be educated about the realities of sex trafficking and trained to look for trafficking victims.¹⁵⁷ Prosecutors also need a full understanding of the

concerns with social justice and human rights.”).

150. Nack, *supra* note 12, at 453.

151. Kate Mogulescu & Katherine Mullen, *Oversight: Combatting Sex Trafficking in NYC: Examining Law Enforcement Efforts – Prevention and Prosecution*, Testimony before the Council of the City of New York, Committee on Women’s Issues & the Committee on Public Safety, 3 (Oct. 19, 2011), *available at* http://www.legalaid.org/media/151071/nyc_council_testimony_101911_sex_trafficking_nyc.pdf.

152. The Trafficking Victims Legal Defense & Advocacy Project (“TVLDAP”), headed by Kate Mogulescu, Esq., is a “specialized pilot project that focuses on its representation of those individuals charged with prostitution.” The TVLDAP “began in March [2011] and represents the first effort by a public defender office to address the problem of systemic criminalization of victims of trafficking and exploitation. The project uses an interdisciplinary team of attorneys and social workers to screen each case and connect clients to important services. The project further seeks to slow the pace of the criminal court process to allow time for clients to be adequately assessed, and build closer relationships with the project team. The project works closely with several service providers in New York City, and nationwide, to ensure this marginalized client group has options for assistance and support.” *Id.* at 4.

153. *Id.*

154. *Id.* at 5.

155. See Nack, *supra* note 12, at 843; MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS, *supra* note 138, at 13 (“[E]ncounters with law enforcement can be traumatic to trafficking victims”).

156. Nack, *supra* note 12, at 843.

157. MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS, *supra* note 138, at 27. One service provider observed, “[l]aw enforcement are rarely trained to identify victims, which makes the default mechanism to be the criminal justice system – a system that continues to criminalize victims.”). See also Nack, *supra* note 12, at 843 (suggesting that law enforcement should be trained to conduct raids on places where trafficking victims are being held in a way that is less likely to traumatize the victims); Sangalis, *supra* note 7, at 416 (noting that part of the problem identifying victims of trafficking stems from law enforcement’s confusion about the

dynamics of the sex trade and its severe exploitation of prostitutes. Otherwise, they may be unsympathetic to their plight, pursuing harsh jail sentences for repeat offenders, or punitive plea offers for first time offenders.¹⁵⁸

Second, in addition to training law enforcement and prosecutors to be more sensitive to the problem of human trafficking, it is equally vital to develop a coordinated judicial response to the problem. Such a response would necessarily require that judges understand: (1) human trafficking and how the courts intersect with potential victims of trafficking; (2) that prostitutes must be viewed as potential sex trafficking victims; (3) that identification of trafficking victims is extremely difficult, but is not impossible; and (4) that, once identified, trafficking victims should be provided with the necessary services to adequately address their situation.

Developing this coordinated response is only possible if courts address entrenched notions about prostitution and the stigma surrounding it. The courts often mirror the prevailing views of society, considering those labeled as “prostitutes”¹⁵⁹ to be unworthy of sympathy because they engage in conduct perceived to be degrading and objectionable. The taboos surrounding prostitution remain incredibly strong, and there is a tendency to blame “prostitutes” for their predicament. As was often the case with domestic violence victims more than twenty years ago, there seems to be a pervasive view that prostituted defendants have chosen their situation, that they are free to leave at any time, and that they are to blame for choosing to remain in “the life.” It is important, on an institutional level, to provide the training and education necessary to change these attitudes and begin the more formidable task of reforming the criminal justice system’s approach to trafficking cases.

One way of developing a coordinated judicial response is the creation of specialized prostitution diversion parts that are equipped to identify victims of trafficking. Given the difficulties inherent to identifying trafficking victims, a court that is specifically devoted to prostitution cases can address the problem of trafficking in a way that a generalized court could not. A specialized part is necessary because, without it, prostitution cases would be neglected among the frenetic bustle of a criminal court’s “all-purpose part,”¹⁶⁰ which, in New York

definition of the word trafficking).

158. Some District Attorney’s Offices are taking a more holistic, victim-centered approach to sex-trafficking prosecutions, as demonstrated by the creation of the Human Trafficking Program in the Manhattan District Attorney’s Office, <http://manhattanda.org/human-trafficking-0>, and the Sex Trafficking Unit of the Kings County District Attorney’s Office, http://www.brooklynda.org/press_releases/2010/pr_oct_10.htm#10, both of which were created in 2010.

159. I have consciously avoided using the term “prostitute” throughout this article because of the stigma attached to it. However, the other term commonly used, “sex worker,” is not entirely applicable to the defendants I have observed in my courtroom because the term suggests a level of choice and agency regarding the act of working in the commercial sex industry that does not adequately describe the situation of these individuals.

160. Term for a pre-trial part designed to take as many dispositions as possible while moving cases along for trial.

City, typically handles over one hundred cases a day.¹⁶¹ Trafficking victims face many subsidiary issues, including housing problems, unemployment, drug abuse, trauma, and violence, and are often in desperate need of more comprehensive intervention than can be provided in a regular criminal court part.¹⁶² Staffing the part with trained professionals who are knowledgeable about trafficking issues affords the possibility of success. In addition to a prosecutor, judge, and defense attorney, the service providers in the HTIC play an important role, as they are usually the ones to whom victims will disclose that they have been trafficked.

In the past decade or so, the court system has advanced a different model of adjudicating criminal cases and has created various “problem solving courts” that address issues related to, *inter alia*, domestic violence, substance abuse, mental health, and veterans’ experiences. This type of “therapeutic jurisprudence”¹⁶³ has rarely extended to the treatment and adjudication of prostitution cases, however. And yet, given the undeniable intersection between trafficking and the commercial sex trade, the traditional response by the criminal justice system has not only been inadequate, but may have devastating consequences for trafficked individuals who are being re-victimized by the very institutions that should be protecting them.

V. CONCLUSION

New York State has been responsible for the passage of a very impressive body of anti-trafficking legislation in the past six years. Through these legislative efforts, more attention has been focused on domestic trafficking, as well as international victims of trafficking in New York City and State. These laws have provided the framework for the establishment of a coherent anti-trafficking policy that acknowledges the importance of protecting and assisting victims of trafficking, as well as prosecuting traffickers. Even with improved laws, however, many victims of trafficking remain unidentified. It is imperative that the courts coordinate a judicial response to address this problem. The existence of a prostitution diversion court such as the HTIC makes the identification and treatment of victims of trafficking a much more realizable goal. The HTIC should serve as a model for other courts, inspiring the development of similar diversion parts that can properly identify and provide supportive services for victims and survivors of trafficking.

161. It is important to note that the judicial approach of the HTIC is not the only viable approach with which to address trafficking cases. The Midtown Community Court (MCC) represents another successful approach—instead of a part devoted *only* to addressing prostitution cases, the MCC addresses prostitution cases as well as other “quality of life” cases.

162. As demonstrated by the HTIC, such a diversion court, which meets only once a week in Queens, can be created without any additional resources or funds to ensure its operations or success.

163. See generally David B. Wexler, *Therapeutic Jurisprudence and the Criminal Courts*, 35 WM. & MARY L. REV. 279 (1993).