

State Notes

TOPICS OF LEGISLATIVE INTEREST

Spring 2014



An Overview of Human Trafficking in the U.S. and Michigan **By Jeffrey Mann, Legislative Analyst**

Introduction

Human trafficking is commonly referred to as "modern day slavery". The International Labour Organization estimates that nearly 18.7 million people worldwide are exploited by individuals and enterprises for sex or forced labor.¹ The State of Michigan sees some of these cases; however, the true extent of these crimes within the State's borders is unknown. This paper will discuss the basics of labor and sex trafficking and the forms that they take in the United States and Michigan. This paper also will describe some estimates as to the prevalence of human trafficking in Michigan, some of the Federal and State anti-human trafficking laws, and the public and private actors involved in anti-trafficking efforts in Michigan. Finally, this paper will present some of the legislation introduced in Michigan to counter human trafficking, and describe some other legislative actions that have been suggested by individuals and groups involved in preventing human trafficking.

Labor Trafficking

Labor trafficking is defined by Federal law as "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".² The practices of labor trafficking are not restricted to any particular industrial sector, set of actors, or enterprise size. Cases involving labor trafficking have ranged from a single trafficked individual to large-scale trafficking for industrial or agricultural operations. While labor trafficking is not isolated to any particular industry, some sectors involve a disproportionate number of reported human trafficking cases. According to the National Human Trafficking Resource Center (NHTRC), several industries made up a majority of its reported labor trafficking cases between 2007 and 2012. These included domestic work, restaurant or food services, agriculture, peddling, and general labor (or unspecified).³ While sex trafficking receives more media attention and has been easier to identify, global estimates of labor trafficking are significantly higher than the estimates for sex trafficking.⁴ Moreover, labor trafficking involves a greater proportion of men than sex trafficking does, though women still occupy a majority of those forced into labor trafficking.⁵

Sex Trafficking

The Federal government defines sex trafficking as the "recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act".⁶ The United States Code further defines a "severe form" of sex trafficking as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age".⁷ The majority of the NHTRC's cases of sex trafficking in the U.S. have involved pimp-controlled

¹ International Labour Organization, "New ILO Global Estimate of Forced Labour: 20.9 million victims", 6-1-2012, retrieved 4-14-2014, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang-en/index.htm.

² 22 U.S.C. § 1702. This definition is for the "severe forms of trafficking in persons" related to labor. The terms "involuntary servitude" and "debt bondage" are defined separately.

³ Polaris Project, *Human Trafficking Trends in the U.S.: National Human Trafficking Resource Center 2007-2012*, 20, retrieved 4-14-2014, <http://www.polarisprojec.org/resources/hotline-statistics>.

⁴ See n.1.

⁵ *Id.* at 21.

⁶ 22 U.S.C. § 7102.

⁷ *Id.*



prostitution and commercial-front brothels, though other venues are present.⁸ Most sources estimate that sex trafficking is more prevalent in the United States than labor trafficking. Although sex trafficking predominately affects women, cases involving men or transgendered individuals also have been reported.

Trafficking in the United States and Michigan

United States

The United States is known to be a source, transit, and destination country for men, women, and children subjected to sex trafficking, debt bondage, involuntary servitude, and forced labor.⁹ The prevalence of human trafficking in any location is difficult to determine for several reasons. First, there is no uniform system for data reporting. The nature of human trafficking as a crime also contributes greatly to the problem. Victims are often unwilling to come forward out of fear. Commonly, this is the result of a trafficker's threats of violence, embarrassment, alienation, or warnings that the victim will be arrested or deported if he or she is found by the police. Other victims do not come forward due to lack of awareness about the rights they have under Federal and state law. While arrests and prosecutions add to an understanding about the prevalence of human trafficking, some cases that are human trafficking cases are prosecuted under other laws, and go unreported as human trafficking. Also because human trafficking is often meant to be covert, human traffickers often engage in a variety of strategies to keep their activities and their victims from being found. These include closely monitoring their victims, moving frequently, and sequestering their victims in houses with cameras and locked or barred doors and windows. Finally, misconceptions as to what human trafficking is and when questionable conduct may actually be human trafficking make third-party reporting difficult.¹⁰

There is some information available to determine the prevalence of human trafficking in the United States. The U.S. Department of Justice Bureau of Justice Statistics recorded 2,515 incidents of human trafficking nationwide between January 2008 and June 2010.¹¹ Of those incidents, 1,016 involved the sexual exploitation of a child, 1,218 involved the sexual exploitation of adults, and 350 involved labor trafficking.¹² In 2013, the NHTRC received 31,945 phone calls, 1,669 online tip forms, and 1,488 emails nationwide.¹³ These communications resulted in over 20,000 unique cases. Of those, 5,214 reported moderate to high indicators of human trafficking.¹⁴ Of these cases, 3,609 (63.23%) bore indicia of sex trafficking, 929 (17.82%) had indications of labor trafficking, and the remainder either were not specified or were a combination of sex and labor trafficking. While the actual numbers of sex trafficking victims in the United

⁸ See n.3, at 15.

⁹ United States Department of State, *Trafficking in Persons Report 2013*, 381, retrieved 4-8-2014, <http://www.state.gov/j/tip/rls/tiprpt/2013>.

¹⁰ Michigan Commission on Human Trafficking, 2013 Report on Human Trafficking, 37, retrieved 4-2-2014, http://michigan.gov/documents/ag/2013_Human_Trafficking_Annual_Report_439271_7.pdf?20140403122710. One physician suggested that the reason that 93% of surveyed doctors said that they had never treated a human trafficking victim was that doctors are not trained to recognize human trafficking victims and would not recognize a victim if they saw one.

¹¹ Duren Banks & Tracey Kyckelhahn, "Characteristics of Suspected Human Trafficking Incidents, 2008-2010", *U.S. Department of Justice, Bureau of Justice Statistics Special Report*, p. 1, 4-2011, retrieved 4-7-2014, <http://www.bjs.gov/content/pub/pdf/cshti0810.pdf>.

¹² *Id.* at 3.

¹³ National Human Trafficking Resource Center, "2013 Statistical Overview", retrieved 4-11-2014, <http://www.polarisproject.org/resources/hotline-statistics>.

¹⁴ According to the NHTRC, cases categorized as "high" have a high level of critical information, and contain key indicators of human trafficking. Cases categorized as "moderate" contain some critical information or red flags, or resemble typical trafficking scenarios, but lack certain elements such as force or coercion.



States is not known, the Polaris Project estimates that the number of minors involved in sex trafficking in the U.S. could be in the hundreds of thousands.¹⁵

Trafficking in Michigan

Michigan is believed to be a major destination for human trafficking for a variety of reasons. The State's three border crossings with Canada make convenient entry points for international traffickers to bring their victims into this country. In addition, several main interstate highways bring commercial traffic through Michigan from other U.S. states. In areas such as Detroit and other economically depressed communities, law enforcement and other municipal services may not have the time, resources, or manpower to effectively police human trafficking.

The seriousness of human trafficking and its portrayal in the media and the news lead many to believe that human trafficking is not common in Michigan. However, there have been a number of prominent cases in Michigan relating to both domestic and international human trafficking. One example is Jean-Claude Toviave of Ypsilanti, who was sentenced to 135 months in prison on human trafficking charges in March 2013.¹⁶ He brought four children from his native Togo to Michigan in 2006 and forced them to work in his home, where he subjected them to physical and verbal abuse, for over five years. Human trafficking in Michigan also affects domestic victims. Sedrick Mitchell of Detroit was convicted of eight criminal charges in 2012.¹⁷ Mitchell was found to have forced two minors to prostitute themselves and turn over their earnings to him. He abused both girls physically if their earnings were insufficient and sexually assaulted both girls several times. A July 2013 FBI raid targeting 76 urban areas throughout the United States, including Detroit, resulted in 150 arrests and the rescue of 105 minors.¹⁸ Detroit ranked second in juveniles recovered and overall statistics, behind San Francisco.¹⁹

For the same reasons as those discussed above, the prevalence of human trafficking in Michigan is difficult to determine. Nevertheless, some estimates do exist. In 2013, the NHTRC received a total of 554 phone calls, 25 online tip forms, and 13 emails from individuals in Michigan.²⁰ Of those communications, the NHTRC generated 120 cases that had indicators of trafficking. As classified by the NHTRC, 50 of the reported cases were high and 70 were moderate. The majority of these cases (101) were sex trafficking cases, 15 had indications of labor trafficking, and the remainder were sex and labor trafficking or the nature of the case was not specified.

¹⁵ Polaris Project, "Human Trafficking Cheat Sheet", retrieved 4-14-2014, <http://www.polarisproject.org/resources/resources-by-topic/human-trafficking>.

¹⁶ Tresa Baldas, "University of Michigan janitor convicted of child slavery", *USA Today*, 3-25-2013, retrieved 4-10-2014, <http://www.usatoday.com/story/news/nation/2013/03/25/university-of-michigan-janitor-child-slavery-conviction/2017953/>.

¹⁷ Staff Reports, "Man nicknamed 'Gruesome' found guilty of human trafficking in Detroit", *Oakland Press News*, 3-24-2012, retrieved 4-9-2014, <http://www.theoaklandpress.com/general-news/20120324/man-nicknamed-gruesome-found-guilty-of-human-trafficking-in-detroit>.

¹⁸ Supervisory Special Agent David K. Porter, "FBI Detroit Participates in Operation Cross Country VII with Members of Southeast Michigan Crimes Against Children Task Force", FBI Detroit, 7-29-2013, retrieved 4-14-2014, <http://www.fbi.gov/detroit/press-releases/2013/fbi-detroit-participates-in-operation-cross-country-vii-with-members-of-southeast-michigan-crimes-against-children-task-force>.

¹⁹ *Id.*

²⁰ National Human Trafficking Resource Center, "Michigan State Report: 1/1/2013-12/31/2013", retrieved 4-14-2014, <http://www.polarisproject.org/state-map/michigan>. In nearly five years, the NHTRC received 1,245 communications from Michigan.



Federal and State Human Trafficking Laws

Federal Law

The laws pertaining to human trafficking in the United States stem from the Thirteenth Amendment to the U.S. Constitution, which states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."²¹ The principal statute banning human trafficking in the United States is the Trafficking Victims Protection Act (TVPA) of 2000. As the first act regulating human trafficking explicitly, it is the primary law for prosecuting human traffickers. Since its original passage, Congress has reauthorized the TVPA in 2003, 2005, 2008, and 2013.²²

Other laws that were originally passed to regulate or prohibit other activity have been repurposed or adapted to work for human trafficking. The Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), and the National Labor Relations Act can be used to fight human trafficking, but often come with exemptions for industries most affected by human trafficking. For example, the FLSA exempts live-in domestic workers from overtime and minimum wage requirements, and regulations interpreting OSHA state that its provisions do not apply to "individuals who, in their own residences, privately employ persons for the purpose of performing for the benefit of such individuals what are commonly regarded as ordinary domestic household tasks".²³

Federal prosecutors also have used the Mann Act to prosecute commercial sex trafficking offenses. In its "Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons" for the 2006 fiscal year, the U.S. Attorney General highlighted several cases involving the Mann Act.²⁴ The Mann Act prescribes a criminal penalty for "[w]hoever knowingly transports any individual in interstate or foreign commerce...with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense...".²⁵

Michigan Law

Amendments to the Michigan Penal Code in 2006 added Chapter 67A, which bans various forms of human trafficking. Specifically, Chapter 67A prohibits subjecting another person to forced labor or services through threat of physical harm, force, restraint, abuse of legal process, concealment of documents, blackmail, or financial harm.²⁶ Chapter 67A also prohibits recruiting, enticing, providing, or transporting a minor for sex, or a person for forced labor or services.²⁷ Additionally, as amended in 2010, Chapter 67A includes a prohibition against subjecting another person to forced labor or services through force, fraud, or coercion, and bans the recruiting, providing, or transporting of a person for labor or services for the purpose of debt bondage or involuntary servitude.²⁸ The chapter also imposes additional sentence modifiers for violations involving death, injury, kidnapping, or a victim who is a minor.

²¹ United States Constitution, amend. XIII, § 1.

²² U.S. Department of State, "U.S. Laws on Trafficking in Persons", retrieved 4-14-2014, <http://www.state.gov/j/tip/laws/>; "Current Federal Laws", retrieved 4-14-2014, <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/current-federal-laws>.

²³ 29 C.F.R. 1975.6.

²⁴ U.S. Department of Justice, "Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2006". 43, 50, retrieved 3-8-2014, <http://www.justice.gov/archive/ag/annualreports/tr2006/agreporhumantrafficking2006.pdf>.

²⁵ 18 U.S.C. § 2421.

²⁶ M.C.L. 750.426b-750.462f.

²⁷ M.C.L. 750.462g and 750.462h.

²⁸ M.C.L. 750.462j.



Other parts of the Penal Code also work to punish human trafficking in Michigan. Many cases of sex trafficking involve criminal sexual conduct, as defined in the Code.²⁹ The Code also includes human trafficking in a list of offenses that, if committed for financial gain, constitute racketeering.³⁰ There are also various prostitution offenses that are used to secure convictions of pimps and traffickers.

The penalties for violating Chapter 67A can be severe, ranging from 10 years to life in prison, depending on the circumstances of the crime.³¹ In addition, a convicted trafficker may be required to pay criminal fines ranging between \$10,000 and \$50,000. Assets and other property used in the commission of a human trafficking offense may be seized and forfeited.³² Additionally, a convicted trafficker may be required to pay restitution to his or her victim for lost wages, costs, attorney fees, and other losses incurred by the victim, and may be compelled to reimburse the government for the costs associated with investigation and prosecution.³³

Public and Private Actors

Public

Michigan's Department of Attorney General has increased its efforts to prosecute human traffickers and participates in a variety of initiatives to educate the public on the issue of human trafficking and to deter and prevent human trafficking. In 2011, the Attorney General launched the Human Trafficking Unit to prosecute trafficking cases under laws passed in 2010.³⁴ As of February 2014, the unit had secured the conviction of at least eight people for various offenses under current human trafficking laws.³⁵ In addition, the Attorney General co-chaired the Michigan Commission on Human Trafficking and is a member of the National Association of Attorneys General Presidential Initiative Leadership Council, whose major initiatives include a united effort on the enforcement of human trafficking laws and the prosecution of offenders.

²⁹ M.C.L. 750.462b-750.520e. Michigan repealed its laws against rape in 1975 and replaced them with four degrees of criminal sexual conduct (CSC). A typical case in which a trafficker may be convicted of CSC would be one in which a person had nonconsensual sex with a prostitute he or she was associated with, or had sex with a minor prostitute. For example, Sedrick Mitchell, n. 13, was convicted of CSC for his sexual assault of two minors whom he forced into prostitution.

³⁰ M.C.L. 750.159g(hh). The Penal Code prohibits a person from engaging in "a pattern of racketeering activity", or, at least two incidents of racketeering that have interrelated characteristics and amount to or pose a threat of continuing criminal activity. M.C.L. 750.159f. "Racketeering" means committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit" one (or more) of the offenses enumerated in the Code for financial gain. M.C.L. 750.159g.

³¹ M.C.L. 750.462a to M.C.L. 750.462j.

³² Under Chapter 47 of the Revised Judicature Act, M.C.L. 600.4701, *et seq.*, the state or a local unit of government may seize "all personal property that is the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime", and "[a]ll real property that is the proceeds of a crime or the substituted proceeds of a crime", except the primary residence of the spouse or dependent child of the owner, unless either of them knew of, and consented to the commission of, the crime.

³³ M.C.L. 750.462j(5).

³⁴ "No Love for Michigan Human Traffickers: A.G. Schuette Announces 8th Conviction", Michigan Attorney General Bill Schuette, 2-14-2014, retrieved 4-14-2014, http://www.michigan.gov/ag/0,4534,7-164-46849_47203-321992--,00.html

³⁵ *Id.*



The Michigan Commission on Human Trafficking was formed in 2013 by a collaborative effort between the Governor, the Attorney General, and the Michigan Legislature. The goals of the Commission were to assess the threat of human trafficking to Michigan residents and to develop a strategy for combating human trafficking in Michigan. The Commission consisted of 31 members from the Legislature, law enforcement, academia, and human trafficking activist organizations from around the State of Michigan.³⁶ In its 2013 report, the Commission set forth a number of findings, proposed strategies, and recommendations for locating human trafficking victims and their traffickers. These included a list of 11 legislative recommendations, such as a safe harbor law for human trafficking victims (which would shield victims from prosecution for crimes they were forced to commit), poster laws, civil forfeiture, and nuisance abatement.³⁷ Many of the Commission's recommendations have been incorporated into legislation currently before the Legislature.

The State's largest universities also contribute to anti-human trafficking efforts in Michigan, nationally, and internationally. The University of Michigan Law School offers a Human Trafficking Clinic. Launched in 2009, the Clinic gives law students the opportunity to aid human trafficking victims domestically and internationally through representation, advocacy, and education efforts.³⁸ The Clinic also keeps a database of human trafficking cases. The database is organized by case name, forum, venue, date, and whether the case is civil or criminal.

The Michigan Human Trafficking Task Force, headed by Michigan State University, also works on anti-human trafficking efforts. The Task Force consists of over 90 members from nongovernmental organizations (NGOs), community members, academic organizations, law enforcement organizations from the local, State, and Federal levels, and other professionals and organizations.³⁹ The Task Force's efforts include providing human trafficking education and training to law enforcement agencies, faith-based service providers, and community groups, and disseminating information to potential human trafficking victims.

Private

There are many NGOs and other private groups in Michigan and nationally that aid in anti-trafficking activities, including outreach, education, and victim services. Many of these are faith-based organizations.⁴⁰ These groups are often associated with a particular church, but this is not always the case.

The Polaris Project is a nonprofit entity that works to prevent human trafficking and human slavery in all forms through direct outreach and education. Founded in 2002 by Derek Ellerman and Katherine Chon,⁴¹ the Polaris Project engages in a number of activities including public policy programs, training, public outreach, support services for victims, and operating the NHTRC. The NHTRC is a hotline used to request information and resources on human trafficking and report tips on human trafficking to facilitate the arrest of human traffickers and the rescue of their victims. Through the NHTRC, the Polaris Project is able to accumulate information about how often its services are used, where they are used, and who is using them.

³⁶ See n.9, at 18.

³⁷ *Id.* at 45-51.

³⁸ University of Michigan Law School Human Trafficking Clinic, viewed 4-14-2014, <https://www.law.umich.edu/clinical/humantraffickingclinicalprogram/Pages/humantraffickingclinic.aspx>.

³⁹ Michigan State University: Michigan Human Trafficking Task Force, viewed 4-14-2014, <http://www.humantrafficking.msu.edu>.

⁴⁰ E.g., Manasseh Project, <http://www.manassehproject.org>; Eve's Angels, <http://www.evesangels.org>.

⁴¹ Polaris Project, "Founding Story", retrieved 4-14-2014, <http://www.polarisproject.org/about-us/overview/founding-story>.



Legislative Action in Michigan

As of this writing, there are at least 46 different bills before the Legislature designed to bolster anti-human trafficking efforts in Michigan or assist human trafficking victims. Many of these bills represent duplicate efforts in the Senate and House of Representatives to pass recommendations made by the Human Trafficking Commission. While many of the bills explicitly deal with human trafficking, others are designed to address human trafficking, but not explicitly. These measures are in varying stages in the legislative process.

Proposals that have been introduced in the Senate, and presently remain in committee, include Senate Bills 205 and 206, which would make it a felony for a person 16 or older to solicit another person between the ages of 16 and 17 to commit prostitution or another lewd or immoral act.⁴² Senate Bills 499 and 500 would create the "Human Trafficking and Reporting Act" and would direct funds received from the sale of property forfeited as a result of violations of Chapter 67A to certain purposes related to human trafficking violation enforcement and prevention. Senate Bill 596 would enact the "Human Trafficking Board Act" and create the Human Trafficking Board within the Department of State Police.

Under Senate Bill 589, a court's ability to terminate an individual's parental rights could be extended to instances in which a parent was convicted of a human trafficking violation. Senate Bills 594 and 595 would levy a \$3 excise tax per customer admitted into certain adult entertainment facilities, and would authorize local governments to adopt ordinances requiring any person employed at an adult entertainment business to obtain a permit to work at the business. A more recently introduced bill, Senate Bill 855, would grant immunity from civil liability to a number of professionals who, in the course of performing their professional duties, have reasonable cause to suspect a human trafficking violation, and report the suspected violation in good faith, or cooperate with an investigation into an alleged human trafficking violation.⁴³

Other bills have passed the Senate and are now awaiting action in the House. For instance, Senate Bills 585 through 588 would increase the minimum age for prostitution offenses, give the family court jurisdiction over minors who committed prostitution offenses, require counseling to be provided to a child in foster care who was a human trafficking victim, and provide affirmative defenses for victims of human trafficking during the prosecution of certain offenses (creating a "safe harbor law"). Senate Bills 590 through 593 would allow victims to sue their traffickers, allow a criminal conviction to be set aside on the ground of being a victim of human trafficking, provide victims of human trafficking with the ability to receive medical and psychological care, and grant consideration within the foster care system for minors who may be victims of human trafficking, respectively.

Proposed Laws and Conclusion

Both the Human Trafficking Commission and the Polaris Project have made general policy recommendations to strengthen human trafficking laws in Michigan. Elements of many of these proposed laws have been included in introduced legislation. However, there are several recommendations that have not. One such recommendation is a poster law, which would require that certain locations post an informational poster with the NHTRC hotline phone number.⁴⁴ The states that have passed such a law vary in their posting location requirements, but often include establishments that serve alcohol, adult entertainment businesses, rest areas, and other transportation system areas. In some cases, the laws include a fine for failing to post the signs in a conspicuous place.

⁴² The House introduced and passed substantially similar bills, House Bills 4209 and 4210.

⁴³ House Bill 5399 contains identical language.

⁴⁴ See n. 31, at 51.

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Another suggested approach is a complete decriminalization of the sale of sex, with an accompanying increase in penalties for those who purchase sex. The notion is that severely penalizing the demand for prostitution, rather than the supply, would decrease the incidence of prostitution (and human trafficking). Some countries have applied this approach.⁴⁵

In conclusion, the legislative activity for the 2013-2014 session in regard to human trafficking represents a potential shift in Michigan's public policy. In recent years, there has been an attempt to move toward viewing sex-trafficked individuals as victims, rather than criminals, and this approach is reflected in much of the proposed legislation. In addition, the quantity and quality of information relating to the prevalence of human trafficking in Michigan are key to determining where problems are, and enhanced reporting of human trafficking offenses would give the Legislature, law enforcement, and, ultimately, individuals a better idea of the extent of human trafficking in Michigan communities. In turn, this knowledge could lead to more effective efforts to combat the problem.

⁴⁵ Victoria Stunt, "Sex workers fear new prostitution laws will compromise safety", *CBC News*, 2-7-2014, retrieved 4-14-2014, <http://www.cbc.ca/news/canada/sex-workers-fear-new-prostitution-laws-will-compromise-safety-1.2523145>. At least three countries follow this model, often called the "Nordic model": Iceland, Sweden, and Norway. France, the U.K., and Canada are currently considering similar legislation.