

STUDENT WORKS

ENDING MODERN-DAY SLAVERY IN FLORIDA: STRENGTHENING FLORIDA'S LEGISLATION IN COMBATING HUMAN TRAFFICKING

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I. THREE FLORIDA STORIES

After entering the United States, two Mexicans in their early twenties met with two men at the Georgia-Florida border.¹ The men offered them a paying job at their Chinese restaurants throughout Florida.² Soon after accepting the job offers, the Mexicans learned that they would not receive payment even though they were working up to twenty hours a day, preparing food, handling hot pans of burning oil without protection for their hands, and traveling at night to other locations where the men forced them to work.³ The men gave the Mexicans three options: continue working without trying to escape and without reporting the abuses, be killed, or go to jail for being an illegal immigrant.⁴ After the Mexicans demanded payment, the men drove them near Plant City and abandoned them on the side of a road.⁵ Despite not speaking English and not knowing the area, the Mexicans ultimately found refuge at a Baptist church.⁶

A woman from El Salvador wanted to move to the United States.⁷ After visiting an employment agency in El Salvador, the

1. Roxanne Escobales, *Slaves among Us*, 19 *Weekly Planet* (Tampa, Fla.) 17, 18 (July 12, 2006).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Tel. Interview with Carol Nelson, St. Coalition Outreach and Community Rel. Coord., Fla. Coalition Against Human Trafficking (Aug. 21, 2006) (notes on file with *Stetson Law Review*). The Florida Coalition Against Human Trafficking is part of the Immigrant Rights Advocacy Center, Inc., which is a non-profit organization and advocates for

woman accepted an offer to work as a maid for a married couple in Naples, Florida.⁸ The couple promised to pay her four hundred dollars a week.⁹ However, in May 2000, after about one week in her new home, the woman began to realize that the couple did not intend to treat her very well.¹⁰ Some days, the couple put her on a shift that ran from 6 a.m. to 1 a.m.¹¹ They forced her to scrub the garage using only her bare hands and bleach.¹² They forbade her from using the front door.¹³ They required her to ask for permission to drink water.¹⁴ She was allowed to leave the house only to attend church services,¹⁵ and if she brought home food, the wife would throw it away.¹⁶ The couple allowed her to eat no earlier in the day than 6 p.m. and prohibited her from eating their leftovers.¹⁷ When she was allowed to sleep, she had to sleep on the porch in a rollaway bed.¹⁸ And like the dogs, her restroom and bath were outside.¹⁹ The couple explained to her that she had to work in these conditions for two years in order to pay them back for airplane tickets, used clothes, and a trip to a free clinic.²⁰ She

the best interests of victims of human trafficking, especially in Southwest Florida. Immigrant Rights Advoc. Ctr., Inc., *Florida Coalition against Human Trafficking*, <http://www.stophumantrafficking.org/about.htm> (accessed Nov. 1, 2007).

8. Tel. Interview, *supra* n. 7.

9. *Id.*

10. *Id.*

11. *Id.* Sometimes, the couple required the woman to care for the neighbor's children from 10 p.m. to 2 a.m. without pay. Janine Zeitlin, *An Escape from Servitude*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/29/escape_servitude/ (Jan. 29, 2006).

12. Tel. Interview, *supra* n. 7.

13. *Id.*

14. *Id.*

15. Zeitlin, *supra* n. 11.

16. *Id.*

17. *Id.* Instead, the couple would feed her half sandwiches, tacos, or hot dogs. *Id.*

18. *Id.*

19. Tel. Interview, *supra* n. 7.

20. Zeitlin, *supra* n. 11. The couple charged the woman fifty dollars for each call she received from her children in El Salvador; after that deduction, the couple paid her no more than two hundred dollars a month. *Id.* The woman pled with the couple to allow her to return to El Salvador, but the couple, having confiscated her passport, refused to let her go. *Id.* Although the couple never physically abused her, the husband threatened physical abuse with a baseball bat, and they told her about their other "employees" who had disappeared. *Id.* They told her that one of their older sons was a sheriff who could make her disappear. Tel. Interview, *supra* n. 7. Pointing to a picture of their son in uniform, they threatened that if she tried to leave, they would call immigration or law enforcement. *Id.* She did not know her rights. *Id.*

never paid them back, but did manage to escape with the help of her pastor.²¹

Wanting to escape poverty-stricken Malaysia, a woman in her early twenties moved to Clearwater, Florida, to become a United States citizen by marrying a man she met through an international marriage broker.²² She quickly learned he did not intend to help her gain citizenship; rather, he forced her to be his sex slave and to give him all the money she earned while working at a dry cleaners, even while he remained unemployed.²³ After seven months, she escaped the enslavement and sought refuge at a domestic-violence center that had sheltered another woman who had a similar story and who had been married to the same man.²⁴

These stories illustrate three types of human-trafficking cases: labor trafficking, domestic servitude, and sex trafficking. They illustrate the hidden nature of human trafficking as the victims each suffered for up to eight months before finally revealing their stories.²⁵ Law enforcement and prosecutors continue to search for ways to identify and prosecute human-trafficking cases.

This Article suggests ways in which Florida can strengthen its laws designed to prevent and prosecute human-trafficking

21. Zeitlin, *supra* n. 11. Ultimately fearing that her life was in danger, she shared her story with her pastor and some friends at her church. *Id.* Together, they planned a way for her to escape, and one Sunday in February 2001, she did not return from church. *Id.* The couple was unable to find her and even requested the local sheriff's office either to return their "housekeeper" or send her back to Central America. *Id.* Despite a journal that she kept as evidence of the ordeal, *id.*, the couple escaped prosecution because evidence suggested the woman freely came back to the United States and the couple after having been permitted to return to El Salvador. Interview with Doug Molloy, Asst. U.S. Atty., Middle Dist. of Fla. (Jan. 3, 2007) (notes on file with *Stetson Law Review*). Since her escape, the woman has lived in the Naples area, married, and made a living by cleaning houses and then by doing the bookkeeping for her husband's business. Zeitlin, *supra* n. 11. Even after hearing that the couple has since moved from the area, the woman has feared running into them again. *Id.* In the years following her escape, she visited a psychologist about once a month. *Id.*

22. Escobales, *supra* n. 1, at 19. An international marriage broker is also known as a mail-order bride agency. *Id.*

23. *Id.* at 20.

24. *Id.* She sought refuge at the Haven, a women's refuge in Clearwater, Florida. *Id.* Its director estimated that in the past two years, the Haven sheltered at least twelve trafficking victims. *Id.*

25. The Mexicans were slaves for about a month. *Id.* at 18. The woman from El Salvador was a slave for about eight months. Tel. Interview, *supra* n. 7. And the Chinese woman was a slave for seven months. Escobales, *supra* n. 1, at 20.

cases and protect victims. Part II of this Article outlines the various elements of human trafficking.²⁶ Part III describes the Victims of Trafficking and Violence Protection Act of 2000, which is Congress' effort to combat human trafficking.²⁷ Part IV surveys the legislation of some states other than Florida.²⁸ Part V describes how Florida's legislation has evolved from the initial 2004 enactments to the 2006 amendments.²⁹ Finally, Part VI suggests how Florida should further strengthen its legislation in combating human trafficking.³⁰ In particular, Florida should define a role for nongovernmental organizations that are well equipped to help victims of human trafficking and assist with prosecutions.³¹ Also, Florida should encourage counties to form human-trafficking task forces to ensure that law enforcement and prosecutors statewide are working together to combat human trafficking.³² Finally, victims of human trafficking should be able to recover punitive damages from the traffickers.³³

II. THE VARIOUS ELEMENTS OF HUMAN TRAFFICKING

A. Overview

Understanding the various elements of human trafficking is necessary in order to know how to prevent human trafficking, punish its perpetrators, and protect its victims. Often described as modern-day slavery,³⁴ human trafficking victimizes men, women, and children.³⁵ The United States government estimates that about 600,000 to 800,000 victims cross national borders annually, including 14,500 to 17,500 into the United States.³⁶ In-

26. *Infra* pt. II.

27. *Infra* pt. III.

28. *Infra* pt. IV.

29. *Infra* pt. V.

30. *Infra* pt. VI.

31. *Infra* pt. VI(A).

32. *Infra* pt. VI(B).

33. *Infra* pt. VI(C).

34. Kathleen A. McKee, *Modern-Day Slavery: Framing Effective Solutions for an Age-Old Problem*, 55 *Cath. U. L. Rev.* 141, 144 (2005); Stephanie Richard, Student Author, *State Legislation and Human Trafficking: Helpful or Harmful?*, 38 *U. Mich. J.L. Reform* 447, 448 (2005).

35. U.S. Dept. of St., *Trafficking in Persons Report Introduction* pt. I (June 2006) (available at <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>).

36. U.S. Dept. of Just., *Attorney General's Annual Report to Congress on U.S.*

cluding all trafficking within countries and not just across national borders, the United States estimates that two million to four million people worldwide are victims of human trafficking annually.³⁷

B. Definitions

While traffickers use various methods of enslaving their victims,³⁸ whether their particular methods constitute human trafficking depends on the applicable law. Other than specifying the types of conduct that constitute enslavement, the applicable law may also stipulate that the trafficker must have transported the victim across national borders and may specify the type of service—prostitution, slave labor, marriage, etc.—provided by the victim in order to label the case human trafficking.³⁹

For example, in 1996, a European Parliament report defined human trafficking as

Government Activities to Combat Human Trafficking in Persons: Fiscal Year 2005 3 (June 2006) (available at <http://www.usdoj.gov/ag/annualreports/tr2005/agreporhumantrafficking2005.pdf>) [hereinafter *AG's Annual Report*]. In 2006, the United States Government Accountability Office (GAO) criticized the federal government's estimate of 600,000 to 800,000 annual trafficking victims. U.S. Govt. Accountability Off., *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad* 10–18 (July 2006) (available at <http://www.gao.gov/new.items/d06825.pdf>). The GAO reports that the one person who arrived at that estimate failed to document all of his work, so it is not replicable. *Id.* Also, the GAO highlights several factors complicating efforts to estimate the number of victims: first, many victims constitute a hidden population; second, some governments give low priority to human trafficking, so they may not have a uniform system for collecting information about victims; third, countries of origin, which are often developing countries, lack the capacity for data collection; fourth, countries define human trafficking differently; fifth, reporting agencies, such as advocacy groups, may report data so as to accommodate their own needs; sixth, the number of observed victims is significantly below the number of estimated victims; and seventh, methods of data collection in the United States are fragmented. *Id.*

37. Francis T. Miko, *Trafficking in Persons: The U.S. and International Response* 1 (Cong. Research Serv. July 7, 2006) (available at <http://fpc.state.gov/documents/organization/70330.pdf>). “Since trafficking is an underground criminal enterprise, there are no precise statistics on the extent of the problem and all estimates are unreliable.” *Id.* at 2.

38. *Infra* nn. 62–84 (describing various forms and methods of enslavement that traffickers have used).

39. Becki Young, Student Author, *Trafficking of Humans across United States Borders: How United States Laws Can Be Used to Punish Traffickers and Protect Victims*, 13 *Geo. Immig. L.J.* 73, 75 (1998).

the illegal action of someone who, directly or indirectly, encourages a citizen from a . . . country to enter or stay in another country in order to exploit that person by using deceit or any other form of coercion or by abusing that person's vulnerable situation or administrative status.⁴⁰

Also in 1996, the International Organization for Migration said that human trafficking had the following four elements: "(1) an international border is crossed, (2) a facilitator—the trafficker—is involved, (3) money (or another form of payment) changes hands, and (4) entry and/or stay in the country of destination is illegal."⁴¹ Thus, at least two definitions of human trafficking required that the victim crossed national borders, and at least one definition required that the victim stayed in the destination country illegally.

In 1998, Global Alliance Against Traffic in Women defined human trafficking more broadly:

All acts involved in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threats of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion.⁴²

This definition eliminated the need for international transport and made irrelevant whether the victim was in the destination country illegally.

In 2000, drafting what has been called the first international agreement on the definition of human trafficking,⁴³ the United Nations articulated an even broader definition:

40. *Id.* (quoting facsimile from the International Human Rights Law Group to Trafficking Roundtable Participants (Mar. 2, 1998) (copy on file with Becki Young)).

41. *Id.* at 76 (quoting Intl. Org. for Migration, *Trafficking of Women to Countries of the European Union: Characteristics, Trends and Policy Issues 2* (June 1996) (paper submitted to the Conference on Trafficking in Women for Sexual Exploitation in Vienna) (copy on file with Becki Young)).

42. *Id.* (quoting Janie Chuang & Lara Stemple, *International Trafficking in Women: An Exploration of the Issues* (Jan. 22, 1998) (Final Draft, Harvard Human Rights Clinical) (copy on file with Becki Young)).

43. *Developments in the Law—Jobs and Borders: II. The Trafficking Victims Protection Act*, 118 Harv. L. Rev. 2180, 2184 (2005) [hereinafter *Developments in the Law*].

[T]he 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁴

Also in 2000, the United States Congress defined human trafficking, but unlike prior international definitions, Congress' definition divided human trafficking into the following two categories: "severe forms of trafficking in persons" and "sex trafficking."⁴⁵ The former is

sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or . . . the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁴⁶

The latter is "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act."⁴⁷

44. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, GA Res. 55/25, Art. 3, UN OHCHR (Nov. 15, 2005) (not in force) (available at <http://www2.ohchr.org/english/law/protocoltraffice.htm>).

45. 22 U.S.C. § 7102(8)–(9) (2006).

46. *Id.* at § 7102(8).

47. *Id.* at § 7102(9). Why Congress chose to label only one form of trafficking as "severe" is unclear. Perhaps the reason is that because "sex trafficking" requires neither "the use of force, fraud, or coercion" nor that the victim be less than eighteen years of age, "sex trafficking" is not considered "severe." Ostensibly, the reason that Congress distinguishes victims who were coerced or who were minors from victims who were neither is that Congress wanted to extend certain benefits only to victims who were coerced or who were minors. See *infra*, nn. 167–169 (outlining benefits available to victims of severe forms of trafficking in persons).

In 2004, Florida first defined human trafficking when the state criminalized the practice. In so doing, Florida defined human trafficking as “transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport.”⁴⁸ Unlike Congress’ definition and prior international definitions, Florida’s definition did not involve coercion or even servitude. Rather, it required only transport and criminalized human trafficking only when the trafficker also obtained “forced labor or services,”⁴⁹ which Florida defined separately as “[u]sing or threatening to use physical force against that person or another person; or . . . [r]estraining or confining or threatening to restrain or confine that person or another person without lawful authority and against her or his will.”⁵⁰ Effective October 1, 2006, amendments to Florida’s human-trafficking statutes did not change the definition of human trafficking.⁵¹ Thus, even though international and federal definitions of human trafficking deemphasize the element of transporting the victim, that element by itself essentially constitutes “human trafficking,” in its literal statutory sense, in Florida.⁵²

48. Fla. Stat. § 787.06(1)(b) (2006) (section amended in 2006).

49. “Any person who knowingly engages in human trafficking with the intent that the trafficked person engage in forced labor or services commits a felony of the second degree” *Id.* at § 787.06(2) (section amended in 2006).

50. *Id.* at § 787.06(1)(a) (section amended in 2006).

51. *Id.* at § 787.06(2)(c); *see infra* nn. 207–219 (describing amendments to Florida’s human-trafficking legislation).

52. Transportation typically characterizes human smuggling, not trafficking. U.S. Dept. of Just., Human Smuggling and Trafficking Ctr., *Fact Sheet: Distinctions between Human Smuggling and Human Trafficking 4* (Jan. 2005) (available at http://www.usdoj.gov/crt/crim/smuggling_trafficking_facts.pdf). While both human trafficking and human smuggling occur amid extreme poverty, including lack of economic opportunities, civil unrest, and political uncertainty, *id.* at 1, the differences between the two activities lie in the expectations and treatment of the smuggled and trafficked persons and in the statutory definitions. *Id.* at 2, 4. “Human smuggling is the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border, in violation of one or more countries’ laws, either clandestinely or through deception, such as the use of fraudulent documents.” *Id.* at 2. Typically, a smuggled person gave consent to the smuggling and paid the smuggler a large fee for the service. *Id.* After arrival in the destination country, the smuggling has essentially ended, and the smuggled person is free to act independently. *Id.* The smuggled person has violated the law and is not a victim. *Id.* at 4. In contrast, victims of human trafficking and their traffickers are not two willing parties in a business transaction; rather, the victim, whom the traffickers defrauded, forced, or coerced into servitude, is the object of the traffickers’ criminal enterprise. *Id.* at 2. Sometimes, the victims might have consented to the smuggling, only to realize later that they were not free to act independently upon arrival in the destination country. *Id.* Also,

C. Underlying Causes

Before a case fits a particular statutory definition, certain social and economic factors put people in the position to become victims and other people in the position to become traffickers.⁵³ For example, as international transportation has become easier, international criminal organizations have more easily transported vulnerable people from poorer countries to wealthier countries.⁵⁴ Often, these vulnerable people are women viewed by their families as economic assets whose sale can provide immediate income and preclude the family from having to pay a dowry.⁵⁵ Traffickers thrive in impoverished countries, especially in Eastern Europe and the former Soviet Union, where law enforcement against human trafficking is weak and where the collapse of communism and the aftermath of wars have left people without many opportunities for a comfortable life.⁵⁶ Outside those areas, high demand for sex workers, sweatshop labor, and domestic workers, as well as the prospect of tax-free profits, have encouraged unscrupulous business people to engage in trafficking.⁵⁷

Typically, the business is subject to little risk because of weak laws and law enforcement, which may punish prostitutes without considering that they may also be victims.⁵⁸ This flawed approach stems from a flawed notion that trafficking is a problem only of illegal immigration⁵⁹ and that, consequently, the illegal immigrants—the victims who are reluctant to testify against the traffickers who threatened them—should be punished.⁶⁰ Some governments may deny knowledge of trafficking because they accept

human trafficking does not usually require international travel. *Id.* at 4.

53. Miko, *supra* n. 37, at 2–3.

54. *Id.* at 2.

55. *Id.*

56. *Id.*

57. *Id.* at 2–3.

58. *Id.* at 3.

59. For example, on the *Naples Daily News* Web site, following an article about a Mexican man linked to a human-trafficking case, one reader comment says, “Since most of our illegal aliens are single males, why not let them have their ho’s so that they stop raping our girls . . . It’s just part of their culture . . . (that includes disrespecting police).” Oldtimer, *Comments*, *Naples Daily News*, http://www.naplesnews.com/news/2006/may/25/man_pleads_guilty_transporting_mexican_woman_girl/ (May 25, 2006).

60. Miko, *supra* n. 37, at 3.

bribes from traffickers or fear reprisals from criminal gangs.⁶¹ Therefore, as human trafficking has been subject to various definitions for which the common element has been coercion, human trafficking stems from various social and economic conditions providing opportunities for exploitation.

D. Forms and Methods of Enslavement

Human trafficking also occurs in various forms. Aside from cases of domestic servitude, such as the one described in the introduction above, human-trafficking offenses usually involve either sex trafficking or labor trafficking.⁶² With regard to sex trafficking, traffickers will lure victims in a number of ways. For example, traffickers may simply purchase their victims in the victims' home country⁶³ or lure them by offering a good job.⁶⁴ Traffickers may give false marriage proposals or simply kidnap their victims.⁶⁵ Victims of sex trafficking can be men, women, boys, or girls, but most are women or girls.⁶⁶

After capturing their victims, traffickers will use various methods to keep them captive. One of the more common methods is debt-bondage, whereby the trafficker tells the victim that in order to repay the traffickers for transportation to the destination country and for living expenses, the victim must provide services.⁶⁷ Traffickers may also confiscate the victims' passports and visas.⁶⁸

61. *Id.* For about \$800, Russian traffickers can obtain false travel documents from the Ministry of Foreign Affairs for minors to travel to other countries to work as prostitutes. *Id.* at n. 5.

62. 22 U.S.C. § 7101(b)(2)–(3).

63. In August 2006, a United States District Court judge sentenced a man from Cape Coral, Florida, to ten years in prison for harboring a sex slave, whom the man purchased in Guatemala and brought to Florida to be raped, beaten, and forced to work. Nicholas P. Alajakis, *Man Gets 10 Years in Prison for Harboring Sex Slave*, Naples Daily News, http://www.naplesnews.com/news/2006/aug/02/man_gets_10_years_prison_harboring_sex_slave/ (Aug. 2, 2006).

64. U.S. Dept. of Health & Human Servs.: Administration for Children and Fams., *Fact Sheet: Sex Trafficking*, http://www.acf.hhs.gov/trafficking/about/fact_sex.html (accessed Nov. 1, 2007).

65. *Id.*

66. *Id.*

67. *Id.*

68. Kathryn E. Nelson, Student Author, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 *Houston J. Intl. L.* 551, 555 (2002).

Other methods like the following are more violent: starvation, confinement, beatings, physical abuse, rape, gang rape, threats of violence to the victims and the victims' families, forced drug use, and the threat of shaming the victims by revealing their activities to their families and friends.⁶⁹ These conditions expose victims to numerous health risks, such as drug addiction, broken bones, sexually transmitted diseases, miscarriages, and forced abortions, and lead to psychological problems, such as shame, grief, suicidal thoughts, acute anxiety, and depression.⁷⁰ Traffickers may instill fear into the victims to such an extent that the victims feel a sense of gratitude toward the traffickers for allowing them to live.⁷¹

Sex trafficking can occur in street prostitution or in closed-door brothels.⁷² In May 2006, police in Clearwater, Florida, raided a house that they correctly suspected was a brothel.⁷³ Up to forty men per day parked in a nearby Sears parking lot, walked to the house, paid twenty-five dollars to a doorman, sat down in a waiting room where a television played pornographic videos and a wall calendar indicated a different girl for each week, and waited their turn.⁷⁴ While not conclusive, initial evidence indicated that some of the women who serviced customers were lured by traffickers from Mexico and forced to work at the brothel against their will.⁷⁵

69. U.S. Dept. of Health & Human Servs., *supra* n. 64.

70. *Id.*

71. *Id.*

72. *Id.*

73. Jacob H. Fries, *A House of Human Trafficking*, St. Pete. Times 1B (July 2, 2006).

74. *Id.*

75. *Id.* Brothels like this one have been called "21 clubs" since the price for fifteen minutes with a girl is twenty dollars plus one dollar for a condom although fees may now be higher. Escobales, *supra* n. 1, at 18. "Coyotes," the traffickers who smuggle victims into the destination country, lure girls to Southwest Florida, often without telling them they will be prostitutes, and then sell the girls to brothel owners, who will then force the girls to repay their smuggling debts by working at the brothels. *Id.* at 18–19.

Another form of human trafficking is labor trafficking,⁷⁶ which has three general categories: bonded labor, child labor, and forced labor.⁷⁷ Bonded labor is labor obtained by debt-bondage, where no one has defined the conditions of the loan or service on which the debt is based and where the traffickers unreasonably assess the value of the victims' services.⁷⁸ Child labor is work that is likely to be harmful for children and often interferes with their education.⁷⁹ Forced labor is labor by victims forced to work under threat of violence or punishment.⁸⁰ It is hidden, inhumane, and widespread: traffickers often forbid victims from appearing in public and torture them in order to keep them captive.⁸¹ In the United States, forced labor has existed in as many as ninety cities, particularly ones having transit routes for international travelers and large populations with large immigrant communities.⁸² Most forced labor cases have involved prostitution, domestic servitude, or agricultural work.⁸³ Much like sex traffickers, labor traffickers use various methods in order to keep their victims compliant, including physical abuse, isolation, and threats to report the victims' illegal alien status to law enforcement.⁸⁴ Also, like victims of sex trafficking, victims of labor trafficking experi-

76. One of the more widely publicized labor-trafficking cases from Florida is the Cuello case. Janine Zeitlin, *Slavery: Collier County's Connection*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/29/modernday_slavery_reaches_immokalee_farm_fields_pr/ (Jan. 29, 2006). For about two months in 1999, Abel Cuello, Jr. and Bacilio Cuello enslaved two dozen workers on a farm in Immokalee, often paid them only forty cents per hour, and forced them to live in a roach-infested trailer. *Id.* In 1999, before enactment of federal or state anti-trafficking statutes, one brother was sentenced to three years in prison for conspiracy to violate federal laws barring involuntary servitude, harboring illegal immigrants, and failure to ensure migrant vehicle safety; the other brother was sentenced to two years in prison. *Id.* Many of the victims were deported. *Id.*

77. U.S. Dept. of Health & Human Servs., Administration for Children and Fams., *Fact Sheet: Labor Trafficking*, http://www.acf.hhs.gov/trafficking/about/fact_labor.html (accessed Nov. 1, 2007).

78. *Id.*

79. *Id.*

80. *Id.*

81. Human Rights Ctr., U. Cal. Berkeley, *Hidden Slaves: Forced Labor in the United States* 5 (Sept. 2004) (available at http://www.hrcberkeley.org/download/hiddenslaves_report.pdf). Forced labor operations have been concentrated in Florida, New York, California, and Texas. *Id.* at 10.

82. *Id.*

83. *Id.* at 14. Less common cases have involved sweatshop labor, food service, sexual exploitation of children, entertainment, and mail-order brides. *Id.*

84. U.S. Dept. of Health & Human Servs., *supra* n. 77.

ence health and psychological problems resulting from physical abuse and psychological manipulation.⁸⁵

E. Traffickers

Despite the physical pain and emotional anguish suffered by victims, traffickers typically view their victims as business commodities necessary for lucrative business. Certain benefits to traffickers may help explain why human trafficking has become, by many estimates, the second or third largest international criminal enterprise in the world.⁸⁶ The Congressional Research Service reports that traffickers have earned up to \$9.5 billion in one year.⁸⁷ Sex trafficking is particularly lucrative because each victim can generate multiple sales, so “[u]nlike drug dealers, who sell their commodities only once, brothel owners can reap a continuous return on their investment.”⁸⁸ For traffickers, selling the services of humans, rather than selling drugs or weapons, provides for many profitable benefits attributable to the nature of the commodity: humans are cheap—especially if kidnapped or coerced—and reusable.⁸⁹ Transporting and employing them are likewise cheap, particularly in situations where the victim actually paid the traffickers a smuggling fee or other transportation fee.⁹⁰ Moreover, once they begin providing services, victims often pay traffickers extra fees for room and board.⁹¹ Potential revenues just for smuggling a person into the destination country range from \$8,000 to \$10,000 per person, which can translate into \$320,000 for a boatload of smuggled people.⁹² Traffickers can earn even more because they often receive at least part of the smug-

85. *Id.*

86. *See Developments in the Law, supra* n. 43, at 2186 (reporting that human trafficking is the third largest international criminal enterprise, ranked behind drug smuggling and arms smuggling); *but see* Kristen Zambo, *The Human Commodity*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/31/human_commodity/ (Jan. 31, 2006) (reporting that human trafficking is now the second largest trafficking enterprise behind only drug trafficking).

87. Miko, *supra* n. 37, at 2.

88. Nelson, *supra* n. 68, at 556 (estimating that “[e]ven a small bordello can gross over \$200,000 in just a month”).

89. *Developments in the Law, supra* n. 43, at 2185.

90. *Id.*

91. *Id.*

92. Zambo, *supra* n. 86.

gling fee plus fees from brothel owners and owners of migrant labor camps.⁹³ Profits, of course, are tax-free.⁹⁴ If a victim dies, the traffickers merely consider that death as a business expense: while replacing a slave during the time of the Civil War cost owners the modern equivalent of \$40,000, the cost of a replacing a trafficked human today can run as low as \$90.⁹⁵

Traffickers have been able to escape punishment for a number of reasons. Public awareness of human trafficking is low in some places,⁹⁶ and acceptance of prostitution is widespread in many countries.⁹⁷ Traffickers can hide their victims fairly easily.⁹⁸ Sometimes, traffickers and public officials have corrupt relationships involving sex, money, and blackmail.⁹⁹ Further, law enforcement may lack adequate training in identifying cases of human trafficking, especially those cases involving children.¹⁰⁰ If caught, traffickers often have money to hire lawyers and post bail.¹⁰¹ Furthermore, victims have had a difficult time proving their credibility when judges and juries determine that the victims came to the United States voluntarily, in violation of immigration laws, and lied to protect themselves and their families.¹⁰²

93. *Id.*

94. Miko, *supra* n. 37, at 3.

95. Ctr. for the Advancement of Human Rights, Fla. St. U., *Florida Responds to Human Trafficking* 14 (Fall 2003) (available at <http://www.cahr.fsu.edu/the%20report.pdf#search=%22fsu%20human%20rights%20center%22>).

96. In trying to raise awareness of human trafficking, some countries have focused on educating younger generations. For example, in Indonesia, starting in 2004 and incorporating nearly all public school students, the Scout Movement has sought to educate 25,000 students in 116 schools by August 2006 about the dangers of human trafficking. U.S. Dept. of St., *supra* n. 35, at pt. II (available at <http://www.state.gov/g/tip/rls/tiprpt/2006/65984.htm>). School-level facilitators use a four-part video documentary, comic books, and other anti-trafficking materials to educate the students. *Id.* The Scout Movement is part of an effort by the Indonesian government, the American Center for International Labor Solidarity, and the International Catholic Migration Commission to “mobilize existing mass-membership institutions and their significant networks to combat trafficking.” *Id.* Likewise, in Lithuania, the Missing Person Families Support Center has educated students about human trafficking by organizing twenty annual one-hour sessions during which students watch a documentary chronicling young victims’ experiences and engage in roundtable discussions of the issue. *Id.*

97. Ctr. for the Advancement of Human Rights, *supra* n. 95, at 21.

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* On the *Naples Daily News* Web site, following an article about a Mexican man linked to a human-trafficking case and perhaps reflecting the sentiment of some jurors,

Also, victims may be reticent to discuss their cases for fear that they or their families receive retribution from the traffickers.¹⁰³ Other times, before they could tell their stories, victims might have committed suicide, been murdered by the traffickers, or been deported by law enforcement.¹⁰⁴

Traffickers can be composed of a small group of individuals or of a larger multinational criminal organization.¹⁰⁵ Traffickers are often powerful, well-respected people in their native countries and use their influence to obtain victims.¹⁰⁶ Some of the major human-trafficking gangs are composed of Chinese, Asians, Mexicans,

one reader comment says,

If we are going to sensationalize this “human trafficking,” then why do we not put pressure on the local law enforcement, and prosecutors, for either not proving the facts in the case or not pursuing a prosecution of “human trafficking?” . . . The funny thing is [that] our tax dollars are being spent on prosecuting transportation cases. . . . Every construction guy rounding up 5 guys to work for the day is guilty of such a crime. The reality of the situation is this, TRANSPORTATION cases are being sensationalized as “human trafficking.” What is the hidden agenda? . . . Since when are we so concerned with protecting [prostitutes]?

Mack_10, *Comments*, Naples Daily News, http://www.naplesnews.com/news/2006/may/25/man_pleads_guilty_transporting_mexican_woman_girl/ (May 25, 2006). Also, following an article about a man sentenced for sexually enslaving a smuggled teen, a reader comment says,

We can have compassion on the two females that got raped, but—they are here in the country ILLEGALLY! If somebody is doing something illegally, do they really have the right to protest when somebody does something illegal to THEM? I always thought that, under the law, if the person does something illegal, they pretty much forfeit their “rights.” Are we somehow expected to protect people who are engaged in a criminal act?

Adventista, *Comments*, Naples Daily News, http://www.naplesnews.com/news/2006/may/12/man_sentenced_sexual_slavery_smuggled_teen/ (May 28, 2006).

Seemingly anticipating this sort of public backlash, Mike Scott, a Lee County sheriff, reportedly acknowledged that “[t]here are people out there right now who believe trafficking is a bunch of crap.” Anne Marie Apollo, *Lee Trafficking Cases a Recent Chapter in County’s History*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/29/lee_trafficking_cases_recent_chapter_countys_histo/ (Jan. 29, 2006). Scott pointed out, though, that the public did not always perceive gangs and drugs as legitimate problems in Lee County. *Id.*

103. Ctr. for the Advancement of Human Rights, *supra* n. 95, at 21.

104. *Id.* at 21–22.

105. Interview with Doug Molloy, Asst. U.S. Atty., M.D. Fla. (Sept. 28, 2006) (notes on file with *Stetson Law Review*). From 1999 to 2006, Mr. Molloy prosecuted seven cases of human trafficking in Southwest Florida and now speaks widely on the topic. *Id.* As of the date of the interview, his office was investigating eleven more cases of human trafficking in Florida. *Id.*

106. *Id.*

Russians, citizens from the former Soviet Union, and Central Americans.¹⁰⁷

F. Victims

Just as human-trafficking organizations may be composed of various numbers and nationalities, victims likewise do not fit into a particular stereotype although most trafficked women are younger than twenty-five.¹⁰⁸ About half of all victims are forced into prostitution, and most of the remainder work in sweatshops or in domestic servitude.¹⁰⁹ Desperate to escape the living conditions of their native third-world countries, victims are easy prey for the more powerful and influential countrymen, whom the victims trust to lead them to a better life.¹¹⁰ Wearing nice clothes and jewelry, traffickers may return to their native countries to con families into allowing their children to accept job opportunities as waitresses, nannies, and maids in another country.¹¹¹ Upon arrival there, the victims first learn that they are domestic slaves or prostitutes.¹¹² Under these circumstances, victims sometimes fall prey to their own friends or relatives.¹¹³ In Florida, the ethnicities of those involved in human trafficking tend to reflect the demographics of the area to which victims were trafficked.¹¹⁴ For example, Collier and Lee counties have large Guatemalan populations, and trafficking and smuggling cases there have involved large numbers of Guatemalans; likewise, authorities in North Florida have found European slaves, and authorities in Miami have found Russian slaves.¹¹⁵

107. Miko, *supra* n. 37, at 3.

108. *Id.* at 4. Because customers may fear that older women are infected with diseases such as HIV and AIDS—and rightly so since victims of sex trafficking are exposed to sexually transmitted diseases much more frequently than the general population and have almost no access to medical care—traffickers will often recruit younger women and girls, as young as seven, so as to provide a sense of security, albeit false, for the customers. *Id.* at 4, 21.

109. *Id.* at 8.

110. Dianna Smith & Janine Zeitlin, *Violating Their Trust, Cultures Prey on Their Own*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/31/violating_their_trust_cultures_preying_their_own/ (Jan. 31, 2006).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

Working as a victim of human trafficking is all that some children know to do.¹¹⁶ One strategy that some Haitians employ in order to escape poverty is to give their children to middle-class families whom the children can serve in exchange for living in a nice home and receiving a quality education.¹¹⁷ Some families do not treat the children humanely and ultimately force them to become domestic slaves.¹¹⁸ These victims are more difficult to identify because they usually do not have permission to leave the house.¹¹⁹ Thus, their situation is different than other types of victims who may interact with the public by working at strip clubs, restaurants, and nail salons.¹²⁰

G. Identifying Cases

Regardless of the type of servitude involved, law enforcement and prosecutors must overcome several obstacles in order to identify a victim of human trafficking, a crime that is unique because victims are often reluctant to report it.¹²¹ An initial challenge is finding the victims and then finding someone whom they can trust and who can communicate in their native language.¹²² Victims are often uncomfortable at first to speak with a stranger about the degrading and inhumane treatment they received.¹²³ Because traffickers move their victims, especially ones working in the sex industry, from city to city, they are not able to know any particular city or to create a bond with anyone who may be able to help them.¹²⁴ Furthermore, victims, especially ones who have never been free, often do not know that they have the right to report the abuses.¹²⁵ As a report by Florida State University's Center for the Advancement of Human Rights states, "A lifetime

116. *Id.*

117. *Id.*

118. *Id.* Florida's east coast has had at least one reported instance of a Haitian girl who worked as a domestic slave for about three years. *Id.*

119. *Id.*

120. *Id.*

121. Anne Marie Apollo & Kristen Zambo, *Barriers Numerous in Detecting Slavery Victims*, Naples Daily News, http://www.naplesnews.com/news/2006/feb/01/barriers_numerous_detecting_slavery_victims/ (Feb. 1, 2006).

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

spent as a slave may foster a world view in which the victim sees exploitation as part of his or her unfortunate but inevitable station in life. The exploited person may even identify the trafficker as a caretaker.”¹²⁶ Traffickers may threaten victims that if they tell anyone about the abuses they have endured, the traffickers will harm them or their families:

[T]here is a “softening period” They are beaten and raped by their slavers. What they have gone through is horrific. It’s all to give them a sense of hopelessness. After that softening period, you don’t have to use force. All you have to be told is, “If you complain, who’s gonna miss you? If you disappear, who will know?” You don’t have to have barbed wire to keep people in.¹²⁷

Or the traffickers may tell victims, who are illegal aliens, that if they talk, the police will imprison them; this threat makes victims fearful of law enforcement.¹²⁸ In other cases, victims, following traffickers’ orders, may lie by saying, for example, that traffickers are their husbands.¹²⁹ Moreover, a general lack of public awareness facilitates traffickers’ efforts to conceal their crimes.¹³⁰

H. Worldwide Scope

These obstacles are not necessarily unique to human-trafficking cases in the United States; human trafficking is a worldwide problem affecting every country.¹³¹ While the number of trafficking victims is uncertain,¹³² figures that include trafficking within and between countries and that include forced or bonded labor indicate that as many as twenty-seven million peo-

126. Ctr. for the Advancement of Human Rights, *supra* n. 95, at 15.

127. Apollo & Zambo, *supra* n. 121 (quoting Assistant United States Attorney Doug Molloy, who prosecutes cases of human trafficking in Southwest Florida).

128. *Id.* A federal public defender also expressed concern that false reports of human trafficking act as barriers to identifying legitimate claims and create skepticism that human trafficking even exists in Southwest Florida: “If the Justice Department had an abominable snowman department with an abominable snowman task force, they would find abominable snowmen in North Naples.” *Id.*

129. *Id.*

130. *Id.*

131. Miko, *supra* n. 37, at 1.

132. *Id.*

ple are victims of human trafficking annually.¹³³ South and Southeast Asia are home to the highest number of victims trafficked internationally.¹³⁴ The former Soviet Union, Latin America, the Caribbean, and Africa are also origin countries for a large number of victims, who typically end up in high-demand metropolises, tourist areas, and military bases.¹³⁵

Recognizing the worldwide scope of human trafficking, the United States government, in fiscal year 2005, spent about \$95 million on 266 international anti-trafficking programs in 101 countries.¹³⁶ In Sierra Leone, for example, the money will help pay for a project to help victims of child trafficking and to strengthen national systems for eliminating exploitive child labor,

133. *Id.* (referencing an estimate by the International Labor Office that at any given time, 12.3 million people are victims of forced labor; eighty percent of these victims are women; and fifty percent are younger than eighteen years old).

134. *Id.* at 2. To discourage the buying, selling, or renting of people, the United States Department of Defense requires all overseas service members to complete a forty-five minute training session, which focuses on “origins, detection, U.S. and DOD policies, and regulations governing human trafficking.” Allison Batdorff, *Human Trafficking Training Mandatory for Overseas Troops*, Stars and Stripes, P. ed., <http://www.estripes.com/article.asp?section=104&article=39956&archive=true> (Oct. 22, 2006). As of June 2006, about 450,000 service members and civilians had completed the online course. *Id.*

135. Miko, *supra* n. 37, at 2.

136. U.S. Dept. of St., *Assessment of U.S. Government Efforts to Combat Trafficking in Persons* 18 (Sept. 2006) (available at <http://www.state.gov/documents/organization/73227.pdf>) (reporting that the amount spent in fiscal year 2005 was sixteen percent more than in fiscal year 2004 and twenty-seven percent more than in fiscal year 2003; partly attributing the increase to a one-time Presidential Anti-Trafficking Initiative that transferred almost \$50 million to Brazil, Cambodia, India, Indonesia, Mexico, Moldova, Sierra Leone, and Tanzania). The United States Department of State also ranks foreign governments according to their efforts in combating human trafficking. U.S. Govt. Accountability Off., *supra* n. 36, at 26. While the rankings in the State Department’s annual report have raised global awareness of human trafficking, encouraged some governments to improve their efforts at combating human trafficking, and threatened to sanction governments that failed to make significant efforts, the GAO reported that the State Department’s report has limited credibility and does not consistently influence anti-trafficking programs. *Id.* The GAO reported that reliable estimates on the number of victims in other countries are not available. *Id.* at 30. Further, the GAO found that the State Department’s report ranked some countries as first tier countries in compliance with minimum standards of combating human trafficking without explaining how they met enough of the criteria. *Id.* at 32. For example, the State Department’s report notes that France fails to comply with the requirement of protecting victims because France allows for the arrest, jailing, and fining of victims, but the State Department’s report does not explain how France’s compliance with other criteria outweighs the deficiency in the noncompliance with the requirement of protecting victims. *Id.* Additionally, the GAO reported that the State Department does not link the people responsible for producing the department’s report with the people responsible for managing overseas assistance programs. *Id.* at 33.

and in Uganda, the money will help reunification of victims with social workers.¹³⁷

I. Effects in the United States

The worldwide scope¹³⁸ of human trafficking has manifested itself in Florida, where traffickers have taken victims from other countries, particularly Guatemala.¹³⁹ A possible reason for the strong connection between Southwest Florida and victims of human trafficking from Guatemala is the substantial Guatemalan migrant population in Southwest Florida.¹⁴⁰ With this backdrop, advocates, suspecting that traffickers have been able to con poor Guatemalans into moving to the United States, have been trying to educate Guatemalans about the dangers of human trafficking.¹⁴¹

In the United States as a whole, most victims are from Southeast Asia and the former Soviet Union.¹⁴² Traffickers force half the victims into sweatshop labor or domestic servitude and the other half into the sex industry or, when children are the victims, may sell them into adoption.¹⁴³ Russian crime groups may also be active traffickers in the United States.¹⁴⁴ Although one concern is that the government's efforts in fighting terrorism have sapped financial, law enforcement, and judicial resources from

137. *Id.*

138. According to at least one report, the United States, Japan, and Australia are the top three destination countries for sex trafficking. Meredith May, *Sex Trafficking: San Francisco Is a Major Center for International Crime Networks that Smuggle and Enslave*, S.F. Chron. A1 (Oct. 6, 2006).

139. Janine Zeitlin, *The Guatemala Connection*, Naples Daily News, http://www.naplesnews.com/news/2006/jan/30/guatemala_connection/ (Jan. 30, 2006).

140. *Id.* (estimating that 29,000 people from the villages of Huehuetenango live in Florida).

141. Janine Zeitlin, *Migrant Educators Take Trafficking Fight to Guatemala*, Naples Daily News, http://www.naplesnews.com/news/2006/jun/05/migrant_educators_warn_about_human_trafficking_gua/ (June 5, 2006) (reporting that migrant educators from Florida delivered public-service announcements to leaders in Guatemala and to a popular radio chain in Guatemala City and also appeared as guests on "Good Morning Guatemala," a popular radio show there).

142. Miko, *supra* n. 37, at 7–8.

143. *Id.*

144. *Id.* at 8.

addressing other issues,¹⁴⁵ the United States government has enacted legislation to combat human trafficking.¹⁴⁶

III. CONGRESSIONAL EFFORT TO COMBAT HUMAN TRAFFICKING

The Victims of Trafficking and Violence Protection Act of 2000¹⁴⁷ (Trafficking Act) seeks to prevent human trafficking, protect victims of human trafficking, and punish traffickers. The “prevention” strand of the act has several components.¹⁴⁸ First, the President must initiate programs providing economic opportunities for potential victims of human trafficking so as to deter them from becoming victims.¹⁴⁹ These programs may train people in business development or in job skills, encourage women to participate in economic decisionmaking, ensure that children stay in school and that victims receive education, develop educational curricula about the dangers of trafficking, and grant money to nongovernmental organizations (NGOs) that can advance the role of women in their countries.¹⁵⁰ Second, the President must initiate programs to raise public awareness regarding the dangers of human trafficking and protections available to victims.¹⁵¹ Third, the President must initiate border-interdiction programs whereby

145. *Id.* at 20.

146. *Infra* pt. III.

147. 22 U.S.C. § 7101(a).

148. *Id.* at § 7104.

149. *Id.* at § 7104(a).

150. *Id.*

151. *Id.* at § 7104(b). Evidence of activity under this requirement seems most recognizable. For example, the United States Department of Justice has established thirty-two task forces in twenty-one states, promoted a model state anti-trafficking statute, and included training on human trafficking in the department’s advanced child-exploitation course. *AG’s Annual Report*, *supra* n. 36, at 23–24. The United States Department of Health and Human Services, during the second year of its *Rescue and Restore Victims of Human Trafficking* public-awareness campaign, strove to raise awareness among people most likely to come into contact with victims: these people include law-enforcement personnel, social-service and healthcare providers, and members of faith-based organizations, ethnic organizations, homeless-assistance groups, and child-protective-service groups. *Id.* The campaign also reached out to members of the local and national media. *Id.* The campaign hotline received more than 4,000 calls, resulting in 120 case leads and 800 referrals to local organizations to help potential victims. *Id.* at 34. The United States Department of State reached out to foreign governments by publishing a report detailing the federal policies against human trafficking and rating 142 foreign governments according to their efforts in combating human trafficking. *Id.* at 38.

survivors of human trafficking can train border guards and officials at key border crossings in how to identify traffickers and victims and how to treat victims.¹⁵² Fourth, the President must support television and radio programs, including documentaries, that inform vulnerable populations overseas about the dangers of trafficking and that inform people in destination countries about the abuses of trafficking.¹⁵³ Fifth, the President must disseminate materials alerting citizens who are traveling to countries where sex tourism is significant that it is illegal.¹⁵⁴ Sixth, the President must consult with nongovernmental organizations in carrying out the first five duties under this “prevention” strand.¹⁵⁵ Finally, during post-conflict and humanitarian assistance, the United States Agency for International Development, the United States Department of State, and the United States Department of Defense must establish anti-human-trafficking and prevention measures for vulnerable populations.¹⁵⁶

Where efforts to prevent human trafficking have failed, the Trafficking Act has provisions to minimize resulting harm. For example, finding that victims of human trafficking were often unfamiliar with the destination country,¹⁵⁷ were physically harmed by traffickers,¹⁵⁸ were in poor health,¹⁵⁹ and that no services or facilities adequately addressed victims’ needs,¹⁶⁰ Congress included in the Trafficking Act a “protection” strand to protect and grant certain rights to victims.¹⁶¹ This “protection” strand has the following two main parts: Part (a) mandates that the Secretary of State and the United States Agency for International Development initiate programs in foreign countries to protect victims and

152. 22 U.S.C. § 7104(c).

153. *Id.* at § 7104(d).

154. *Id.* at § 7104(e).

155. *Id.* at § 7104(f).

156. *Id.* at § 7104(h). The “prevention” strand also requires the President to ensure that any contract providing funds from the federal government to a private entity include a provision allowing the federal government to terminate the contract upon a finding that the private entity has engaged in human trafficking during the time of the contract or in furtherance of the entity’s duties under the contract. *Id.* at § 7104(g).

157. *Id.* at § 7101(5).

158. *Id.* at § 7101(6).

159. *Id.* at § 7101(11).

160. *Id.* at § 7101(18).

161. *Id.* at § 7105.

their children, and Part (c) gives victims in the United States an opportunity to obtain certain benefits and services.¹⁶²

Under Part (a), the programs must support, “to the maximum extent practicable,” nongovernmental-organization hotlines, protective shelters, nongovernmental organizations and their networks, victims’ advocates (who provide legal, social, and other services), education and training for trafficked women and girls, community or family reintegration, and efforts by victims’ families in locating and treating the victims.¹⁶³ Further, in executing these initiatives, the Secretary of State and the United States Agency for International Development must cooperate as much as possible with foreign countries in assisting victims.¹⁶⁴

Under Part (c), a victim of a severe form of trafficking in persons¹⁶⁵ can qualify for protections while in the federal government’s custody.¹⁶⁶ These protections include assurances that law enforcement will not detain the victim in a facility inappropriate for a crime victim (such as a prison), that the victim will receive medical care and other assistance, and that the federal government will protect the victim from threats and reprisals by the trafficker and will not disclose the victim’s identifying information to the public.¹⁶⁷ Also, a victim of a severe form of trafficking has the right to learn about his or her rights and to access translation services and federal anti-trafficking programs.¹⁶⁸ Further, if the victim is both an alien and a potential witness to the trafficking, federal law enforcement may permit the continued presence of the victim in the United States.¹⁶⁹

162. *Id.* at § 7105(a), (c).

163. *Id.* at § 7105(a).

164. *Id.*

165. *Supra* n. 46 and accompanying text (defining “severe forms of trafficking in persons”).

166. 22 U.S.C. § 7105(c)(1).

167. *Id.*

168. *Id.* at § 7105(c)(2).

169. *Id.* at § 7105(c)(3). These protections are subject to the victim being certified as a “victim of a severe form of trafficking in persons.” *Id.* To achieve this certification, the victim, if eighteen or older, must be “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons” and either apply for a visa under section 101(a)(15)(T) or be someone whose continued presence in the United States effectuates prosecution of traffickers. *Id.* at § 7105(b)(1)(C), (E)(i). This “protection” strand also requires that the “[a]ppropriate 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.” *Id.* at § 7105(c)(4).

The Trafficking Act also sought to strengthen prosecution and punishment of traffickers.¹⁷⁰ In particular, the Trafficking Act increased the punishments for the crimes of peonage, enticement into slavery, and sale into involuntary servitude from a maximum of ten years imprisonment to a maximum of twenty years imprisonment.¹⁷¹ The Trafficking Act also added a provision allowing for imprisonment of any term of years up to life in violations causing death, kidnapping or attempted kidnapping, aggravated sexual abuse or attempted aggravated sexual abuse, or an attempt to kill.¹⁷² Additionally, the Trafficking Act added the following four crimes relevant to human trafficking: forced labor; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor; sex trafficking of children or by force, fraud, or coercion; and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor.¹⁷³

IV. STATE EFFORTS TO COMBAT HUMAN TRAFFICKING

Even though the federal Trafficking Act seeks to prevent human trafficking, protect victims, and prosecute traffickers, the United States Department of Justice has written a model anti-trafficking statute for states to adopt into their criminal codes.¹⁷⁴ In explaining why states would enact criminal anti-trafficking statutes when Congress has already done so, the Department of Justice says that federal and state overlap would lead to more prosecutions because local prosecutors could “respond most appropriately to crime problems in their own jurisdictions.”¹⁷⁵ Pointing out that some state constitutions mirror the Federal Constitution regarding involuntary servitude, the Department of Justice

170. *Id.* at § 7109.

171. 18 U.S.C. §§ 1581(a), 1583, 1584 (2006).

172. *Id.* at § 1581(a).

173. *Id.* at §§ 1589–1592. Victims of each of these crimes, except for the crime of unlawful conduct with respect to documents, may recover civil damages. *Id.* at § 1595. The Trafficking Act also added a provision mandating restitution from the trafficker to the victim. *Id.* at § 1593.

174. U.S. Dept. of Just., *Model State Anti-Trafficking Criminal Statute* (available at http://www.usdoj.gov/crt/crim/model_state_law.pdf) [hereinafter *Model State Statute*].

175. *Id.* at 7.

says that uniformity in definitions and concepts will facilitate victim assistance.¹⁷⁶ The Department of Justice further suggests that states should bundle their slavery and human-trafficking statutes in one particular section of their codes so as to increase the likelihood that law enforcement will recognize those crimes.¹⁷⁷

In 2006, several states passed human-trafficking legislation. For example, Colorado and Michigan added to their criminal codes new sections making trafficking in persons a felony.¹⁷⁸ Iowa did the same and also established a procedure whereby state law enforcement and the state attorney general work together to obtain for the victim benefits and services available under federal law.¹⁷⁹ Mississippi enacted the Mississippi Anti-Human Trafficking Act,¹⁸⁰ which makes human trafficking a felony for both the trafficker and anyone who “knowingly aids, abets, or conspires” with the trafficker.¹⁸¹

As states enact human-trafficking legislation, the National Center for State Courts predicts that state courts and law enforcement will confront certain challenges unique to human-trafficking prosecutions.¹⁸² Perhaps the biggest challenge will be in identifying cases of human trafficking because victims are often isolated, told they have no legal recourse, and may fear the idea of testifying.¹⁸³ Also, law enforcement and the justice system may lack the training necessary to identify cases of human trafficking or may confuse trafficking enterprises with prostitution enterprises in which the prostitutes are criminals and not vic-

176. *See id.* (referencing an increase in state prosecutions of racial violence cases in the last twenty years as a model for potential increased local enforcement of the United States Constitution’s guarantee of freedom from involuntary servitude).

177. *See id.* at 7–8 (explaining that prosecutors may not recognize cases of human trafficking when the state code is written in such a way that crimes relevant to human trafficking are in separate sections, such as a kidnapping section or a prostitution section, and, thus, appear disconnected).

178. Colo. Rev. Stat. § 18-13-127 (2006); Mich. Comp. Laws Serv. § 750.462a–i (Lexis 2006).

179. 2006 Iowa Acts 1074.

180. 2006 Gen. Laws Miss. 583.

181. *Id.*

182. Natl. Ctr. St. Cts., *Future Trends for State Courts: Human Trafficking: A Growing Crime to Hit State Courts* (2005) (available at <http://www.ncsconline.org/WC/Publications/Trends/2005/ImmLawHumTraffickingTrends2005.pdf>).

183. *Id.*

tims.¹⁸⁴ Furthermore, penetrating trafficking enterprises is difficult when the traffickers speak a different language.¹⁸⁵

Florida, New York, and California are often reported as states with the highest number of human-trafficking instances.¹⁸⁶ California enacted perhaps the most comprehensive state human-trafficking legislation in the United States with the California Trafficking Victims Protection Act,¹⁸⁷ effective January 1, 2006. The Act makes human trafficking a crime punishable for up to eight years in prison.¹⁸⁸ It provides a civil remedy allowing victims to recover actual damages, compensatory damages, punitive damages, injunctive relief, attorneys fees, costs, any combination of those forms of relief, or any other appropriate relief.¹⁸⁹ The Act also creates a right for victims to prevent disclosure of confidential communication between the victim and a caseworker.¹⁹⁰ Additionally, it creates the California Alliance to Combat Trafficking and Slavery Task Force (California ACTS), whose members are to include, among others, the state attorney general, representatives from the district attorney and public defender associations, representatives from the state departments of health and social services, a university researcher, a mental health professional, victims' advocates, and one survivor of human trafficking.¹⁹¹ Together, they were to study human trafficking in California, examine the relationships between government and nongovernmental organizations in protecting victims of human trafficking, identify programs providing services useful for victims, evaluate the effectiveness of state criminal human-trafficking statutes, evaluate different ways to increase public awareness of human trafficking,

184. *Id.*

185. *Id.*

186. Ctr. for the Advancement of Human Rights, *supra* n. 95.

187. 2005 Cal. Stat. 240. New York followed suit in 2007 with legislation criminalizing human trafficking, authorizing services for victims, and establishing an interagency task force. 2007 N.Y. Laws ch. 74 (S. 5902) (available in WL, NY LEGIS 74).

188. Cal. Penal Code Ann. § 236.1 (Lexis 2006).

189. Cal. Civ. Code Ann. § 52.5(a) (Lexis 2006).

190. Cal. Evid. Code Ann. § 1038 (Lexis 2006). This right to prevent disclosure does not apply when a court determines that the probative value of the information received by a caseworker outweighs the effect of disclosure on the victim, the counseling relationship, and the counseling services when the victim is either dead or not the complaining witness in a criminal action against the trafficker. *Id.* at § 1038.1(a).

191. Cal. Penal Code Ann. § 13990(a), (c) (repealed Jan. 1, 2008).

and recommend ways to strengthen efforts in combating human trafficking.¹⁹²

The scope of California's human-trafficking legislation is broader than the United States Department of Justice's model state anti-trafficking statute, but the maximum criminal punishment is much lower. Whereas the California legislation provides for criminal punishment, a civil remedy, confidentiality of information, and a state task force,¹⁹³ the model statute provides only for a criminal punishment and broadly requires the assessment of the victim's needs.¹⁹⁴ But whereas the maximum sentence for human trafficking under California law is eight years,¹⁹⁵ the maximum sentence under the model statute is life imprisonment or death.¹⁹⁶ Florida should look more closely at California's human-trafficking legislation because Florida's legislation is inadequate where California's legislation is appropriately thorough.

V. FLORIDA'S LEGISLATIVE EFFORTS

Several factors explain why states should enact human-trafficking legislation even though the federal government has already done so,¹⁹⁷ and Florida is no exception. Before Florida enacted its human-trafficking legislation, human trafficking was not within the common knowledge of local law-enforcement officials, yet they would be the first ones to come in contact with victims.¹⁹⁸ Since victims of human trafficking are often reluctant or unable to report the crime, ignorance of local law enforcement decreases the likelihood that anybody would identify the crime. Especially during times when federal law enforcement is focused on what may be more pressing issues, such as terrorism, the ignorance of

192. *Id.* at § 13990(a)(1)–(7). These tasks are similar to those required of New York's interagency task force. *See* N.Y. Soc. Servs. Law § 483-ee(b) (McKinney 2008).

193. *Supra* nn. 188–191 and accompanying text.

194. *Model State Statute*, *supra* n. 174.

195. Cal. Penal Code Ann. § 236.1.

196. *Model State Statute*, *supra* n. 174, at 3.

197. 22 U.S.C. §§ 7101–7112.

198. Terry S. Coonan, *Human Rights in the Sunshine State: A Proposed Florida Law on Human Trafficking*, 31 Fla. St. U. L. Rev. 289, 293–294 (2004) (advocating for the enactment of legislation criminalizing human trafficking in Florida). While conducting vice raids, investigating crime scenes in immigrant communities, or responding to domestic-violence calls, local law-enforcement officers are often in a position to come in contact with victims. *Id.* at 293.

local law enforcement and the diverted attention of federal law enforcement relegate human trafficking to a lower priority.¹⁹⁹ Of course, another reason that Florida would enact human-trafficking legislation is the moral imperative to criminalize the egregious act.²⁰⁰

Human-trafficking legislation is relevant in Florida because Florida has certain characteristics that attract traffickers. For example, Florida has a diverse population, allowing immigrants to blend in easily²⁰¹ and has many jobs in landscaping, stores, and hotels.²⁰² One article cited the following three reasons that traffickers do their business in Florida: money, sun, and unskilled jobs.²⁰³ Wealthy people use a form of quasi-indentured servitude to cut expenses, the thriving and competitive tourism industry prompts unscrupulous business people to save money by using forced labor, and the availability of unskilled jobs attracts immigrants who often do not know their rights.²⁰⁴

A. 2004 Legislation

In 2004, Florida enacted legislation specifically to combat human trafficking.²⁰⁵ The legislation created Florida Statutes Section 787.05, which made unlawfully obtaining labor or services a second-degree felony; Section 787.06, which made human trafficking a second-degree felony; Section 796.035, which made sex trafficking of minors a first-degree felony; Section 796.045, which made sex trafficking a second-degree felony; and amended Section 895.02 to expand the definition of racketeering to include sex trafficking of minors and sex trafficking.²⁰⁶ These new statutes and

199. *Id.* at 294.

200. *Id.* at 295.

201. Interview, *supra* n. 105.

202. Apollo, *supra* n. 102.

203. Zeitlin, *supra* n. 76.

204. *Id.*

205. 2004 Fla. Laws ch. 391.

206. *Id.* First-degree felonies are punishable by up to thirty years or, where explicitly provided by statute, life imprisonment, and second-degree felonies are punishable by up to fifteen years imprisonment. Fla. Stat. § 775.082(3)(b), (c). Sex trafficking is a first-degree felony when the victim is younger than fourteen or when the offense results in death. *Id.* at § 796.045.

the amendment were scattered in the criminal code under various chapters.²⁰⁷

B. 2006 Amendments

In 2006, Florida amended two civil statutes and two criminal statutes²⁰⁸ in order to strengthen the penalties for human trafficking.²⁰⁹ In the civil statutes, the legislation amended Section 772.102 so as to include human trafficking and sex trafficking as the kind of criminal activity allowing a victim to obtain a civil remedy.²¹⁰ The legislation also amended Section 772.104 so as to provide a victim of human trafficking or sex trafficking with a civil cause of action for a maximum of three times the amount gained (presumably by the trafficker) from the human trafficking or sex trafficking.²¹¹ Explicitly, the statute prohibits courts from awarding punitive damages to victims of human trafficking or sex trafficking.²¹²

In the criminal statutes, the 2006 legislation amended Section 787.06 in several ways. The legislation added legislative findings and intent.²¹³ It defines “financial harm”²¹⁴ and redefines “forced labor or services”²¹⁵ to include fraud or coercion, debt practices, and manipulation of victim’s documents. The legislation equates attempted human trafficking with human trafficking²¹⁶ and makes the act of knowingly benefiting financially or receiving value from forced labor or services a second-degree felony.²¹⁷ It

207. The chapters are Chapter 787 (Kidnapping; False Imprisonment; Luring or Enticing a Child; Custody Offenses), Chapter 796 (Prostitution), and Chapter 895 (Offenses Concerning Racketeering and Illegal Debts). The scattering of these provisions is potentially problematic. *See supra* n. 177 (explaining the potential problem with scattering codified human-trafficking legislation among various sections).

208. 2006 Fla. Laws ch. 168.

209. Tel. Interview with Sen. Gwen Margolis, Fla. Sen. (Oct. 19, 2006) (notes on file with *Stetson Law Review*). Inspired initially by a local television station’s series on human trafficking, Senator Margolis was the prime sponsor of the bill, which she called her “most important bill” of the session. *Id.*

210. Fla. Stat. § 772.102(1)(a)(15), (17).

211. *Id.* at § 772.104(2).

212. *Id.* at § 772.104(3).

213. *Id.* at § 787.06(1).

214. *Id.* at § 787.06(2)(a).

215. *Id.* at § 787.06(2)(b).

216. *Id.* at § 787.06(3)(a).

217. *Id.* at § 787.06(3)(b). The offense of human trafficking with the intent or knowledge that the trafficked person will be subject to forced labor or services is still a second-degree

requires the Criminal Justice Standards and Training Commission to establish training standards, and it requires the inclusion of a human-trafficking component in basic skills courses for law enforcement so that those involved may learn how to investigate and prevent human trafficking.²¹⁸ Similarly, the legislation requires state attorneys to establish standards of instruction for prosecutors to learn so that they can more effectively investigate and prosecute human-trafficking offenses.²¹⁹ Finally, the legislation amends Section 895.02 to include human trafficking within the definition of “racketeering activity” (number 23).²²⁰

VI. STRENGTHENING FLORIDA’S HUMAN-TRAFFICKING LEGISLATION

Reflecting a better understanding of the elements of human trafficking, Florida’s legislation is better now than it was in 2004, but it is still inadequate.²²¹ Under the initial 2004 effort, the state legislature criminalized human trafficking,²²² but took no further steps at preventing it, facilitating prosecution, or protecting victims. By merely criminalizing the act, the legislature failed to recognize the unique nature of the act. Victims often are unable or afraid to report the abuses they endure²²³ and generally do not know their rights.²²⁴ Confusing victims as criminals is easy to do because often the traffickers force victims to engage in illegal acts such as prostitution.²²⁵ Human trafficking was not within the common knowledge of law-enforcement officers, whose ignorance of the act diminished the chance of identifying human-trafficking

felony. *Id.* at § 787.06(3).

218. *Id.* at § 787.06(4).

219. *Id.* at § 787.06(5).

220. 2006 Fla. Laws ch. 06-168. Sex trafficking was already within the definition of “racketeering activity” (number 25). *Id.*

221. “Believe it or not, if you went to the legislature before the beginning of the session [in which the legislature introduced the new bill], I would be willing to wager out of 160, probably 20 were aware of how significant this problem was.” Escobales, *supra* n. 1, at 20 (quoting Florida State Senator Skip Campbell, speaking to the Tiger Bay Club while a candidate for State Attorney General).

222. Fla. Stat. § 787.06(2) (section amended in 2006).

223. *Supra* nn. 103–104 and accompanying text.

224. *Supra* nn. 165–169 and accompanying text (addressing the need for victims to learn their legal rights).

225. Miko, *supra* n. 37, at 8 (stating that traffickers force about half of their victims into prostitution).

cases and increased the likelihood that law enforcement would mishandle the cases by identifying victims as criminals.²²⁶ And once victims were freed from their servitude, they often did not know how to integrate themselves into society because they were often from a foreign country,²²⁷ did not speak the local language very well if at all,²²⁸ and had very little money, if any.²²⁹ Even if they could integrate themselves into society, they did not have a strong civil cause of action that could financially cripple the traffickers.²³⁰ Because Florida's 2004 human-trafficking legislation failed to address these issues, it was inadequate.

The 2006 Amendments did address these issues, but not well enough. The amendments recognize the important role that government agencies can play in preventing human trafficking and protecting victims,²³¹ but fail to recognize the no-less-important role of nongovernmental organizations. The Amendments encourage government agencies to cooperate with each other in combating human trafficking,²³² but do not suggest how they should cooperate. Finally, the Amendments allow victims to recover civil damages,²³³ but cap them too low.

226. *Supra* nn. 56–58 and accompanying text (pointing out some effects of weak laws and law enforcement).

227. *Supra* n. 36 and accompanying text (estimating that about 600,000 to 800,000 victims cross national borders annually).

228. *Supra* n. 168 and accompanying text (addressing need for translation services for victims).

229. *Supra* nn. 56–57 and accompanying text (explaining that traffickers sometimes take advantage of the poor to obtain victims).

230. *Supra* nn. 205–207 and accompanying text (showing that Florida's initial legislative effort to combat human trafficking only criminalized it).

231. Fla. Stat. § 787.06(1)(d). "It is the intent of the Legislature . . . that the victims of trafficking be protected and assisted by this state and its agencies." *Id.*

232. *Id.*

[I]t is the intent of the Legislature that the state Supreme Court, The Florida Bar, and relevant state agencies prepare and implement training programs in order that judges, attorneys, law enforcement personnel, investigators, and others are able to . . . direct victims to appropriate agencies for assistance. It is the intent of the Legislature that the Department of Children and Family Services and other state agencies cooperate with other state and federal agencies to ensure that victims of human trafficking can access social services and benefits to alleviate their plight.

Id.

233. *Id.* at § 772.104(2).

A. Florida Should Define a Role for Nongovernmental Organizations

NGOs protect victims from retribution by the traffickers and provide basic and essential needs for victims,²³⁴ including legal services.²³⁵ Sometimes, NGOs identify victims before law enforcement does.²³⁶ NGOs train people to understand the dangers of human trafficking and help victims understand their rights.²³⁷ Other times, NGOs help governments develop stronger laws.²³⁸ In Florida, the Florida Coalition Against Human Trafficking regularly leads training sessions attended by law-enforcement officials and other NGOs.²³⁹

Yet Florida's legislation fails to recognize the role of NGOs and, thus, sends a message that they are not critical in Florida's effort to prevent human trafficking, facilitate prosecution, and protect victims. California recognized the role of NGOs; of the twenty-four spots reserved for the California Alliance to Combat Trafficking and Slavery Task Force, at least four were for members of NGOs.²⁴⁰ If Florida is serious about combating human

234. Human Rights Ctr., *supra* n. 81, at 44. The Coalition of Immokalee Workers at least once worked with local religious organizations to help victims of forced labor; specifically, the NGOs provided peer counseling, clothes, toiletries, housing, and money for telephone calls to family. *Id.*

235. *Id.* at 47.

236. *Id.* at 44.

237. Zarrin T. Caldwell, *The Work of NGOs*, OneWorld US, <http://us.oneworld.net/article/view/109100/1/> (Apr. 8, 2005).

238. *Id.*

239. The Author attended one such training session on August 16, 2006, in Tampa, Florida. The Florida Coalition Against Human Trafficking advocates for the interests of victims of human trafficking, particularly in Southwest Florida. Tel. Interview, *supra* n. 7.

240. The organizations they represent must include the following: a service provider for farm workers, a service provider for children, a service provider for victims of human trafficking in southern California, a service provider for victims of human trafficking in northern California, a legal immigration service provider for low-income people, and an advocacy organization for immigrant workers' rights. Cal. Penal Code Ann. § 13990(c) (repealed Jan. 1, 2008). Similarly, New York recognizes a key role for NGOs:

[T]he office of temporary and disability assistance may enter into contracts with non-government organizations for providing services to pre-certified victims of human trafficking Such services may include . . . 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.

N.Y. Soc. Servs. Law § 483-bb(b).

trafficking, Florida should define the role of NGOs by sending a message that they are critical to Florida's efforts at combating human trafficking.

B. Florida Should Encourage Counties to Form Their Own
Task Forces to Ensure That Law Enforcement and
Prosecutors Statewide Are Working Together

The purpose of a task force is for law-enforcement and social-service organizations to work together in identifying and prosecuting cases and protecting victims.²⁴¹ Because of the unique nature of human trafficking, proper training for first responders, law enforcement, prosecutors, and victims' advocates is critical, as California has recognized.²⁴² In Florida, the Florida Coalition Against Human Trafficking has organized a statewide task force, composed of law enforcement, social-service providers, and victims' advocates.²⁴³ Additionally, the sheriff's departments of Lee and Collier counties, both in Southwest Florida, have formed their own task forces.²⁴⁴ The problem is that if only certain areas of the state have concentrated efforts at combating human trafficking, the traffickers can simply move to other areas of the state where people are less aware of the crime and where law enforcement has no coordinated effort with social-service providers and prosecutors in combating the crime.²⁴⁵

The Department of Justice offers localities a chance to receive federal funding to operate a task force.²⁴⁶ In 2006, the Clearwater

241. Becky Bohrer, *AG Gonzales Worries Interstate 10 Becoming Magnet for Human Trafficking in Gulf Coast Region*, AP DataStream (Oct. 4, 2006) (available at WL, ALLNEWSPLUS database).

242. *Supra* nn. 191–192 and accompanying text (outlining the membership and duties of the California ACTS).

243. Janine Zeitlin, *Group Begins Search for Slavery Victims*, Naples Daily News, http://www.naplesnews.com/news/2006/jun/09/group_begins_search_slavery_victims/ (June 9, 2006).

244. Interview with Shawn Ramsey, Lee Co. (Fla.) Sheriff's Off. Detective (Aug. 16, 2006) (notes on file with *Stetson Law Review*).

245. A conceivable reason that traffickers would not relocate, of course, is if they decide that demand for the services of the victims is too low elsewhere.

246. 22 U.S.C. § 7105(b)(2)(A). The application is available through the Department of Justice's Office for Victims of Crime. U.S. Dept. of Just., *Law Enforcement Task Forces and Services for Human Trafficking Victims*, http://www.ojp.usdoj.gov/ovc/fund/pdftxt/FY06_Trafficking_Victims.pdf#search=%22law%20enforcement%20task%20forces%22 (accessed Nov. 1, 2007). Grant amounts are for three years at \$450,000 each. *Id.* at 4. States, Indian

Police Department was the only Florida locality to receive the federal grant.²⁴⁷ Clearwater plans to use the money to pay for two full-time detectives to investigate human-trafficking cases for three years and to create a task force, which will include representatives from the United States Attorney's Office, the Pinellas-Pasco State Attorney's Office, the Pinellas County Sheriff's Office, and the Regional Community Policing Institute.²⁴⁸ While this new task force is taking steps towards eliminating human trafficking in and around Pinellas County, the task force is still the exception in Florida. Failing to establish a coordinated effort statewide against human trafficking is failing to acknowledge the concept that statewide or regional task forces are critical to Florida's effort in combating human trafficking. In this regard, if Florida wants its legislation to assertively confront the issue, Florida should look more closely at the California ACTS.²⁴⁹

C. Florida Should Allow Victims of Human Trafficking to Recover Punitive Damages from Their Traffickers

Victims should be entitled to receive compensation, and traffickers should be crippled financially so as to make human trafficking a highly risky business. While the risk of serving fifteen years in prison would seem to make trafficking a highly risky business,²⁵⁰ one man's prison sentence does not necessarily cripple a trafficking organization financially because such an imprisonment leaves open the opportunity for a network of traffickers to continue its business. For example, in the case of Hugo Cadena-Sosa, who admitted to federal prosecutors in 2002 that he conspired with others to force women from Mexico to work in his

tribes, tribal governments, local government units, non-profit organizations, and NGOs are eligible to receive a grant. *Id.* at 5.

247. Jacob H. Fries, *City Wins Grant on Human Trafficking*, St. Pete. Times, Largo Times 1 (Oct. 4, 2006). Nine other police agencies nationwide also received grants in 2006. *Id.*

248. *Id.*

249. *Supra* nn. 191–192 and accompanying text (describing the California ACTS).

250. Fifteen years is the maximum prison sentence for committing a second-degree felony. Fla. Stat. § 775.082(3)(c). Human trafficking is a second-degree felony in Florida. *Id.* at § 787.06. However, the prison sentence can increase because of the trafficker's criminal record; for example, the prison sentence for a violent career criminal who commits a second-degree felony is a minimum of thirty years and a maximum of forty years. *Id.* at § 775.084(4)(d).

brothel houses in Fort Pierce, Okeechobee, Avon Park, Palm Beach, Lake Worth, and Fort Myers, Florida,²⁵¹ federal law enforcement initially arrested Cadena-Sosa and fourteen of his co-conspirators, but at least six other co-conspirators remained at large.²⁵² Therefore, penalties for trafficking should not only imprison the people whom law enforcement has caught, but also, as much as possible, financially cripple the entire organization. Florida's human-trafficking legislation, while allowing victims the chance to recover three times their actual damages²⁵³ or three times the amount gained from their services,²⁵⁴ fails to adequately provide the opportunity to cripple trafficking organizations financially because the legislation bars victims from recovering punitive damages.²⁵⁵

Although a criminal conviction coupled with a judgment to pay punitive damages does not violate the defendant's constitutional protection against double jeopardy,²⁵⁶ an award of punitive

251. At least one report estimates that the Cadena-Sosa ring made \$2.5 million in two years. Escobales, *supra* n. 1, at 19.

252. U.S. Dept. of Just., *Florida Man Part of Mexican Trafficking Ring Pleads Guilty to Involuntary Servitude Charges*, http://www.usdoj.gov/opa/pr/2002/September/02_crt_525.htm (Sept. 13, 2002).

253. Fla. Stat. § 772.104(1).

Any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 shall have a cause of action for threefold the actual damages sustained and, in any such action, is entitled to minimum damages in the amount of \$200, and reasonable attorney's fees and court costs in the trial and appellate courts.

Id.

254. *Id.* at § 772.104(2).

As an alternative to recovery under subsection (1), any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of the provisions of s. 772.103 due to sex trafficking or human trafficking shall have a cause of action for threefold the amount gained from the sex trafficking or human trafficking and in any such action is entitled to minimum damages in the amount of \$200 and reasonable attorney's fees and court costs in the trial and appellate courts.

Id.

255. *Id.* at § 772.104(3).

In no event shall punitive damages be awarded under this section. The defendant shall be entitled to recover reasonable attorney's fees and court costs in the trial and appellate courts upon a finding that the claimant raised a claim which was without substantial fact or legal support. In awarding attorney's fees and costs under this section, the court shall not consider the ability of the opposing party to pay such fees and costs. Nothing under this section shall be interpreted as limiting any right to recover attorney's fees or costs provided under other provisions of law.

Id.

256. *Smith v. Bagwell*, 19 Fla. 117, 123 (1882) (explaining that the double jeopardy

damages must still meet certain criteria.²⁵⁷ The United States Supreme Court has established that in reviewing a punitive-damages award, a court must consider the disparity between the actual or potential harm suffered by the plaintiff and the punitive-damages award.²⁵⁸ A four-to-one ratio between the amount of punitive damages and the amount of compensatory damages may be within the realm of “constitutional impropriety.”²⁵⁹ Although that rule suggests a cap on punitive damages, the Court clarified that “a particularly egregious act” resulting in minimal economic damages may warrant a punitive-damages award that is more than four times the compensatory damages award.²⁶⁰

As previously discussed, victims of human trafficking certainly are victims of particularly egregious acts.²⁶¹ Because the amount of compensatory damages is supposed to equal the amount necessary to make the victim whole,²⁶² the amount depends in part on the economic well-being of the victim before the wrongful conduct. Trafficking victims often come from poverty-stricken families.²⁶³ Consequently, their economic damages may be somewhat low. Therefore, under the United States Supreme Court’s standard, a punitive-damages award of four times the compensatory damages may be permissible, yet under Florida law, the victim could recover only up to three times the actual damages or the amount gained from the trafficking.²⁶⁴ This recovery would not necessarily cripple the trafficker financially because it is based in part on how much money the victim needs in order to be at the level of well-being before the wrongful conduct.

prohibition applies only to criminal prosecutions).

257. An award of punitive damages may hurt, but not bankrupt, the defendant. *Bould v. Touchette*, 349 So. 2d 1181, 1186–1187 (Fla. 1977).

258. *St. Farm Mut. Automobile Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003) (stating that the court must also consider the degree of reprehensibility of the defendant’s misconduct and must compare the jury’s award against awards authorized or imposed in comparable cases).

259. *P. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23–24 (1991).

260. *Campbell*, 538 U.S. at 425.

261. *Supra* nn. 62–85 and accompanying text (outlining forms of human trafficking and methods of enslavement).

262. *Mercury Motors Express v. Smith*, 393 So. 2d 545, 547 (Fla. 1981).

263. *Supra* nn. 54–56 and accompanying text (showing that traffickers sometimes prey on the desperation of the poor to obtain victims).

264. Fla. Stat. § 772.104.

Not allowing victims of human trafficking to recover punitive damages is also inconsistent with Florida negligence law, under which the amount recoverable increases as the motivation and intent driving the wrongful conduct become more apparent.²⁶⁵ Although Florida normally caps punitive damages for negligence at three times the compensatory damages or at \$500,000,²⁶⁶ this cap increases to four times the compensatory damages or \$2 million where “the wrongful conduct . . . was motivated solely by unreasonable financial gain and . . . the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known” by the actor.²⁶⁷ Traffickers engage in trafficking principally for financial gain²⁶⁸ by employing physically and emotionally dangerous tactics in forcing other people into prostitution or into other types of servitude.²⁶⁹ Moreover, Florida negligence law removes the cap on punitive damages where “at the time of injury the defendant had a specific intent to harm the claimant and . . . the defendant’s conduct did in fact harm the claimant.”²⁷⁰ Traffickers purposefully injure victims in order to establish control over them.²⁷¹ Therefore, in light of the United States Supreme Court’s standards for recovering punitive damages and Florida’s standards in negligence law, allowing victims of human trafficking to obtain punitive damages would seem to be a more reasonable approach than prohibiting punitive damages altogether. This approach would appropriately expose the trafficker to the severest of civil penalties when the trafficker, out of financial greed, either acted despite knowing the high likelihood of injury or intentionally harmed the victim.

265. *Id.* at § 768.73.

266. *Id.* at § 768.73(1)(a).

267. *Id.* at § 768.73(1)(b).

268. “Slavery’s about money Drugs go into somebody’s arms or up somebody’s nose.” Zambo, *supra* n. 86 (quoting Assistant United States Attorney Doug Molloy explaining that people provide an unlimited supply of cash for traffickers if they work hard enough).

269. *Supra* nn. 63–85 (describing forms of human trafficking and methods of enslavement).

270. Fla. Stat. § 768.73(1)(c). Furthermore, if the court decides that the punitive damages still did not sufficiently punish the defendant, the jury may consider awarding additional punitive damages. *Id.* at § 768.73(2)(b).

271. *Supra* n. 69 and accompanying text (describing the violent methods traffickers use to coerce victims).

This is not to say that victims of human trafficking should always have a chance to recover a lucrative sum. Florida should allow victims of human trafficking to recover punitive damages, but should consider requiring the defendant to pay a portion of the punitive damages to the state for an anti-human-trafficking fund to further efforts at preventing human trafficking and protecting victims.²⁷² For example, the state could use that money to pay for a public-awareness campaign in the victim's country²⁷³ or to help pay for shelters designed specifically for victims of human trafficking.²⁷⁴

The policy of splitting awards of punitive damages between the plaintiff and the state has been subject to criticism.²⁷⁵ One criticism is that splitting the award encourages "runaway awards."²⁷⁶ The argument is that juries are more likely to award large punitive damages because jurors feel comfort in that a single plaintiff will not receive a windfall or that part of the award

272. One potential problem with allowing victims to keep all of the punitive damages would be that a victim's new wealth, if communicated back to people in the victim's home country where traffickers prey, may give potential victims another reason to fall for the traffickers' false promises of a "better life" in America. Thus, in some sense, allowing victims to become too rich may encourage more people to become "victims," willing to risk the abuse for a short time in hopes of escaping and recovering their own award of punitive damages.

273. A more ambitious approach than raising public awareness may be to raise the standard of living for people in the particular area where the victim originated as follows: "What you need to do is to strengthen women and girls so they don't feel they have no place[] to go and no options, and create a situation to gain some of their powers and have opportunities." Janine Zeitlin, *Este Vida Triste, This Sad Life*, Naples Daily News, http://www.naplesnews.com/news/2006/feb/01/nesta_vida_triste_sad_life/ (Feb. 1, 2006) (quoting Vivian Stromberg, executive director of MADRE, a New-York based human-rights group that has worked in rural Guatemala since 1989). Frances Dixon, a resident of North Miami, founded Adopt-A-Village in 1991, a non-profit agency that works with the poor in rural Guatemala; Adopt-A-Village planned to build a secondary school with vocational training in the region. *Id.*

274. A top priority for the Florida Coalition Against Human Trafficking has been to build a shelter for victims of human trafficking. Anne Marie Apollo, *Group Working to Establish a Shelter for Victims of Human Trafficking*, Naples Daily News, http://www.naplesnews.com/news/2006/apr/20/group_working_establish_shelter_victims_human_traf/ (Apr. 20, 2006). Without a shelter, victims may flee or, in the case of males, may stay in jail as a material witness. *Id.* Social-service agencies often have no space or are not designed to house men. *Id.*

275. See Victor E. Schwartz et al., *I'll Take That: Legal and Public Policy Problems Raised by Statutes That Require Punitive Damages Awards to Be Shared with the State*, 68 Mo. L. Rev. 525, 526 (2003) (arguing that split-recovery statutes are "ethically and constitutionally problematic").

276. *Id.* at 538.

will fund a “good cause”; similarly, another concern is that judges, as elected officials, would be more likely to allow for large punitive damages that would fund a “good cause.”²⁷⁷ To avoid these problems, the court could refrain from telling the jury how the court would allocate an award of punitive damages so that the jury would not base its decision about the amount of punitive damages on the prospect of a windfall or on the advancement of a social good. Judges would simply have to continue applying the law as they do with other types of cases; the legislature routinely passes laws based on furthering good causes, and judges have to enforce them.

Another criticism of splitting an award of punitive damages is that the policy would create a conflict of interest between the plaintiff’s lawyer and the plaintiff.²⁷⁸ The concern is that split-recovery statutes have normally excluded plaintiff’s lawyers from having to share their contingency fees (their portion of the award) with the state even though the plaintiffs would have to share their awards with the state.²⁷⁹ This arrangement could make the lawyer the primary beneficiary of a punitive damages award and, thus, give the lawyer a greater incentive to proceed to trial rather than settle.²⁸⁰ A simple solution to this problem would seem to be to limit the percentage of the punitive damages that the lawyer could receive so that it does not exceed the percentage that the plaintiff could receive.

A split-recovery statute would be consistent with the Florida Contraband Forfeiture Act,²⁸¹ which allows county or municipal agencies²⁸² or state agencies²⁸³ to seize contraband articles used for criminal purposes.²⁸⁴ The seizing agency may use the seized

277. *Id.* at 538, 540, 545–546.

278. *Id.* at 544–545.

279. *Id.* at 545.

280. *Id.*

281. Fla. Stat. § 932.701.

282. *Id.* at § 932.7055(5)(a).

283. *Id.* at § 932.7055(6).

284. *Id.* at § 932.704(1).

It is the policy of this state that law enforcement agencies shall utilize the provisions of the Florida Contraband Forfeiture Act to deter and prevent the continued use of contraband articles for criminal purposes while protecting the proprietary interests of innocent owners and lienholders and to authorize such law enforcement agencies to use the proceeds collected under the Florida Contraband Forfeiture Act as supplemental funding for authorized purposes.

property, sell it at public auction, or transfer the property to any non-profit organization.²⁸⁵ Ultimately, the seizing agency may use proceeds derived from the forfeiture proceedings to further the agency's interests. For example, a county or municipal agency may use the proceeds for crime prevention or drug-abuse education.²⁸⁶ Where the seizing agency is a state agency, the agency will deposit the proceeds into the General Revenue Fund.²⁸⁷ Therefore, the Florida Contraband Forfeiture Act allows law enforcement to confiscate contraband used for criminal purposes and to use the resulting proceeds to further law enforcement's crime-prevention efforts. Likewise, a split-recovery statute applicable to cases of human trafficking would allow the state to obtain money earned by trafficking enterprises in order to further the state's interests in combating human trafficking.

Nevertheless, even if Florida were to decide against a split-recovery statute, Florida should still allow victims of human trafficking to recover punitive damages, especially where the traffickers belong to lucrative criminal enterprises that could afford to pay treble damages.

VII. CONCLUSION

Understanding the various elements of human trafficking is necessary in order to know how to prevent it, punish its perpetrators, and protect its victims. The hidden crime of human trafficking is the modern-day version of slavery, and Florida reportedly ranks near the top nationwide in the number of human-trafficking occurrences. Unscrupulous business people in the agriculture, sex, and restaurant industries have defrauded men, women, and children from abroad to move to Florida. Preying on their victims' financial insecurity back home, traffickers lure their poor victims to the United States with promises of legitimate job opportunities and a better life. Upon arriving in the United

Id.

285. *Id.* at § 932.7055(1)(a)–(c).

286. *Id.* at § 932.7055(5)(a).

287. *Id.* at § 932.7055(6). This requirement has exceptions. For example, when the seizing agency is the Division of Alcoholic Beverages and Tobacco, the proceeds go into the Alcoholic Beverage and Tobacco Trust Fund, or, when the seizing agency is the Department of Highway Safety and Motor Vehicles, the proceeds go into the department's Law Enforcement Trust Fund. *Id.* at § 932.7055(6)(c), (d).

States, however, they learn that these job opportunities are not legitimate at all. Rather, they quickly learn that they have become slaves—usually either sex slaves or slave laborers—whose services the traffickers sell over and over again to maximize profits gained from each one.

The victims often work in ordinary-looking neighborhoods and restaurants or on ordinary-looking farms. Their bosses often threaten and physically beat them into submission and silence. Upon defrauding their victims into moving to the United States and forcing them to work against their will, the traffickers have committed the crime of human trafficking. Regardless of the nature of the trafficking, victims rarely report the crime because they typically feel they cannot escape, either because they fear retaliation by the traffickers or because they fear the local police. The result is that prosecutors get few chances to prosecute human traffickers.

Victims who manage to escape seek refuge with NGOs, such as social-service providers or churches, who help victims access necessities such as medical care, food, shelter, psychological counseling, legal services, and clothing. In Southwest Florida, particularly in Naples and Fort Myers, law enforcement has formed task forces that focus on uncovering human-trafficking rings. Task forces and NGOs then work with prosecutors in punishing the traffickers.

In 2004, Florida first passed legislation criminalizing human trafficking as a second-degree felony. While more comprehensive than the 2004 bill, the 2006 amendments to Florida's human-trafficking legislation fail to reflect a full understanding of the various elements of human trafficking. The legislation fails to recognize the critical role that NGOs play and the need for task forces statewide. Further, although victims can recover civil damages, the amount recoverable is too low because the legislation prohibits courts from awarding punitive damages. Rather, the legislation leaves open the possibility that a large human-trafficking organization could survive despite having to pay up to treble damages. Therefore, Florida should strengthen its human-trafficking legislation even more by defining, or at least acknowledging, a role for NGOs and task forces, and by allowing victims of human trafficking to recover punitive damages.