



MODERN SLAVERY IN OUR MIDST:

A Human Rights Report on Ending Human Trafficking in Oregon

June 2010

Prepared by the International Human Rights Clinic at Willamette
University College of Law

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"The victims of modern slavery have many faces. They are men and women, adults and children. Yet, all are denied basic human dignity and freedom. Victims can be abused in their own countries, or find themselves far from home and vulnerable. Whether they are trapped in forced sexual or labor exploitation, human trafficking victims cannot walk away, but are held in service through force, threats, and fear. All too often suffering from horrible physical and sexual abuse, it is hard for them to imagine that there might be a place of refuge. We must join together as a Nation and global community to provide that safe haven by protecting victims and prosecuting traffickers. With improved victim identification, medical and social services, training for first responders, and increased public awareness, the men, women, and children who have suffered this scourge can overcome the bonds of modern slavery, receive protection and justice, and successfully reclaim their rightful independence."

-President Barack Obama, as quoted by Luis CdeBaca, Ambassador-at-Large, Office To Monitor and Combat Trafficking in Persons, at Department of Justice's National Human Trafficking Conference, May 2, 2010.

Prepared by the International Human Rights Clinic at Willamette University College of Law under the Direction and Supervision of Adjunct Professor Kathleen Maloney-Dunn and Assistant Professor of Clinical Law Gwynne Skinner. Legal interns in the Clinic who researched and wrote the report were Tristan Burnett, Keely Hopkins, Faith Morse, Danielle Pratt, and Jessica Santiago, with Michael Bauer. Edited by Kathleen Maloney-Dunn and Gwynne Skinner, with assistance from Clinic legal intern and summer clerk, Erica Rodriguez.

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I. INTRODUCTION

A. Purpose of the Fact-Finding

The International Human Rights Clinic (“the Clinic”) at Willamette University College of Law¹ conducted a fact-finding study between August 2009 and June 2010 to evaluate Oregon’s response to human trafficking. The Clinic undertook a comprehensive approach to the issue, specifically measuring how well federal and state actors within Oregon have complied with Oregon’s obligations regarding trafficking under international and national law. This Human Rights Report on Ending Human Trafficking in Oregon (“the Report”) is an assessment of Oregon’s effort to combat trafficking of men, women and children who have been subjected to forced labor or sexual exploitation.

B. Project Objectives

In measuring Oregon’s performance in preventing trafficking, protecting and assisting victims of trafficking, and prosecuting traffickers (the “Three Ps”) the project’s goal was not to determine the overall level of trafficking in the state, but rather to assess whether Oregon is meeting current federal and international standards. Nonetheless, the Clinic collected and assessed the most recent data and specific statistics on the incidence and prevalence of trafficking crimes and prosecutions in Oregon, as well as on the number of victims protected and assisted. This evaluation, like the myriad other analyses conducted for the report, furthered the main objective of the project, which was to evaluate the state’s existing anti-trafficking infrastructure for, and effectiveness in, implementing the Three Ps required under federal and international laws.

To accomplish this primary objective, the Clinic analyzed the following: all laws in Oregon directly or indirectly related to trafficking; state and federal law enforcement efforts to identify, investigate, and prosecute trafficking crimes within Oregon; governmental and non-governmental programs or services for victim identification and the provision of assistance to and protection of victims; efforts by governmental agencies and non-governmental (“NGO”) groups to raise public awareness and help prevent further trafficking activities; training and funding resources available for implementing the Three Ps; and the level of coordination among all agencies and actors combating trafficking in the state.

C. Main Human Trafficking Themes in Oregon

Human trafficking is a crime with transnational, national, state, and local implications. This crime, usually committed by single individuals, small businesses, gangs, or family networks, is increasingly perpetrated by sophisticated, organized criminal enterprises. According to the

¹ The interviews and research were conducted by students of the Willamette University College of Law International Human Rights Clinic over the course of two semesters. The work was done under the direction and supervision of Adjunct Professor Kathleen Maloney-Dunn and Assistant Professor Gwynne Skinner, who teaches the Clinic. The students involved in the fact-finding and writing the Report were Tristan Burnett, Keely Hopkins, Faith Morse, Danielle Pratt, Jessica Santiago, and Michael Bauer. Erica Rodriguez assisted in the editing. A special thanks to Adjunct Professor Kathleen Maloney-Dunn, whose time and effort into this project was so much greater than what is reasonably expected from an adjunct. This project could not have occurred without her involvement and expertise.

United States Department of Health and Human Services, trafficking in persons is now the second largest criminal industry in the world. Hundreds of thousands of people are trafficked internationally every year, with tens of thousands trafficked annually in the United States.²

Oregon, like other states, is struggling to respond effectively to the adverse impacts of global and domestic trafficking within its own borders. This rapidly growing problem plagues big cities, small towns, and rural areas across America, including many in Oregon.

Although trafficking in persons has been addressed primarily as a crime with national laws and international treaties criminalizing trafficking-related activities, it is equally important to recognize human trafficking as a human rights issue. Traffickers deprive their victims of fundamental rights to freedom, and violate myriad other human rights in compelling or coercing labor and services. Victims of such involuntary exploitation, which many call modern-day slavery, suffer unconscionable physical, sexual, and psychological abuse.

Oregon's particular mix of lax trafficking laws, relatively permissive interpretations of the state Constitution's free speech protections for commercial sex enterprises, high percentages of youth living in foster care and on the streets (including runaway and homeless children), difficult-to-monitor rural farming and forestry operations, and dependence on seasonal, migrant workers has made the state a magnet for human trafficking. Officials in rural areas are also besieged by the challenges and dangers of patrolling remote regions of the state which are under the control of traffickers growing marijuana and running other illegal drugs, operations which go hand-in-hand with trafficking in persons.

Additionally, while neighboring states Washington and California passed anti-trafficking statutes in 2003 and 2005, respectively, Oregon did not criminalize trafficking until 2007. The fact that involuntary servitude and trafficking in persons in Oregon are designated as only Class C or B felonies, while adjacent states designate human trafficking crimes as Class A felonies with higher sentences and penalties, including state forfeiture of traffickers' assets used to compensate victims, also contributes to Oregon serving as a relatively safe haven for traffickers.

The metropolitan Portland area has emerged in recent years as a main hub for sex trafficking. In the last two years, Portland ranked second for the greatest number of children found in forced prostitution among all U.S. cities participating in a nationwide federal law enforcement sting.

Johns Hopkins' School of Advanced International Studies identifies Portland's commercial sex industry as the largest per capita in the nation. Illicit sex trafficking activities often find cover behind such "legitimate" operations, which are rarely subject to oversight or accountability once established, even regarding minors potentially employed by these businesses.³ The intersection

² The International Labor Organization (ILO) estimates that 12.3 million adults and children at any given time are in forced labor, bonded labor, and commercial sexual servitude. The ILO also reports that there are currently 1.39 million victims of sex trafficking, nationally and transnationally, and that 56% of all forced labor is done by women and girls. Trafficking in Persons Fact Sheet, U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT (2009), available at www.state.gov/r/pa/scp/fs/2009/124871.htm.

³ Melody Finnemore, *Human Tender: Oregon Attorneys, Law Enforcement Forge Collaborative Strategy to Combat Growing Trade in Human Trafficking*, Or. State Bar Bull. (Dec. 2009), available at

of two interstate freeways, I-5 and I-84, situates Portland at the crossroads of major sex trafficking routes between Seattle, Los Angeles, and Las Vegas. The port city's proximity to two shipping waterways as well as to the Canadian border provides relatively convenient access for international and domestic traffickers.

Other parts of Oregon are attracting trafficking activity as well. Police report that they encounter three to five victims of human trafficking per week; 80 percent of these are women and 50 percent are children.⁴ Commercial sex establishments line the I-5 corridor, including at truck stops, which facilitate transfers of sex trafficking victims between the Mexican and Canadian borders. Federal prosecutors have reported a recent surge in sex trafficking and related arrests in the Springfield-Eugene area.⁵ The vulnerability of potential victims, especially minors, to sex trafficking in southern Oregon and rural towns is increasing, with sex crimes involving prostituted children and "survival sex" incidents among runaway and homeless youth on the rise.⁶ Trends in Oregon, where more adults are travelling to Southern Oregon to have sex with children they have met online, confirm studies showing that rural children are the ones most often lured into prostitution, not inner city children.⁷ The Southern Oregon High-Tech Crimes Task Force reports a 29 percent increase in crimes involving child pornography and child sexual exploitation in the past year.⁸

Oregon currently ranks 47th out of 50 states in terms of children living in foster care placements.⁹ Given the strong correlation nationally and in Oregon between foster care and homelessness in youth, and the fact that in some urban settings, 30-40% of youth on the streets have come out of foster care,¹⁰ it is not surprising that between 20,000 and 25,000 unaccompanied youth ages 11 to 21 experience homelessness each year in Oregon.¹¹ This youth population runs a much higher risk of sexual victimization and prostitution, with services and funding from federal sources that

www.Osbar.org/publications/bulletin/09dec/humantender.html (stating Portland's large sex industry provides a "kind of camouflage in which sex trafficking victims easily disappear.")

⁴ Ed Langlois, *Human Trafficking Continues to Claim Victims in Oregon*, CATHOLIC SENTINEL, Jan. 29, 2009 available at <http://www.sentinel.org/node/9786> (last visited June 14, 2010).

⁵ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, in Portland, Or. (Mar. 17, 2010).

⁶ Sanne Specht, *Rise in Sex Crimes Involving Children Sparks Concern*, MAIL TRIBUNE, May 26, 2010, available at <http://www.mailtribune.com/apps/pbcs.dll/article?AID=%2F20100526%2FNEWS%2F5260320>; Ian Urbina, *Running in the Shadows: For Runaways, Sex Buys Survival*, N.Y. TIMES, Oct. 27, 2009, available at www.nytimes.com/2009/10/27/us/runaways.html?_r=2&pagewanted=print (reporting studies published in academic and public health journals indicating nearly one-third of runaway children nationwide trade sex for food, drugs or a place to stay, which often leads to formalized prostitution, or sex trafficking of minors; pimps prowl the streets, homeless shelters, malls, and bus stops in search of vulnerable runaway recruits).

⁷ Specht, *supra*, note 6.

⁸ *Id.*

⁹ Interview with Honorable Nan Waller, Judge, Multnomah County Circuit Court, in Portland, Or. (Mar. 29, 2010).

¹⁰ RUNAWAY AND HOMELESS YOUTH INITIATIVE REPORT TO THE LEGISLATURE AND GOVERNOR, Oregon Commission on Children and Families and Oregon Partners for Children and Families, at 3 (Apr. 2007) [hereinafter RUNAWAY AND HOMELESS YOUTH INITIATIVE REPORT].

¹¹ *Id.* (estimating 20,000-25,000 youth between ages 12 and 21 run away, are abandoned, or are homeless over the course of a year in Oregon); *Stronger Youth and Smarter Communities: An Analysis of Oregon's Investment in Runaway and Homeless Youth Programs*, Center for Improvement of Child and Family Services, Portland State Univ., at 5 (May 2009) (estimating 24,000 youth homeless in Oregon each year).

are linked to cities and towns along the I-5 corridor much scarcer or unavailable in rural areas.¹² Some studies and experts estimate that one-quarter to one-third of all children who runaway or end up on the streets in Oregon are lured into prostitution within 48 hours.¹³

In Oregon, an urgent need exists for secure shelters where such victims can receive the services they need to recover. Almost two years ago, the Work Group of the Oregon Task Force on Human Trafficking recommended the provision of secure housing for victims of human trafficking. The Task Force found the following: “Those involved in trafficking of persons do so by controlling the basic necessities of life of their victims. Safe and secure housing is not only a way of protecting victims but cutting the link between abuser and abused.” According to this Task Force, “[r]unaways are prime candidates for human trafficking in the sex trade[,]” and secure living arrangements “would reduce not only the likelihood that these girls would be involved in crime, but that they would become pregnant.”¹⁴

Currently, Oregon does not have any secure shelters for human trafficking victims. It does not even have a shelter for victims of “severe forms of trafficking” under federal law, such as child victims of sex trafficking. Teens over the age of 18 are most vulnerable, as they are legally considered adults and if they are arrested for prostitution, instead of receiving protection or assistance, they are treated as criminals, charged with sex crimes, and if convicted, face jail time and a criminal record. In contrast, “johns” (customers) in Oregon have been given the option of attending a “johns’ school” for a small fee to avoid any criminal record or fines. The traffickers or pimps are rarely prosecuted or convicted; if they are, it is not under Oregon’s trafficking or involuntary servitude statutes, but for compelling prostitution.

However, victims of human trafficking were recognized with the 2009 passage of Oregon’s Senate Bill 839 as individuals the Attorney General may designate as eligible for address confidentiality. While address confidentiality for trafficking victims may seem like a small step, it signifies progress in Oregon’s recognition of the importance of safe housing for victims of this crime.

Large swaths of rural agricultural land in Oregon provide ideal conditions for labor trafficking of immigrant, migrant, and undocumented workers. Abuses of farmworkers, sometimes recruited by brokers and held involuntarily or in conditions amounting to forced labor, indentured servitude or debt bondage, are difficult to unearth when access to farms and work camps is limited. Law enforcement and oversight suffer in vast or relatively inaccessible rural areas.

¹² RUNAWAY AND HOMELESS YOUTH INITIATIVE REPORT, *supra* note 10 (citing estimates that there are 200,000 homeless youth on the streets nationwide). This means that homeless youth in Oregon constitute approximately 10% of all homeless youth in the country.

¹³ Interview with Caroline Holmes, Victim Advocate, FBI Civil Rights Division, in Portland, Or. (Apr. 07, 2010); see also Nikole Hannah-Jones, *Human Trafficking Industry Thrives in Portland Metro Area*, THE OREGONIAN, Jan. 9, 2010, available at www.oregonlive.com/portland/index.ssf/2010/01/human_trafficking_industry_thr.html (“One of three missing teens who ends up on the streets will be lured or forced into prostitution within 48 hours, according to national estimates.”).

¹⁴ Memorandum from the Work Group on Human Trafficking to the S. Interim Judiciary Comm. and The H. Interim Judiciary Comm. (Oct. 30, 2008).

The forestry sector in Oregon also provides fertile ground for labor trafficking. Contractors and subcontractors recruit and use foreign-born labor and migrant or undocumented workers, who are often subject to labor abuses and trafficking.¹⁵

Further barriers arise from linguistic and cultural differences and fear of police and deportation if labor violations or trafficking crimes are reported. Farmworker and forestry-sector victims transported exclusively by subcontractors and contractors, without independent funds or means of public or private transportation to or from labor camps or the woods, or even the right to leave the site, can hardly seek basic or even emergency services. Outreach to these populations by governmental agencies and non-governmental organizations (“NGOs”) is improving gradually in Oregon, but is still quite restrictive. Consequently, individual victims of labor trafficking, who also frequently endure sexual abuse or assault,¹⁶ remain quite isolated.

Labor trafficking victims are also found in domestic servitude in households, in restaurants, in the construction industry, in the drug trade, in nail salons, massage parlors, exotic dancing and escort services throughout Oregon. Many of these individuals suffer both labor and sexual exploitation.¹⁷ Human traffickers operate as individuals, in family units, as loosely-associated groups, labor recruiting agencies, gangs, or organized criminal enterprises.

Internet and cell phone communications make deals among traffickers and their accomplices ever easier and victims ever more vulnerable and transferable. Such electronic networking, advertising, selling, and purchasing of human beings also makes trafficking crimes and offenders less visible. The relatively hidden or anonymous nature of such trafficking transactions in cyberspace also makes it harder to raise public awareness about the nature and prevalence of trafficking crimes.

The lack of public awareness of the scope of the trafficking problem in Oregon contributes to apathy around funding and legislative initiatives, which undermines prevention efforts or educational campaigns, further exacerbating the situation. Training of law enforcement and other public authorities charged with combating trafficking in the state is not possible without mandates and additional funding. In the absence of training on how to identify the victims of trafficking and recognize different forms of the crime, there are not as many arrests, investigations or prosecutions, leading to the public perception that trafficking must not exist in Oregon. Thus, when legislation that adequately criminalizes and combats trafficking, provides protection and assistance to victims, and provides prevention services is introduced, public support for passage of stronger laws, especially those with any fiscal impact, is negligible or inadequate.

Even the legislation that was passed three years ago, in 2007, creating new felony crimes of involuntary servitude and trafficking is not well-known to the general public or law enforcement

¹⁵ Interview with Carl Wilmsen, Executive Director, Alliance for Forest Workers (Feb. 24, 2010); Cassandra Moseley, *Working Conditions in Labor-Intensive Forestry Jobs in Oregon*, Ecosystem Workforce Program Working Paper Number 14, Institute for a Sustainable Environment, Univ. of Oregon, Fall 2006.

¹⁶ Finnemore, *supra* note 3.

¹⁷ *Id.*; see also Clinic interviews with multiple agency representatives working with farm or forestry-sector laborers (on file with Clinic).

personnel; nor is it used by state prosecutors to punish traffickers. Collaboration among law enforcement, state and federal prosecutors, and governmental agencies dealing with immigration issues and the investigation of federal trafficking crimes has been challenging to date, especially given the absence of shared databases, statistics, or standardized procedures to identify and assist victims in all parts of the state. Cooperation and information-sharing among all stakeholders combating sex and labor trafficking crimes has been growing beyond the tri-county area surrounding Portland, but tremendous improvement is still urgently needed for Oregon's trafficking-related statutes and the myriad other public and private anti-trafficking initiatives to become more effective in ending modern-day slavery in the state.

II. METHODOLOGY

In conducting the fact-finding and in writing the Report, the Clinic applied the federal definition of trafficking and did not limit the study to trafficking of a single gender, age group, or particular type of exploitation.

A. Interviews

The research consisted primarily of interviews with individuals involved in combating human trafficking in Oregon or in providing services to trafficking victims. Overall, the Clinic conducted 44 interviews with members of Oregon's anti-trafficking community, including state and federal agency officials, law enforcement officers, prosecuting and defense attorneys, state representatives, NGOs, service providers, judges, private immigration attorneys, and one victim.¹⁸

The interviews consisted of similar open-ended questions, followed by appropriate follow-up questions, pertaining to each interviewee's understanding of the trafficking problem in Oregon, the obstacles hindering combating the problem, the processes and procedures in combating trafficking and their or their organization's involvement in such, and suggested recommendations for improving the anti-trafficking efforts in the state. The Clinic incorporated information gathered from previous interviews into subsequent interview questions. After the interviews, the Clinic conducted follow-up meetings, telephone calls and emails for clarification and corroboration purposes. Detailed interview notes were kept for each interview, and remain on file with the Clinic. Two Clinic students attended each interview and virtually all of the interviews were conducted under the observation, or with the participation, one of the supervising clinical law professors.

¹⁸ Numerous attempts were made to interview more victims. However, this was very difficult because the mental and physical trauma that victims suffer make most of them hesitant to trust anyone enough to share their stories. Many also fear being discovered by their former abusers. Other victims who expressed willingness to talk with the Clinic lost telephone service due to ongoing financial stressors, and contact could not be maintained. In the end, the Clinic was successful in finding one courageous victim who agreed to be interviewed in person in order to help other people who have been, or are at risk of becoming, victims of trafficking.

B. Surveys

In an effort to gather details on the level of awareness and training on the topic of human trafficking across Oregon, the Clinic drafted and distributed surveys to the 36 sheriff departments and 36 district attorney offices within the state.¹⁹ Both surveys were constructed to glean feedback from those coming into direct contact with victims. We asked for information on training of staff, identification of victims, procedures that are in place once a victim of trafficking is identified, and obstacles that officers or district attorneys face when addressing trafficking cases. Of the 72 total surveys sent out, six district attorneys completed and returned the survey and two sheriff offices responded to the survey. The more thorough responses came from departments in the more heavily populated counties.

C. Attendance at Trafficking Trainings, Seminars, and Committee Hearings; Review of Other Relevant Material

In addition to the information gathered through interviews and the survey, Clinic students attended trainings, awareness raising seminars, task force sessions, and legislative committee hearings concerning human trafficking held within Oregon. Clinic students also reviewed FBI press releases, media articles, and training materials.

D. Legal Research

To ascertain Oregon's legal obligations, Clinic students performed in-depth legal research and analysis on international and national law concerning the State's legal obligations to prevent trafficking. This involved researching and analyzing international instruments (such as treaties) related to trafficking, customary international law, and national laws concerning trafficking.

In analyzing Oregon's response toward its legal obligations regarding trafficking, Clinic students also conducted in-depth legal research into Oregon statutes related to trafficking, including their legislative history.

In the end, the Clinic used the information gathered to evaluate whether Oregon is meeting its legal obligations under international and federal law to combat human trafficking. The Clinic measured the policies, procedures, and state legislation currently in place against requirements set forth under federal and international law. The Clinic primarily applied the requisite standards found in two main legal documents: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (commonly known as the Trafficking Protocol, or the "Protocol"); and The Victims of Trafficking and Violence Protection Act of 2000 (commonly referred to as the "Trafficking Victims' Protection Act," or the "TVPA"), and its Reauthorizations in 2003, 2005, and 2008.

¹⁹ A copy of the surveys can be found in Appendix A.

III. LEGAL OBLIGATIONS

A. International Law

The United States Constitution includes a provision, commonly known as the Supremacy Clause, which incorporates international treaties and other international law into the law of the United States.²⁰ As Supreme Court Justice Gray famously wrote, “International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination.”²¹ Treaties of the United States and customary international law²² are thus a part of the law of the United States. In addition, U.S. treaties and customary international law are part of the law of each state.²³ The United States has ratified specific international instruments to combat human trafficking, including a trafficking treaty.²⁴ In doing so, it has made a reservation²⁵ indicating that federalism principles apply, thereby specifically invoking the laws of the states as part of the federal government’s intent to comply with its obligations under the Protocol.²⁶

²⁰ U.S. CONST. art. VI, cl. 2. “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

²¹ *The Paquete Habana*, 175 U.S. 677, 700 (1900); *accord Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); *United States v. Smith*, 18 U.S. 153 (1820), *Filartiga v. Pena-Irala*, 630 F.2d 876 (2nd Cir. 1980).

²² “Customary international law” denotes a long established tradition or usage that is (a) consistently and regularly observed by nations and (b) recognized by those nations observing it as a practice that they must follow. That is, customary international law consists of a *consistent government practice* followed out of a sense of *legal obligation*. The technical legal argument about the incorporation of customary international law into the law of the individual states is outside the scope of this Report, as customary international law is unnecessary to establish U.S. state obligations under international law because of the positive treaties the United States has ratified. *See infra* note 26. However, it should further be noted that the prohibition against slavery is one such custom that has risen to the level of *jus cogens*, or peremptory norm, in international law from which no country may derogate. *Filartiga*, 630 F.2d at 890 (mentioning slavery is *jus cogens*), *quoted with approval in Sosa*, 542 U.S. at 732. Human trafficking is a form of modern day slavery.

²³ *Hauenstein v. Lynham*, 100 U.S. 483, 490 (1880). “It must always be borne in mind that the Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution. This is a fundamental principle in our system of complex national polity.”

²⁴ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, to the Convention Against Transnational Organized Crime, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/25, *opened for signature* Dec. 12, 2000 (*entered into force* Dec. 25, 2003), *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (last visited on March 15, 2010) [hereinafter Trafficking Protocol].

²⁵ A reservation to a treaty is “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331.

²⁶ There is a difference between a “self-executing treaty” and a “non-self-executing treaty” in creating enforceable legal norms. *Medellin v. Texas*, 552 U.S. 491, 504-05 (2008). A self-executing treaty becomes a part of U.S. law without any implementing legislation. A non-self-executing treaty requires implementing legislation to become enforceable law, and is enforced through the implementing legislation. The Trafficking Protocol most likely is not a self-executing treaty. However, the unique circumstances surrounding the Protocol suggest that implementing legislation is unnecessary. Congress initially passed the TVPA in 2000. The United States ratified the Trafficking Protocol in 2005. Federal law already substantially complied with most provisions of the Protocol at that point

Consequently, the Trafficking Protocol and its related international instruments are effective and binding on state legislatures, creating certain obligations for Oregon. This holds true, even in domains typically and historically controlled by state authority.²⁷ Thus, examining the international treaties specifically pertaining to human trafficking is necessary to understand Oregon's obligations arising from these treaties, the compliance with which this Report seeks to evaluate.

Although there is both customary international law relating to slavery as well as various other treaties and international documents that address trafficking in persons,²⁸ the set of international

because of the TVPA. Subsequent reauthorizations of the TVPA in 2003, 2005, and 2008 brought the federal trafficking statute into even closer alignment with the Protocol's key provisions. Although Congress has not passed explicit federal implementing legislation, as it normally does to give domestic effect to such non-self-executing treaties, the passage of the TVPA and its Reauthorizations effectively serves this function.

In addition, three other circumstances indicate that the Protocol probably does not need implementing legislation to give it effect in federal or state law. First, the treaty does not create individual rights that are judicially enforceable; rather, it creates an obligation for the federal government and the individual states to meet the requirements under the treaty. Implementing legislation is essential for a non-self-executing treaty that creates an individual right to sue, but in this case, the treaty alone serves to create the obligation on the states, regardless of additional action, obviating in large part the need for implementing legislation. Second, the U.S. Senate did not attach a declaration stating that the Protocol was non-self-executing, as it sometimes does with treaties, indicating that Congress may not believe implementing legislation is necessary. Third, when the United States ratified the Protocol, it made a reservation explicitly recognizing that it was assuming its treaty obligations in a manner consistent with federalism principles, pursuant to which both federal and state criminal laws must be considered in relation to the conduct addressed by the Protocol. These factors suggest that the intent of the United States when it ratified the Protocol was for it to become judicially-enforceable domestic law in both federal and state arenas without specific implementing legislation. To the extent that federal implementing legislation is necessary, the TVPA and its Reauthorizations fills the void. This role of the TVPA was emphasized in a recent speech by an official of the executive branch: "The [Trafficking] Protocol mandates the criminalization of human trafficking, and the TVPA is enforcement driven, because a policy solution to a heinous crime problem must involve freeing the victims and punishing their tormentors." Luis CdeBaca, Ambassador-at-Large, Office to Monitor and Combat Trafficking in Persons, Dept. of Justice's National Human Trafficking Conference (May 3, 2010) (transcript available at <http://www.state.gov/g/tip/rls/rm/2010/141446.htm>).

²⁷ *State of Missouri v. Holland*, 252 U.S. 416, 434-435 (1920).

²⁸ Trafficking Protocol, *supra* note 24, at art. 1(1). Many international agreements specifically address the issue of slavery. A few are listed here to demonstrate that prohibiting slavery is *jus cogens*: the International Agreement for the Suppression of the White Slave Traffic (1904); Convention to Suppress the Slave Trade and Slavery (1926); International Labor Organization Forced Labor Convention (1930); U.N. Supplementary Convention on Abolition of Slavery (1956); International Labor Organization Abolition of Forced Labor Convention (1957).

Many other international instruments also address human trafficking and the myriad human rights concerns connected with this issue. For example, each of the International Bill of Human Rights documents contain articles relating to human trafficking and its victims: the Universal Declaration of Human Rights (Articles 4, 5, 8, 23, 24, 25, 26) (1948); the International Covenant on Economic, Cultural and Social Rights (Articles 1, 2, 6, 7, 8, 10, 12, 13) (1966); and the International Covenant on Civil and Political Rights (Articles 2, 7, 8, 12, 24) (1966). Additional provisions relevant to human trafficking issues can be found in the International Convention on the Elimination of All Forms of Racial Discrimination (Articles 1, 2, 5) (1969); the Convention on the Elimination of All Forms of Discrimination Against Women (Articles 1, 2, 3, 6, 10, 11, 14) (1979); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 1, 2, 3, 4, 5, 9, 10, 12, 13, 14, 16) (1987); the Convention Relating to the Status of Refugees (1951); the Convention on the Rights of the Child (Articles 1, 2, 6, 8, 9, 11, 12, 19, 20, 22, 24, 27, 28, 31, 32, 33, 34, 35, 36, 38, 39) (1989); the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12) (2002); and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (Articles 1, 2, 3, 4, 5, 6) (2002). All are available at

commitments specifically addressing trafficking the United States has ratified are found in the Convention Against Transnational Organized Crime,²⁹ the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,³⁰ and the Interpretative Notes (Travaux Préparatoires) to the Trafficking Protocol.³¹ These three documents must be read and interpreted together.

1. Definition of Human Trafficking

Under the Protocol, human trafficking is

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.³²

The Protocol provides additional protection for children by eliminating the “means” requirement if the victim is under the age of 18.³³

According to the Protocol, exploitation includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”³⁴ Consent of a victim to the intended exploitation is irrelevant.³⁵ Therefore, Oregon’s response to human trafficking cannot exclude any of the enumerated forms of this crime and still fully comply with its obligations under these instruments.

2. Scope of the Trafficking Protocol and Convention

The Trafficking Protocol broadly defines the crime of human trafficking. However, the Protocol limits its scope to transnational crimes involving an organized criminal group.³⁶ These important terms are defined in the parent Convention Against Transnational Organized Crime.

<http://treaties.un.org/Pages/UNTSONline.aspx?id=1>. This is by no means an exhaustive or complete list. It is important to remember that the majority of these instruments are human rights related and their paradigm is based on those principles. However, this Report specifically focuses on the obligations related to the United Nations’ Human Trafficking Protocol and the Convention Against Transnational Crime because these are treaties ratified by the U.S. and create legal obligations for Oregon. *See supra* notes 22-26.

²⁹ United Nations Convention Against Transnational Organized Crime, Jan. 8, 2001, A/RES/55/25, *available at* <http://www.unhcr.org/refworld/docid/3b00f55b0.html> (last visited May 3, 2010).

³⁰ Trafficking Protocol, *supra* note 24.

³¹ *Travaux Préparatoires* of the Negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, U.N. Doc A/55/383/Add.1 (Nov. 3, 2000), *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/383a1e.pdf (last visited March 15, 2010).

³² Trafficking Protocol, *supra* note 24, at art. 3(a).

³³ *Id.* at art. 3(c).

³⁴ *Id.* at art. 3(a).

³⁵ *Id.* at art. 3(b).

³⁶ *Id.* at art. 4.

Keeping in mind that “State” as used in the Protocol refers to countries, a crime is “transnational” if any of the following criteria are met:

- (a) It is committed in more than one State;³⁷
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.³⁸

This definition encompasses many possible variations of transnational interactions; however, it fails to specifically include domestic trafficking within the scope of the Convention and Protocol. To some extent, this omission reflects the nature of the instruments as international agreements on transnational crime. While the Protocol itself does not require criminalization of domestic trafficking absent some transnational element, practically speaking, criminalizing only transnational trafficking committed within national jurisdictions is problematic for at least two reasons. First, the realities of trafficking networks and international communication systems mean criminal groups frequently engage in criminal activity in more than one country. Second, there are likely to be political problems if a country criminalized behavior, for instance, only if the victim (or perpetrator) was foreign born, but not if the victim (or perpetrator) was a citizen.

The Convention defines an “organized crime group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences . . . in order to obtain, directly or indirectly, a financial or other material benefit.”³⁹ Human rights activists have criticized this part of the definition and scope.⁴⁰ Many traffickers are part of small teams, such as a husband and wife, which work one victim at a time.⁴¹ Under the current definition and scope, they are not covered by the Protocol, and thus fall outside states’ legal obligation to criminalize such activity under the Protocol.⁴²

3. The Obligations to Prevent, Punish and Protect

These international human trafficking instruments impose legal obligations for each of the signing/ratifying State Parties, including the United States, which effectively binds the individual

³⁷ In the Convention, the word “State” refers to a nation or country, such as the United States, not an individual state such as Oregon.

³⁸ United Nations Convention Against Transnational Organized Crime, *supra* note 29, at art. 3(2).

³⁹ *Id.* at art. 2(a).

⁴⁰ Ann D. Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol*, The International Human Rights Law Group, at 9 (2002), available at http://www.globalrights.org/site/DocServer/Annotated_Protocol.pdf (last visited on Dec. 2, 2009).

⁴¹ See, e.g., Levi Pulkkinen, *Charge: Man, Woman Abducted Girl for Prostitution*, SEATTLE POST-INTELLIGENCER, Mar. 29, 2010, available at http://www.seattlepi.com/local/417564_child29.html (A man and a woman in Seattle are charged with luring a 17-year-old girl with promises of a job and then forcing her to “walk the track” and have sex with several men. She escaped by asking a bartender for help as the two tried to physically drag her away from the bar).

⁴² United Nations Convention Against Transnational Organized Crime, *supra* note 29, at art. 2(a).

states, like Oregon, to the same obligations.⁴³ The obligations under these instruments can be divided into three categories (commonly referred to as the Three Ps): Prevent, Punish, Protect.⁴⁴

Prevent: The Trafficking Protocol contains several articles that create obligations to prevent human trafficking. Generally, these obligations are: (1) educating the community and the stakeholders, (2) strengthening cooperation among parties to the treaty, and (3) strengthening national borders.

First, the Protocol requires countries to engage in “research, information and mass media campaigns and social and economic initiatives” that will combat human trafficking.⁴⁵ Further, it requires countries to “take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.”⁴⁶ This obligation recognizes that human trafficking is a symptom of a much larger problem and that human trafficking cannot be stopped without addressing the underlying causes. Additionally, the countries must confront the demand for trafficking victims through legislative, educational, social or cultural measures.⁴⁷

Second, countries are to cooperate in the exchange of information, and create or strengthen existing training related to human trafficking.⁴⁸ Such cooperation includes providing training to law enforcement, immigration and other relevant officials.⁴⁹ The training should contain “methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.”⁵⁰ The training should also take into account human rights and child- and gender-sensitive issues.⁵¹

Finally, countries are to strengthen border controls in an effort to control and eliminate human trafficking. In addition, countries are to enact legislation or other appropriate measures to prevent commercial carriers from being used in human trafficking offenses.⁵² The Protocol encourages sanctions for violations by commercial carriers, as well as the revocation of visas of those convicted of human trafficking.⁵³

⁴³ *Hauenstein v. Lynham*, 100 U.S. 483, 490 (1880).

⁴⁴ The Protocol includes some mandatory and some recommended actions. When something is voluntary as opposed to mandatory, it is labeled as such throughout.

⁴⁵ Trafficking Protocol, *supra* note 24, at art. 9(2).

⁴⁶ *Id.* at art. 9(4).

⁴⁷ *Id.* at art. 9(5).

⁴⁸ *Id.* at art. 10(1) and (2).

⁴⁹ *Id.* at art. 10(2).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at art. 11(2).

⁵³ *Id.* at art. 11(4) & (5). It should be noted, however, that there are problems associated with expecting airlines and other commercial carriers to enforce our national immigration laws. Preventing asylees escaping persecution, who often do not have proper documents, from boarding an airplane, for example, could lead to unintended and even severe negative consequences and human rights violations.

Punish: The Protocol requires countries to criminalize human trafficking and sets forth the required mens rea, or mental state, at the level of “intentionally.”⁵⁴ However, individual states may institute a lesser mens rea standard, such as “knowingly,” in their respective laws, as the United States has done in the Trafficking Victims Protection Act of 2000, since more trafficking conduct is effectively criminalized under this standard than the Protocol mandates. Additionally, the Protocol requires countries to enact laws criminalizing attempts at human trafficking, being an accomplice, or conspiring to traffic persons.⁵⁵

Protect: The Protocol sets forth specific obligations to protect and assist the victims of human trafficking. First, there is an obligation to protect the privacy and identity of trafficking victims, including requiring legal proceedings to be confidential.⁵⁶ Second, countries are required to provide information about relevant court and administrative proceedings to victims and to assist victims presenting their case against their traffickers “in a manner not prejudicial to the rights of the defence.”⁵⁷

Additional recommended protection and assistance measures include providing for the physical, psychological, and social recovery of trafficking victims, such as providing appropriate housing, counseling and legal information; medical, psychological and material assistance; and employment, educational and training opportunities.⁵⁸ Countries should remove language barriers;⁵⁹ ensure physical safety, consistent with their rights;⁶⁰ and make victim compensation available.⁶¹

In summary, all countries, including the United States and its constituent states, should protect victims’ privacy; provide information about proceedings; provide assistance for the victims’ welfare; provide security; and create legal mechanisms for compensation.

B. Federal Law

1. The U.S. Constitution’s Thirteenth Amendment

The Thirteenth Amendment to the U.S. Constitution was adopted on December 6, 1865. The intention of the Amendment was to abolish slavery in the United States. The drafters of the Amendment chose to keep the language very broad. The Amendment states:

Section 1: Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist in the United States, or any place subject to their jurisdiction.

⁵⁴ *Id.* at art. 5(1); *see also* note 250.

⁵⁵ Trafficking Protocol, *supra* note 24, at art. 5(2).

⁵⁶ *Id.* at art. 6(1).

⁵⁷ *Id.* at art. 6(2)(b).

⁵⁸ *Id.* at art. 6(3) and (4).

⁵⁹ *Id.*

⁶⁰ *Id.* at art. 6(5) and (6).

⁶¹ *Id.*

Section 2: Congress shall have the power to enforce this article by appropriate legislation.⁶²

Although the immediate effect of the Amendment was wildly successful and a huge step in eradicating slavery across the country, many people do not realize that there are still lasting remnants of slavery in the United States today. This comes in the form of human trafficking.

While involuntary servitude is included in the Thirteenth Amendment, offenses under the Amendment have not been prosecuted since 1947.⁶³ In 1988, the U.S. Supreme Court concluded that the Thirteenth Amendment did not prohibit involuntary servitude through psychological coercion.⁶⁴ However, the Court set forth three situations in which involuntary servitude could violate the Thirteenth Amendment: where there is (1) threatened or actual physical force, (2) threatened or actual state-imposed legal coercion, or (3) fraud or deceit where the servant is a minor, an immigrant or is mentally incompetent.⁶⁵ It was not until the United States passed the Trafficking Victims Protection Act of 2000 that federal law on human trafficking included psychological coercion.

2. Federal Statute: The Victims of Trafficking and Violence Protection Act of 2000 and Subsequent Reauthorizations

a. Purpose of the Act

In an effort to strengthen the U.S. response to trafficking domestically and abroad, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 (commonly referred to as the “Trafficking Victims’ Protection Act,” or the “TVPA”) in October 2000.⁶⁶ The TVPA explicitly notes that trafficking is a grave violation of human rights, and that the international community has condemned slavery, involuntary servitude, violence against women, and other elements of trafficking in over twelve different declarations, treaties, UN resolutions and UN reports.⁶⁷ The TVPA codified this international condemnation, and attempts to ensure that victims in the United States are protected and their traffickers effectively punished.⁶⁸

The U.S. Congress enacted numerous statutes prohibiting slavery between 1794 and 1865, when the 13th Amendment was adopted.⁶⁹ The TVPA, however, represents the first comprehensive

⁶² U.S. CONST. amend. XIII.

⁶³ Risa L. Goluboff, *The Thirteenth Amendment and the Lost Origins of Civil Rights*, 50 DUKE L.J. 1609 (2001).

⁶⁴ *United States v. Kozminski*, 487 U.S. 931, 949-50 (1988).

⁶⁵ *Id.* at 952-53.

⁶⁶ Victims of Trafficking and Violence Protection Act of 2000 § 102(a) & (b), Pub. L. No. 106-386 (codified as amended in scattered sections of 8 U.S.C., 18 U.S.C., 22 U.S.C., and 42 U.S.C.) *available at* <http://www.state.gov/g/tip/laws/61124.htm> [hereinafter TVPA].

⁶⁷ *See id.* at § 102(b)(23).

⁶⁸ *See id.* at § 102(a).

⁶⁹ An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country (1794); An Act in Addition to the Act Entitled “An Act to Prohibit the Carrying on the Slave Trade from the United States to any Foreign Place or Country” (1800); An Act to Prevent the Importation of Certain Persons into Certain States, Where, by the Laws Thereof, Their Admission is Prohibited (1803); An Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States, From and After the First Day of January,

legislation to address the modern manifestation of slavery: human trafficking. In the TVPA, Congress reconfirms that the right to be free from slavery and involuntary servitude is an unalienable right recognized in the Declaration of Independence, and that trafficking is an evil that requires concerted and vigorous action.⁷⁰ Congress further condemned trafficking by emphasizing the twelve international instruments, declarations and UN reports in the “Purposes and Findings” section of the TVPA. Notably, Congress enacted the legislation during the same month the Protocol was presented for signature (it came into force in 2003).⁷¹ While the United States was integrally involved in drafting and supporting the Protocol and signed it in 2000, Congress did not ratify the Protocol until November 2005.⁷² Therefore, the enactment of the TVPA in 2000 cannot be directly attributed to the United States’ intention and effort to meet its obligations under the Protocol, at least not until the TVPA’s second and third Reauthorizations in 2005 and 2008. The content of the TVPA, however, does reflect the principles set forth by the international community in the Protocol.

Like the Protocol, the purpose of the TVPA is to combat human trafficking by protecting victims, predominantly women and children, and ensuring just and effective punishment of traffickers. Congress reauthorized the TVPA in 2003, 2005, and 2008. The original legislation’s amendments have sought to strengthen victim access to protection and assistance, and to increase the capacity of law enforcement to prosecute traffickers. The TVPA has been codified in various chapters of the United States Code regarding Aliens and Nationality (Title 8);⁷³ Crimes and Criminal Procedure (Title 18);⁷⁴ Foreign Relations and Intercourse (Title 22);⁷⁵ and Public Health and Welfare (Title 42).⁷⁶

b. Federal Definition of Trafficking

The TVPA defines trafficking generally as: The use of coercion, deception or force for the purpose of placing men, women or children in slavery or slavery-like conditions for continued exploitation.⁷⁷ More specifically, some key definitions of terms included in the TVPA are as follows:

SEX TRAFFICKING: The crime of recruiting, harboring, transporting, providing, or obtaining a person for the purpose of a commercial sex act.⁷⁸

SEVERE FORMS OF TRAFFICKING IN PERSONS: Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person

in the Year of our Lord One Thousand Eight Hundred and Eight (1807); Fugitive Slave Act (1850); U.S. CONST. amend. XIII. *See also supra* note 66, TVPA at § 102(b)(22).

⁷⁰ *Supra* note 66, TVPA at § 102(b)(22) & (21).

⁷¹ *Supra* note 66, TVPA at § 102(b)(22) & (21); Trafficking Protocol, *supra* note 24.

⁷² The United States signed the Protocol on Dec. 13, 2000, and ratified it on Nov. 3, 2005. *See* U.N. Treaty Collections *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=XVIII-12-a&chapter=18&lang=en.

⁷³ 8 U.S.C. §§ 1101, 1182, 1184, 1229(b), 1231, 1232, 1252, 1367, and 1375(b).

⁷⁴ 18 U.S.C. §§ 1581-1596 and app. § 2H4.1.

⁷⁵ 22 U.S.C. §§ 2151(n), 2152(d), 2211, 2304, 2370(c)(1), 4028, 7101-7112, 7833.

⁷⁶ 42 U.S.C. § 14044(a)-(f).

⁷⁷ *Supra* note 66, TVPA at § 103(2), (3), (4), (5), (8), (9), (13), (14).

⁷⁸ *Id.* at § 103(9); 22 U.S.C. § 7102(9).

induced to perform such act is under the age of 18; 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.⁷⁹

VICTIM OF TRAFFICKING: A person subjected to a severe form of trafficking or sex trafficking.⁸⁰

COERCION: Threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process.⁸¹

COMMERCIAL SEX ACT: Any sex act on account of which anything of value is given to or received by any person.⁸²

DEBT BONDAGE: The status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.⁸³

INVOLUNTARY SERVITUDE: A condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process.⁸⁴

c. Minimum Standards for Foreign Governments to Address Trafficking

Although the TVPA is a federal law, and therefore is only binding on the United States, it establishes detailed methods for the U.S. Department of State⁸⁵ to evaluate other countries' efforts to combat human trafficking.⁸⁶ Ironically, and unfortunately, the TVPA is less detailed in establishing criteria for evaluating U.S. federal and state entities. The methods used to evaluate

⁷⁹ *Supra* note 66, TVPA at § 103(8); 22 U.S.C. § 7102(8).

⁸⁰ *Supra* note 66, TVPA at § 103(14); 22 U.S.C. § 7102(14).

⁸¹ *Supra* note 66, TVPA at § 103(2); 22 U.S.C. § 7102(2).

⁸² *Supra* note 66, TVPA at § 103(3); 22 U.S.C. § 7102(3).

⁸³ *Supra* note 66, TVPA at § 103(4); 22 U.S.C. § 7102(4).

⁸⁴ *Supra* note 66, TVPA at § 103(5); 22 U.S.C. § 7102(5).

⁸⁵ A cabinet-level Interagency Task Force is responsible for evaluating other countries efforts to combat trafficking. The TVPA established the Office to Monitor and Combat Trafficking in Persons, U.S. Dept. of State, to provide operational support to the Task Force. *Supra* note 66, § 105(e); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, §§ 101, 102, Pub. L. No. 110-457 available at <http://www.justice.gov/olp/pdf/hr3887.pdf>; 22 U.S.C. § 7103 [hereinafter TVPRA].

⁸⁶ Countries of origin, transit and destination for victims of severe forms of trafficking are evaluated by the State Department according to the minimum standards set forth in the TVPA. *Supra* note 85, TVPRA § 106; 22 U.S.C. § 7106(a).

other countries are encapsulated in the “minimum standards.”⁸⁷ In preparing this Report, the Clinic used the United States’ proposed minimum standards for other countries and applied these standards internally. [The day before this Report went to press on June 16, 2010, the State Department released its annual reports on countries’ efforts to combat trafficking, and for the first time, reported on the United States’ efforts as well. Although the United States was listed as a Tier 1 country, the report acknowledges weaknesses in the efforts in the United States to combat trafficking. Among the recommendations are to improve law enforcement data collection on human trafficking cases and to offer more advanced training. Unfortunately, we were not able to incorporate that report into this Report. For the report in detail, please visit www.state.gov/g/tip/rls/tiprpt/2010/142761.htm.]

According to the TVPA’s minimum standards for evaluating other countries, such countries must: (1) prohibit and punish severe forms of trafficking; (2) ensure that the punishment of certain forms of sex trafficking is commensurate with that of forcible sexual assault, adequately reflects the gravity of the crime, and serves as a deterrent; and (3) make serious and sustained efforts to eliminate severe forms of trafficking.⁸⁸ Some of the criteria used by the United States to determine whether a country is making serious and sustained efforts include examining whether there is vigorous investigation and prosecution of cases, and whether the country is cooperating with other governments on these issues. The United States investigates whether victims are protected, including whether countries are refraining from repatriating the victims to their countries of origin if they risk retribution or hardship, and not criminalizing victims. Finally, the United States analyzes prevention measures and government efforts to identify and investigate trafficking patterns.⁸⁹

In 2009, the U.S. State Department expanded the scope of the international evaluation to include a section on domestic efforts in the United States to combat trafficking. The 2009 Trafficking in Persons (TIP) report provided information on measures taken to prevent trafficking, protect and assist victims, and prosecute traffickers in the United States.⁹⁰ It is unclear if the same minimum standards to assess foreign countries were applied internally. The subsection on the United States provided a brief summary of current programs, but failed to include an assessment of whether such efforts are serious and sustained.⁹¹ While it is commendable that domestic activities are finally included in the global review, the U.S. State Department should consider conducting a more stringent analysis of federal and state efforts. [As mentioned above, the day before this report went to press, the State Department released its annual reports, and for the first time, included the United States]. The TVPA specifically outlines actions that will be taken by the United States against foreign governments that fail to meet the minimum standards to combat trafficking set forth by Congress.⁹² At a minimum, the federal government should ensure that the capacity of the fifty U.S. states is increased so that they, too, can meet these basic standards.⁹³

⁸⁷ *Supra* note 66, TVPA at § 108; *supra* note 85, TVPRA at § 106; 22 U.S.C. § 7106.

⁸⁸ *Supra* note 66, TVPA at § 108(a) & (b); *supra* note 85, TVPRA at § 106; 22 U.S.C. §§ 7106 & 7107.

⁸⁹ *Supra* note 66, TVPA at § 108(b)(1), (2), (3), (4), (6); *supra* note 85, TVPRA at § 106; 22 U.S.C. § 7106.

⁹⁰ U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT 2009, at 57.

⁹¹ *Id.*

⁹² *Supra* note 66, TVPA at § 110; *supra* note 85, TVPRA at § 107; 22 U.S.C. § 7107.

⁹³ States, however, do have a clear obligation to enforce the minimum federal statutory standards in combating trafficking within their jurisdiction, just as they have an obligation to meet minimum international standards because

d. General Overview of Federal Requirements: Prevention, Protection and Assistance, and Prosecution

The United States has approached the fight against human trafficking, domestically and internationally, by supporting initiatives in three distinct areas: prevention, protection and assistance, and prosecution. The “Three Ps,” as they are commonly referred to, encompass a broad range of activities to raise awareness among law enforcement officials, the general public and potential victims; to build the capacity of NGOs and federal and state agencies; to meet the basic needs of victims and provide comprehensive medical and psychological services; to account for the safety of victims and their families; to enact programs to reintegrate victims back into society and prevent re-victimization; and to effectively criminalize and punish traffickers.

e. Trafficking Victim Protection Act Requirements for Prevention

i. Awareness-raising

Foreign-born victims: The TVPA recognizes the vulnerability of immigrants and non-immigrants, including migrant workers, their lack of understanding about the dangers of trafficking, their legal rights, and available resources for assistance. The TVPA addresses this vulnerability by requiring that informative pamphlets in different languages⁹⁴ be posted on federal websites, including all consular posts that process employment and education-based non-immigrant visas, and be made available to NGOs, foreign labor brokers and other government agencies.⁹⁵ The pamphlets must provide details on visa application procedures; the legal rights of non-immigrant visa holders under federal employment, labor and immigration law; the criminality of trafficking and related offenses; the specific rights of foreign-born trafficked victims and exploited workers; and information on service providers that assist trafficked victims and exploited workers.⁹⁶ During interviews, consular officers must confirm that the aliens applying for relevant visas have received the pamphlet and understand the information it contains.⁹⁷ The official must also reiterate the legal rights of migrants, the dangers of trafficking, and services available to trafficked victims and exploited workers.⁹⁸ If the alien has not received a copy of the pamphlet, the consular official must provide the information verbally and in writing.⁹⁹

of the incorporation of treaty law into domestic law. The United States’ reservation to the U.N. Protocol on trafficking recognizes that federalism may create gaps in certain circumstances where conduct falls between federal and state statutes. If there is a conflict between federal and state law, and it is found that a state is not applying federal statutory standards, then the federal statute trumps state law.

⁹⁴ The pamphlets must be posted in languages spoken by the greatest concentrations of employment and education-based non-immigrant visas.

⁹⁵ The pamphlet must be posted on the website of the Department of State, Homeland Security, Justice, and Labor, as well as “all U.S. consular posts processing applications for employment- or education-based nonimmigrant visas.” *Supra* note 85, TVPRA at § 202(d).

⁹⁶ *Supra* note 85, TVPRA at § 202(b)(1)-(5).

⁹⁷ The legal rights that consular officials must clearly communicate include the right (1) of access to immigrant and labor rights groups, (2) to seek redress in U.S. courts, (3) to report abuse without retaliation, (4) to relinquish possession of passport to the employer, and (5) to an employment contract. *Supra* note 85, TVPRA at § 202(e)(1).

⁹⁸ *Supra* note 85, TVPRA at § 202(e)(2).

⁹⁹ *Supra* note 85, TVPRA at § 202(e)(1).

Domestic victims: The TVPA does not set forth standards for preventing U.S. citizens from becoming victims of trafficking.¹⁰⁰ It does, however, require federal agencies to raise awareness on trafficking in the general public and among vulnerable populations.¹⁰¹ The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008) has a substantially increased focus on trafficking taking place exclusively within the United States, over that of the TVPA and its first two subsequent Reauthorizations.¹⁰² Much of the statutory language concerning trafficking victims, however, is still devoted to providing assistance to foreign-born victims who are exploited domestically.¹⁰³ Efforts to strengthen law enforcements' capacity to rescue victims and arrest traffickers through increased coordination and stronger laws can be viewed as preventive measures.¹⁰⁴ Similarly, the TVPRA 2008 requires the Attorney General to compile data on prosecutions, victim restitution, and cases assisted, which will increase awareness and understanding among law enforcement, legislators and service providers on the forms and scope of trafficking domestically.¹⁰⁵ Finally, the statute requires the National Institute of Justice to conduct studies on the sex industry and internet-based (criminal) businesses, and on the effectiveness of state statutes on human trafficking.¹⁰⁶

ii. Training and Capacity Building

The U.S. Attorney General is authorized to fund state and local law enforcement training.¹⁰⁷ These grants are to increase the ability of law enforcement¹⁰⁸ to do the following: identify, protect and assist¹⁰⁹ victims; investigate trafficking crimes; increase awareness and utilization of existing statutes; and assist in the development of state and local legislation. The authorized level of appropriations for each fiscal year from 2007 through 2011 was \$10 million.¹¹⁰

Grants are also available for local and state law enforcement agencies to either establish or assist programs to investigate and prosecute severe forms of trafficking that occur in the United States

¹⁰⁰ *Supra* note 66, TVPA at § 106(a)-(c).

¹⁰¹ The U.S. Dept. of Labor, Health and Human Services, State, and Justice are required to implement awareness-raising activities. *Supra* note 66, TVPA at § 106(b).

¹⁰² The subsequent reauthorizing statutes for the TVPA are as follows: The Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620) [hereinafter TVPRA 2003], The Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972) [hereinafter TVPRA 2005], and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (H.R. 7311) [hereinafter TVPRA 2008].

¹⁰³ The TVPRA provisions that impact domestic victims includes requiring Health and Human Services to provide assistance to victims, increasing penalties against traffickers, providing a civil cause of action for victims, increasing the capacity of law enforcement, and requiring agencies to report on activities. *Supra* note 85, TVPRA at § 201-205, 211.

¹⁰⁴ *Supra* note 85, TVPRA at § 225(a) & (b).

¹⁰⁵ *Supra* note 85, TVPRA at § 237(c)(1)(A)-(D).

¹⁰⁶ *Supra* note 85, TVPRA at § 237(c)(2)(A)-(B).

¹⁰⁷ The grants are awarded to state or local governments, including the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands and any other territory or possession of the U.S. to conduct this training. 42 U.S.C. § 14044f(a)(3) (2010).

¹⁰⁸ *See id.* at § 14044f(b)(2) and (3). (This includes state and local prosecutors for identification, investigation, prosecution, and use and development of trafficking statutes.).

¹⁰⁹ *See id.* at § 14044f(b)(1). (Protection of victims includes training such personnel to utilize federal, state, or local resources to assist victims of trafficking.).

¹¹⁰ *See id.* at § 14044f(e).

or its territories.¹¹¹ One of the eligibility requirements is that the agencies must work in collaboration with social service providers and NGOs.¹¹² Congress authorized \$10 million in appropriations for the fiscal years 2008 through 2011.¹¹³

iii. Information Exchange/Coordination

Cabinet-level Coordination: The President established the Interagency Task Force to Monitor and Combat Trafficking which is comprised of the Secretary of State, the U.S. Agency for International Development Administrator, the Attorney General, the Secretaries of Labor, Health and Human Services, Education, and Homeland Security, and the Directors of Central Intelligence and the Office of Management and Budget.¹¹⁴ The Task Force is responsible for measuring and evaluating the United States and other countries on prevention, protection and assistance, and prosecution measures.¹¹⁵ The Task Force also carries out activities to increase the capacity of and coordination among other governments to address trafficking.¹¹⁶ Finally, the TVPA requires the Task Force to ensure that interagency procedures are developed to collect and organize data on domestic and international trafficking, and to ensure that such procedures protect the confidentiality of victims.¹¹⁷

Federal Coordination: The TVPA designated the U.S. State Department to establish the Office to Monitor and Combat Trafficking in Persons (G/TIP), the operational branch that assists the Task Force in carrying out its required responsibilities.¹¹⁸ Specifically, G/TIP coordinates the United States' activities and promotes partnerships between the United States and private entities to ensure that items, products or materials of victims of severe forms of trafficking do not enter the United States, and that those entities do not contribute to the sexual exploitation of victims. G/TIP also provides and coordinates funding for anti-trafficking activities carried out by NGOs and intergovernmental organizations.¹¹⁹ Finally, G/TIP conducts the global assessment of countries' efforts to combat trafficking and issues its findings in the annual Trafficking in Persons (TIP) report to Congress.¹²⁰

¹¹¹ *See id.* at § 14044f(c).

¹¹² The federal share of the grant is also limited to 75% of the total costs of the project.

¹¹³ 42 U.S.C. § 14044f(e).

¹¹⁴ Ex. Or. No. 13333 of Mar. 18, 2004, 69 Fed. Reg. 13455 (*see* 22 U.S.C. § 7103 (2010)).

¹¹⁵ The Task Force evaluates other countries' efforts to combat trafficking by applying the minimum standards discussed earlier in this report. *Supra* note 66, § 105(d)(2); *supra* note 85, TVPRA at § 101; 22 U.S.C. § 7103. *See also supra* note 66, TVPA at § 108; *supra* note 102, TVPRA of 2008 at § 106; 22 U.S.C. § 7106.

¹¹⁶ *Supra* note 66, TVPA at § 109; *supra* note 85, at §§103(a) & (b); 22 U.S.C. §§ 7104 & 7105.

¹¹⁷ *Supra* note 66, TVPA at § 105(d)(3); *supra* note 85, TVPRA at §§ 108, 110; 22 U.S.C. §§ 7103, 7109, 8 U.S.C. § 1777.

¹¹⁸ *Supra* note 66, TVPA at § 105(e); *supra* note 85, TVPRA at § 102; 22 U.S.C. § 7103(e).

¹¹⁹ 22 U.S.C. § 7103(e).

¹²⁰ *Supra* note 66, TVPA at § 110(b); *supra* note 85, TVPRA at §§ 107, 108(b); 22 U.S.C. § 7107(b).

iv. Accountability, Transparency and Reporting

The Attorney General must apprise Congress of all federal activities on trafficking, and submit an annual report with the following data:¹²¹

- The number of people who have received assistance through activities or grants from the Departments of Labor, Health and Human Services, the Attorney General, the Legal Services Corporation or other federal agencies;
- The number of people granted continued presence in the previous fiscal year;
- The number of applications, grants and denials of T visas;
- The level of charges, convictions and sentences imposed for trafficking offenses;
- Detailed information on grants issued under 22 U.S.C. 7104 and 7105;
- The nature of the trainings conducted under 22 U.S.C. 7105(c)(4) and 42 U.S.C. 14044(a) & (c);
- Efforts by the Department of Defense to reduce violations committed by U.S. military or defense contractors;¹²² and
- Activities by federal agencies to enforce laws against federal employees and contractors for engaging in severe forms of trafficking, commercial sex acts, and forced labor;¹²³ and to prohibit federal procurement of goods and services produced by slave labor.

In addition, the Attorney General must submit data to various Congressional committees on levels of prosecutions, convictions, multiple-defendant cases, and the level of restitution and property forfeiture in relation to those prosecutions.¹²⁴ Each federal agency that issues grants for anti-trafficking activities is required to report to the Senior Policy Operating Group to ensure that the activities are in line with the core objectives of the TVPA.¹²⁵

v. Research

The Attorney General must compile and analyze data from state and local law enforcement authorities in order to increase understanding of domestic trafficking.¹²⁶ This is an integral component to decreasing victimization from, and demand for, commercial sex acts. The

¹²¹ The Attorney General must submit the report to the Committees on Ways and Means, Foreign Affairs, and the Judiciary of the House of Representatives, and the Committees on the Judiciary, Finance, and Foreign Relations of the Senate. *Supra* note 66, TVPA at §105(d)(7); *supra* note 85, TVPRA § 231; 22 U.S.C. § 7103(d)(7).

¹²² DOD efforts include education and disciplinary action. 22 U.S.C. § 7103(d)(7)(H).

¹²³ Forced labor includes instances of debt bondage.

¹²⁴ *Supra* note 85, TVPRA at § 237(c)(1)(A)-(D). The TVPA requires the reports to be submitted to the Committees on Foreign Affairs/Relations and the Judiciary for the House and Senate.

¹²⁵ The TVPA established the Senior Policy Operating Group, comprised of Task Force representatives, to coordinate activities on trafficking. 42 U.S.C. § 14044(d); 22 U.S.C. § 7103(f).

¹²⁶ 42 U.S.C. § 14044(a)(1)(A).

Attorney General must conduct two research initiatives and a statistical review every two years on severe forms of trafficking, sex trafficking, and unlawful commercial sex acts.¹²⁷ The data must include the estimated number of perpetrators involved, their demographic profile, as well as the number of investigations, arrests, prosecutions and incarcerations in each state.¹²⁸ The Human Trafficking and Smuggling Center must conduct these studies and create an integrated database.¹²⁹ In addition, the Attorney General is supposed to conduct studies on internet-based crime in the sex industry and develop best practices in investigating and prosecuting these crimes, as well conduct a comprehensive analysis on federal actions to combat human trafficking.¹³⁰

The Attorney General and the Secretary of Health and Human Services are also responsible for hosting biennial conferences on trafficking. The conferences are to serve as fora to share best practices for law enforcement, and where the results of the studies will be released. The participants should include federal, state and local government officials, victims, medical personnel, service providers and NGOs, and academia.¹³¹

vi. State Legislation

In an effort to encourage states to strengthen or enact local laws against trafficking, the Attorney General promulgated a model state law and disseminated it to the Attorney Generals in each state.¹³² The model statute was developed to “further a comprehensive approach to investigation and prosecution through modernization of State and local prostitution and pandering statutes.”¹³³ Furthermore, the National Institute of Justice is to assess the application of state laws, cases prosecuted, and their impact on other state criminal statutes.¹³⁴

vii. Border Measures

The TVPRA 2008 sets forth certain measures to prevent trafficking of children across borders and points of entry.¹³⁵ Specific measures include assessing whether an unaccompanied alien child is a trafficked victim before returning the child to his/her country of nationality.¹³⁶ The Department of Homeland Security must also take into account the conditions of the child’s home country before repatriating him/her.¹³⁷ The TVPRA 2008 provides additional protection for unaccompanied alien children by providing child advocates and ensuring access to legal counsel.¹³⁸ It also limits the processing of special immigrant juvenile status for at-risk youth to

¹²⁷ *See id.*

¹²⁸ *See id.*

¹²⁹ *Supra* note 85, TVPRA at § 108(a)(1) and (2).

¹³⁰ *Supra* note 85, TVPRA at § 237(c)(1) and (2).

¹³¹ 42 U.S.C. § 14044(a)(2).

¹³² The model State statute is also available on the U.S. DOJ website; *supra* note 85, TVPRA at § 225(c).

¹³³ *See supra* note 85, TVPRA at § 225(b)(1).

¹³⁴ *See supra* note 85, TVPRA at § 237(c)(2)(B).

¹³⁵ *Supra* note 85, TVPRA at § 235(a)(1)-(5).

¹³⁶ *See supra* note 85, TVPRA at § 235(a)(2)(A)(i) and 235(a)(4).

¹³⁷ The DHS must consult the annual U.S. DOS Country Reports on Human Rights Practices and the TIP Report when making this determination. *Supra* note 85, TVPRA at § 235(a)(5)(B).

¹³⁸ Access to legal counsel applies to unaccompanied alien children who are or have been in DHS custody. *See supra* note 85, TVPRA at § 235(c)(5)-(6).

180 days.¹³⁹ Some children are eligible for immediate services, such as federal foster care placement, even without cooperating with law enforcement first.¹⁴⁰ Additionally, the U.S. Departments of State, Homeland Security, and Health and Human Services must develop and implement best practices for the safe return and reintegration of unaccompanied minors.¹⁴¹ The Act also requires the Secretary of State to negotiate agreements with contiguous countries to ensure that children are not returned unless they are received by appropriate and trained officials.¹⁴²

f. Trafficking Victim Protection Act Requirements for Protection and Assistance

i. Access to Basic Services

The original version of the Trafficking Victims Protection Act focused on international trafficking and trafficking of foreign-born victims into the United States. The internal, domestic trafficking of U.S. citizens was not addressed and subsequently, the TVPA did not include them as beneficiaries for assistance. As the understanding of trafficking trends and networks within the United States has increased, domestic victims have received more focus in the reauthorized versions of the TVPA.

The Department of Health and Human Services (HHS) issues grants to provide assistance to U.S. citizens and lawful residents who have been victimized in the United States or in any of its territories.¹⁴³ The Secretary of HHS and the Attorney General are to consult with NGOs that work with trafficked victims to determine the most appropriate forms of assistance.¹⁴⁴ Additionally, HHS must facilitate access to preexisting programs, including by developing referral mechanisms, identifying providers, and coordinating with service providers.¹⁴⁵

The TVPA also mandates HHS to initiate a pilot program to protect juvenile victims of trafficking.¹⁴⁶ HHS must establish three residential treatment facilities that provide shelter, psychological counseling and independent living skills development. Congress authorized \$5 million for each year for fiscal years 2008 through 2011 for these facilities, but these were never actually funded. The TVPRA 2008 reauthorized the 2005 programs and authorizes \$8 million annually¹⁴⁷ for HHS programs to assist U.S. citizens and lawful permanent residents who have been victimized, and \$5 million to support pilot residential programs for minor victims.¹⁴⁸

¹³⁹ *Supra* note 85, TVPRA at § 235(d)(2); 8 U.S.C. § 1101(a)(27)(J).

¹⁴⁰ *Supra* note 85, TVPRA at § 235(b) and (c).

¹⁴¹ *Supra* note 85, TVPRA at § 235(a)(5)(A).

¹⁴² *Supra* note 85, TVPRA at § 235(a)(2)(C). (An example of an appropriate government official is a child welfare agent.)

¹⁴³ States, Indian tribes, local governments, non-profits, and NGOs are eligible to apply for grants to provide assistance to domestic victims. *Supra* note 66, TVPA at § 107(f)(3); *supra* note 85, TVPRA at §213(a)(1); 22 U.S.C. § 7105.

¹⁴⁴ *Supra* note 66, TVPA at § 107(f)(1).

¹⁴⁵ *See supra* note 85, TVPRA at § 107(f)(2).

¹⁴⁶ A “juvenile subjected to trafficking” is defined as a U.S. citizen or permanent resident under the age of 18 years who is has been subjected to sex trafficking or a severe form of trafficking. 42 U.S.C. § 14044b(f).

¹⁴⁷ FYs 2008-2011.

¹⁴⁸ *Supra* note 85, TVPRA at § 301(2).

Foreign-born trafficked victims are eligible to receive the same federal and state benefits as refugees.¹⁴⁹ The TVPA directed federal agencies to expand benefits and services to victims of severe forms of trafficking regardless of the victims' immigration status.¹⁵⁰ However, for victims to receive such benefits, they must be certified by HHS.¹⁵¹ Child victims under the age of 18, however, do not need to be certified to receive services.¹⁵²

ii. Special Protection for Foreign-born Minor Victims

HHS is the designated agency to provide care and custody, including detention, for unaccompanied alien children.¹⁵³ Federal agencies must notify HHS of unaccompanied alien children in custody within 24 hours of their detainment, and must transfer custody of the child within 48 hours.¹⁵⁴ The Secretaries of State, Homeland Security, HHS, and the Attorney General must take steps to ensure that unaccompanied minor children are protected from traffickers, such as through witness security programs.¹⁵⁵ Further, such children must be placed in the least restrictive setting that is considered to be in the best interest of the child.¹⁵⁶ The HSS is supposed to conduct "safety and suitability" assessments before placing a child into a private home or entity.¹⁵⁷ If the child is placed in a secured facility, HHS must review the necessity of the child's placement on a monthly basis.¹⁵⁸ HHS must also ensure that unaccompanied alien children have access to counsel, and HHS can appoint independent child advocates for trafficked victims.¹⁵⁹ HHS can grant permanent protection for certain at-risk children, including minors who cannot be reunified with their parents because of abuse, neglect or abandonment.¹⁶⁰

iii. Information and Victim Participation in the Legal Process

The TVPA explicitly states that victims of severe forms of trafficking must be given access to information that explains their rights and to language translation services.¹⁶¹ Consular officials

¹⁴⁹ Immigration and Nationality Act § 207 [hereinafter INA].

¹⁵⁰ *Supra* note 66, TVPA at § 107(b)(1)(B); 22U.S.C. § 7105.

¹⁵¹ *Supra* note 66, TVPA at § 107(b)(1)(C) and (E); 22 U.S.C. § 7105.

¹⁵² *Supra* note 66, TVPA at § 107(b)(1)(C); *supra* note 85, TVPRA at § 212(a)(2); 22 U.S.C. § 7105(b)(1).

¹⁵³ *Supra* note 85, TVPRA at § 235(b)(1); 6 U.S.C. § 279.

¹⁵⁴ *Supra* note 85, TVPRA at § 212(a)(2) and 235(a)(4); 8 U.S.C. § 1232(b).

¹⁵⁵ *Supra* note 85, TVPRA at § 235(c)(1).

¹⁵⁶ *See id.* at § 235(c)(2); 6 U.S.C. § 279(b)(2); 8 U.S.C. § 1522(d).

¹⁵⁷ *Supra* note 85, TVPRA at § 235(c)(3)(A) and (B).

¹⁵⁸ A child cannot be placed into a secured facility unless he/she poses a threat to self or has been charged with a criminal offense. *Supra* note 85, TVPRA at § 235(c)(2); 6 U.S.C. § 279(b)(2); 8 U.S.C. § 1522(d).

¹⁵⁹ *Supra* note 85, TVPRA at § 235(c)(5) and (6); 8 U.S.C. § 1232(c).

¹⁶⁰ *Supra* note 85, TVPRA at § 235(d); 8 U.S.C. § 1101(a)(27)(J). Child victims of trafficking may be eligible for Special Immigrant Juvenile Status (SIJS) if they have been declared a dependent of a court that has determined the child is eligible for long-term foster care due to abuse, neglect or abandonment and it is not in the child's best interest to be returned to the country of origin. Immigration attorneys often file a SIJS application for minor trafficking victims because such status is easier and faster to obtain for a juvenile court-dependent victim than a T or U visa. If the application is successful, state child protective services can move forward and the child may remain in the U.S., work legally, qualify for in-state tuition, and apply citizenship after a five-year period. Telephone interview with Chanpone P. Sinlapasai, Immigration Attorney, Maranda & Okamura LLP (June 15, 2010); *see also* <http://immigrantchildren.org/SIJS/>.

¹⁶¹ *Supra* note 66, TVPA at § 107(c)(2).

must ensure that people applying for employment or education-based visas understand the dangers of trafficking, their legal rights, and have information about emergency resources.¹⁶² HHS must ensure that unaccompanied alien children have access to counsel in order to “represent them in legal proceedings or matters and protect them from mistreatment, exploitation and trafficking.”¹⁶³

iv. Immigration Options

The Department of Homeland Security (DHS) can extend the status of non-immigrant aliens in exceptional circumstances, including situations where a victim faces potential retaliation. Victims of human trafficking and other specified crimes¹⁶⁴ can apply for a T visa or a U visa, or both, which can be pursued simultaneously or sequentially; both provide temporary legal status to people who assist with investigations or prosecutions of the criminal activity.¹⁶⁵ If granted, T and U visas provide interim status for three years, which can be extended to four years in some circumstances. The Attorney General must report to Congress annually on the number of applicants who were denied T visas and adjustment of status because of the unavailability of visa slots (the number of visas made available).¹⁶⁶ The statutory language does not require that the total number of applicants and denials be included in the report, nor does it require reporting on the level of denials for reasons other than unavailable visa slots.

Continued Presence: If a person who lacks legal status is determined to be a victim of a severe form of trafficking and could potentially be a witness in a criminal case against his/her traffickers, federal law enforcement officials can grant temporary legal immigration status, called “Continued Presence” (CP).¹⁶⁷ In addition, a victim who files a civil cause of action against his/her trafficker is also eligible to remain in the United States during the proceeding.¹⁶⁸ Although the primary purpose of continued presence certification is to promote the successful prosecution of criminals,¹⁶⁹ family members of victims can be paroled into the United States while the victim has CP.¹⁷⁰ Victims granted CP status are allowed to travel outside the United States, but immigration attorneys do not recommend this due to the risk of victims being refused re-entry, losing status, or other possible problems.

¹⁶² *Supra* note 85, TVPRA at § 202(e).

¹⁶³ *See supra* note 85, TVPRA at § 235(c)(5); 8 U.S.C. § 1232(c).

¹⁶⁴ The enumerated crimes are “rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt; conspiracy; or solicitation to commit any of the above mentioned crimes.” INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U) (2008).

¹⁶⁵ U.S. Dept. of Homeland Security, *Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa*, Jan. 29, 2009, at 1, *available at* http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf.

¹⁶⁶ *Supra* note 66, TVPA at § 107(g).

¹⁶⁷ *Supra* note 66, TVPA at § 107(c)(3); *supra* note 85, TVPRA at § 205(a); 22 U.S.C. § 7105(c)(3).

¹⁶⁸ *Supra* note 85, TVPRA at § 205(a); 22 U.S.C. § 7105.

¹⁶⁹ *Supra* note 66, TVPA at § 107(c)(3).

¹⁷⁰ *Supra* note 85, TVPRA at §§ 205(a)(1), 205(b); 8 U.S.C. § 1229(b)(a)(b)(6).

T Visa: The T visa is available for victims of severe forms of trafficking who would face “extreme hardship involving unusual and severe harm” if they were to leave the United States.¹⁷¹ Victims must be physically present in the United States and comply with “reasonable requests” for help in the investigation and prosecution.¹⁷² Child victims who are under the age of 15 years are eligible to apply for the T visa even if they do not assist law enforcement.¹⁷³ However, child victims between the ages of 15 and 17 years cannot receive T visas unless they assist in the investigation and prosecution.¹⁷⁴ What “compliance” entails is not clearly defined, and thus law enforcement officials involved in the case appear to have sole discretion to make this determination. T visa recipients can receive authorization to work.¹⁷⁵ Five thousand T visas are available annually. Family members of trafficked victims are also eligible to receive T visas, although these visa issuances are not counted in the annual 5,000 ceiling.¹⁷⁶

U Visa: The U visa is applicable to victims of certain types of crimes, including trafficking, who have suffered “substantial physical or mental abuse.”¹⁷⁷ Like those applying for the T visa, a government official must certify that these applicants are assisting in the investigation and prosecution effort to be eligible.¹⁷⁸ U visa recipients can also receive employment authorization. There are 10,000 U visas available annually.¹⁷⁹ Similar to the T visa, victims’ family members can also apply for a U visa and are not restricted by the capped amount.¹⁸⁰

Adjustment to Permanent Residency Status: Trafficked victims and eligible family members can adjust their status to lawful permanent resident under certain conditions including: if the person has been present (as a non-immigrant) in the United States for at least three continuous years; has “good moral character;” and has complied with reasonable requests for assistance in the investigation or prosecution; or if the person would suffer extreme hardship of “unusual and severe harm upon removal.”¹⁸¹ Both T and U visa recipients can apply for adjusted status.¹⁸²

Accessing Immigration Relief

The U.S. Department of Justice recognizes that “[the] T visa is a powerful tool to protect the most vulnerable victims and prevent future trafficking.”¹⁸³ While the statute provides 5,000 non-

¹⁷¹ *Supra* note 66, TVPA at § 107(e)(1), 8 U.S.C. § 1101(a)(15); *supra* note 85, TVPRA at § 201(a) and (b), 8 U.S.C. §§ 1101(a)(15)(T), 1184(o)(7).

¹⁷² *Supra* note 66, TVPA at § 107(e); *supra* note 85, TVPRA at § 201(a) and (b); 8 U.S.C. § 1101(a)(15)(T).

¹⁷³ *Supra* note 66, TVPA at § 107(e)(1); *supra* note 85, TVPRA at § 201(a) and (b); 8 U.S.C. § 1101(a)(15)(T). *See also* Civil Rights Division, U.S. Dept. of Justice, Trafficking in Persons — A Guide for NGOs, *available at* <http://www.justice.gov/crt/crim/wetf/trafficbrochure.php> [hereinafter Trafficking in Persons — A Guide for NGOs].

¹⁷⁴ *Id.*

¹⁷⁵ *Supra* note 66, TVPA at § 107(e)(4); 8 U.S.C. § 1101(a)(15)(T)(i)(2).

¹⁷⁶ The limitations on T and U Visas do not apply to family members. *Supra* note 66, TVPA at § 107(e)(4); 8 U.S.C. 1101(a)(15)(T)(ii)(I)-(II). *See* Trafficking in Persons — A Guide for NGOs, *supra* note 173.

¹⁷⁷ *Supra* note 85, TVPRA at § 201(c); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

¹⁷⁸ *Supra* note 85, TVPRA at § 201(c); 8 U.S.C. § 1101(a)(15)(U)(i)(I).

¹⁷⁹ Trafficking in Persons — A Guide for NGOs, *supra* note 173.

¹⁸⁰ Eligible victims’ relatives include spouses, parents, and children. 8 U.S.C. § 1101(a)(15)(U)(i)(I).

¹⁸¹ *Supra* note 66, TVPA at § 107(f); *supra* note 85, TVPRA at § 201(d); 8 U.S.C. § 1255.

¹⁸² Trafficking in Persons — A Guide for NGOs, *supra* note 173.

¹⁸³ U.S. Dept. of Justice, “Department of Justice Issues T Visa to Protect Women, Children and All Victims of Human Trafficking” (Jan. 24, 2002) *quoting* former INS Commissioner James Ziglar.

immigrant T visas per year, less than 2,300 principal applications had been received by the USCIS as of October 2008. Of this number, 1,308 were approved, 709 were denied or withdrawn, and 212 were pending.¹⁸⁴ With regard to the U visas, there is an annual cap of 10,000 per year.¹⁸⁵ Only 50 of the 12,151 applications received were approved as of October 2008. Nine applications were denied or withdrawn and 12,092 were put on hold until the adjustment regulations were finalized.¹⁸⁶

Both the TVPA and the Trafficking Protocol call for measures to allow trafficked persons, in appropriate cases, to remain in the country permanently.¹⁸⁷ As mentioned above, T and U visa recipients are entitled to apply for permanent residency if the person has been present in the U.S. for at least three continuous years, has been a person of “good moral character,” and has complied with reasonable requests for assistance in the investigation or prosecution, or if the person would suffer extreme hardship of “unusual and severe harm upon removal.”¹⁸⁸ While over 300 principal T applicants and 2,100 U applicants are eligible to adjust their status, the adjudication of these applications has been significantly delayed. The U.S. Citizenship and Immigration Services’ (USCIS) adjustment of status regulations, which “provide the procedures for T and U non-immigrants to become lawful permanent residents,” was not issued until late 2008.¹⁸⁹ The delay in the issuance of the regulations has resulted in a large backlog of cases of as January 2009: 212 T visas for victims, 202 T visas for victims’ family members (“derivatives”), 12,092 U visas for victims, and 8,156 U derivatives.¹⁹⁰

According to the USCIS Ombudsman, “[T]housands of victims have failed to obtain the benefits afforded to them” by the federal law on trafficking because of the processing delays.¹⁹¹ The Ombudsman expressed concern that USCIS has not allocated sufficient resources needed to process T and U non-immigrant and eligible adjustment cases in a timely manner.¹⁹² As a result, applicants face difficulties in obtaining work authorization, inconsistent cooperation from law enforcement, and long processing times.¹⁹³ Stakeholders have reported to the Ombudsman that the inability of T and U non-immigrant visa applicants to work while their applications are pending is a major roadblock for victims seeking relief.¹⁹⁴ Upon approval of the T or U visa

¹⁸⁴ U.S. Dept. of Homeland Security, Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, Recommendation from the CIS Ombudsman to Director, USCIS, Jan. 2009, at 5.

¹⁸⁵ *Id.* at 6.

¹⁸⁶ *Id.* at 7.

¹⁸⁷ Trafficking Protocol, *supra* note 24, at art. 7(1.2); *supra* note 66, TVPA at § 107(f).

¹⁸⁸ *Supra* note 66, TVPA at § 107(f).

¹⁸⁹ USCIS Interim Final Rule, “Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status,” 73 Fed. Reg. 75540 (Dec. 12, 2008), effective Jan. 12, 2009; U.S. Dept. of Homeland Security, Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, Jan. 29, 2009, at 1.

¹⁹⁰ U.S. Dept. of Homeland Security, Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, Jan. 29, 2009, at 1, n. 2.

¹⁹¹ *Id.* at 3.

¹⁹² *Id.* at 1.

¹⁹³ *Id.* at 1, n. 3.

¹⁹⁴ *Id.* at 1.

application by USCIS, victims receive work authorization. However, until a decision is made, victims remain dependent on other means for financial support.¹⁹⁵

v. Repatriation and Reintegration Assistance

The TVPA set into place certain measures to enhance efforts to combat trafficking in children. The TVPA directed the Departments of Homeland Security, State, Health and Human Services and the Attorney General to develop policies and procedures to safely repatriate foreign-born children who have been trafficked, including a pilot program where best practices on return and reintegration are compiled and implemented.¹⁹⁶ Further, the DHS must consider the Country Reports on Human Rights Practices¹⁹⁷ and the Trafficking in Persons Report when determining whether to return an unaccompanied alien child to his/her country of nationality.¹⁹⁸

The TVPA does not discuss such measures for victims trafficked within the United States, despite the fact that such measures are understood to be an integral component to prevent the re-trafficking of rescued victims. Initiatives to provide victims of trafficking within the United States with assistance and tools to enhance their successful reintegration into society or reunification of minors with their families may be carried out by NGOs, but such activities are not yet required by federal law.

vi. Security/Witness Protection

The TVPA outlines special protective measures for victims of severe forms of trafficking while in federal custody, and specifies that they should not be placed in facilities inappropriate for crime victims.¹⁹⁹ However, these provisions are couched in the language of “to the extent practicable.”²⁰⁰ The TVPA further provides that during the investigation and prosecution of traffickers, law enforcement must take safety measures to shield victims and their family from “intimidation, threats of reprisals, and reprisals.”²⁰¹ In particular, federal government officials must keep the names and identifying information of victims and their relatives confidential.²⁰²

It should be noted that while the TVPA and subsequent Reauthorizations enact measures to protect foreign-born victims against retaliation, provide opportunities for special immigrant

¹⁹⁵ USCIS Ombudsman, Press Release: Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, Jan. 29, 2009, at 9, *citing* Ombudsman meeting with U visa stakeholders (Aug. 1, 2008).

¹⁹⁶ *Supra* note 85, TVPRA at § 235(a)(5)(C); 8 U.S.C. § 1232(a).

¹⁹⁷ The U.S. Department of State issues annual country reports to Congress on human rights practices around the world. The reports assess individual, civil, political and worker rights in U.N. member states and in all countries that receive U.S. assistance. *See* Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor, Under Secretary for Democracy and Global Affairs, U.S. Dept. of State, *available at* <http://www.state.gov/g/drl/rls/hrrpt/>.

¹⁹⁸ *Supra* note 85, TVPRA at § 235(a)(5).

¹⁹⁹ *Supra* note 66, TVPA at § 107(c)(1).

²⁰⁰ *See supra* note 66, TVPA at § 107(c)(1).

²⁰¹ *See supra* note 66, TVPA at § 107(c)(i).

²⁰² *See supra* note 66, TVPA at § 107(c)(ii).

visas,²⁰³ and require that such victims be informed of legal rights and available assistance, victims trafficked within the United States remain largely unaddressed. While special measures for general crime victims can be utilized, the lack of specific language in the TVPA dedicated to U.S. victims underscores the fact that domestic trafficking is still not receiving the attention that it should.

g. Trafficking Victim Protection Act Requirements for Prosecution

i. Criminalization & Penalties

The TVPA establishes strict penalties for people who knowingly participate in human trafficking.²⁰⁴ The penalty for those involved in trafficking or who obstruct enforcement of the law in order to commit trafficking ranges from a fine to imprisonment for a period of up to twenty years.²⁰⁵ Trafficking offenses that involve kidnapping, aggravated sexual assault, or murder, can invoke a sentence of life imprisonment.²⁰⁶

When “serious harm” is used to compel a person to perform or keep performing commercial sexual activity, the person inflicting the harm can be punished for trafficking.²⁰⁷ “Serious harm” includes both physical and non-physical harm, such as serious psychological, financial, or reputational harm.²⁰⁸ People who knowingly or recklessly participate in a transaction involving a commercial sex act where the victim is under the age of 14 years, or use force, fraud or coercion to maintain control over the victim, can be both fined and sentenced to a minimum term of 15 years to life.²⁰⁹ Crimes against minors between the ages of 14 and 17 years result in a fine and a minimum sentence of 10 years to life.²¹⁰

A person who knowingly or recklessly provides an individual for forced labor can be fined and imprisoned for a period up to 20 years.²¹¹ If the forced labor involves kidnapping, (attempted) death or aggravated sexual abuse of a victim, the punishment can be increased to life imprisonment.²¹² The same penalties apply to anyone who holds or sells someone into involuntary servitude.²¹³ Furthermore, people who confiscate a victim’s government-issued identity document can be fined and imprisoned up to 5 years.²¹⁴

²⁰³ While the TVPA calls for such protective measures for foreign-born victims, it does not mean that all identified victims actually receive these protections.

²⁰⁴ 18 U.S.C. §§ 1581, 1584, 1589-1592.

²⁰⁵ 18 U.S.C. §§ 1581, 1584, 1589-1592.

²⁰⁶ 18 U.S.C. §§ 1581(a), 1584(a), 1589(d), 1590(a) 1591(b)(1).

²⁰⁷ 18 U.S.C. § 1591(e)(4).

²⁰⁸ *Id.*

²⁰⁹ *Supra* note 66, TVPA at § 112 (a)(2); *supra* note 85, TVPRA at § 222(b)(5); 18 U.S.C. § 1591(b)(1).

²¹⁰ *Supra* note 66, TVPA at § 112 (a)(2); *supra* note 85, TVPRA at § 222(b)(5); 18 U.S.C. § 1591(b)(2).

²¹¹ *Supra* note 66, TVPA at § 112 (a)(2); *supra* note 85, TVPRA at § 222(d)(1); 18 U.S.C. § 1593A. (Whoever knowingly or recklessly benefits financially or by receiving anything of value, from participating in a venture which has engaged in any act in violation of §1581(a), 1592 or 1595(a), knowing or in a reckless disregard of the fact that the venture has engaged in such violation, shall be fined under this title or imprisoned in the same manner as a completed violation of such section.)

²¹² *Supra* note 66, TVPA at § 112(a)(2); *supra* note 85, TVPRA at § 222(b)(1); 18 U.S.C. § 1589.

²¹³ *Supra* note 66, TVPA at § 112(a)(1); *supra* note 85, TVPRA at § 222(b)(2); 18 U.S.C. § 1584.

²¹⁴ *Supra* note 66, TVPA at § 112(a)(2); *supra* note 85, TVPRA at § 222(b)(6); 18 U.S.C. § 1592.

The TVPA mandated the United States Sentencing Commission to review and, “if appropriate,” amend the sentencing guidelines for trafficking and related offenses to ensure that penalties thoroughly reflect the heinous nature of the crime and are a sufficient deterrent.²¹⁵ The TVPA further recommended that the Sentencing Commission consider enhanced sentences for traffickers who have victimized large numbers of people, have shown continued and flagrant violations, utilized a dangerous weapon, or inflicted death or bodily injury on a person.²¹⁶

ii. Immigration Penalties Against Traffickers

Prospective migrants whom consular officials have a “substantial reason to believe” are traffickers or have benefitted from a severe form of trafficking are prohibited from admission to the United States.²¹⁷ Additionally, foreign-born traffickers in the United States are deportable.²¹⁸

iii. Extra-Territorial Jurisdiction

Courts have extra-territorial jurisdiction to prosecute trafficking crimes committed outside the United States by U.S. citizens or lawful permanent residents.²¹⁹ Courts can also prosecute traffickers that are physically present in the United States regardless of their nationality.²²⁰

iv. Compensation for Victims

A victim of trafficking can bring a civil action against his/her traffickers to recover damages and attorneys’ fees.²²¹ Civil actions cannot be filed until the criminal investigation and prosecution is completed, but must commence within 10 years after the cause of action arose.²²² Aside from civil and criminal penalties, the TVPA stipulates that victims are entitled to mandatory restitution from traffickers.²²³ The appropriate amount should reflect the complete financial loss by the victim, including expenses²²⁴ and lost earnings.²²⁵ In addition, any property that is used or

²¹⁵ *Supra* note 66, TVPA at § 112(b)(1) & (2); *supra* note 85, TVPRA at § 222(g); 22 U.S.C. § 7109(b).

²¹⁶ *Supra* note 66, TVPA at § 112(b)(2)(C); 22 U.S.C. § 7109(b)(2)(C).

²¹⁷ *Supra* note 66, TVPA at § 111(d); *supra* note 85, TVPRA at § 222(f)(1). 8 U.S.C. § 1101(a)(15)(T); 8 U.S.C. § 1182(a)(2).

²¹⁸ *Supra* note 85, TVPRA at § 222(f)(2); 8 U.S.C. § 1227(a)(2).

²¹⁹ Trafficking crimes include any offense, attempt or conspiracy to commit an offense under 18 U.S.C §§ 1581, 1583, 1584, 1589, 1590, or 1591. *Supra* note 85, TVPRA at § 223(a); 18 U.S.C. § 1596(a).

²²⁰ *Supra* note 85, TVPRA at § 223(a); 18 U.S.C. § 1596(a).

²²¹ 18 U.S.C. § 1595(a).

²²² *See id.* at § 1595(b) & (c).

²²³ *Supra* note 66, TVPA at § 112(a)(2); *supra* note 85, TVPRA at § 221; 18 U.S.C. 1593.

²²⁴ The full amount of the victim’s losses includes any costs incurred by the victim for medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys’ fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense. 19 U.S.C. § 1593(b)(3) and 18 U.S.C. § 2259(b)(3).

²²⁵ This amount is calculated by estimating the gross income/value of the victim’s services or labor to the trafficker, or by the value of the labor itself, whichever amount is higher. *Supra* note 66, at § 112(a)(2); *supra* note 85, TVPRA at § 221; 18 U.S.C. § 1593(b)(3).

intended to be used for the crime or was purchased or derived from the proceeds of trafficking is forfeited to the government.²²⁶

h. Recent Legislative Developments Relevant to Protecting Children from Trafficking and Related Crimes

i. Child Protection Compact Act of 2009

The purpose of the Child Protection Compact Act 2009²²⁷ is “to protect and rescue children from trafficking by the establishment of Child Protection Compacts between the U.S. and select, eligible countries with a significant prevalence of trafficking in children.”²²⁸ The Act specifically aims to increase the capacity of governments to protect vulnerable children and to rescue and rehabilitate child victims; to “address other legal, political, and societal vulnerabilities for children; and to ensure transparency and accountability during the 3-year implementation period of the law.”²²⁹ This Act provides assistance to other countries in their fight against trafficking, but, like the TVPA, does not apply those same resources internally to the United States.

ii. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (“Protect Act”)²³⁰ demonstrates Congressional commitment to combat trafficking of children and to implement measures to protect child victims and enhance prosecution of offenders. The statute strengthens law enforcement’s ability to prevent, investigate and prosecute violent crimes committed against children by nationalizing the Amber Alert Program,²³¹ providing new investigative tools to recover abducted children,²³² and eradicating the statute of limitations²³³ for most crimes involving the abduction or physical or sexual abuse of children. The Protect Act makes it more difficult for defendants accused of serious crimes against children to obtain bail,²³⁴ and strengthens laws to punish sex tourism offenders.²³⁵

The Protect Act also increases penalties for sexual exploitation and child pornography.²³⁶ A first offense of using a child to produce child pornography invokes a 15 to 30 year sentence, and the “Two Strikes” provision requires life imprisonment for offenders who commit two serious sexual

²²⁶ *Supra* note 85, TVPRA at § 221, 18 U.S.C. § 1593(b)(4); 21 U.S.C. § 853(a)(1)-(3).

²²⁷ H.R. 2737, June 4, 2009, 11th Congress, 1st Session.

²²⁸ H.R. 2737 at 4.

²²⁹ *Id.* at 5.

²³⁰ Prosecutorial Remedies and Other Tools To End the Exploitation of Children Today (PROTECT) Act of 2003, Pub.L. No. 108-21.

²³¹ *See id.* at § 301.

²³² *See id.* at § 201, 18 U.S.C. § 2516(1).

²³³ The statute of limitations previously expired when the child turned 25. *Supra* note 230, at § 202; 18 U.S.C. § 3283.

²³⁴ *Supra* note 230, at § 203; 18 U.S.C. § 3142(e).

²³⁵ *Supra* note 230, at § 105(a)-(d).

²³⁶ *See id.* at § 501; 18 U.S.C. § 1466(A).

abuse offenses against a child,²³⁷ including sexual exploitation of children,²³⁸ selling or buying children,²³⁹ and coercing and enticing a minor into prostitution.²⁴⁰ Provisions to address downward departures from the Sentencing Guidelines, when a judge imposes a sentence below the applicable range, were also included.²⁴¹ In an effort to decrease recidivism rates, the statute increases the length of post-release supervision from a 5-year maximum to up to life.²⁴² Finally, the law establishes a civil cause of action for victims.²⁴³

iii. Child Soldier Accountability Act of 2008

The Child Soldiers Accountability Act was included within the same bill as the TVPRA Reauthorization in 2008, and its intended beneficiaries share many of the same vulnerabilities and abuses as trafficked victims. Many children are abducted and forced into armed combat while others, primarily girls, are taken for sexual exploitation and to provide domestic labor. The Act criminalizes the recruitment, enlistment or conscription of children under the age of fifteen years into armed groups.²⁴⁴ The sentence includes a fine and/or a 20-year prison term²⁴⁵ and imposes a life sentence for offenses resulting in death.²⁴⁶ The statute expands jurisdiction for prosecuting offenders, including resident aliens,²⁴⁷ but imposes a 10-year limitation period for prosecuting violations.²⁴⁸ Furthermore, aliens who have recruited or used child soldiers are deportable and ineligible for asylum.²⁴⁹

iv. Trafficking Victim Protection Act Falls Short in the Area of Child Protection

While the TVPA does not provide for all the measures encompassed within the Trafficking Protocol, the three Reauthorizations can be viewed as a de facto enactment of the U.S. treaty obligation to implement domestic legislation. The TVPA's standard for protecting minors, however, falls short of the international criterion for child protection. For instance, no person under the age of 18 can consent to being trafficked under the international standard. Consent is considered irrelevant under U.S. law only for victims of sex trafficking, leaving labor trafficking instances more difficult to prove.

Despite the gap between the Protocol and the TVPA, Congress has repeatedly demonstrated its intent to protect minors from various forms of exploitation, and has recognized that some children fall through the cracks. The recent legislative activity to protect and assist children who

²³⁷ *Supra* note 230, at § 106(a)(1) & (2).

²³⁸ 18 U.S.C. § 2251.

²³⁹ *See id.* at § 2251A.

²⁴⁰ *See id.* at § 2422(b).

²⁴¹ *Supra* note 230, at § 504(c); 18 U.S.C. § 1466A.

²⁴² *Supra* note 230, at § 101; 18 U.S.C. § 3583.

²⁴³ *Supra* note 230, at § 510; 18 U.S.C. § 2252A.

²⁴⁴ Child Soldiers Accountability Act of 2008 § 2(a)(1), Pub. L. No. 110-340; 18 U.S.C. 118 § 2442(a).

²⁴⁵ The language stipulates that the defendant must have knowingly committed these acts with knowledge of the victim's age.

²⁴⁶ *Supra* note 244, at § 2(a)(1); 18 U.S.C. 118 § 2442(b).

²⁴⁷ *Supra* note 244, at § 2(a)(1); 18 U.S.C. 118 § 2442(c).

²⁴⁸ *Supra* note 244, at § 2(a)(2); 18 U.S.C. 213 § 3300.

²⁴⁹ *Supra* note 244, at § 2(b)-(d); 8 U.S.C. §§ 1182(a)(3), 1227(a)(4).

are trafficked in other countries, children exploited through pornography, child soldiers, and unaccompanied alien minors focus on many of the protection needs in the Trafficking Protocol that remain unaddressed under the current federal statute on trafficking. While the international standards may not be fully reflected in the TVPA, the additional statutes reinforce that Congress is committed to protect minors from various forms of exploitation related, either directly or indirectly, to human trafficking.

C. Summary of Specific Obligations of Oregon under the International Trafficking Protocol and the Federal TVPA (the Three P's)

Oregon's general legal obligations to combat trafficking in persons flow from provisions in the international Protocol and the federal TVPA, which can be divided into the three P's: Prevent, Punish, Protect. The specific obligations for each category, found in these legally binding documents, can be summarized as follows:

Prevent: Appropriate authorities within Oregon have a duty to conduct research, information and mass media campaigns, coupled with social and economic initiatives to combat human trafficking. This includes addressing root causes of both supply (i.e., vulnerability of those who end up being trafficked) and demand. Training of law enforcement, immigration, and other relevant officials is also required.

Punish: Oregon must criminalize trafficking, attempted trafficking, conspiracy to traffic, and being an accomplice to trafficking. The maximum allowed mens rae (mental state) requirement is "intentionally," although the federal government has adopted the lower standard of "knowingly."²⁵⁰ The minimum activity covered by this law must include the following:

the recruitment, transportation, transfer, harboring 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.²⁵¹

Under the TVPA, the punishment of certain forms of sex trafficking must resemble that of forcible sexual assault. Oregon's laws should reflect this requirement in its felony classification for trafficking offenses and the accompanying sentences.²⁵²

²⁵⁰ "Intentionally" is the highest mental state recognized under U.S. law. "Knowingly" is significantly lower, and thus generally easier to prove. There are two lower mental states also used in criminal statutes: recklessness and negligence. Because the definitions of mental state requirements can vary under different state laws, the Model Penal Code definitions are offered here as demonstrative examples:

Intentionally: "(i) it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist."

Knowingly: "(i) he is aware that his conduct is of that nature or that such circumstances exist; and (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result."

²⁵¹ Trafficking Protocol, *supra* note 24, at art. 3(a).

²⁵² See *infra* page 92, for sentencing discussion; see also Sentencing Grid, appendix C. Oregon's two involuntary Servitude statutes and Trafficking statute are not even on the state's sentencing grid, and have not yet been used in any prosecutions, partly due to the inadequate sentencing attached to these three statutes. The statute actually used

Protect: Oregon must ensure that officials are protecting the privacy and identity of victims of trafficking in persons. Part of this requirement includes mandating that legal proceedings relating to trafficking be confidential. Second, victims must be provided information about court and administrative proceedings and given assistance when testifying against the offenders. Additionally, foreign-born trafficking victims are eligible to receive the same federal and state benefits as refugees, regardless of the victims' immigration status. In addition, as a part of sentencing, traffickers must pay victims mandatory restitution. Moreover, a trafficking victim should also be able to bring a civil action against his/her traffickers to recover damages and attorneys' fees.²⁵³ This type of civil action cannot be filed until the criminal investigation and prosecution are complete, but must commence within ten years after the cause of action arose.

The TVPA and Protocol also recommend the provision of physical, psychological, and social recovery of victims, including access to: appropriate and safe housing; counseling and legal information; medical, psychological and material assistance; employment, educational and training opportunities; and language assistance if necessary. Although stated as recommendations, they are more appropriately viewed as requirements, because many of the required actions can only be accomplished if the recommended actions are also accomplished. For example, the United States is required to prosecute traffickers. Under the U.S. legal system, successful prosecutions of trafficking crimes are nearly impossible without the cooperation and assistance of the victims.²⁵⁴ Due to the severe trauma these victims experience at the hands of their traffickers, victims are frequently unable or unwilling to assist with the prosecution if there are not adequate provisions for their physical, psychological, and social recovery. Therefore, by failing to institute recommended protections, the country and states like Oregon will invariably fail to accomplish required actions. Similar connections exist between almost every other recommended act and required acts under the Protocol and the TVPA.

The standards set forth in the Protocol and the TVPA establish the minimum requirements that states, including Oregon, must meet in order to comply with international and federal laws on human trafficking. Oregon must meet and in some circumstances even exceed these minimum standards in order to effectively comply with international and national law and to respond to human trafficking within its borders.

IV. OREGON'S RESPONSE TO HUMAN TRAFFICKING

Oregon's Constitution contains several provisions that pertain to the prohibition of human trafficking.²⁵⁵ For example, the Constitution bars any taking of an individual's services without

by state prosecutors to date for sex trafficking has been Compelling Prostitution, which has a lower mandatory minimum sentence than Rape II.

²⁵³ 18 U.S.C. § 1595(a).

²⁵⁴ See *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004) (A statement is excluded to protect the right of the accused "to be confronted with the witnesses against him" found in the federal confrontation clause when the statement is testimonial, the witness is unavailable, and there has been no opportunity for cross examination.).

²⁵⁵ The relevant provisions of the Oregon Constitution were not created in response to modern-day human trafficking but are relevant in understanding Oregon's obligation and motivation for passing legislation to address the trafficking issue.

just compensation.²⁵⁶ The Constitution further prohibits slavery and involuntary servitude occurring within the state.²⁵⁷ These provisions prohibit the types of acts that often comprise human trafficking. Thus, actions that amount to trafficking in persons or involuntary servitude violate the obligations set forth in the state’s Constitution.

However, the right to freedom of speech provided for in Oregon’s Constitution, which is broader than freedom of speech protections at the federal level, serves to protect the commercial sex industry in Oregon as it is difficult to successfully challenge establishments and activities within the state that effectively promote or exacerbate sex trafficking.²⁵⁸ This is discussed further under the Section relating to the State’s labor laws.

However, consistent with the long-standing provisions expressed in its Constitution, the Oregon legislature recently enacted specific legislation designed to target and punish human traffickers within the state.

A. Oregon’s Human Trafficking Laws

1. Current Statutory Framework

Human trafficking is a multi-dimensional threat that fuels organized crime, increases global health risks and fosters deprivation of human rights and freedoms. By 2007, in addition to the existing federal Trafficking Victims Protection Act (TVPA), 27 states across the nation had passed some form of human trafficking legislation in response to human trafficking. The Oregon Legislature acknowledged the growing importance of the issue, as well as the unique geographic location Oregon possesses as a corridor state between Canada and Mexico, and recognized that trafficking legislation in Oregon was essential.²⁵⁹ The Oregon legislature responded to this need for anti-trafficking legislation by passing Senate Bill 578. This bill created the crimes of subjecting a person to involuntary servitude in the primary and secondary degree and trafficking in persons.²⁶⁰ As one group has described it: “A person commits the crime of involuntary servitude when the person forces another person to engage in conduct the person otherwise would not have engaged in. A person commits the crime of trafficking in persons when the person recruits, transports or harbors another person knowing that the other person will be subjected to involuntary servitude.”²⁶¹

²⁵⁶ “Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation[.]” Private Property or Services Taken for Public Use, OR. CONST. art. 1, § 18.

²⁵⁷ “There shall be neither slavery, nor involuntary servitude in the State, otherwise than as a punishment for crime, whereof the party shall have been duly convicted.” Slavery or Involuntary Servitude, OR. CONST. art. 1. [Added to Bill of Rights as unnumbered section by vote of the people at time of adoption of the Oregon Constitution in accordance with section 4 of Article XVIII thereof].

²⁵⁸ OR. CONST. art. 1, § 8, “No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.” See also *infra* section 4(a) Labor Laws: The Sex Industry for a more in depth discussion on how expansive free speech rights within the state serve to promote strip clubs in Oregon.

²⁵⁹ *Relating to Trafficking in Persons: Hearing on SB 578 before the Subcomm. on Public Safety and the H. Comm. on Ways & Means* (2007) (statement of Sen. Joanne Verger).

²⁶⁰ Memorandum from the Work Group on Human Trafficking to the S. Interim Judiciary Comm. and The H. Interim Judiciary Comm. (Oct. 30, 2008).

²⁶¹ *Id.*

To date, the Oregon Legislature has enacted five statutes addressing human trafficking in Oregon. The first three statutes make it a crime to subject another person to involuntary servitude or to engage in trafficking in persons.

Oregon's Trafficking in Persons statute reads as follows:

(1) A person commits the crime of trafficking in persons if the person knowingly: (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or (b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.264. (2) Trafficking in persons is a Class B felony.²⁶²

Involuntary Servitude has been established in Oregon as an offense in both the first and second degree. Involuntary Servitude in the first degree is defined as follows:

(1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by: (a) Causing or threatening to cause the death of or serious physical injury to a person; or (b) Physically restraining or threatening to physically restrain a person. (2) Subjecting another person to involuntary servitude in the first degree is a Class B felony.²⁶³

Involuntary Servitude in the second degree provides the following:

(1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by: (a) Abusing or threatening to abuse the law or legal process; (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person; (c) Threatening to report a person to a government agency for the purpose of arrest or deportation; (d) Threatening to collect an unlawful debt; or (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing. (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.²⁶⁴

For the purposes of involuntary servitude in the first and second degree, Oregon has defined "services" as "activities performed by one person under the supervision or for the benefit of another person."²⁶⁵

²⁶² OR. REV. STAT. § 163.266 (2009).

²⁶³ OR. REV. STAT. § 163.264 (2009).

²⁶⁴ OR. REV. STAT. § 163.263 (2009).

²⁶⁵ OR. REV. STAT. § 163.261 (2009).

Despite the penalty considerations, the Oregon trafficking statutes were primarily intended to be an educational and awareness tool rather than a prosecutorial tool. Proponents of Senate Bill 578 testified that the bill would raise public awareness and law enforcement awareness on the subject of human trafficking. Additionally, the legislature felt that enactment would illustrate the level of commitment the state afforded the human trafficking issue.²⁶⁶ This was further evidenced by a testimony that only a handful of trafficking cases would be seen on an annual level and any fiscal impact as a result would be minimal. Furthermore, any “big cases” would presumably fall under federal responsibility.²⁶⁷

In addition to creating the crimes of trafficking in persons and involuntary servitude, these laws provide an avenue for a victim to bring a civil cause of action for damages against a person conducting or involved in trafficking.²⁶⁸ The legislature attached a statute of limitations of six years for the victim to commence a claim.²⁶⁹

Victims may also seek restitution for economic damages suffered. This payment may be awarded in addition to any awards for compensatory damages.²⁷⁰ Claims for damages are barred if the victim is considered a co-participant in the defendant’s criminal activities.²⁷¹ However, according to the legislative history, legislators agreed that Oregon’s law should provide for a victim to raise a defense of duress²⁷² if she or he were forced to commit a crime while under the control of the trafficker.²⁷³

Additionally, proponents of the anti-trafficking legislation intended the use of the trafficking statutes to operate in conjunction with Oregon’s racketeering statute,²⁷⁴ which prohibits any conduct to commit, attempt to commit, conspire to commit, solicit, coerce, or intimidate another person to commit a crime.²⁷⁵

In understanding Oregon’s process of prosecuting trafficking, the felony of Compelling Prostitution is also relevant. Many trafficking victims are often coerced or forced into engaging in prostitution. Having clearly defined elements and a ranking as a Measure 11 offense on the sentencing grid, compelling prostitution is often used as a successful prosecution tool. Oregon’s statute defines Compelling Prostitution as follows:

²⁶⁶ *Relating to trafficking in persons; creating new provisions: Hearing on SB 578 Before Sen. Comm. on Judiciary*, 2007 Leg., 74th Sess. (2007) (statement from Sen. Kate Brown).

²⁶⁷ *Relating to trafficking in persons; creating new provisions: Hearing on SB 578 Before Sen. Comm. on Judiciary*, 2007 Leg., 74th Sess. (2007) (statement from Sen. Roger Beyer, Vice-Chair, Or. S. Comm. on Judiciary).

²⁶⁸ OR. REV. STAT. § 30.867 (2009).

²⁶⁹ OR. REV. STAT. § 30.867(4) (2009).

²⁷⁰ OR. REV. STAT. §§ 137.103 (2009) and 137.109 (2009).

²⁷¹ OR. REV. STAT. § 137.109 (2009).

²⁷² OR. REV. STAT. § 163.269 (2009).

²⁷³ *Relating to Trafficking in Persons: Hearing on SB 578 Before the Subcomm. on Public Safety and the H. Comm. on Joint Ways & Means* (2007). This is relevant because many victims of trafficking engage in prostitution or serve as mules for the defendant. If the victim can demonstrate she was forced to engage in these offenses, she would still be entitled receive award for damages.

²⁷⁴ *Relating to trafficking in persons; creating new provisions: Hearing on SB 578 Before Sen. Comm. on Judiciary*, 2007 Leg., 74th Sess. (2007) (statement from Sen. Roger Beyer, Vice-Chair, Or. S. Comm. on Judiciary); OR. REV. STAT. § 166.720 (2010) (stating racketeering is an unlawful crime).

²⁷⁵ OR. REV. STAT. § 166.715 (6) (2010) (defining racketeering activity).

(1) A person commits the crime of compelling prostitution if the person knowingly: (a) Uses force or intimidation to compel another to engage in prostitution; or (b) Induces or causes a person under 18 years of age to engage in prostitution; or (c) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

(2) Compelling prostitution is a Class B felony.²⁷⁶

2. Recent State Legislation

In 2009, Oregon passed Senate Bill 839, which amended certain sections of Oregon's Revised Statutes relating to confidentiality of victims' addresses within the Address Confidentiality Program.²⁷⁷ The Address Confidentiality Program was established within Oregon Department of Justice to protect the confidentiality of victims' addresses in order to prevent assailants or potential assailants from finding the victim through public records. This bill amended the statute to ensure that victims of human trafficking, along with victims of sexual offenses, domestic violence, or stalking, were included within the Program's protection.²⁷⁸

In February 2010, in response to Oregon's growing human trafficking problem, the state legislature passed HB 3623.²⁷⁹ This bill aims to increase public awareness of human trafficking within the Oregon by allowing the Oregon Liquor Control Commission (OLCC) to send informational stickers to establishments who sell and serve alcohol.²⁸⁰ The sticker displays the National Human Trafficking Hotline phone number for victims, a description of human trafficking as a form of slavery, and an appeal for the public to call the hotline if they have encountered a trafficking victim.²⁸¹ However, the posting of the stickers is not mandated; it is up to the establishment receiving the stickers to decide whether to post it.

3. Federal Legislation Introduced by U.S. Senator in Response to Trafficking Victims' Needs in Oregon

U.S. Senator Ron Wyden, recognizing Oregon's human trafficking problem, introduced a bill in 2009 that is currently before Congress and has gained four co-sponsors to date. This bill aims to provide certain regions of the United States with federal funds of \$2.5 million dollars. Oregon would be included in this pilot program, with the funds designated for the following: law enforcement training, shelters, salaries for police officers and prosecutors, victim's assistance and counseling services, everyday needs of victims such as clothing and food, and outreach and education funds.²⁸²

²⁷⁶ OR. REV. STAT. § 167.017 (2007).

²⁷⁷ OR. REV. STAT. § 192.822 (2009).

²⁷⁸ 2009 Or. Laws Regular Reg. Sess. 1 (The summary of the bill states: "Includes victim[s] of human trafficking as [a] person eligible for Address Confidentiality Program").

²⁷⁹ Or. Laws Spec. Sess. 1, Ch. 65 (2010).

²⁸⁰ Interview with Representative Brent Barton, Oregon State Legislator, in Salem, Or. (Feb. 01, 2010).

²⁸¹ *Id.*

²⁸² "Trafficking Deterrence and Victims Support Act of 2009," S2959, *available at* <http://thomas.loc.gov/cgi-bin/thomas>; Interview with Commissioner McKeel, Multnomah County Commissioner, in Portland, Or. (Feb. 10, 2010).

4. Oregon's Labor Laws

Oregon has developed extensive laws to regulate labor within the state. Many of these statutes and regulations directly or indirectly impact trafficking victims or traffickers. Oregon established the Bureau of Labor and Industries (BOLI) to administer these laws and oversee employment issues within the state. BOLI's mission is "to protect employment rights, advance employment opportunities, and protect access to housing and public accommodations free from discrimination."²⁸³ BOLI has four principle duties:

- 1) To protect the rights of workers and citizens to equal, non-discriminatory treatment through the enforcement of anti-discrimination laws that apply to workplaces, housing and public accommodations;
- 2) To encourage and enforce compliance with state laws relating to wages, hours, terms and conditions of employment;
- 3) To educate and train employers to understand and comply with both wage and hour and civil rights law; and
- 4) To promote the development of a highly skilled, competitive workforce in Oregon through the apprenticeship program and through partnerships with government, labor, business, and educational institutions.²⁸⁴

Accomplishing these duties requires BOLI to develop and promulgate agency regulations that implement the statutory framework. BOLI's statutory authority covers work-related violations in the illicit sex and labor trafficking sectors, as well as in the legitimate businesses that operate alongside these problematic arenas.

a. Labor Laws: The Sex Industry

Oregon's Constitution has an expansive free speech clause that allows the commercial sex industry in Oregon significant liberty,²⁸⁵ though prostitution is still illegal regardless of age, and any sexual display or contact with minors is prohibited by Oregon criminal law.²⁸⁶ At least in part because of this freedom, Portland has the highest number of sexually oriented businesses per capita of any city in the nation.²⁸⁷ However, the legal sex industry often is used as a front for illegal commercial sex activities, including commercial sexual exploitation of minors.²⁸⁸ Legal

²⁸³ See State of Oregon, Bureau of Labor and Industries, <http://www.oregon.gov/BOLI/index.shtml> (last visited June 14, 2010).

²⁸⁴ *Id.*

²⁸⁵ *State v. Henry*, 732 P.2d 9 (1987). See Brad Smith, *Strip Club Foes Seek Amendment*, THE OREGONIAN, Apr. 23, 2009, at C1, C3. See also *supra* note 258.

²⁸⁶ OR. REV. STAT. §§ 163.415, 163.670 (2009).

²⁸⁷ See, e.g., Susan Donaldson James, *Strip Club Teases Small Oregon City*, ABC NEWS, Oct. 22, 2008, available at <http://abcnews.go.com/TheLaw/Story?id=6088041&page=1>. See also Smith, *supra* note 285, at C3 ("Oregon's constitution and rulings by the Oregon Supreme Court have protected nude dancing, adult bookstores—and even live sex shows—through the free-speech clause. These protections have helped dub Portland the country's per-capita strip-club capital.").

²⁸⁸ RICHARD J. ESTES AND NEIL ALAN WEINER, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S, CANADA AND MEXICO, Executive Summary 7 (University of Pennsylvania) (2001) (a study finding that commercial sexual exploitation of children is linked to escort and massage services, private dancing, drinking and

sex establishments often attract parallel illicit businesses and serve to render sex trafficking of adults and young girls hidden or easier, including forced prostitution.²⁸⁹ Because working for these sex businesses is similar enough to other forms of employment, there are not specific regulations regarding sex workers beyond criminal limitations on commercial sex and other general requirements, such as health code regulations and wage laws. For instance, there appears to be some controversy over whether strippers or similarly employed people are actually employees or independent contractors.²⁹⁰ Regardless, BOLI has authority to regulate these establishments, and should do so aggressively²⁹¹ to prevent the abuse of such women which regularly occurs.²⁹²

b. Labor Laws: Farm/Forest Labor

Oregon Revised Statutes Chapter 658 regulates employment agencies, farm labor contractors, and farmworker camps. This Chapter is thus the most important section of the labor statutes regarding farmworkers.²⁹³ The relevant BOLI regulations are:

- Division 14 Farm Worker Camp Operators: Rules regulating farm-worker camp operators.²⁹⁴

photographic clubs, major sporting and recreational events, major cultural events, conventions, and tourist destinations).

²⁸⁹ See generally, U.S. DEPT. OF STATE, *TRAFFICKING IN PERSONS REPORT 27* (2007), available at <http://www.state.gov/g/tip/rls/tiprpt/2007/>. Specific to Portland, see Ruben Rosario, *After Prostitution and Addiction, a New Beginning*, PIONEER PRESS, May 5, 2010, available at http://www.twincities.com/localnews/ci_15026537 (“She was introduced to a charismatic ‘record producer’ who turned out to be a pimp. The dancing led to client ‘dating’ and escort-service work in the Portland and San Francisco areas that involved prostitution.”).

²⁹⁰ See, e.g., James Pitkin, *Strip Fees*, WILLAMETTE WEEK ONLINE, July 1, 2009, available at <http://week.com/editorial/3534/12758/>. See contra, In the Matter of Geoffroy Enter., Inc., dba Babe’s Cabaret, and Richard D. Geoffroy, Respondents, Case Number 16-96, Final Order of the Commissioner, ALJ Jack Roberts (1996), available at http://www.oregon.gov/BOLI/LEGAL/H_FO_Geoffroy.shtml (the commissioner determined that two women who worked as nude dancers at Respondents’ bar were employees and not independent contractors, and were entitled to payment of minimum wages and civil penalty wages).

BOLI applies a five-part “economic realities” test derived from federal law to determine whether or not strippers are employees or independent contractors under Oregon wage and hour laws. See generally BUREAU OF LABOR AND INDUSTRIES, *INDEPENDENT CONTRACTORS* (2006), available at http://www.oregon.gov/BOLI/TAT_FAQ_Independent_Contractor_092606.pdf. Based on these criteria, strippers working at establishments providing this activity as entertainment probably would qualify as employees, but depending on the facts of any particular situation, it might be possible for a stripper to be an independent contractor. For example, if a stripper has her own independent business and works for multiple clients or customers, she could be considered an independent contractor. BOLI has successfully pursued cases both administratively and in court involving the non-payment of wages to exotic dancers, asserting an employment relationship. Email from Christine N. Hammond, Wage and Hour Division Administrator, Oregon Bureau of Labor and Industries, to Faith Morse, Legal Intern, Willamette University College of Law Legal Clinic (May 5, 2010) (on file with the Clinic).

²⁹¹ This proposal is made despite the reality that BOLI is currently performing at its best under limiting budget constraints. The legislature needs to provide the additional resources and authority necessary to adequately address the issues regarding sex workers.

²⁹² For example, two men recently pled guilty in Washington State to being involved in running a prostitution ring making more than \$25 million per year and operating out of a chain of strip clubs. Levi Pulkkinen, *Three plead guilty in strip-club case*, SEATTLE POST-INTELLIGENCER, Apr. 28, 2010, available at http://www.seattlepi.com/local/419168_ricks28.html.

²⁹³ OR. REV. STAT. § 658 (2010).

- Division 15 Farm and Forest Labor Contractors: Rules pertaining to licensing and regulation of farm/forest operators.²⁹⁵
- Division 17 Private Employment Agency Matters: Rules regulating private employment agencies that charge applicants a fee for services.²⁹⁶

BOLI also produces a handbook about farm labor laws that provides a “general summary and teaching guide to help farm and forest labor contractors understand and comply with Oregon’s Farm Labor Contractor, Farmworker Camp Operator, Wage and Hour and Child Labor regulations.”²⁹⁷ As it stands, the handbook covers only BOLI regulations and associated administrative penalties, which may create the perception that the criminal consequences of trafficking are minimal.²⁹⁸ Thus, adding information to this handbook on human trafficking and the criminal penalties for anyone involved in trafficking-related activities may be appropriate. Human trafficking involves violations of more than just the BOLI regulations or labor statutes, and the handbook should highlight such trafficking-related laws rather than merely mentioning them in passing. This would make the book more comprehensive and a more useful tool for the intended audience: farm and forest labor contractors.²⁹⁹

Brief Overview of Relevant Laws and Regulations: Part of BOLI’s responsibility includes creating administrative regulations that interpret the governing statutes and enforcing them. Due to the unique nature of the employment relationship involved in migrant and agriculture labor, BOLI has specific regulations regarding this type of employment. These regulations require farm or forest labor contractors to be licensed and bonded.³⁰⁰ Other relevant license requirements include the following: a completed application; current color photographs of the contractor; certification of tax compliance with various government agencies; information about vehicles used to transport workers; copies of worker agreements and worker rights supplied to the workers; and proof of financial responsibility. BOLI defines proof of financial responsibility as a Corporate Surety Bond of a company licensed to do business in Oregon, a cash deposit, or deposit the equivalent of cash (such as a Time Certificate of Deposit).³⁰¹ It is unclear from the

²⁹⁴ Oregon State Archives, Bureau of Labor and Industries, http://arcweb.sos.state.or.us/rules/OARS_800/OAR_839/839_014.html (last visited June 10, 2010).

²⁹⁵ Oregon State Archives, Bureau of Labor and Industries, http://arcweb.sos.state.or.us/rules/OARS_800/OAR_839/839_015.html (last visited June 10, 2010).

²⁹⁶ Oregon State Archives, Bureau of Labor and Industries, http://arcweb.sos.state.or.us/rules/OARS_800/OAR_839/839_017.html (last visited June 10, 2010).

²⁹⁷ BUREAU OF LABOR AND INDUSTRIES, OREGON FARM/FOREST LABOR CONTRACTOR HANDBOOK (2009), available at http://www.oregon.gov/BOLI/WHD/FFL/W_FFL_Handbook.shtml.

²⁹⁸ *See id.* at 17. “In addition to other penalties provided by law, BOLI may assess a civil penalty of up to \$2,000 for each violation of the F/FLC law” While this is accurate—BOLI may add this fine on top of other criminal penalties—the handbook does not cover other criminal laws related to trafficking or other crimes. Including that here may be a good tool to communicate to this particular type of trafficker that Oregon takes trafficking seriously.

²⁹⁹ While most human traffickers probably do not engage in detailed cost-benefit analysis comparisons before they decide to engage in criminal activity, Oregon should not lose any opportunity to remind them of the costs associated with their behavior, including the criminal nature of their activities and the penalties involved.

³⁰⁰ OR. REV. STAT. §§ 658.410, 658.417; OR. ADMIN. R. 839-015-0004(3).

³⁰¹ The amount required is based on the maximum number of employees the farm/forest labor contractor expects to employ during the license year and ranges from \$10,000 for 20 or fewer employees to \$30,000 for 21 or more employees and for all agricultural associations. OR. REV. STAT. § 658.415. If the contractor is also operating a farm worker camp, there is an additional endorsement required. Proof of financial responsibility is also raised to \$15,000. OR. REV. STAT. § 658.735.

statute if the bond amounts would be available to pay compensation or restitution to victims of trafficking in the event of a conviction or other finding of liability, in addition to any wage claims the victim may have.³⁰²

One of the more important requirements for labor contractors is that they must provide at the time of hiring a statement of the worker's rights and remedies to the worker in a written format in English and a language they understand.³⁰³ A few of the required elements include the following:

- The method of computing the rate of compensation.
- The terms and conditions of any loan made to the worker.
- The conditions of any housing, health and child care services to be provided.
- The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof.
- The terms and conditions under which the worker is furnished clothing or equipment.
- The name and address of the owner of all operations where the worker will be working as a result of being recruited, solicited, supplied or employed by the farm labor contractor.
- The worker's rights and remedies in plain and simple language.

Workers who live in farm worker camps have certain additional rights, which include access to the camp by non-employees, including authorized or invited persons, access to a telephone, and to receive certain information about government agencies and the camp operator.

c. Analysis & Recommendations Regarding Labor Laws

There are many improvements that could be made to the labor law system in Oregon. A few examples are included here, but this list is not intended to be exhaustive or complete. These are just a few of the surface changes necessary to meet immediate needs. A deep evaluation of the system by a team of experts is necessary to fully understand the impact these laws have on victims and how best to use the law to prevent this kind of criminal abuse.

First, BOLI should require that information about farm and forest workers' rights and remedies be provided on a regular basis throughout the employment/contractor relationship, not merely upon the first contact. At the initial point of contact, there is so much paperwork for the worker to contend with that this kind of notice is easily skipped over, not read, or more commonly, not understood or believed.³⁰⁴ The larger problem is that contractors who traffic in persons are

³⁰² OR. REV. STAT. § 658.415(3).

³⁰³ OR. REV. STAT. § 658.440(1)(f); OR. ADMIN. R. 839-015-0310; OR. ADMIN. R. 839-015-0360.

³⁰⁴ Particularly for foreign-born populations, this kind of notice is likely to be ineffective for many reasons. They may come from a country where the government cannot be trusted. They may or may not be able to read. They may or may not be allowed to keep the information. If they do try to seek help, many migrant workers speak indigenous languages instead of Spanish and require translators that are not easily accessible. These workers thus get lost in, or cannot access, the system. The community itself is hesitant to report abuses because of possible retaliation, such as job loss for the complaining person and possibly others, which would result in community

unlikely to substantially comply with labor laws in the first place. The same can be said of sex traffickers. Requiring additional provision of this information at intervals (such as twice a season with a paycheck) throughout the employment relationship or at the very least through requisite workplace and work-camp postings, could help prove the intent element during later prosecutions if the trafficker failed to comply.

Second, the regulations that protect farm workers and create a private right of action for abuses rely on the victim to complain to the BOLI or the police and thus, communication between vulnerable populations and these agencies needs to be improved. The system is not functioning well because most migrant workers are not aware of their rights, even though they must be handed a copy of them in writing. Ways in which the regulations could be better communicated is through either community education programs that occur close by their workplace, or through more directed outreach. Community education is important—the knowledge of workers’ rights and access to people that can help them encourage people to come forward with complaints. Similarly, they cannot access the relevant agencies to report a violation if they did know their rights. For example, they may not have transportation to reach the relevant agencies. Creating the opportunity to make complaints close by would help.

A third recommended route to improvement would be changing the way cases are initiated and investigated. The current system relies on the workers or NGOs to file a formal complaint before an investigation is launched for sex or labor trafficking, resulting in very few cases making it through the process, partly because reporting these crimes involves huge personal risks to the victim (including violence, job loss, and humiliation). As the regulating agency, BOLI is in a much more secure and powerful position than the victims of violations to make a difference. At this time, BOLI does not have the resources to undertake investigations without an official complaint being filed.³⁰⁵ This means an anonymous allegation or "tip" that something may be going on is not enough to work with to begin an investigation.³⁰⁶ One possible way to finance this could be to have the Legislature increase the administrative fines BOLI can charge employers who violate labor laws, specifically including a large, mandatory fine if trafficking is uncovered.

Finally, the laws that are broken when human trafficking occurs go far beyond violations of labor laws. Thus, many substantive issues in trafficking cases fall within other areas of the law besides labor regulations. However, because BOLI is the labor law enforcement entity, it is well-situated to identify cases of human trafficking and raise awareness among employers of the consequences of trafficking given that human trafficking, particularly labor trafficking, involves the violation of labor laws. Training conducted in this area effectively falls into BOLI’s core mission of protecting employment rights. Thus, BOLI is in a unique position to raise awareness of these violations with many groups, including employers, victims, service providers, law enforcement, and attorneys. This is essential, because many of these groups are not aware that these labor

condemnation, especially for abuses that require speaking about things that are culturally taboo, such as sexual violence. Interview with Janice R. Morgan, Farmworker Program Director, Legal Aid Services of Oregon and Nargess Shadbeh, Farmworker Program Director, Oregon Law Center in Portland, Or. (Feb. 19, 2010). Telephone Interview with Carl Wilmsen, Executive Director, Alliance for Forest Workers (Feb. 24, 2010).

³⁰⁵ E-mail from Bob Estabrook, Office of the Commissioner, Oregon Bureau of Labor & Industries, to Faith Morse, Legal Intern, Willamette University College of Law Clinic (Apr. 30, 2010) (on file with Clinic).

³⁰⁶ *Id.*

violations may be a part of a trafficking case. Training is essential to a better system of victim identification and prevention of trafficking. Fewer employers are likely to be willing to “hire” victims of trafficking if they believe law enforcement, including administrative agencies such as BOLI, are aggressively hunting violators.

B. Implementing the Three “Ps”

1. Prevention

The goal of prevention is to address the trafficking problem directly and to reduce human trafficking. Moreover, having the proper procedures in place makes it difficult for traffickers to infiltrate the state. The Trafficking Protocol delineated several mechanisms to prevent human trafficking. These include efforts to increase education and awareness efforts throughout the anti-trafficking community and general public, encourage cooperation in the exchange of information between state and federal agencies, NGOs, and other officials, and to increase training of individuals who combat human trafficking in an official capacity.³⁰⁷

a. Coordination Mechanisms and Programming

Because various parts of the anti-trafficking efforts in Oregon are interconnected, agency cooperation as well as communication between all interested parties is necessary to avoid duplicative efforts, turf wars, and wasteful use of a limited amount of resources. While each party has its own particularized role in anti-trafficking efforts, all parties involved should have a clear understanding of what that role entails in order to form a cohesive and dependable system that works well and efficiency. Developing a streamlined system comprised of clearly defined roles increases the chances that victim identification, victim cooperation, and prosecution of traffickers will occur. All of this results in decreased opportunities for traffickers to thrive in Oregon.

Several key agencies are tasked with advancing coordination and communication amongst the various interested stakeholders and with ensuring the various roles have been clearly defined and understood by all other relating groups.

i. Oregon Human Trafficking Task Force (OHTTF)

The Oregon Human Trafficking Task Force (OHTTF) participates in multiple spheres of the anti-trafficking community. “The OHTTF is a collaboration of local, state, and federal law enforcement agencies working together with organizations providing comprehensive services to trafficking victims to identify and rescue victims of human trafficking and to proactively investigate, identify, apprehend and prosecute those engaged in human trafficking.”³⁰⁸ The task force was formed in 2005 under a grant administered by the U.S. Department of Justice.³⁰⁹ Functioning as the primary coordination mechanism in the state, several subsets of the OHTTF focus on specific areas, such as law enforcement investigation, foreign-born victims of

³⁰⁷ See *supra* Section III(A)(3).

³⁰⁸ Program Narrative Report from the Dept. of Community Justice (DCJ), Multnomah County, OR (2009).

³⁰⁹ Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010).

trafficking, education and awareness, and victims' services. More specifically, the Task Force is comprised of four smaller task forces: The Domestic Law Enforcement Task Force, the Domestic Victim Assistance Task Force, and the Foreign Born Law Enforcement Task Force and the Foreign Born Victim Assistance Task Force.³¹⁰ In addition, Oregonians Against Trafficking Humans (OATH), is a branch of the OHTTF that works closely with Catholic Charities, a non-profit organization,³¹¹ focusing solely on education and awareness. Additionally, the Sexual Assault Task Force (SATF), a membership body appointed by the Oregon Attorney General, provides training in sexual assault and related issues, and is a part of the victims' services committee for domestic victims at the OHTTF.

Deputy Sheriff Keith Bickford serves as Director of the Task Force and is responsible for ensuring local, state, and federal law enforcement collaborate in reporting suspected trafficking incidents, creating police reports, and identifying victims.³¹² Deputy Bickford receives victim referrals from service providers such as Catholic Charities, the Sexual Assault Resource Center (SARC), the Department of Human Services Child Welfare Division, immigration attorneys, and the Multnomah County District Attorneys office.³¹³ Additionally, he works closely with Immigration and Customs Enforcement (ICE) in the issuance of T and U visas to identified foreign-born victims of trafficking.³¹⁴

As part of its collaborative efforts, the OHTTF, together with the Portland Police Department and Catholic Charities, provides voluntary training to law enforcement on the topic of human trafficking. The first pilot training offered to law enforcement was held in March 2010.³¹⁵ Further training is offered through collaboration with service provider groups such as the Sexual Assault Resource Center (SARC) and OATH. These trainings are directed toward other service providers, victim advocates, educators, and the community-at-large.³¹⁶

³¹⁰ Interview with Pam Heimuller, Victim Witness Specialist, United States Attorney's Office, in Portland, Or. (Oct. 15, 2009); Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010) (The Domestic Law Enforcement Task Force consists of a US Attorney, several FBI agents, Immigration Customs Enforcement (ICE), Assistant Attorney General and local law enforcement from Portland to Eugene. The Domestic Victim Assistance Task Force consists of FBI Victim Specialists, a U.S. Attorney Victim Specialist, Dept. of Human Services Child Welfare (DHSCW), Dept. of Community Justice (DCJ), Juvenile Judges, medical services organization (CARES) and different faith based organizations. The Foreign Born Law Enforcement Task Force consists of a US Attorney, FBI, ICE, US Customs and Border Protection, Assistant Attorney General. The Foreign Born Victim Assistance Task Force consists of immigration attorneys, Farm Worker Programs, interpreters, and the various members of the medical community); Interview with Carol Fenton, Board Member, OATH, in Portland, Or. (Mar. 9, 2010); Program Narrative Report from the DCJ, Multnomah County, OR (2009).

³¹¹ See also *infra* Section IV(B)(2)(a)(ii) at 60 (Describing the roles and objectives of Catholic Charities with respect to human trafficking).

³¹² Program Narrative Report from the DCJ, Multnomah County, OR (2009); Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010); Interview with Joslyn Baker, Collaboration Specialist, DCJ, in Portland, Or. (Mar. 15, 2010).

³¹³ Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010); Interview with Joslyn Baker, Collaboration Specialist, Dept. of Community Justice Multnomah County, in Portland, Or. (Mar. 15, 2010).

³¹⁴ Chris Killmer, Human Trafficking Training (Nov. 05, 2009).

³¹⁵ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³¹⁶ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010); Interview with Carol Fenton, Board member, OATH, in Portland, Or. (Mar. 09, 2010).

ii. Oregon Work Group

The 2007 Legislative Assembly passed Oregon’s first trafficking statutes.³¹⁷ SB 578 called for an official “task force” to assess the level of trafficking within the state and the policies and procedures in place to address the issue. Because of insufficient funding, the Ways and Means Committee ultimately deleted the task force.³¹⁸

A less formal, voluntary “work group” was formed during the 2007-08 interim session and addressed issues formally delegated to the task force called for in the 2007 bill.³¹⁹ The work group consisted of members of the state legislature, attorneys, state agencies, law enforcement and service providers.³²⁰

As a part of its evaluation, the work group distributed surveys to the Chiefs of Police Association, Sheriffs Association, District Attorneys Association, State Police, and NGO’s to determine the extent of human trafficking in Oregon. Based on its findings from the surveys, the work group submitted a report consisting of its findings and recommendations to the Senate Interim Committee and the House Interim Judiciary Committee for consideration.³²¹ Some of the main recommendations included:

- Increase education for the general public
- Increase education of law enforcement through trainings offered as certification credits
- Track the number of prosecutions for human trafficking in Oregon
- Create secure housing for victims
- Increase information sharing amongst the various anti-trafficking organizations
- Provide for a victim shelter³²²

There is no longer an active organized “work group” that engages in scheduled meetings or roundtable sessions. The last formal convening of the “work group” took place in the 2007-2008 interim legislative session.

³¹⁷ See *supra* Section IV(A), at 35.

³¹⁸ Memorandum from the Work Group on Human Trafficking to the S. Interim Judiciary Comm. and The H. Interim Judiciary Comm. (Oct. 30, 2008).

³¹⁹ *Id.* (The purpose of the Task Force was to: 1) Measure and evaluate the progress of the state’s efforts at preventing trafficking in persons; 2) Identify available federal, state and local programs that provide services to victims of human trafficking; 3) Make recommendations on methods to provide a coordinated system of support and assistance to persons who are victims of trafficking in persons).

³²⁰ *Id.* Membership included: Senator Joanne Verger, Rep. Debbie Boone, Immigration Attorney, Siovhon Sheridan-Ayala, Mickey Service with the Oregon Dept. of Human Services, Ann Christian, Oregon Criminal Defense Lawyers Assoc., Kevin Campbell, Oregon Assoc. of Chiefs of Police, Michael Slauson and Stephanie Soden Oregon Dept. of Justice, Craig Prins and Mike Stafford with the Oregon Criminal Justice Commission, Kethy Verger Muscus-Shapf, Legislative Assistant to Sen. Verger, Nancy Cozine, State Court Administrator’s Office, and Lia Lee, Council for Prostitution Alternatives.

³²¹ Memorandum from the Work Group on Human Trafficking to the S. Interim Judiciary Comm. and The H. Interim Judiciary Comm. (Oct. 30, 2008).

³²² *Id.*

iii. Coordination between State and Federal Agencies

(1) Oregon Criminal Justice Commission

The Oregon Criminal Justice Commission (CJC) is the agency charged with determining sentences for new crimes created by the Legislature.³²³ Under the initial trafficking statutes, the CJC was tasked with tracking the number of trafficking cases prosecuted within the state.³²⁴ As of February 2010, there had been no convictions under Oregon’s trafficking statutes.³²⁵

(2) Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI) initiative that addresses trafficking, “Innocence Lost,” combines federal, state, and local law enforcement efforts to rescue minor victims of trafficking and arrest their traffickers.³²⁶ To date, police forces in the cities of Tigard, Portland, Gresham, and Vancouver have cooperated with and participated in this initiative.³²⁷ Once the cases have been identified and it has been decided where to prosecute, the cases are referred to either the U.S. Attorney’s Office or a state district attorney’s office.³²⁸

The FBI also partnered with the Department of Human Services (DHS) to provide victims’ services after the first cross-country sting operation, Operation Cross Country.³²⁹ Moreover, the two collaborated to conduct law enforcement interviews with the victims who were found as a result of the sting.³³⁰ In the second Operation Cross Country sting, the FBI once again demonstrated agency collaboration through partnering with a local service provider, the Sexual Assault Resource Center (SARC), in the case management system for the victims. These are significant examples of strong collaborative efforts that are unique to the state.³³¹

Continued coordination should continue between the FBI and DHS, especially because the FBI is not equipped to serve as case managers for identified victims.³³² Furthermore, the FBI lacks legal authority to take custody of children identified as trafficking victims.³³³ The FBI also relies heavily on identification of potential victims from third-party referrals.³³⁴

³²³ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Nov. 03, 2009).

³²⁴ Memorandum from the Work Group on Human Trafficking to the S. Interim Judiciary Comm. and The H. Interim Judiciary Comm. (Oct. 30, 2008).

³²⁵ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 08, 2010).

³²⁶ Interview with Caroline Holmes, Victim Advocate, FBI Civil Rights Division, in Portland, Or. (Apr. 07, 2010).

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*; see also *infra* Section IV(B)(2)(a) at 58 and Section *infra* Section IV(B)(2)(a)(v) at 62 (discussing “Operation Cross Country” FBI sting).

³³⁰ Interview with Caroline Holmes, Victim Advocate, FBI Civil Rights Division, in Portland, Or. (Apr. 07, 2010).

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ *Id.*

(3) Local Law Enforcement

The Multnomah County District Attorney's office works closely with the Portland Police Department (PPD) and the Multnomah Sheriffs Office in the prosecution process.³³⁵ Advocates and experts agree that cases will not survive or move forward without strong collaboration between local police and prosecutors.³³⁶ Based on some positive results from close cooperation between the PPD and the Multnomah County DA's office, the PPD stresses the importance of interagency communication to promote favorable prosecution outcomes.³³⁷ A close working relationship between law enforcement agencies and respective district attorney offices expedites prosecution. This has been demonstrated in Portland where the DA can usually get the case to a grand jury in a matter of days.³³⁸

While coordination between law enforcement and prosecutors has improved in the Portland area, an identified lack of coordination between law enforcement and service providers remains problematic throughout the state. Law enforcement is generally unfamiliar with the existence of specific social service resources and, as a result, they do not know where to refer victims.³³⁹ Service providers such as Catholic Charities receive victim referrals from attorneys and community members, but receive only a small number of referrals from local and federal law enforcement agencies.³⁴⁰

(4) Law Enforcement Data Compilation

There is no standardized reporting or record management system (RMS) in Oregon.³⁴¹ Agencies currently use a variety of systems for recording information. Because of the lack of a uniform method of compiling data, the cross-referencing needed to track offenders from various crimes recorded in different databases becomes impaired.³⁴² Consequently, victim identification, witness information, and original arrest charges are lost or do not ever make it into a single system.³⁴³

These statistics are crucial to law enforcement and groups like the CJC in their attempts to substantiate a need for stricter sentencing and legislation.³⁴⁴ Furthermore, the absence of a

³³⁵ Interview Greg Moawad, Assistant Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

³³⁶ Interview with Mike Geiger, Police Sgt., Sexual Assault Detail, Detective Division, Portland P.D., and Doug Justus, Police Sgt. Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

³⁴⁰ Interview with Chris Kilmer, Catholic Charities, in Portland, Or. (Feb. 10, 2010); Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010) (It should be noted that while Multnomah County has increased coordination efforts between law enforcement and service providers, it is uncertain as to what is being accomplished in the rest of the state).

³⁴¹ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Nov. 03, 2009) (There are various databases in use including but not limited to: OJIN (Oregon Judicial Information Network), NIBRS (National Instant Based Reporting System), and LEDS (Law Enforcement Data System). Thirty-one percent of the state uses NIBRS, which, in Mike's opinion, is the best. Only the small agencies use this program, and it is not the agencies in urban areas).

³⁴² Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Nov. 03, 2009).

³⁴³ *Id.*

³⁴⁴ *Id.*

central repository of human trafficking data directly affects the level of understanding of the problem.³⁴⁵

The Oregon State Intelligence Network (OSIN) contains information on national statistics, but there is nothing in patrol cars that law enforcement officers can access while they are in the field that provides information on prior victim status or any indication of a pattern of arrests that might serve as an indicator of a potential trafficking situation.³⁴⁶

b. Awareness-raising

Currently, trafficking efforts are primarily focused on juvenile victims of sex trafficking.³⁴⁷ This focus elicits a greater response from the public, especially as it often serves as a stepping stone to better awareness of labor trafficking and trafficking of foreign-born victims.³⁴⁸ Labor trafficking is not as evident as sex trafficking in the Portland area, and is harder to recognize in general.³⁴⁹ Current public education efforts are mainly focused on the tri-county area (Multnomah, Washington, Clackamas)³⁵⁰ with some attention to the I-5 corridor and where regional volunteer OATH coordinators have been established.³⁵¹

Oregonians Against Trafficking Humans (OATH) is the education and awareness branch of the Oregon Human Trafficking Task Force. OATH is comprised of a Board of Directors, college and high school groups, and regional volunteers.³⁵² OATH targets high schools, universities, businesses, religious organizations and others to raise awareness about trafficking, mainly through trafficking education events in Oregon.³⁵³ The current focus of OATH is on sex-trafficking involving domestic minors.³⁵⁴ Events hosted by OATH include trainings at schools, brown bags called “lunch-n-learn,” and outreach through tabling at anti-trafficking events and fairs.³⁵⁵ OATH also hosts a speaker series the second Monday of the month at Kell’s Irish Pub in Portland that focuses on human trafficking.³⁵⁶

Multnomah County Commissioner Diane McKeel has also been raising awareness of the human trafficking issue in the Portland area.³⁵⁷ Commissioner McKeel has been focusing her efforts on raising support for bringing a shelter to the Portland area, reestablishing a johns’ school in

³⁴⁵ Interview with Honorable Nan Waller, Judge, Multnomah County Circuit Court, in Portland, Or. (Mar. 29, 2010).

³⁴⁶ Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 10, 2010).

³⁴⁷ Interview with Commissioner McKeel, Multnomah County Commissioner, in Portland, Or. (Feb. 10, 2010).

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010).

³⁵¹ Interview with Carol Fenton, OATH, in Portland, Or. (Mar. 09, 2010).

³⁵² *Id.* The Board of Directors is made up of Wynne Wakila, Chris Killmer, Keith Bickford, Doug Justus, Bill Hiller and Carol Fenton. Current OATH High School Chapters are: Glencoe, Jesuit, Lake Oswego, Oregon Episcopal, Portland Adventist Academy. Current college chapters are: George Fox, Lewis & Clark Graduate School, Oregon State University, Pacific University, PCC Sylvania, Portland State University, University of Oregon, and University of Portland. Regional Coordinators are located in Bend, Klamath Falls, Seaside.

³⁵³ Interview with Carol Fenton, OATH, in Portland, Or. (Mar. 09, 2010).

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

Multnomah County, as well as working with Comcast to provide public service announcements on human trafficking in several different languages.³⁵⁸

Johns' schools, also known as first offender programs, serve as a diversion alternative to offenders for purchasing sex from a prostitute. In Johns' schools, the "johns," who are the individuals caught soliciting sex, have the option to enroll in an educational program as an alternative to criminal prosecution if they plead guilty to a lesser misdemeanor offense.³⁵⁹ In addition to the program's goal of preventing sex trafficking, reestablishment of a Johns' school seeks to change the public's perception of prostitution as a "victimless" crime and to deter further offenses.³⁶⁰ Plans for eventually reopening a Johns' school are currently underway in Multnomah County, with LifeWorks Northwest (NW) as the possible agency to implement and run the program.³⁶¹ There will also be a public relations campaign through the Trafficking Legislation Group to encourage other counties to adopt a Johns' school program. Due to fiscal impact and the reality that not all counties have the resources and/or need of a Johns' school, it appears that a Johns' school will not be statutorily mandated in the immediate future.³⁶²

Statewide efforts to raise awareness have also been made in the past year. Representatives Brent Barton and Jefferson Smith recently introduced and passed a bill aimed at increasing awareness of Oregon's trafficking problem.³⁶³ Oregon HB 3623 allows the Oregon Liquor Control Commission (OLCC) to provide stickers with a national trafficking hotline telephone number in the renewal notices sent out to restaurants and bars throughout Oregon.³⁶⁴ While posting the stickers in the restaurants and bars is voluntary, Representative Brent Barton has worked with the Oregon Restaurant Association to encourage its posting.³⁶⁵ Oregon HB 3623 bill was sponsored with primarily sex trafficking in mind.³⁶⁶

In the spring of 2010, the Oregon Center for Christian Values (OCCV) hosted the first comprehensive trafficking legislation planning meeting.³⁶⁷ Among several goals related to

³⁵⁸ *Id.*

³⁵⁹ The original Johns' school in Portland hoped to include prostitutes as staff members. It was felt that prostitute participation would demonstrate to the Johns' that prostitution is not a victimless crime and to help destroy the "Hollywood Pretty Woman" view often given to prostitution. Interview with Steve Evans, Referee, Southeast Portland Community Court in Portland, Or. (Mar. 19, 2010).

³⁶⁰ Interview with Carol Fenton, OATH, in Portland, Or. (Mar. 09, 2010); for further information on deterrence and prosecution of offenders, *see infra* Section IV(B)(3) at 80.

³⁶¹ Human Trafficking Legislation Planning Meeting, in Portland, Or. (Mar. 24, 2010). LifeWorks NW is a non-profit, community-based prevention, mental health and addiction agency that provides services primarily in the Portland Metro area.

³⁶² *Id.*

³⁶³ Interview with Representative Brent Barton, Oregon State Legislator, in Salem, Or. (Feb. 01, 2010).

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ Human Trafficking Legislation Planning Meeting, in Portland, Or. (Mar. 24, 2010). In attendance were: Deputy Keith Bickford, OHTTF; Drew Olsen, Commissioner McKeel's office; Mollie Ruskin, Rep. Smith's office; James Barta, Rep. Barton's office; Laura Janssen, Sen. Starr's office; Debbie Runciman, Rep. Tomei's office; Carol Fenton, OATH; Tara Lawrence, DA, Oregon Anti-Crime Alliance; Keely Hopkins, Willamette Law School; Dominique Rastrelli, Portland State University, Compassion2One; Stacy Bellavia, HT Cmte, OCCV, DHS; Dr Howard Kenyon, Board, OCCV; Stephanie Mathis, ED, OCCV; Stephanie Tama-Sweet, OFB Lobbyist, OCCV Board; Auricia Tama-Sweet, Former Medford police.

strengthening human trafficking legislation in Oregon, the group also plans on expanding the trafficking hotline bill to include other sectors and venues as part of a public campaign to raise awareness.³⁶⁸ One example involves gas stations. Oregon is one of the only states that prohibits drivers from pumping their own gas, so gas station workers are in a position to spot potential trafficking victims.³⁶⁹ Upcoming legislation could be aimed at placing stickers at gas stations, as well as providing gas station employees with a short training on trafficking and what red flags to look for.³⁷⁰ Other pieces of the public awareness campaign could include providing stickers or signs for posting to rest areas, massage parlors, nail salons, erecting billboards relating to human trafficking, and educating those in bar and restaurant businesses on the trafficking issue.³⁷¹ The biggest obstacle will be Oregon's budget and the price tag associated with any bill.³⁷²

c. Training for Law Enforcement

Members of the anti-trafficking community, including state and federal legislative representatives, attorneys, law enforcement, district attorneys, service providers and educators, identify training as a major gap at all levels in the system. One immigration attorney considers training one of the biggest gaps in the fight against human trafficking in Oregon because different agencies have varying views as to what constitutes trafficking in the eyes of the law.³⁷³

Focusing attention on training of law enforcement is one way to narrow the gap as law enforcement serves an integral role in anti-trafficking efforts. Human trafficking is considered a "hidden crime" because it is often entwined with other crimes, making identification difficult.³⁷⁴

Front-line officers are often the first individuals to come in contact with a potential victim of trafficking. They are in the prime position to recognize whether a person has been trafficked, to refer the victim to service providers in order to obtain the help she or he needs, and to gather critical evidence needed for further investigation and prosecution. Because of the vital position these officers hold and their interconnection with the protection, prevention, and prosecution goals of the TVPA, careful attention ought to be paid to the level and content of training given to law enforcement.

i. Available Training for Law Enforcement

The current law enforcement training curriculum offered to new recruits consists of a 16-week, 640-hour basic training program.³⁷⁵ This training program is the result of a legislative mandate passed in the 2007 legislative session where basic training was increased from 10 to 16 weeks.³⁷⁶

³⁶⁸ *Id.*

³⁶⁹ Human Trafficking Legislation Planning Meeting, in Portland, Or. (Mar. 24, 2010).

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ Interview with Siovhon Sheridan-Ayala, Immigration Attorney, in Portland, Or. (Feb. 10, 2010).

³⁷⁴ Chris Killmer, Program Director of OSSIP, Catholic Charities, Human Trafficking Training (Nov. 05, 2009).

³⁷⁵ OR. REV. STAT. §§ 181.610-181.712 (2010).

³⁷⁶ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

Despite this improvement, Oregon continues to fall behind the national average in the number of weeks offered for basic training.³⁷⁷

Absent a legislative mandate, curriculum work groups consisting of a multi-disciplinary board and policy committee determine the type of training included in the police academy training curriculum.³⁷⁸ The 16-week time frame is a significant factor in the decision-making process of what to include in training curriculum.³⁷⁹ A risk-management approach is taken with respect to basic and continuing education unit (CEU) training. The focus for training is on high risk, low occurrence crimes.³⁸⁰ Most of the curriculum decisions are, in reality, trend-driven as a result of the public perception of a recognized need or an increase in certain situations.³⁸¹

Presently, human trafficking is not covered within the current mandatory training curriculum.³⁸² Members of the law enforcement community believe training should become a mandatory requirement of state certification for each officer.³⁸³ Service providers and educators believe patrol officers play such an integral role in recognizing a trafficking case that education on the topic should occur while they are still immersed in basic training.³⁸⁴

ii. Mandatory Training

Incorporating trafficking into the current curriculum would require a legislative mandate.³⁸⁵ Existing training hours are already filled to capacity with training topics such as use of force. According to some, incorporating human trafficking into the existing training scheme would require the Police Policy Committee to eliminate an existing training subject to create an opening for trafficking training.³⁸⁶ Additionally, some view the lack of funding for additional resources and trainers as another obstacle to the likelihood of success of such a legislative mandate.³⁸⁷

Given the complexities involved with instituting mandatory training requirements, sheriffs and police sergeants concerned with Oregon's trafficking problem suggest as an alternative: the inclusion of trafficking training within the regional CEUs.³⁸⁸ Following basic training, recruits continue to receive "advanced" training in their regions, and such training could take place

³⁷⁷ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 8, 2010); Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010) (An approximation of the national average is 22 weeks of basic training).

³⁷⁸ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³⁷⁹ *Id.*

³⁸⁰ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 08, 2010); Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³⁸¹ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³⁸² *Id.*

³⁸³ Interview with Mike Geiger, Police Sgt., Sexual Assault Detail, Detective Division, Portland P.D., and Doug Justus, Police Sgt. Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

³⁸⁴ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010); Interview with Carol Fenton, Board member, OATH, in Portland, Or. (Mar. 09, 2010).

³⁸⁵ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ Interview with Mike Geiger, Police Sgt., Sexual Assault Detail, Detective Division, Portland P.D., and Doug Justus, Police Sgt. Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

there.³⁸⁹ However, this would raise numerous fiscal concerns in need of resolution. Regional training is ongoing throughout the state, but during the last legislative session, regional training received one of the largest reductions in funding.³⁹⁰ The number of regional trainers was reduced from four trainers to two, and these two trainers are responsible for coverage of the entire state.³⁹¹

The current statutory requirements address basic training, not regional training.³⁹² As a result, decisions regarding training content are based on individual agency self-identification of particular needs and areas of improvement.³⁹³ Consequently, this gives rise to inconsistencies between what is highlighted in basic training compared to the training received as recruits begin work in their respective regions.³⁹⁴

Despite the hurdles challenging mandatory and regional training, voluntary efforts to increase training are underway in the Portland tri-county area. It is believed recruits and other law enforcement officers are more receptive to training conducted by fellow law enforcement.³⁹⁵ In response, Deputy Sheriff Keith Bickford, Director of the OHTTF, recently completed the first human trafficking pilot training offered to law enforcement.³⁹⁶ This initiative focuses on addressing the problem of domestic sex trafficking of minors in the Portland area.³⁹⁷ Increased law enforcement resources and training is needed to accomplish this goal.³⁹⁸

iii. Training Recommendations of the Anti-trafficking Community

In order to maintain and promote efforts at increased and better training, a variety of recommendations have been suggested throughout the anti-trafficking community. These include:

- Standard operating procedures addressing victim identification, investigation and referrals³⁹⁹

³⁸⁹ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010).

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 08, 2010); *see also* Survey to Law Enforcement in Appendix A (The trafficking team distributed a survey to the 36 sheriffs' offices throughout the state in an attempt to determine training efforts directed to law enforcement and what processes and procedures were in place to handle an identified trafficking incident. According to the responses we received, very few officers received little to no training on the topic of human trafficking. Of the training that was given, it was done so on a voluntary basis. Additionally, the survey responses we received revealed that no trafficking instances had been identified in their particular regions).

³⁹⁵ Chris Kilmer, Catholic Charities with Deputy Keith Bickford, Dir. OHTTF, Human Trafficking Training (Nov. 05, 2009).

³⁹⁶ Interview with Lorraine Anglemier, Legal Services Coordinator, DPSST, in Salem, Or. (Mar. 17, 2010) (The training occurred in March 2010 and approximately 40 law enforcement officers were in attendance).

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ Keith Bickford, Dir. OHTTF, Human Trafficking Training (Nov. 05, 2009).

- Asking the right questions in the right way in order to maximize victim cooperation.⁴⁰⁰ As one person put it, because victims tend to “minimize, repress, and avoid, police should be trained to ask the right questions in the right environment and in a sympathetic tone in order to encourage victim identification and cooperation.”⁴⁰¹
- A training session occurring simultaneously for law enforcement and district attorneys, which would serve to further prosecution efforts and increase quality of evidence gathered by law enforcement.⁴⁰²
- A shift in mentality in the manner law enforcement deals with victims upon initial contact and investigative phases.⁴⁰³ Training to promote a change in mentality with respect to the treatment of prostitutes and other victims of trafficking could emphasize the importance of viewing these individuals as victims rather than criminals.⁴⁰⁴
- Focus on labor trafficking and events that may lead to a trafficking occurrence.⁴⁰⁵
- A single point of contact within each sheriff’s office that would be available to train new recruits in each region.⁴⁰⁶

d. Training for Other Relevant Agencies

In order for there to be cooperation among all of the players in the anti-trafficking efforts in Oregon, there has to be consistent training, from law enforcement to judges. In the process of examining Oregon’s efforts to combat trafficking, it became increasingly apparent that the large number of agencies and individuals involved is bound to create confusion as to the roles and responsibilities in collaborative efforts. Training has become one of the largest missing links. Although all are making valiant attempts at training their staff, as well as offering training to other agencies, these efforts are in many ways non-collaborative and can cause confusion. One strong recommendation that was echoed from interview to interview was that simultaneous trainings need to occur so that everyone understands their respective roles and the overall process.

⁴⁰⁰ *Id.* (Law enforcement needs training to address the specific needs of foreign-born victims of trafficking given the documentation status of these victims. Foreign-born victims are especially distrustful of police when the risk is deportation or reporting to immigration officials); Interview with Janice R. Morgan, Farmworker Program Director, Legal Aid Services of Oregon and Nargess Shadbeh, Farmworker Program Director, Oregon Law Center in Portland, Or. (Feb. 19, 2010) (This is especially true when dealing with foreign-born victims of labor and sex trafficking where initial questions pertaining to immigration status can overshadow critical questions needed to advance the trafficking investigation).

⁴⁰¹ Interview with Siovhana Sheridan-Ayala, Immigration Attorney, in Portland, Or. (Feb. 10, 2010).

⁴⁰² Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 8, 2010) (So much of the success for prosecution relies on the evidence gathered at the initial investigation. A combined training would allow members of law enforcement and district attorneys to communicate about the specific evidence and investigation procedures that are necessary to prove the elements of trafficking or involuntary servitude under Oregon’s current trafficking statutes. An integrated training session provides a platform to address the obstacles experienced from both sides, to share process and procedure suggestions and to collaborate on ideas to avoid future gaps).

⁴⁰³ Interview with Siovhana Sheridan-Ayala, Immigration Attorney, in Portland, Or. (Feb. 10, 2010); Interview with Doug Justus, Police Sgt. Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

⁴⁰⁴ Interview with Greg Moawad, Deputy District Attorney, Multnomah County District Attorney, in Portland, Or. (Feb. 10, 2010).

⁴⁰⁵ *Id.*

⁴⁰⁶ Interview with Mike Stafford, Public Safety Planning Coordinator, CJC, in Salem, Or. (Feb. 8, 2010).

i. State agencies

State DHS workers seem to be generally aware that there is a trafficking problem in Oregon. Awareness is the first step in training workers on identification and assistance. The child abuse hotline run by DHS has begun training its employees on trafficking issues, but does not have an official protocol in place when workers encounter a trafficking victim. All employees have some trafficking training, but it is currently inconsistent. All supervisors have been trained to a greater or lesser degree. The agency is aware that there is currently more awareness and training in Multnomah County due to the greater exposure to the issue, but they are working on further consistency throughout the state.⁴⁰⁷

Training within the judicial branch is severely lacking. There tends to be a lack of awareness on the level of the problem in Oregon because the community is not seeing traffickers charged. In order to make this happen, there needs to be collaborative training of lawyers, juvenile court judges, and social workers. As of now, there has been no training available to juvenile court judges, although there is a high level of interest.⁴⁰⁸

The Department of Community Justice has begun a project to train members of the community that are in a prime position to come into contact with potential victims of trafficking. Such possible trainings will be targeted at health professionals and educators. The training initiative will focus on the use of systems and resources that are currently in place and developing them into further-reaching mechanisms. The current phase of the project is evaluating which systems are currently in place, in order to determine where to navigate and focus the funds.⁴⁰⁹ The trainings will cover general trafficking awareness issues, victim identification and services.

ii. Federal Agencies in Oregon

The U.S. Attorney's Office, headquartered in Portland, Oregon, states that they are well-aware of the trafficking issue and is devoted to combating the problem.⁴¹⁰ In order to ensure that all staff members are trained on trafficking issues, the entire staff attends conferences on trafficking. There is also consistent internal training on trafficking in persons as well. The Assistant U.S. Attorney in charge of prosecuting trafficking in persons cases also conducts internal training for his staff on federal statutes and how to build federal cases, including what evidence is required to build the case. There is no collaboration with other agencies in Oregon when conducting these trainings.⁴¹¹

⁴⁰⁷ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010).

⁴⁰⁸ Interview with Honorable Nan Waller, Judge, Multnomah County Circuit Court, in Portland, Or. (Mar. 29, 2010).

⁴⁰⁹ The Department of Community Justice in Multnomah County was given a federal grant to fund the program. The specific focus of the grant is to assist minor domestic trafficking victims and stop commercial sexual exploitation of children in Multnomah County. The training programs are one way that the department has chosen to achieve these purposes. Interview with Joslyn Baker, Dept. of Community Justice Multnomah County, in Portland, Or. (Mar. 15, 2010).

⁴¹⁰ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, in Portland, Or. (Mar. 17, 2010).

⁴¹¹ *Id.*

Officers for U.S. Immigration and Customs Enforcement (ICE) in Oregon are trained on trafficking. There are two departments that interact with trafficking in persons: (1) ICE Detention and Removal Officers (DRO), and (2) ICE Customs and Border Protection (CBP). Although the Clinic attempted numerous times to contact both departments, contact was successfully made only with the DRO department. This department is responsible for identifying and investigating trafficking in persons cases. All officers are trained on trafficking, and to ask routine questions for identification purposes.⁴¹²

iii. Non-governmental Organizations

The majority of trainings that occur in Oregon, whether of NGOs or other interested parties, are conducted by Catholic Charities in connection with the Oregon Human Trafficking Task Force. The training program covers both domestic and foreign-born victims of trafficking, as well as general training on what trafficking is, the laws governing trafficking, and basic needs of victims. Catholic Charities offers training on human trafficking to nearly anyone that requests the training. This includes attorneys, other NGOs and community members. The program at Catholic Charities, Outreach and Support to Special Immigrant Populations (OSSIP), is the only program dedicated to assisting foreign-born victims of trafficking in Oregon.⁴¹³ There are only three people staffing the program and all have been trained internally or through the Oregon Human Trafficking Task Force. In addition to providing interactive live trainings, OSSIP provides literature, both online and in its office, to assist concerned community members in identifying victims of trafficking.

The National Crime Victims Law Institute (NCVLI), affiliated with Lewis and Clark College in Portland, has begun to offer Continuing Legal Education (CLE) courses on the topic of trafficking in persons. NCVLI became aware of the trafficking problem in Oregon in the last two years and has actively begun efforts to assist the anti-trafficking community, in conjunction with Catholic Charities and other local partners. NCVLI conducted its first CLE training in March 2010 to interested attorneys and other members of the community. NCVLI is an organization that teams victims with attorneys so that the victims' rights are protected during the litigation process. This is particularly important for trafficking cases, and NCVLI is willing and able to assist these victims.⁴¹⁴ NCVLI's current focus with regard to trafficking, is to assist in training of attorneys, along with the Oregon Human Trafficking Task Force and OSSIP, so that attorneys may better identify and represent these victims. The CLE training conducted in March 2010 offered a general overview of trafficking and the federal laws governing the issue, a question and answer session with members of the task force, and a presentation on different forms of relief available to foreign-born victims of trafficking (T and U visas).

The Sexual Assault Task Force (SATF) was incorporated in 2003 to gain non-profit status, but operates under the direction of the Oregon Attorney General's office. Its primary role is to provide training on sexual assault and other related issues for state agencies. SATF also provides sexual assault training to potential first responders, including nurse examiners, police,

⁴¹² Telephone Interview with Elizabeth Gottfried, ICE Detention and Removal Officer (Mar. 26, 2010).

⁴¹³ Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities Portland, in Portland, Or. (Feb. 10, 2010).

⁴¹⁴ Interview with Meg Garvin, Director of National Crime Victims Law Institute, in Portland, Or. (Mar. 12, 2010).

prosecutors, advocates, NGOs and victims' advocates. In 2008, SATF incorporated trafficking in persons into some of the trainings it conducts. Although trafficking has not been included in all trainings, it is working towards permanently incorporating the trafficking section into its trainings. The aspects of trafficking that are included in SATF's sexual assault trainings include how to identify victims, general indicators of trafficking, and awareness of pimp dynamics. SATF staff is trained internally on trafficking in persons. SATF is in the process of completing this training for all staff members, as well as developing its external training programs.⁴¹⁵

e. Strengths and Gaps in Oregon's Response to Prevent Trafficking Within the Context of Federal and International Legal Obligations

Increased awareness, information sharing amongst various agencies, and increased training for individuals who work in an official capacity are the types of requirements called for in order to effectively meet the prevention obligations under the Protocol and the TVPA. Oregon has made significant progress in preventing human trafficking within the state. Awareness raising initiatives have increased as indicated by the recently enacted "sticker bill", along with awareness initiatives coordinated by various government and non-governmental organizations. Cooperation between various agencies is increasing as demonstrated through the recently held comprehensive legislative planning sessions, and increased cross-agency victim referrals and training endeavors indicates Oregon is moving in the right direction.

Despite these developments, there still remains room for improvement. While awareness raising initiatives have increased and efforts for increased law enforcement and agency training are being made, most of these efforts are directed toward Multnomah County and the surrounding Tri-county area. Awareness raising efforts concentrate on the topic of human sex trafficking, more specifically on the sex trafficking of domestic minors. Emphasis on labor trafficking awareness is not in place.

Lack of funding and resources impede increased training for law enforcement and employees of federal and state agencies. Furthermore, no standard operating procedures currently exist for training purposes. As in the case of awareness initiatives, any training that is offered is not reaching the entire state.

Information sharing between the different agencies remains unaddressed. The lack of a uniform method of accessing information between related agencies continues to result in neglected victims and potential traffickers who go unnoticed because of the lack of law enforcement access to past arrest information while out on patrol.

2. Protection and Assistance to Victims

a. Identification of Victims

The limited data available for analysis points to a correlation between training of law enforcement personnel and victim identification and referrals made to service providers and

⁴¹⁵ Interview with Christine Hermann, Executive Director, Sexual Assault Task Force, in Salem, Or. (Mar. 18, 2010).

response groups. Because trafficking requires looking under the surface and changing attitudes toward people who may have broken laws while under the control of traffickers (i.e., seeing them as victims rather than criminals), law enforcement officers who are unfamiliar with the trafficking and what it looks like, tend to overlook trafficking victims. Identifying trafficking victims requires intentional effort and careful interviewing. Thus, this correlation is not particularly surprising. Without detailed data and statistical analysis, further conclusions would be unwarranted, but the fact that this correlation exists strongly suggests the importance of training for law enforcement on the issue of victim identification.

Identification of victims is one of the largest deficiencies in the trafficking infrastructure in Oregon. Although the trafficking community in Portland has begun to focus specifically on the issue of domestic sex trafficking, training all law enforcement and service providers that come into contact with these victims has proved to be an enormous challenge.

i. Law Enforcement

Law enforcement in the tri-county area around Portland is more aware of the trafficking problem than law enforcement in other areas of the state, although even their focus remains on minor sex trafficking, not labor. Improving law enforcement awareness around the state is a hurdle. However, the largest obstacle with law enforcement's identification of victims is learning to view trafficking victims as victims and not criminals.⁴¹⁶ The widespread view of victims of sex trafficking as criminal prostitutes, even if they are minors, has hindered law enforcement from identifying victims at an early stage, which would allow victims to can gain the assistance they need. There is a very short window of time after authorities' initial contact with victims in which victims are willing to open up to a case manager. This leaves only a brief period to identify them as trafficking victims and secure their cooperation against the traffickers.⁴¹⁷ This is true of victims of both sex trafficking and labor trafficking.

Training local law enforcement on human trafficking is becoming more of a priority for the Department of Public Safety Standards and Training (DPSST), which trains all law enforcement officers in Oregon. In fact, Deputy Keith Bickford, the Director of the Oregon Human trafficking Task Force, just recently completed the first pilot training offered to law enforcement recruits on human trafficking this March 2010.⁴¹⁸ The Portland area is unique in having Deputy Bickford, a Multnomah County Sheriff and U.S. Marshall, available to conduct trainings; it is also fortunate because training on human trafficking requires someone with the type of subject matter expertise he has. However, it is possible that DPSST will need to hire a part-time trainer to continue human trafficking trainings because of the paucity of trafficking training for law enforcement officers across the state and limits on Deputy Bickford's schedule.

⁴¹⁶ See Interview with Keith Bickford, Dir. OHTTF, in Portland, Or. (Feb. 08, 2010); Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities, in Portland, Or. (Feb. 10, 2010); Interview with Stephanie Mathis, Oregon Center for Christian Values, in Portland, Or. (Mar. 17, 2010).

⁴¹⁷ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁴¹⁸ Interview with Lorraine Anglemier, Legal Training Coordinator, Dept. of Public Safety Standards and Training, in Salem, Or. (Mar. 17, 2010).

It is likely that if human trafficking is not addressed in recruit basic training, local law enforcement will lack the requisite awareness and trafficking cases may be missed, creating or furthering a misperception that trafficking is not a serious problem that needs attention in Oregon. However, if training on trafficking in persons is presented in basic training, it would remain in the recruits' minds and help orient them towards identifying victims.

Post-basic police training on trafficking is not widespread anywhere in the state. In fact, it is based on agency self-identification of need, and many officers are not aware of trafficking issues. This advanced training can be a part of the continuing education units required for law enforcement, but is not presently required anywhere. Therefore, if a local police agency does not believe a problem with trafficking exists in their geographic area, they may elect not to attend training on trafficking, and thus may never be exposed to the issue if it is not offered in basic training. This creates a cycle. If they are not trained, they miss cases. If they miss cases, they perceive there is no trafficking problem in their geographic area. They then feel as though trafficking training is not important, believing that such crimes do not exist in their area.

Most of the impetus for law enforcement training on trafficking has been in the Portland area. While it is suggested that the Portland approach serve as a model for other agencies throughout the state, this may be counter-productive. Different areas of the state may see the issue arise in varying forms that may require unique processes and separate procedures. For instance, the focus on sex trafficking in the Portland metropolitan region may not be appropriate for agencies in more rural areas where labor trafficking is the more prevalent issue. Additionally, many rural areas are recruiting grounds for domestic sex traffickers, frequently via the Internet, but do not serve as the locale for selling the victims.⁴¹⁹ Therefore, agencies in such areas are dealing with a much more discrete aspect of the problem than Portland, where the bulk of the actual pimping takes place, calling for a different approach.

In Portland, the type of law enforcement officer will in large part determine the amount of training that officer receives on trafficking. For example, detectives' training is a little more comprehensive than others. Esther Nelson of Sexual Assault Resource Center (SARC) is able to do trainings in the Portland area, and is required to conduct a certain number of training hours mandated by the grant agency funding SARC's work with human trafficking. She is able to train detectives in the tri-county area on sex trafficking annually. She also trains most police officers in the area every two to three years, depending on availability. Portland also focuses on training School Resource Officers in middle and high schools since these officers work daily with minors and potential victims. Patrol officers tend to be the hardest to reach.⁴²⁰

⁴¹⁹ See, e.g., Sanne Specht, *Rise in Sex Crimes Involving Children Sparks Concern*, MAIL TRIBUNE, May 26, 2010, available at <http://www.mailtribune.com/apps/pbcs.dll/article?AID=%2F20100526%2FNEWS%2F5260320>. ("The common assumption that children of inner cities are the ones most often lured into prostitution is a fallacy. Studies show rural children are most at risk. The No. 1 state for recruiting children is Minnesota, [Marlene Mish, executive director of the Jackson County Children's Advocacy Center] said. 'This is big money worldwide and it's attracting people who are making a science out of it,' Mish said. 'They are going to smaller towns where kids are less sophisticated and more willing to buy a line.'"); Victor Vieth and Erika Ragland, "Shadow Children: Addressing the Commercial Exploitation of Child in Rural America," Study Presented at Child Prostitution in Rural Communities, Workshop, Child Abuse Family Violence Summit, Apr. 27, 2010.

⁴²⁰ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

Deputy Keith Bickford has conducted some basic “Human Trafficking 101” trainings for various sheriff departments as well. His focus has been on the tri-county area, but he has done trainings in Bend, Coos Bay and Gold Beach as well. These trainings cover both minor domestic sex trafficking and foreign-born trafficking victims. He believes there is still a need for training of law enforcement, as well as correction officers, parole officers, probation officers and medical employees.⁴²¹

ii. Service Providers

Victim identification training provided to service providers seems to be more extensive than for any other members of the anti-trafficking community. Nevertheless, most service providers still rely on reports from concerned citizens or other informal and unstructured methods to find victims. The extent of service provider training is a positive development in Oregon, but these service providers are not the first responders who especially need to know how to identify a victim. Service providers offering the most focused and extensive trainings on trafficking include Catholic Charities, SARC, NCVLI, and the Salvation Army.

Catholic Charities is the only organization specifically assisting foreign-born trafficking victims in Oregon. Chris Killmer is the only full-time case manager. This non-profit also has two other part-time employees: a bi-lingual case manager and an immigration attorney. All employees are trained by Mr. Killmer on basic Human Trafficking 101 as well as on the identification of both labor and sex trafficking victims. Catholic Charities is not a first responder because their grant from the U.S. Department of Justice’s Office of Victims Crimes only permits assisting victims who have already been identified as trafficking victims. This victim identification must be made by those referring cases to Catholic Charities.⁴²² Catholic Charities is very active in conducting trainings across the state on labor and sex trafficking. The group gets most of its referrals from other NGOs, concerned citizens or law enforcement.

The Sexual Assault Resource Center (SARC) employs case managers that are trained in identifying sex trafficking victims. They have a 24-hour hotline that victims, law enforcement or other concerned citizens can call. From the time of the call, SARC has a thirty-minute response time to assist victims. Most of the calls are from law enforcement officers who are unable to hold minor victims in custody without charging them. Instead, there is a process in place in Portland whereby law enforcement will pick up girls who they believe are victims of trafficking and take them to a secured facility (the “reception center”). This facility has secured access, but those inside are free to leave as they desire. While there, victims are given basic necessities like food and hygiene products. The hope is that there is enough assistance at the reception center that victims will be comfortable speaking with a case manager (usually from SARC) in the small period of time before they want to leave or return to their traffickers. The building of a trusting relationship allows for identification of, and cooperation by, victims.⁴²³

The National Crime Victim’s Law Institute (NCVLI) is playing a new role in the trafficking community in Oregon. NCVLI has already contributed to the training of potential first responders and victim advocates. It conducted its first Continued Legal Education (CLE) course

⁴²¹ Interview with Keith Bickford, Dir. OHTTF, Deputy Sheriff and U.S. Marshall, in Portland, Or. (Feb. 08, 2010).

⁴²² Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities, in Portland, Or. (Feb. 10, 2010).

⁴²³ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

for lawyers on trafficking and immigration issues on March 12, 2010, which was well attended and received. NCVLI is an organization focused on victim's rights throughout the judicial process. Every member of the organization is trained by Chris Killmer and is also required to attend all trainings put on by NCVLI. This organization is rapidly becoming a good resource for other first responders and service organizations that need training or assistance with victims.⁴²⁴

The Farm Worker Program of Legal Aid Services of Oregon has also taken on a dual role in the trafficking community of Oregon. Its employees work as first responders, as well as providing legal aid to farm workers and labor trafficking victims. The lawyers and paralegals employed by Farm Worker Legal Aid all receive extensive training on interviewing clients. They visit labor camps, hold events in nearby cities or towns at churches or community centers, and conduct extensive outreach to the farm worker population. Many farm workers are afraid to speak with representatives from NGOs.⁴²⁵ The great personal risk that these victims face is a severe impediment to their willingness to admit that they are being abused or have been trafficked. There are cultural reasons for this, as well as more immediate problems, such as possible violent retaliation, job loss for themselves or others in the community, threats against their families here or in other countries, and threats of abuse of legal process, among others. Thus, reaching out to the community as a whole, where often entire families or communities are victimized, is often more successful than identifying individuals who may be more vulnerable and fearful of retaliation if they act on their own.

iii. Department of Human Services

The Department of Human Services (DHS) has a child abuse hotline available 24-hours a day in Multnomah County.⁴²⁶ Each county in Oregon has a similar hotline, but in many counties, the hotline is only available during business hours, Monday through Friday. Concerned callers are directed to other organizations if they call after hours (usually the county's sheriff's department). Supervisors at the hotline call centers are aware of the trafficking problem and are trained to a greater or lesser degree.⁴²⁷ However, the awareness in Multnomah County is the highest given greater exposure to sex trafficking in the Portland metropolitan area. DHS is working on consistency throughout the state and on increasing the training screeners receive, as well as including trafficking as a basic part of hotline workers' training. DHS is developing a standard manual that includes an entire section on minor victims of sex trafficking with a "best practice" companion manual on sex trafficking, similar to the best practice guide for domestic violence victims. This manual would assist hotline workers in identifying possible trafficking victims and would prepare DHS workers when assisting victims.

⁴²⁴ Interview with Meg Garvin, Executive Director, NCVLI, in Portland, Or. (Mar. 12, 2010).

⁴²⁵ Interview with Janice R. Morgan, Farmworker Program Director, Legal Aid Services of Oregon and Nargess Shadbeh, Farmworker Program Director, Oregon Law Center in Portland, Or. (Feb. 19, 2010).

⁴²⁶ Dept. of Human Services, Children and Teens, www.oregon.gov/DHS/children/abuse/cps/cw_branches.shtml.

⁴²⁷ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010).

iv. Community

A lack of training of other potential first responders is an existing gap in the system. These include, but are not limited to, medical and health professionals and educators. Various efforts are being made to address this gap. The Sexual Assault Task Force recently added sex trafficking training to some of its trainings, including in its SANE (sexual assault nurse examiner) nurse certification program, and is working to add it to other trainings.⁴²⁸ Additionally, the Department of Community Justice in Multnomah County is aware of this need and has begun making progress on outreach in the Portland area.⁴²⁹ The Department received a federal grant to coordinate efforts to assist minor domestic trafficking victims and to stop commercial sexual exploitation of children in Multnomah County. This relatively new project began in January 2010 and those involved hope to begin producing results soon. The training initiatives included will focus on the use of systems and resources that are currently in place, and on developing them into larger, far-reaching mechanisms. The Department is looking into what training meetings and events are already held in the region and identifying best practice measures in order to promote consistency in the process and information sharing among government agencies.

v. Operation Cross-Country

An example of a successful identification and assistance operation that worked quite well in Portland was a recent Operation Cross-Country. Operation Cross-Country is an FBI sting operation that occurs around the country on a single night, or on several consecutive nights, to arrest traffickers of underage sex trafficking victims. The operation has occurred four times, and Portland has participated in the latest two, in 2009 and 2010. In press releases detailing the operations on the FBI's website,⁴³⁰ Portland was ranked second highest in the nation for the number of girls in forced prostitution, a form of sex trafficking, found in a single night. Portland was given this second-highest ranking even though it only participated for one night, whereas the sting took place for several days in the other cities. Portland tied for second with Oakland, California, and ranked behind Seattle, Washington. It is possible that Portland in fact ranks

⁴²⁸ Interview with Christine Hermann, Executive Director, Sexual Assault Task Force, in Salem, Or. (Mar. 18, 2010).

⁴²⁹ Interview with Joslyn Baker, Collaboration Specialist, Dept. of Community Justice Multnomah County, in Portland, Or. (Mar. 15, 2010).

⁴³⁰ Federal and Local Agencies Rescue Four Children in Sex Trafficking Sting: Oregon Participants in 'Operation Cross Country IV Initiative,'" FBI National Press Release (Oct. 26, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd1022609.htm>; "Portland Couple Arraigned on Transporting and Sex Trafficking Charges Involving a Minor Victim: Federal Indictment Charges Five Counts of Sex Trafficking & Transporting a Minor for Purposes of Prostitution," FBI National Press Release (June 25, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd062509.htm>; "Registered Sex Offender Sentenced to Federal Prison for Sex Trafficking of a Child," FBI National Press Release (June 19, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd061909a.htm>; "Texas Man Arraigned on Transporting and Sex Trafficking Charges Involving a Minor Victim: Federal Indictment Charges Six Counts of Sex Trafficking and Forced Labor of 15-Year-Old Girl for Purposes of Prostitution," FBI National Press Release (June 8, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd060809.htm>; "Portland Children's Author Charged with Trafficking in Child Pornography," Dept. of Justice Press Release (Apr. 6, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd040609.htm>; "Federal and Local Agencies Target Child Sex Trafficking as Part of National Effort," FBI National Press Release (Feb. 23, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd022309.htm>.

higher on the list for trafficking, but because its participation in the sting lasted for only one night, this cannot be confirmed.⁴³¹

During the first sting in which Portland participated, law enforcement picked up seven girls between the ages of 13 and 17, and also arrested six adult pimps, all in one night. The second sting in Portland recovered four youths, none of whom had been recovered in the previous sting. Although both stings were successful in assisting minor victims during the operation itself, those victims over the age of 18 were not given the same help.⁴³² Generally, once a victim of sex trafficking reaches the age of 18, she/he is considered a criminal (i.e. a prostitute) by law enforcement, which impedes identifying the person as a victim, getting the assistance she or he needs, and encouraging them to assist with prosecutions.

The Portland sting was unique compared to stings in other cities because officials set up a separate location for victim services. The FBI partnered with DHS to provide food, hygiene products, and an advocate for each girl to explain the process and help them navigate it. Specifically, the girls were provided with information about what was going on and what would happen to them. Child welfare advocates were involved in the law enforcement interviews as well. The support center for the victims was unique to Oregon, and the FBI victim specialist involved has been invited to speak in other states about how and why it worked.

The only reason that the victim service center in the Portland sting was possible is because of the positive relationships between law enforcement and service providers in the Portland area. The sensitivity of the operations makes it difficult to involve others because of the risk of a leak. Absolute silence about the operation was essential, and in Portland, the trusting and cooperative relationship between the service providers and law enforcement personnel made this possible. Without that significant history and degree of trust, the service center would not have been successful. Because this element is missing in other states, initiating these services in those states has proved difficult.⁴³³

Although the Operation Cross-Country stings in Portland have gone smoothly overall, the operation has run into a few obstacles. An overriding issue is the pressing need for ongoing case management for the victims. Once officials have gotten the girls out and away from the traffickers, it is unclear what can be done to help them stay safe. DHS opens an assessment case for each girl, but the tracking system after that is unclear. A case management system needs to be developed to assist girls based on their individual needs.⁴³⁴ The second Portland sting

⁴³¹ Interview with Caroline Holmes, Victim Advocate: Civil Rights Division, FBI, in Portland, Or. (Apr. 07, 2010).

⁴³² These two particular sting operations were targeted at recovering minor victims of sex trafficking. It is notable that several "adult prostitutes" were cited during the course of both sting operations. See Press Release, FBI, Federal and Local Agencies Rescue Four Children in Sex Trafficking Sting (Oct. 26, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd102609.htm>; Press Release, FBI, Federal and Local Agencies Target Child Sex Trafficking as Part of National Effort (Feb. 23, 2009), available at <http://portland.fbi.gov/pressrel/pressrel09/pd022309.htm>. Sex trafficking victims between the ages of 18 and 22 are probably the most underserved group of victims, and these citations are demonstrative of the drop off of attention to sex trafficking after the victim hits the age of 18. This is not to say anything about the actions of the FBI during the sting or about the adults who were cited, but merely pointing out an instance where the focus was on the age of the victims, which could lead to some victims being overlooked in the identification process.

⁴³³ Interview with Caroline Holmes, Victim Advocate: Civil Rights Division, FBI, in Portland, Or. (Apr. 07, 2010).

⁴³⁴ *Id.*

showed improvement because SARC had instituted a case management system by then, but there are still gaping holes due to lack of funding and coordination among various entities. For example, there is no agency or organization to provide housing, transportation and holistic services to these young victims.

Long term reintegration into society is essential to recovery for these victims, and the resources to provide this are not yet available. Additionally, these victims often require 24-hour supervision in the beginning because many will return to their traffickers.⁴³⁵ Transportation is a related problem because the girls currently are expected to use public transportation, which places them in a position where former pimps can recognize them and new pimps may have access to them. Victims are thus unprotected during the transition process. Currently, SARC is unable to offer either supervised housing or transportation services due to funding restrictions.

Another major obstacle is that the girls need high-level case managers who can keep track of the girls, what they have received and what they still need, and help them in accessing resources. The FBI Victim Services unit is not equipped or staffed to be case managers, and is only able to direct such trafficking victims to the services they need.⁴³⁶ Although SARC is available for case management, it is lightly staffed and may not be able to serve every victim. Currently SARC has a large case load for its small number of case managers. This may be manageable in the short term, but without increased funding and a larger staff, it will not be able to adequately assist victims in the long term with as much attention as these victims need.⁴³⁷ Furthermore, the FBI cannot legally take custody of a child—it needs DHS to step in for that service. Another major obstacle is how fast the children can move, either on their own or by traffickers. They switch jurisdictions so fast that there is huge confusion and lack of communication.

vi. Summary of Progress and Challenges in Identifying Trafficking Victims

The largest missing link inhibiting victim identification is an identification process. Currently, the system relies on concerned citizens, victim self-identification, and chance to find trafficked people. Because of this, identification of victims, particularly labor trafficking victims, is haphazard and random. The focus of the trafficking infrastructure in Oregon is on domestic minor sex trafficking victims, leading to an oversight of adult sex trafficking victims, labor trafficking victims, and foreign-born victims generally. This is partly because identifying minor victims is relatively easy and cases involving minors are easier to prosecute (as will be discussed below).

Adult victims of sex trafficking generally receive less attention than do minors. This is partly because of cultural expectations of adult behavior⁴³⁸ and partly because it is generally harder to

⁴³⁵ Marion County Human Trafficking Forum Speaker, Esther Nelson, Sexual Trafficking Case Manager, SARC, in Salem, Or. (Mar. 09, 2010).

⁴³⁶ Interview with Caroline Holmes, Victim Advocate: Civil Rights Division, FBI, in Portland, Or. (Apr. 07, 2010).

⁴³⁷ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁴³⁸ Interview with Caroline Holmes, Victim Advocate: Civil Rights Division, FBI, in Portland, Or. (Apr. 07, 2010). American society expects that an 18-year-old can make her own decisions and is not subject to the overwhelming influence of another, particularly when that influence is self-destructive. This misunderstanding of the psychology involved with this kind of severe emotional and physical trauma leads to assumptions about the victims that are

identify an adult as a victim; minors cannot consent to any sexual activity and are victims by legal definition, adults can consent and are criminals if they engage in commercial sex.⁴³⁹ This group is especially difficult to identify and assist because it involves a combination of what appears to be criminal behavior (“prostitution”) while the person is actually the victim of a crime (compelling prostitution or involuntary servitude). Also, other crimes may be involved.⁴⁴⁰ This means the identification process needs to be nuanced and insightful to see the relationships and circumstances that forced the victim into the situation, a time and resource consuming process, making it easy to skip over.

Labor trafficking is indeed occurring in the state, but there has been little focus on correcting the problem. This gap has been identified by the Civil Rights Unit of the Attorney General’s office. This unit was only reinstated in the past five months, but is already planning some improvements in the labor trafficking field, beginning with outreach and education missions to various migrant labor sites.⁴⁴¹

The lack of focus on foreign-born victims of both sex and labor trafficking is at least partly because of language barriers. Many of the victims do not even speak Spanish. Sometimes they speak indigenous languages (which is sometimes only oral) for which it is hard to find translators or interpreters. Farmworkers Legal Aid has done a good job finding and providing these interpreters, but they cannot provide interpreters for all other assistance providers. Law enforcement access to interpreters is limited. This creates problems not only in labor trafficking cases, but often in sex trafficking cases as well. Law enforcement tends to use whoever is at the location who speaks both the language of the victim and English to interpret for them. This might be a family member, which is not ideal given the sensitivity of some topics. Sometimes, the translator or interpreter chosen may even be the trafficker.⁴⁴² This is one of the reasons why training on trafficking for law enforcement officers on the ground is so essential. An initial

generally inaccurate. An article on treating victims of trauma put it this way: “[W]hen trauma has occurred, it changes the rules of the game. An individual constructs a sense of self, a sense of others, and a belief about the world after trauma and abuse have occurred that incorporates and is in many cases based on the horrific event or events. That meaning system then informs other life choices and guides the development of particular coping strategies. The impact of trauma is thus felt throughout the individual’s life in areas of functioning that may seem quite far removed from the abuse, as well as in areas that are more obviously connected to the trauma.

“Because trauma serves to organize experience, it is misguided . . . to look for its impact in only the obvious places. It makes sense to assume that a girl who was repeatedly raped . . . would have sexual and relationship difficulties. The difficulties of a girl with such a history may be farther reaching and less obviously connected with the abuse, however. If she learned to cope with the abuse by drifting away and disassociating while it was happening, then she may have begun a pattern of losing connection to her experience that, while it served her well during the abuse, may become problematic as she tries to learn algebra or drive to a friend’s house after school. She may now come to a clinic because she has been diagnosed with learning problems, not because she is a trauma survivor. And she may well be treated for those problems without anyone beginning to question how her problems with concentration began.” Maxine Harris and Roger Fallot, *Envisioning a Trauma-Informed Service System: A Vital Paradigm Shift*, 89 *New Directions for Mental Health Services* 3-22, (Spring 2001).

⁴³⁹ OR. REV. STAT. §§ 163.415, 163.670 (2009).

⁴⁴⁰ One of the ways pimps retain control over their victims is to have them commit a petty crime of some sort, or convince them they committed a crime, and then either threaten to turn them in, or promise to protect them from the police.

⁴⁴¹ Interview with Diane Schartz-Sykes, Senior Assistant Attorney General, DOJ Civil Rights Unit, in Portland, Or. (Mar. 19, 2010).

⁴⁴² *Id.*

identification and separation from the trafficker is the best chance these victims have of escaping, and the law enforcement officers need to be aware that the person is a possible victim of trafficking to know to separate that individual from the people around them for questioning, among other strategies.

Another major hurdle in identification is funding for the training that would help lead to identification. Without the funding, there can be no training. Without training, the victims will not be identified (and if they are, it is often too late). As will be identified in the prosecution section below, without successful prosecutions, funding is limited. It is a vicious cycle. The cycle needs to be broken so that the entire infrastructure will work to identify and protect the victims.

b. Victim Assistance

i. Immediate/Special Needs of Victims

Victims of trafficking are usually divided into two categories—adults and minors—because these categories can define what general assistance the particular victim may need. There are many areas of overlap, but also some areas of distinction, as noted below. These general categories and descriptions cannot fully describe everything a particular victim may need, but are intended to provide a general overview of patterns that emerge when looking at each group of victims.

(1) Psychological Component: VOT-Pimp Trauma Bond

Most domestic victims of trafficking are lured in at very young ages and frequently have a background of sexual abuse as children; indeed, many have already been involved with DHS for years. They often have little education and are dependent on others for basic life necessities. Because of these characteristics, these girls are especially vulnerable to psychological manipulation and conditioning, which are skills that pimps intentionally acquire.⁴⁴³ Part of this manipulation is the intentional cultivation of psychological bonds, frequently called a “trauma bond.” Trauma bond is a generic term that can describe a number of issues, including Stockholm Syndrome or Post-Traumatic Stress Disorder (“PTSD”),⁴⁴⁴ where the victim believes she is in love with the abuser and/or fears inevitable retaliation if she does not return to the abuser immediately. Victims may believe they are protecting people around them or their families, as an effective control tactic traffickers and pimps use is threatening the victim with violence against others. Victims frequently believe they are worthless outside the role of an object of sexual abuse, and the only person who values them is the abuser. This belief is usually carefully implanted and reinforced by the trafficker and/or pimp.⁴⁴⁵ Victims frequently feel a sense of belonging with other victims, their trafficker and/or pimp, or even with their abusers (johns), and may value certain aspects of the life, such as pedicures, shopping, trips to other states, etc.

⁴⁴³ See, e.g., MICKEY ROYAL, *THE PIMP GAME: INSTRUCTIONAL GUIDE* (Sharif Publishing) (1998).

⁴⁴⁴ HEATHER J. CLAWSON, PH.D., NICOLE M. DUTCH, AMY SALOMAN, AND LISA GOLDBLATT GRACE, *STUDY OF HHS PROGRAMS SERVING HUMAN TRAFFICKING VICTIMS: FINAL REPORT 6* (U.S. Dept. of Health and Human Services) (2009), available at <http://aspe.hhs.gov/hsp/07/HumanTrafficking/Final/index.pdf>.

⁴⁴⁵ DR. PATRICK J. CARNES, *THE BETRAYAL BOND: BREAKING FREE OF EXPLOITIVE RELATIONSHIPS*, 27-46 (HCI Publisher) (1997).

Traffickers and pimps are frequently sophisticated in their behavior towards victims in order to entrap them in a psychological net from which it is hard to break free. Many victims do not even believe they are victims at all and are convinced they are criminals.⁴⁴⁶

A practical reality of this manipulation is that many victims constitute a flight risk and will return to their pimp voluntarily. Thus, an immediate need is breaking the bond that exists between the pimp and the victim. This is a delicate process that must be tailored to the particular individual and be trauma-informed.⁴⁴⁷ While it is outside the scope of this report and the expertise of the authors to recommend specific methods or strategies, it must be emphasized that this issue is essential to victims' recovery. First responders must be aware of the significance of these bonds and know how to begin breaking them. This relates back to the issue of training, particularly of law enforcement and medical personnel.

An additional factor this creates is the need for intense, specialized physiological care as a part of the recovery process. Beyond just the physical and emotional trauma of the sexual abuse and forced acts, this bonding is another layer of abuse that the victims need help recovering from.

(2) Need for a Secured Facility

Everyone interviewed or contacted by the Clinic agrees that domestic victims of trafficking need some kind of "home" or safe place where they are physically separated from the trauma and where they can begin healing. Controversy arises, however, over issues such as whether this should be accomplished with a single building, a series of buildings assigned by age, the adaptation of current facilities, such as homeless shelters for youth and domestic violence shelters, combined with case management system and services specifically for trafficking victims, or another method.⁴⁴⁸ Experts and advocates disagree even more substantially about

⁴⁴⁶ See, e.g., R.J. Martin, Jr., *How to Be a Pimp: Using Maslow's Hierarchy of Human Need to Make the Most Money*, ASSOCIATED CONTENT, Oct. 26, 2006, available at

http://www.associatedcontent.com/article/75184/how_to_be_a_pimp_using_maslows_hierarchy?cat=9.

⁴⁴⁷ Maxine Harris and Roger Fallot, *Envisioning a Trauma-Informed Service System: A Vital Paradigm Shift*, 89 *New Directions for Mental Health Services* 3-22, (Spring 2001).

Oregon DHS definition for trauma-informed services: "Trauma-informed services are not specifically designed to treat symptoms or syndromes related to sexual or physical abuse or other trauma, but they are informed about, and sensitive to, trauma-related issues present in survivors. A trauma-informed system is one in which all components of a given service system have been reconsidered and evaluated in the light of a basic understanding of the role that trauma plays in the lives of people seeking mental health and addictions services. A trauma-informed system uses that understanding to design service systems that accommodate the vulnerabilities of trauma survivors and allows services to be delivered in a way that will avoid inadvertent re-traumatization and will facilitate consumer participation in treatment. It also requires collaborative relationships with other public and private practitioners with trauma-related clinical expertise." Oregon Department of Human Services, Addictions and Mental Health Division Trauma Policy, February 14, 2006, available at <http://www.oregon.gov/DHS/addiction/trauma-policy/dhs-trauma-pol.pdf>. See also DHS, Psychological Trauma Informed Services Policy – DRAFT 02/02/2007, available at <http://www.oregon.gov/DHS/addiction/trauma-policy/dhs-trauma-pol.pdf>; see generally <http://www.oregon.gov/DHS/addiction/trauma.shtml#policies>. Source for this definition was adapted from Models for Developing Trauma-Informed Behavioral Health Systems and Trauma-Specific Services, Jennings, A. (2004), National Association of State Mental Health Program Directors.

⁴⁴⁸ These are three standard options typically discussed. The first involves a single building for all sex trafficking victims (why labor trafficking victims generally would not benefit from this type of shelter is discussed *infra*). The second involves several different buildings, and minors are sent to a different shelter than adults, with other distinctions made as necessary; for instance, girls from a rural area may have different needs than those from an

whether any such home or secure shelter should be compulsory or voluntary, especially when minors are involved.⁴⁴⁹ There are national studies on this issue⁴⁵⁰ that can help inform a diverse and experienced team of experts in this arena, representing all sides and viewpoints surrounding this issue, to make fully informed decisions about what the best options for victims in Oregon. Whatever approach is taken, it must be flexible to accommodate the variety of problems associated with these victims, which sometimes includes a violent criminal background, various disabilities (physical and mental), status as a ward of the state, a high likelihood of violence upon return to the pimp/trafficker, age, sex, cultural and linguistic factors, and many other considerations.

(3) Prosecution of “Underage Prostitutes”

Under Oregon law, minors cannot consent to sexual contact.⁴⁵¹ Depending on the circumstances, such sexual contact may be a Measure 11 offense for the other party, with a mandatory minimum sentence ranging from 70 to 300 months, depending on the crime.⁴⁵² However, minors can be cited, and prosecuted, for prostitution.⁴⁵³ Basically, the system is contradictory: minors cannot consent to sexual contact by law and are considered victims of a crime. However, if money changes hands, the system treats them not only as capable of consent, but also as if the victims themselves committed a crime. Many rationales are offered for this, including the view that some minor victims of sex trafficking are on the street voluntarily; and the view that an arrest or detention is necessary to get the girl off the street and away from her pimp. One of the many problems with this latter approach is that by arresting the girl for a crime, the system reinforces what her pimp has already been telling her: that she is the criminal, that what is happening to her is her fault, and that it is her actions that are wrong, not his. The solution to this dilemma is not an easy one, but needs to turn on the understanding that these girls are victims, not criminals.

(4) The Difference Between Federal and State Law Protection

The protections available to victims, minor and adult, vary widely under federal and state law. Under federal law, the TVPA requires the federal government to provide many services to victims, generally on the condition that adult victims agree to assist with the prosecution of the traffickers. As discussed above, those protections are available to minor victims irrespective of

urban area and may not do well sheltered together. Similarly, male trafficking victims generally should not be sheltered with female victims. The third option involves sending victims to existing shelters with different target groups, such as homeless teens or victims of domestic violence. These shelters are designed for other groups, and thus cannot provide many of the services these victims need, hence the need for the enhanced case management system and access to other resources in this type of system. Please note that a case management system of some sort is necessary under any of these models; the third merely requires the most additional effort in that area.

⁴⁴⁹ This topic is discussed more in-depth *infra* at pages 86 & 94.

⁴⁵⁰ See, e.g., CLAWSON, *supra* note 444, at 5.

⁴⁵¹ OR. REV. STAT. § 163.315.

⁴⁵² OR. REV. STAT. § 137.700.

⁴⁵³ See OR. REV. STAT. § 167.002 (defining prostitute) and OR. REV. STAT. § 167.007 (defining the crime of prostitution). Neither statute specifically excludes minors from being charged or prosecuted for prostitution, which is a serious flaw in the criminal code in Oregon, and in cases of minor victims of sex trafficking, renders Oregon’s laws non-compliant with both the international Trafficking Protocol and the federal TVPA.

cooperation. Oregon state law, on the other hand, does not mandate specific services for victims of trafficking, even for minor victims. Many NGOs provide services, and frequently state resources can be cobbled together for such victims (such as food or housing assistance that is generally available) when combined with assistance from the NGOs. When victims are first separated from their traffickers or pimps, these resources are essential to begin their recovery and allow them the ability to remain away from the pimp. The significant disparity between the resources available to victims under the federal laws and the Oregon state laws reflects a serious weakness in the Oregon system that has not yet been addressed.

ii. Special Needs of Foreign-Born Victims of Trafficking

(1) General Difficulties

Foreign-born victims of trafficking are one of the most under-served groups of victims in Oregon as a whole. Catholic Charities offers comprehensive services to the victims it comes into contact with (as discussed below), but the organization is not serving anywhere close the total number of victims living within the borders of Oregon, nor can it with its current funding. The obstacles that foreign-born victims face are, in many ways, more difficult to overcome than those of domestic victims. Not only do these victims have to overcome the vulnerability and trust issues that come with being a victim of trafficking, but they also live with the fear of deportation, the fear of losing their family, and language and cultural barriers. Additionally, they frequently do not trust law enforcement or government officials either because of police corruption in their home country or because of previous bad experiences in the United States. Often, they do not understand that they are a victim of a crime, do not understand the complex processes necessary to get help, are not aware of how to access such legal or social services, or are simply unable to access them for a variety of reasons.

These foreign-born victims may be victims of sex and labor trafficking, may be male or female, and may be minors or adults. All such categories of trafficking victims in a wide variety of industries and occupational sectors are found throughout Oregon. Many victims are initially convinced that they are leaving their home country to pursue a better life in the United States where they will find many opportunities and legitimate jobs. In reality, they are often recruited by paid agents of traffickers (sometimes family members) offering false promises of legitimate employment, only to be exploited once in the United States.⁴⁵⁴ In other cases, smugglers who have taken a fee to transport foreign citizens across U.S. borders end up trafficking their “clients” once they are in a vulnerable position. Furthermore, many of these victims speak little or no English. Some do not even speak another written language such as Spanish. Instead, they might speak indigenous languages for which finding an interpreter is extremely difficult. This makes it difficult not only for the immigrants or migrant workers to learn English, but also

⁴⁵⁴ Telephone Interview with Carl Wilmsen, Executive Director, Alliance for Forest Workers (Feb. 24, 2010). Labor trafficking victims are most frequently found in forestry, farm work, domestic service, restaurants, nail salons and massage parlors, and marijuana and other illegal drug operations within Oregon. Interview with Janice R. Morgan, Farmworker Program Director, Legal Aid Services of Oregon and Nargess Shadbeh, Farmworker Program Director, Oregon Law Center in Portland, Or. (Feb. 19, 2010); Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities, in Portland, Or. (Feb. 10, 2010). *See also* Richard Cockle, *Pot Growers Make Rural Oregon Their Own: Guarded Gardens Believed to be Run by Mexican Cartels Overwhelm Sheriffs*, THE OREGONIAN, Apr. 28, 2010, at B1 & B3.

makes it difficult for victims of trafficking to seek help even if they can find the courage and opportunity to do so.⁴⁵⁵

(2) Immigrant Status Adjustment; Visas

There are two different types of visas that foreign-born victims of trafficking may attempt to procure: T visas and U Visas. Congress created these nonimmigrant visa classifications with the passage of the Victims of Trafficking and Violence Protection Act in October 2000 (TVPA). The TVPA was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases, while at the same time offering protection to victims of crimes such as trafficking.

T visas were created to provide immigration protection to victims of severe forms of human trafficking.⁴⁵⁶ The eligibility requirements of a T visa include the following:

- (1) physical presence in the United States for either
 - a. a continuous period of at least three years or
 - b. a continuous period during the investigation or prosecution of the acts of trafficking, provided that the Attorney General has certified that the investigation or prosecution is complete;
- (2) good moral character; and
- (3) continued compliance with any reasonable request of assistance in investigation or prosecution.⁴⁵⁷

Congress authorizes 5,000 T visas a year; yet fewer than 1,500 have actually been issued in the decade since Congress created these visas.⁴⁵⁸ This deficit constitutes at least partially a national problem, but a discussion about how to use these visas more effectively in Oregon between federal Immigration, Customs and Enforcement (ICE) and other players at the state and federal levels is very important. Clarifying the qualifications and legal standards T visa applicants must meet would be highly useful for everyone involved, particularly since there is no question that nationally there are more than enough victims to fill the 5,000 visas per year.

U visas are designated for victims of certain crimes who have suffered mental or physical abuse because of the crime and who are willing to assist law enforcement in the investigation of the criminal activity. U visa applicants must demonstrate the following:

- (1) Continuous physical presence in the United States for at least three years; and
- (2) No unreasonable refusal to provide assistance in the criminal investigation or prosecution.⁴⁵⁹

⁴⁵⁵ Interview with Diane Schartz-Sykes, Senior Assistant Attorney General, DOJ Civil Rights Unit, in Portland, Or. (Mar. 19, 2010).

⁴⁵⁶ Although the T Visa has specified that they are only for “severe forms of human trafficking,” all trafficking is severe under the TVPA’s definition. If it is not “severe trafficking” it is not trafficking at all under the federal legal definitions.

⁴⁵⁷ See 8 U.S.C. §§ 1101(a)(15)(T), 1182(d)(12), 1184(o), 1255(1).

⁴⁵⁸ Donna Leinwand, *Few Special Immigration Visas Issued*, USA TODAY, Jan. 15, 2009, available at http://www.usatoday.com/news/washington/2009-01-15-humantrafficking_N.htm (last visited Apr. 19, 2010).

⁴⁵⁹ See 8 U.S.C. §§ 1101(a)(15)(U), 1182(d)(14), 1184(p), 1255(m).

U visas are not as attractive for trafficking victims as T visas—they do not allow family members connected visas and do not have a citizenship track—but are often easier to procure. T visas were designed for victims of trafficking specifically, but because of the lack of clarity about the T visas and the difficulties in procuring one, U visas are used much more frequently.

Although the technical eligibility requirements for obtaining T and U visas are not usually difficult to meet with trafficking victims, there are many practical obstacles that foreign-born victims face. First, the time that it takes to apply and be approved (or denied) for one of these visas can be extremely long and unpredictable. Catholic Charities estimated that it can take anywhere from two months to over a year to complete the application process. After sending in the application, it takes a long time to get a response, and there is usually a request for more information.⁴⁶⁰ This time commitment seriously dampens victims' desires to apply for the T visa because they have difficulty finding work and supporting themselves and their families during the waiting period. Catholic Charities is able to offer assistance, but its funding only allows victims approximately four months of services due to grant restrictions, resulting in this organization's inability to assist victims throughout the entire visa-procurement process.

Another difficulty is the financial commitment involved in applying for a T or U visa. There are filing fees for all the necessary forms and petitions, and applicants must pay to have their biometrics taken (finger prints, pictures, etc.), among other costs. There is the option of filing a fee waiver form, but the waiver lies within the discretion of the U.S. Citizenship and Immigration Services within the Department of U.S. Homeland Security. It is difficult to get these fees waived. Furthermore, attorney's fees may be prohibitive. Many immigration attorneys will assist victims in applying for these forms of visas, but are unable or unwilling to waive their costs. This is one of the ways that Catholic Charities gets its cases (i.e., through referrals from attorneys of victims who cannot pay fees).

(3) Family Reunification

Foreign-born victims of trafficking frequently are very concerned about their families, including extended family, both here in the United States and in their home countries. Family reunification is a significant part of the healing process for them, particularly as there may be risks to their family of retaliation or exploitation of additional family members. Depending on the circumstances, the solution may entail bringing the family together in the United States or returning victims back to their home country. In dealing with foreign-born victims, the emphasis must be on the fact that resources need to be available for more than just the immediate victim. Otherwise, more victims may be imminently harmed or trafficked. The ability to keep family members together and protect them from further harm is a key component of securing the victims' cooperation with the prosecution of their traffickers.⁴⁶¹ It is also central to victims' recovery from the harm done to them.

⁴⁶⁰ Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities, in Portland, Or. (Feb. 10, 2010).

⁴⁶¹ The Clinic is not asserting that this is a magic key that will guarantee cooperation, but that by helping victims to a place where they feel safe and secure and like they are protecting their loved ones who are vulnerable, victims may reach an emotional and intellectual state where they can cooperate that would otherwise be impossible to attain.

Because family reunification is so important, the type of visa that the victim can get is essential. T visas allow for certain members of the victims' families to come to the United States or stay in the country with the victim pending investigation or prosecution, while other visa forms frequently do not.

(4) Isolation and Effects of Oregon's Real ID Act

One of the more effective tools traffickers use to control victims is to isolate them from the community and anyone who may attempt to assist them. With foreign born victims, particularly victims of labor trafficking, this is accomplished by physically locating the victims in isolated areas. Oregon's passage of the REAL ID Act⁴⁶² essentially aggravated this condition by making it much more difficult for foreign born victims to procure driver's licenses,⁴⁶³ further limiting their transportation options, and placing them under even tighter control of traffickers.⁴⁶⁴

(5) Reintegration

Reintegration into society is challenging for foreign-born victims of trafficking. Due to the language barriers that many victims must try to overcome, it is difficult for them to find jobs in the United States. In addition, their fears of the immigration system, even if legally in the United States, make them vulnerable to being re-trafficked and sometimes limits their job searches.

The emotional scars can interfere with family relationships and the victims' involvement in society. As many of the forced activities are culturally taboo for many groups, victims feel they must hide what happened to them, and cannot explain their changed and sometimes erratic-appearing behavior without telling their story, which may result in disbelief or shunning by their community. One foreign-born sex trafficking victim recounted that his experiences left him unable to emotionally connect with his girlfriend and family, some of whom refused to believe his story when he finally recovered enough to talk about it. Physical contact with his children and the people he cared about most was psychologically disturbing because of the memories something as simple as a hug evoked. Counseling has not yet improved the situation. His situation was complicated by his trafficker's apparent knowledge concerning the victim's family, and powerful political connections in the country where the victim's family lived. Law enforcement "lost" his reports twice, once after considering them a prank, failed to check up on

⁴⁶² S.B. 1080, 2008 Leg. Special Session, 74th Sess. (Or. 2008), *available at* <http://www.leg.state.or.us/08ss1/measpdf/sb1000.dir/sb1080.intro.pdf>.

⁴⁶³ TOM McCLELLAN, HOUSE BILL 3624 REPORT ON IMPLEMENTATION OF SENATE BILL 1080: STANDARDS FOR ISSUANCE OF OREGON DRIVERS LICENSES AND IDENTIFICATION CARDS 2 (Oregon Dept. of Transportation) (2009), *available at* <http://www.oregon.gov/ODOT/publications/HB3624Report.pdf> ("Although the [Act] did not require proof of United States (U.S.) citizenship or legal presence, applicants who did not have a verifiable SSN were required to submit U.S.-issued identity documents such as a U.S. passport or U.S. immigration document with a valid foreign passport. The [Act] had minimal impact on U.S. citizens, but significantly impacted non-citizens who did not possess a valid SSN since U.S. immigration documents were required. As a result, many applicants who were not legally in the United States were unable to receive a driver license or ID card as of February 2008.")

⁴⁶⁴ This report in no way suggests or asserts that there was any malicious or other intention behind this Act to harm this particular population. It simply points out the adverse effect that this Act has had on foreign-born victims of trafficking, which was probably unforeseen by the legislature that passed it, but real nonetheless.

his family, and closed his file two times without notice to the victim and without locating the trafficker.⁴⁶⁵

Like many victims suffer from PTSD or other types of mental harm, they avoid anything that triggers the memories, which can be places, sights, sounds, smells, certain styles of dress, or essentially anything that the victim's mind associates with the abuse. For example, the victim above was abused mostly by gay men, and he now struggles with flashbacks, anger, and bias when around people he knows or perceives to be gay men, or are dressed in a similar style to those who abused him. This substantial limitation hinders victims' ability to continue living a normal life. Thus, an essential element of reintegration is counseling and assistance in dealing with the trauma. Community education about acceptance and directing blame where it belongs, i.e., with the traffickers, not the victims, is also critical. Not only must law enforcement and the system perceive them as victims, but the culture and community must learn to view and treat them that way as well.

ii. How Law Enforcement Meets Victims' Needs

Several of victims' needs described above are being, or can be, addressed by law enforcement. Law enforcement's role is complicated by the fact that both sex and labor trafficking victims are victims of a crime, but the underlying crime can be difficult to detect, whereas the actions of the victim frequently appear to be criminal on a surface level. Thus, as a first responder and as the victim's initial contact person within Oregon's system, law enforcement's role includes identifying victims, protecting victims from further exploitation (to the extent accepted by the victim), and connecting the victims with appropriate services.

Some of the necessary services law enforcement provides or can provide, include interpreters, access to information about victims' rights, a victim advocate, and information about access to appropriate services provided by both the State and NGOs. Because law enforcement personnel are focused on the criminal aspect, generally their primary concern is helping the victim get to where others can help them and then investigating the crime. Thus, law enforcement is less likely to be involved in the actual care of victims. However, as first responders, law enforcement is likely to play a pivotal role in the initial identification and rescue of the victim.

iii. How Service Providers Help Fulfill Needs

(1) Services to Victims

Social service organizations aid victims of trafficking in many different aspects of their struggles. The primary goal of these organizations is to be victim advocates. The primary responsibility of these organizations is victim protection and assistance, although collaboration with other members of the community working with the trafficking problem (i.e. law enforcement and legislators) is necessary. The main modes of assistance offered by these organizations include: getting the victims out of the situation in which they are being exploited;

⁴⁶⁵ Interview with Manuel, Trafficking Victim, in Portland, Or. (Apr. 21, 2010).

helping them access basic necessities;⁴⁶⁶ and working as advocates in communicating with federal and state agencies. Some call this assistance “systems navigation,” which comprises everything from teaching victims how to use public transportation, to handling their interactions with ICE and other government agencies, to referring them to other NGOs that can offer additional services.

An essential element of service providers’ advocacy for the victim is gaining the victim’s trust. Due to the fact that victims are very vulnerable, it also is the role of the service provider to build relationships with victims and educate others to refrain from being judgmental of these victims.⁴⁶⁷ This enables providers to better assess victims’ needs, offer necessary emotional support, and can help victims learn to advocate for themselves. Additionally, in appropriate cases, this type of support can lead victims to a point where they are sufficiently emotionally recovered to cooperate in the prosecution of human trafficking violations, which can help systemically with the overall trafficking problem in the state. Until victims can trust the people around them again, prosecutions will continue to be difficult given that the victims are indispensable to the investigations and prosecutions of traffickers.

Depending on the provider, services can range from “fully comprehensive”⁴⁶⁸ to specifically targeted aid.⁴⁶⁹ A fully comprehensive service provider will assist victims in all areas of need, such as: food; medical, dental and psychological care; clothing; housing or assisting with rental fees; and employment. Full service providers also extend legal assistance and help the victim to communicate with other agencies that may be involved. Case managers communicate with various federal or state agencies to initiate action on the case. In identifying a victim’s needs, the fully comprehensive service provider will determine the victim’s most crucial needs (usually shelter and medical care), and get her or him to help with those needs first. Then, when the most crucial needs have been satisfied (or are in the process of being satisfied), they offer their other services, such as legal assistance, filing for a visa, employment, etc.) A few points must be emphasized about this type of service: there are drastic funding limitations on what provider agencies can do for the victims they serve; they can only provide these kinds of services to a certain group for a limited time; and they have very limited capacities. While such “full service” continues to be the most necessary type of service, and the organizations providing these services are good at what they do, it also remains the scarcest type of service and is not reaching a large percentage of the labor or sex trafficking victims in Oregon.

Other service providers tailor their services to certain needs only. Often, these providers are contacted by full-service providers to assist victims the full-service providers are also serving, which is a great example of cooperation and collaboration that is characteristic of the Oregon anti-trafficking community. One example of this type of specific provider is a victims’ shelter.

⁴⁶⁶ Service providers such as Catholic Charities and SARC (Sexual Assault Resource Center) do their best to provide victims with the basic necessities of food, shelter and clothing.

⁴⁶⁷ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁴⁶⁸ “Fully comprehensive services” include: basic necessities, medical care, shelter/rental assistance, legal assistance, employment placement and more. Organizations like Catholic Charities take each victim on a case by case basis and identify their greatest needs first and then work with them on all of their needs.

⁴⁶⁹ “Specifically-targeted aid” can address any need of a victim. For example, there are organizations like Harry’s Mother and the Salvation Army that offer shelter, but work with other organizations to satisfy the victim’s other needs.

Although Oregon does not currently have shelters specifically designated to assist trafficked victims, shelters that have been created for other types of victims (i.e. domestic abuse shelters and shelters for homeless youth) have greatly contributed in serving victims of trafficking here in Oregon.⁴⁷⁰ Other examples include organizations that provide job training, access to food resources, clothing, or other necessities. These services are not always specifically targeting trafficking victims, but at providing life essentials to people who are lacking.⁴⁷¹

Unfortunately, the service providers that are available in Oregon are not able to assist every person that walks through their doors. Due to funding constraints and grant restrictions, these providers are typically only able to assist one or two categories of victims. Victims in Oregon are treated differently depending on two different characteristics: whether they are foreign-born⁴⁷² or domestics; and whether they are adults or minors. Catholic Charities is currently the only full service provider assisting foreign-born victims in Oregon.

The individualized needs of these victims are as varied as the victims themselves, while some universal needs (food, shelter, clothes, translating services) are predictable based on outward characteristics.⁴⁷³ Additionally, other restrictions frequently apply, such only serving victims with mental health issues. Right now, the major limiting factor for service providers is funding; there just are not enough resources to meet the needs of the victims in Oregon. The infrastructure is there, and while there are some targeted improvements that should be made (such as shelters and a case management system), the main functional limitation on Oregon's ability to help trafficking victims is a lack of resources.

Legal Services

Fully comprehensive service providers, such as Catholic Charities' Outreach and Support to Special Immigrant Populations (OSSIP), often have an immigration attorney on staff to assist victims with legal needs, such as filing for a visa. Domestic victims of sex trafficking may have a harder time procuring free or low-cost legal services. The Juvenile Rights Project (JRP) is an example of a specifically-targeted service provider that provides legal services to juveniles, including victims of trafficking, to help them with everything from establishing that they are a victim, to trying to get charges dropped or expunged from their record, to filing juvenile immigration applications.⁴⁷⁴

⁴⁷⁰ Although there are many shelters that have contributed to assisting the trafficking community, specific shelters will not be listed for privacy concerns. However, if more information is desired, please contact such organizations as Catholic Charities, The Salvation Army, The YWCA and YMCA and Goodwill.

⁴⁷¹ Examples from Portland include Outside In and New Avenues for Youth.

⁴⁷² Catholic Charities is currently the only full service provider assisting foreign-born victims in Oregon.

⁴⁷³ For example, minor victims of trafficking probably will need access to basic high school education, while adult victims may not. Foreign-born victims frequently need language services, but not all of them will. However, the specific trauma each victim faced creates a need for individualized treatment. Working with animals may help one victim through their recovery, while talking through the past may help another. Each victim is unique and requires individualized resources, but some of types of victims have generally similar needs, and each of these four categories tend to be widely divergent from the others.

⁴⁷⁴ Telephone Interview with Julie McFarlane, Supervising Attorney, Juvenile Rights Project, and Rochelle Martinson, Legal Intern, Juvenile Rights Project (Apr. 27, 2010).

Another underutilized resource available to these specifically targeted service providers is the National Crime Victim's Law Institute (NCVLI).⁴⁷⁵ This non-profit organization pairs victims with local attorneys so that they have representation. All work available to these victims is provided on a pro-bono basis. The organization offers assistance to the attorneys they pair with victims, including, but not limited to, legal research and the provision of sample briefs and motions. NCVLI has recently become aware of the human trafficking problem in Oregon, but has not yet worked directly with a trafficking victim within Oregon.

(2) Services to the Community

Service providers not only offer assistance to victims of trafficking, but also assist the community in anti-trafficking efforts. The heads of many service organizations are members of the Oregon Human Trafficking Task Force and work closely with law enforcement and legislators to train the community on trafficking. These trainings include a wide range of trafficking topics and usually cover both federal and state laws to combat trafficking, as well as efforts to assist both foreign-born and domestic victims.⁴⁷⁶ It is agreed throughout Oregon's anti-trafficking community that more training is necessary on all levels in every sector, including training of service providers, law enforcement, immigration attorneys and legislators. General community awareness is also essential, and increased media attention to human trafficking is beginning to draw attention to these issues.

(3) Obstacles for Service Providers

(a) Funding

Although the service providers currently operating in Oregon are able to assist a number of victims, they are not even close to reaching all of them. It is widely accepted in the trafficking community of Oregon that there is a need for either more service providers to assist victims or more funding so that the current providers can reach a wider group of victims. Currently, there is only one comprehensive service provider in Oregon, Catholic Charities, and it is only able to assist foreign-born victims. That leaves domestic victims alone to navigate procuring resources from organizations that offer specific resources. They are less likely to gain all of the assistance they need to escape their situation, as collaboration between these specific organizations is not as efficient or organized as organizations providing comprehensive services. SARC has begun to offer a case management system for domestic victims, but additional funding is necessary for SARC to develop the program further and cover more victims. Additionally, as the system is new, and thus, the networks necessary to provide "comprehensive services" that meet a particular victim's needs are not yet fully in place.

Funding of these organizations is primarily based on federal grants. For example, Catholic Charities is able to provide services currently due to its OVC grant. However, these grants have

⁴⁷⁵ Interview with Meg Garvin, Executive Director, NCVLI, in Portland, Or. (Mar. 12, 2010).

⁴⁷⁶ Chris Killmer from Catholic Charities is the main trainer on human trafficking in Oregon and is available for training for many different types of groups (other service providers, attorney Continued Legal Education seminars, government officials, district attorneys, law students, medical providers, etc.). Keith Bickford, Deputy U.S. Marshall and head of the Oregon Task Force is the main trainer on human trafficking for law enforcement personnel.

time limits and specific restrictions that keep the service providers from helping a wider range of victims.⁴⁷⁷ These restrictions can also prevent the organization from providing necessary services of a specific type, such as transportation. As mentioned previously, a risk point for many domestic victims is the public transportation system, and alternative transportation assistance is not currently offered by any organization in Oregon, at least in part because of grant restrictions.

(b) Shelters

Although service providers appear to be successful in finding housing for nearly all of their victims, securing a safe place for victims is challenging due to the lack of available shelters, as well as overcrowding. Furthermore, there are no shelters that are specifically designated for domestic victims of trafficking, minor or adult.⁴⁷⁸ Using other types of shelters can pose problems because trafficking victims typically require a lot of attention and have very different needs from other groups.⁴⁷⁹ Additionally, with regard to foreign-born victims, there are many cultural and language barriers that make a “one-size fits all” shelter nearly impossible. Instead, identifying the gaps in the shelter system and creating new shelters, or expanding existing shelters or access to housing, for victims and their families may be the more logical step.⁴⁸⁰

Many domestic under-age trafficking victims need to be accompanied by a trusted figure at all times (escorted to and from school, never left home alone, etc.), to avoid their return to their traffickers.⁴⁸¹ Shelters for other types of victims do not have the resources available to assist victims of trafficking so closely, and other service providers do not have sufficient funding to provide this kind of assistance.

(c) Collaboration

In order for service providers to best assist trafficking victims, they must have open lines of communication with federal and state agencies, as well as with local law enforcement. Building and maintaining trusting relationships among these agencies takes a lot of time and effort for

⁴⁷⁷ The grant under which Catholic Charities is funded is restricted to use for assistance to pre-certified foreign-born victims, which restricts Chris Killmer from assisting other possible victims that have not yet been identified with grant money.

⁴⁷⁸ Catholic Charities tends to place victims of trafficking in shelters designated for other types of victims or give them rental assistance, to overcome this obstacle.

⁴⁷⁹ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010). For example, domestic victims of trafficking between the ages of 18 and 23 are frequently sent to domestic violence shelters, which are designed to empower women who have been abused by a husband or boyfriend usually. Victims of trafficking can be looked down upon by other women in the shelter as “prostitutes”—not out of malice, but because these women have been abused and are looking for anything to raise their self-esteem. Additionally, because victims of trafficking frequently have been forced to depend on their pimp for everything, they do not have the life skills our culture assumes adults have; for example, they do not know how to budget or go grocery shopping. They do not know what hygiene products are necessary, and other simple planning steps that most people take for granted. Thus, domestic violence shelters are not equipped to provide the empowering hand-holding that this group usually needs as the shelter and processes were set up to assist a different group of women.

⁴⁸⁰ Interview with Diane Schwartz-Sykes, Senior Assistant Attorney General, DOJ Civil Rights Unit, in Portland, Or. (Mar. 19, 2010).

⁴⁸¹ Marion County Human Trafficking Forum Speaker, Patty Iwamoto, Dept. of Community Justice, in Salem, Or. (Mar. 09, 2010).

each participant. Unfortunately, there has been much turnover in these key positions, which has impeded the ability of service providers to build and maintain those crucial working relationships.⁴⁸²

iv. Witness Protection/Security Concerns

Victims of trafficking frequently face dangerous situations when they are identified as victims. The seriousness of the crime and the significant profit the perpetrators can realize provide significant incentives for the traffickers to attempt to silence victims, both before and after they escape the traffickers' control. These efforts are varied and versatile and thus can be hard to counter, particularly when the trafficker threatens family, children, or the victims' loved ones. One of the ways federal law endeavors to deal with this problem for foreign born victims is through the T visa and its provisions covering both the victim and some members of the victim's family.

The drastic measure of witness protection is not generally feasible for victims, particularly minors.⁴⁸³ Therefore, other options are necessary, but not easily obtained in many cases. There are some safe houses where victims can stay in the short term, but these houses are generally designed around other problems: domestic violence, mental health issues, juvenile delinquency, or service to older children who are wards of the state, to name a few. Particularly for victims of labor trafficking, cultural and family issues frequently mean the involvement of the needs of a much larger group than just the individual victim (the family members may or may not also be victims of trafficking). Because the threats of violence to the victim and others are grave possibilities, the security of the victims needs to be a paramount concern.

C. Strengths and Gaps in Oregon's Response to Protect and Assist Trafficking Victims within the Context of Federal and International Legal Obligations

Oregon's victim assistance infrastructure is growing and adapting as the problem of trafficking continues to be publicized. That adaptation is a great strength in the community: service providers have made resources that are typically provided to others in need available to trafficking victims. This creative ingenuity as Oregon develops the necessary programming (such as the SARC case management system for domestic victims and the Catholic Charity Services comprehensive service for foreign-born victims) has helped victims gain access to at least basic resources in most cases. Additionally, the existence of strong and cooperative relationships between law enforcement and NGOs in the Portland area is a phenomenal asset that allows participation in law enforcement operations and proceedings, such as Portland's participation in the FBI Operation Cross-Country sting with a secure location set up with victim services. Other areas of Oregon did not have similar examples, and thus the Clinic could not measure of relationships between the agencies.

One of the main missing pieces of the puzzle is the lack of hard data about human trafficking in Oregon. This deficiency is a serious limitation on funding and other resources for everyone, including NGOs, law enforcement, and prosecutors (see diagram representing the "Vicious

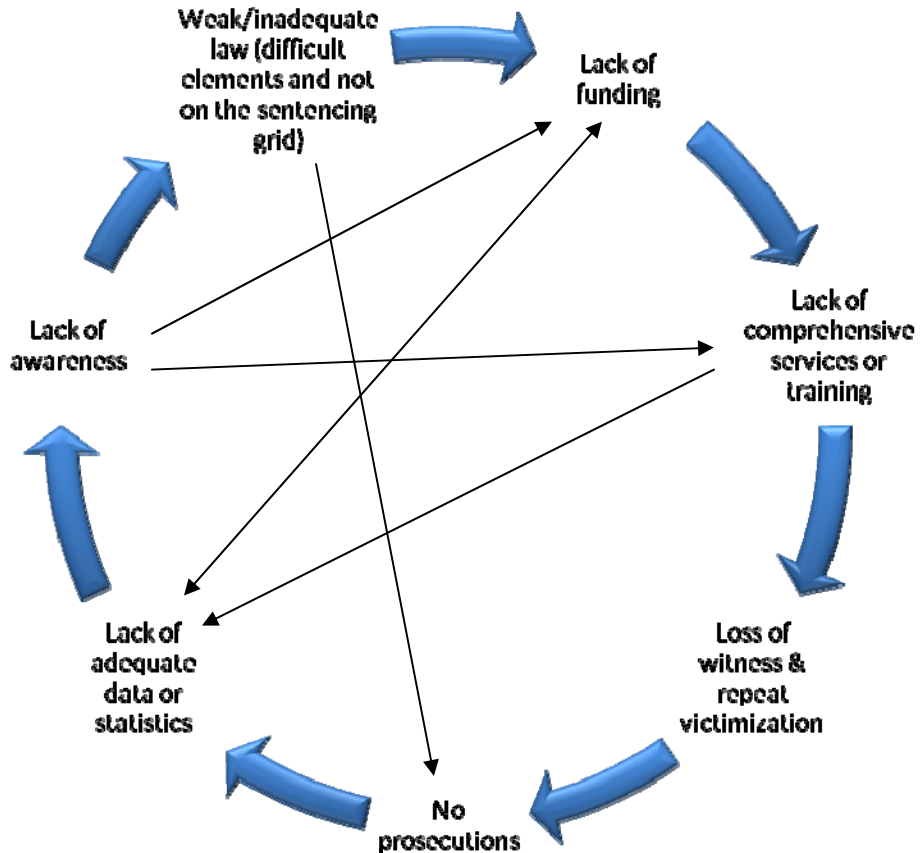
⁴⁸² Interview with Chris Killmer, Program Director of OSSIP, Catholic Charities, in Portland, Or. (Feb. 10, 2010).

⁴⁸³ Interview with Caroline Holmes, Victim Advocate, Civil Rights Division, FBI, in Portland, Or. (Apr. 7, 2010).

Cycles in Combating Human Trafficking in Oregon” on next page). Oregon needs to know the size and scope of the problem to make sure that its response is comprehensive. What is known now is that the resources available are not meeting the known needs in the community for labor or sex trafficking victims.

Because of the intense harm that is done physically, intellectually, and emotionally to each victim, and the highly individualized situation each victim is coming from, service providers, law enforcement, and other first responders frequently cannot meet the individualized needs of a particular victim. For instance, a shelter for domestic trafficking victims in some form is necessary in Oregon, ideally separating adults and minors. However, although such a shelter is a need, the care each victim receives in the shelter must be individualized to that persons’ needs: one victim may be able to shop for herself, while another would not know where to start; one victim may recover from sexual assault or PTSD much faster than another; one victim may not speak English while another may not even speak languages for which translators are readily accessible.

Lack of funding is the key contributor to this cycle. Each of the problems are interconnected, but they all begin with, and end up at, a lack of funding. This lack of funding extends to all the agencies and organizations involved. No one has sufficient funding to meet the needs of all the reachable victims in Oregon. The unavailability of necessary resources to protect and assist victims impacts Oregon’s ability to fulfill its obligations under national and international law regarding human trafficking. The required legal minimums to protect and assist victims are basic, and mostly place requirements on the federal government. However, the recommended standards for the protection and assistance of victims constitute practical, fundamental necessities for the state to meet its other obligations to Prevent and Punish. Thus, Oregon is meeting the absolute minimums that are necessary at the state level: the proceedings are confidential to the extent possible in our public system, and victims’ privacy is protected at least in one arena by the address confidentiality law recently passed. Victims also have the ability to seek restitution in the court system. These are the bare minimum requirements in this category, and Oregon meets them, though quite minimally in some cases.



As to the recommended standards for the protection and assistance to trafficking victims, Oregon’s system exists, but is limping. It cannot meet the demands placed on it, and is not able to serve all victims effectively because of funding limitations, a lack of a comprehensive case management system for victims of sex trafficking, lack of some necessary services (such as transportation and shelters, discussed above), and a missing identification system. Because of these limitations, Oregon’s response to trafficking is limited because the victims must spend their time and energy on survival rather than recovery and assisting with the prosecution of their traffickers. Until Oregon creates the capacity to provide this necessary victim protection and assistance, it will be unable to meet the legal obligations of the other two categories of the Three Ps: prevention and prosecution.

1. Prosecution

a. Identification of Cases and Victims

i. Precinct Screening

Police typically identify minor victims of sex trafficking during routine patrols or through referrals from the Oregon Department of Human Services (“ODHS”).⁴⁸⁴ The Portland Police sex crimes unit is currently trying to compile information on how trafficking victims are being identified and referred to police.⁴⁸⁵

The Portland Police Department (“PPD”) and other law enforcement frequently identify trafficked victims after an individual has been picked up by patrol officers for engaging in some form of criminal behavior. Screening mechanisms are an essential tool for law enforcement, not only to avoid charging someone who may in fact be a crime victim, but also to ensure that victims are referred to appropriate assistance services and that efforts are refocused on investigating the real offender; the trafficker. This is particularly important for persons detained for engaging in commercial sex activities. The federal law on trafficking classifies any person under the age of eighteen who is engaged in prostitution or child sexual exploitation as a trafficked victim.⁴⁸⁶ This has facilitated identification of minor victims by law enforcement. Adult victims of sex trafficking are significantly more difficult to spot, because the complex web of voluntary versus coerced activity is often difficult to untangle. The lack of prosecutions for trafficking in adults reiterates the fundamental difficulty in identifying this group. For this reason, consistent screening procedures for all persons detained for commercial sexual activity must be developed and followed.

ii. Referrals

(1) Foreign-born Victims

Immigration attorneys, ODHS, District Attorneys, churches, and other sources refer international trafficking cases to the Oregon Human Trafficking Task Force.⁴⁸⁷ The Oregon Human Trafficking Task Force reviews these cases, interviews victims (hopefully establishing trust), and then refers case information to the relevant prosecutor at the federal (U.S. Attorney for Oregon) or state (D.A.) level. The District Attorneys also provide case information to the Oregon Human Trafficking Task Force in an effort to maintain statistics and intelligence in law enforcement databases.⁴⁸⁸

⁴⁸⁴ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland Or. (Oct. 16, 2009).

⁴⁸⁵ *Id.*

⁴⁸⁶ *Supra* note 66, TVPA at §103(8); 22 U.S.C. 7102(8) (2009).

⁴⁸⁷ Interviews with Keith Bickford, Dir. OHTTF, in Portland, Or. (Oct. 19, 2009) and (Feb. 08, 2010). The Federal Marshal is housed at the Multnomah Co. Sheriff’s Office, and is the Director of the Task Force on Human Trafficking in Oregon.

⁴⁸⁸ Interviews with Keith Bickford, Dir. OHTTF, Portland, Or. (Oct. 19, 2009) and (Feb. 08, 2010).

The U.S. Department of Homeland Security, Immigration and Customs Enforcement (“ICE”) receives information on suspected cases of trafficking of foreign-born victims from a variety of sources, including state and local authorities.⁴⁸⁹ The FBI also investigates international cases of trafficking, but will not divulge information on referral sources.⁴⁹⁰

(2) Domestic Victims

The Multnomah County Child Welfare Division, of Oregon’s Department of Human Services (“DHS”) has identified the majority of the 120 cases of domestic minor victims of sex trafficking in Oregon. DHS operates a child welfare hotline for the tri-county area through which members of the public have reported suspected cases of sex trafficking. DHS officials refer these cases to law enforcement for investigation. Law enforcement officials also identify victims, such as during sting operations, when responding to missing persons and runaway reports, and when they detain minors for curfew violations.⁴⁹¹ Law enforcement officials have also identified victims by conducting internet (cyberspace) investigations of social networking sites.⁴⁹² Domestic cases of trafficking are reported to the Oregon Human Trafficking Task Force not only for case assessment and referral to state and federal prosecutors, but also for maintaining statistics, as required by the task force’s federal grant, and coordinating communications with police departments, nongovernmental organizations, and victim advocates.⁴⁹³ First-line police officers who identify cases handle the investigation and subsequent referral for prosecution.

Federal agencies including the FBI, USDHS, USDEA, and the Secret Service also identify trafficking cases, and refer them directly to the U.S. Attorney for Oregon for review.⁴⁹⁴ The FBI identifies and investigates suspected cases of trafficking of domestic and foreign-born victims. The primary vehicle to identify minor victims of sex trafficking is through the Innocence Lost Initiative, in which the FBI Crimes Against Children Unit coordinates national stings (“Operation Cross Country”) to rescue children and arrest pimps.⁴⁹⁵

b. Investigation

i. Police Procedure

Local Law Enforcement: There are no uniform standard operating procedures in place for local law enforcement conducting trafficking investigations in Oregon. The response is individualized

⁴⁸⁹ Information provided by Lorie Dankers, Spokeswoman & Public Affairs Officer for Alaska, Idaho, and Washington, U.S. Immigration and Customs Enforcement (ICE), U.S. DHS (May 11, 2010).

⁴⁹⁰ Interview with Caroline Holmes, Victim Specialist, FBI Portland Division, U.S. DOJ in Portland, Or. (Apr. 07, 2010).

⁴⁹¹ Many of the victims who are between the ages of 18-21 are identified when law enforcement’s vice squads conduct raids. Interviews with Keith Bickford, Dir. OHTTF, Portland, Or. (Oct. 19, 2009) and (Feb. 08, 2010).

⁴⁹² Interviews with Keith Bickford, Federal Marshal/Federal Task Force Director, Portland, Or. (Oct. 19, 2009) and (Feb. 08, 2010).

⁴⁹³ *Id.*

⁴⁹⁴ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney’s Office, in Portland, Or. (Mar. 17, 2010).

⁴⁹⁵ U.S. DEPT. OF JUSTICE, ATTORNEY GENERAL’S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOV’T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS FY 2008, 33-37, 33 (2009) [hereinafter ATTORNEY GENERAL’S ANNUAL REPORT].

to each office. According to a survey distributed to sheriffs' offices in each county, the majority of law enforcement agencies do not have internal protocols on how to address suspected cases of trafficking. One exception is the Portland Police Department. This department has enacted formal procedures for investigating sex trafficking cases and restructured its response to trafficking by instituting a philosophical shift on how cases are addressed.

Formerly, trafficking and prostitution cases were investigated by the vice unit⁴⁹⁶ utilizing an offense-based approach, where sex workers were viewed as offenders. There was also minimal tracking of case management, inadequate review of incoming cases, lack of computers and databases, and insufficient levels of staff. The Sex Crimes Unit now investigates prostitution cases and gives them the same priority as a sexual assault case. This change in philosophy, along with clearly defined department goals, has helped eliminate the minimization of forced prostitution cases. It has also helped develop coherent investigations that are both effective and conserve resources.

The Sex Crimes Unit was established so that detectives, rather than vice officers, would investigate compelling prostitution and trafficking cases. The full weight of the detective division is behind these investigations, and the creativity of its detectives is fostered to achieve these goals. The sex offender registration database is also housed within this department.⁴⁹⁷ When a victim has been identified, is willing to talk, and has identified her pimp, a detective is immediately sent to the scene.⁴⁹⁸ Officers are available 24 hours a day to investigate and respond to these complaints.⁴⁹⁹ Officers in the Sex Crimes Unit debrief the victim to identify the pimp and/or trafficker and obtain incriminating information. Once sufficient evidence has been obtained, the police arrest the pimp and/or trafficker. If the person is charged under the compelling prostitution statute, which is a Measure 11 offense, bail is usually set at \$250,000. The police then initiate an investigation and examine computers and other forms of documentation, as pimps and traffickers often maintain detailed business records.

Currently, there is no focus in the Portland Police Department on labor trafficking. There is a lack of awareness on this issue. Awareness is necessary before identification procedures can be developed.

Federal Law Enforcement: The FBI office in Oregon was unable to provide any information on procedures, training and staff dedicated to trafficking because of internal policies against divulging investigative strategies.⁵⁰⁰ Nationally, however, FBI field offices produce threat assessments on trafficking, conduct investigations, and develop actionable intelligence for

⁴⁹⁶ The vice unit was attached to the drug unit so the mindset was one of offense rather than victimization.

⁴⁹⁷ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

⁴⁹⁸ The detectives that respond to these cases are available 24 hours a day.

⁴⁹⁹ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

⁵⁰⁰ Email from Glenn Norling, Violent Crime Squad, FBI Portland (Mar. 15, 2010) (on file with Clinic) and Interview with Caroline Holmes, Victim Specialist, FBI Portland Division, U.S. DOJ in Portland, Or. (Apr. 07, 2010).

potential cases. Local offices also liaise with civic, community and non-governmental organizations on case referrals and information gathering. The FBI works with local, state, and federal law enforcement agencies and national victim-based advocacy groups in joint task forces on trafficking, including 30 law enforcement task forces and 42 Bureau of Justice Assistance-sponsored task forces nationwide.⁵⁰¹ In addition, victim specialists within the FBI work directly with victims to advise them of their rights and ensure access to appropriate services.⁵⁰²

The two units within the U.S. Immigration and Customs Enforcement agency that interface with trafficking are the Office of Investigations, and the Customs and Border Protection unit.⁵⁰³ The Office of Investigations is responsible for identifying and investigating human trafficking and smuggling cases.⁵⁰⁴ Specific initiatives “focus on attacking the infrastructure that supports smuggling and trafficking organizations, and the assets that are derived from these criminal activities” including “seizing currency, property, weapons, and vehicles.”⁵⁰⁵ While there are standard operating procedures in place for conducting investigations, details on the means and methods of these investigations are not publicly disclosed.⁵⁰⁶ In addition, ICE criteria used for initiating an investigation is also kept confidential.⁵⁰⁷ The Office of Investigations, however, is an active member of the federal task force on human trafficking in Oregon.

ii. Referral Mechanisms: Federal and State Case Determinations

State cases: Generally, police become aware of cases involving minor victims of sex trafficking when they take them into custody after an arrest, or when presenting a case before the Grand Jury. The police create a report, gather evidence, and conduct an investigation. The law enforcement officer presents the case to the District Attorney’s office, and notifies the federal task force director for tracking purposes. The Portland Police present possible trafficking cases to the District Attorney, who then determines whether to prosecute it under state law or turn it over to the U.S. Attorney for Oregon for federal prosecution. This is also the procedure that has historically been used in drugs, firearms and gang cases. Maintaining a close relationship with the District Attorney on the issue of human trafficking is crucial, as it impacts how quickly cases are processed. Cases involving minor victims in Multnomah County are indicted within the same day that the victim is picked up.⁵⁰⁸

Federal cases: There is an informal agreement between the U.S. Attorney for Oregon and the police in Oregon and Vancouver, Washington, that all identified cases are referred directly to the

⁵⁰¹ Correspondence with Glenn Norling, Violent Crime Squad, FBI Portland (Mar. 15, 2010) (on file with Clinic).

⁵⁰² Services include legal, repatriation, and immigration assistance, as well as housing, employment, education, job training, and child care.

⁵⁰³ The only CBP officers in Oregon are located at the Portland Airport.

⁵⁰⁴ Telephone interview with Elizabeth Gottfried, Detention and Removal Officer, U.S. DHS ICE, (Mar. 26, 2010).

⁵⁰⁵ U.S. ICE Office of Investigations, *About Us* (2010), <http://www.ice.gov/investigations/>.

⁵⁰⁶ Information provided by Lorie Dankers, Spokeswoman & Public Affairs Officer for Alaska, Idaho, and Washington, U.S. ICE, U.S. DHS (May 11, 2010).

⁵⁰⁷ *Id.*

⁵⁰⁸ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland Or. (Oct. 16, 2009).

local district attorney unless there is a federal nexus to the case.⁵⁰⁹ A federal nexus is some aspect of the case that falls within or affects interstate commerce. Travel across state lines or the use of drugs to entice girls into prostitution falls within the federal nexus. Purely intrastate activity can also come under federal jurisdiction in some circumstances where there is an interstate activity, including where the internet or cell phones are used, when hotels are booked in another state for trafficking-related activities, or bank accounts are used for trafficking revenue. Federal agencies, such as the FBI, DHS, DEA, or the Secret Service, that identify trafficking cases refer them to the U.S. Attorney for Oregon for review.⁵¹⁰ The violent crimes prosecutor is responsible for overseeing trafficking cases, and may later decide to forward the case to the district attorney to be prosecuted as a state case.⁵¹¹

iii. Obstacles to Investigation

(1) Lack of Victim Cooperation

One of the primary impediments to investigating sex trafficking cases is the loss of witnesses. A combination of factors contributes to victims, particularly minors, returning to their pimps and ceasing all cooperation with police. Such factors include the strong trauma-bond victims have with their pimps, lack of self esteem resulting from prolonged loss of control over their own lives, stigmas associated with sex workers, threats, and/or the inability to perceive an alternative lifestyle. Even victims who initiate contact with the police often withdraw their complaints within 24-48 hours.⁵¹² Obtaining sufficient evidence without victim testimony and cooperation is extremely difficult in forced prostitution cases.

The material witness statute is applicable to witnesses of extreme crimes and requires the District Attorney's approval. The District Attorney must show probable cause that a crime has been committed and that the witness poses a flight risk.⁵¹³ As discussed below, trafficking is an unranked crime under state law. Among the consequences to this is the fact that it is not considered a serious crime and renders the material witness statute inapplicable to trafficked victims. The reported benefit of a secured holding facility for victims is that prosecutors would have access to the victim-witness throughout the case preparation process.⁵¹⁴ However, many advocates argue that a secured facility would inhibit freedom of movement and further damage individuals who have already been subjected to prolonged domination. Many advocates view the placement of trafficked victims into a secured facility as punitive.

⁵⁰⁹ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, in Portland, Or. (Mar. 17, 2010).

⁵¹⁰ *Id.*

⁵¹¹ *Id.*

⁵¹² Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

⁵¹³ Interview with Doug Harclerod, former District Attorney, Lane County, in Salem, Or. (Oct. 27, 2009).

⁵¹⁴ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

(2) Specific Barriers Relating to Foreign-born Victims

Police face significant barriers when they investigate trafficking cases involving foreign-born victims, particularly in labor trafficking cases. Currently, local law enforcement agencies that address trafficking are exclusively focused on sex trafficking. This lack of institutional focus on labor trafficking undermines the ability of police officers to identify potential victims, and to initiate investigations or follow-up on suspected cases.

Additionally, many foreign-born victims have an inherent mistrust of police, often due to conditions in their countries of origin, and will not voluntarily seek police assistance. Their fear of being reported to immigration authorities and being punished for perceived immigration violations only compounds their mistrust of authorities.⁵¹⁵ Police need to take proactive measures to identify cases of foreign-born victims, as this population rarely self-reports.

Moreover, individuals in custody, who may in fact be trafficking victims, can easily be overlooked when basic communication is impeded. Many migrant laborers speak indigenous languages for which interpreters are not readily available.⁵¹⁶ Furthermore, all minors in Oregon that the ICE Detention and Removal Office (“DRO”) places into deportation proceedings are transferred directly from the juvenile justice system, and 98% of adults in DRO custody are transferred from local jails. While DRO officers have reportedly been trained on human rights and trafficking issues, they currently do not conduct standard screening to identify potential victims of trafficking among these cases. It is left to the discretion of the interviewing officer to inquire about trafficking.⁵¹⁷ Once a person has been identified as a crime victim, the DRO victim witness coordinator becomes involved.⁵¹⁸ Juveniles are also transferred to DRO from other states for placement in the Oregon detention center. These minors are in the final stages of removal and have already been interviewed by the Office of Refugee Resettlement, U.S. Department of Health and Human Services. DRO officers do not conduct any interviews with this caseload. Without training to identify victims in custody or ICE procedures to detect cases in deportation proceedings, many victims could be slipping through the cracks. The vulnerability of such victims is only increased when they are returned to their countries of origin without appropriate protection and services. All these factors contribute to a lack of information on these cases and has fueled a misconception that labor trafficking is simply not a problem in Oregon.

Continued Presence: Continued Presence⁵¹⁹ (“CP”) certification grants temporary immigration relief during an investigation or prosecution to adult victims of severe forms of trafficking. CP is initially authorized for a period of one year; however, an extension of CP may be authorized for

⁵¹⁵ Many documented workers also cite a fear of immigration violations because of their lack of understanding how the legal system functions and because traffickers use threats of immigration violations to maintain control over their victims.

⁵¹⁶ Interviews with Nargess Shadbeh, Director Farmworker Program, Oregon Law Center, and Janice R. Morgan, Farmworker Program Director, Legal Aid Services of Oregon, in Portland, Or. (Feb. 19, 2010) and interview with Diane Schwartz-Sykes, Senior Assistant Attorney General, DOJ Civil Rights Unit, in Portland, Or. (Mar. 19, 2010).

⁵¹⁷ DRO officers do not ask detainees who are from contiguous countries whether their documentation was withheld by someone unless there are some unusual indicators.

⁵¹⁸ Telephone interview with Elizabeth Gottfried, Detention and Removal Officer, U.S. DHS ICE, (Mar. 26, 2010).

⁵¹⁹ Victims of Trafficking and Violence Protection Act of 2000 § 107(c)(3).

a longer period if the investigation is ongoing.⁵²⁰ Victims can also obtain work permits during this time⁵²¹ and are eligible to receive social service benefits. Only DHS has the authority to grant Continued Presence,⁵²² which is done at the Vermont Service Center. Historically, the ICE office in Portland has assumed the role of filing CP applications in Oregon, despite that CP can be requested by any federal law enforcement agency on behalf of a potential witness.⁵²³ CP requests are reviewed and authorized by the Law Enforcement Parole Branch (LEPB), and then forwarded to the Vermont Service Center for processing.

While there is no data available on the number of CP certifications granted in Oregon,⁵²⁴ numerous agencies interviewed for this report identified the lack of CP certification as a primary impediment to prosecuting cases and ensuring that victims receive adequate services. The understanding of CP criteria varies between the stakeholders, such as whether the individual must be a confirmed victim prior to certification, or whether CP is issued for the period in time during which law enforcement and prosecutors confirm that the individual meets the legal criteria as a victim of trafficking. Thirteen requests were withdrawn by the requesting federal law enforcement agencies or denied in FY 2008 because of insufficient evidence to substantiate that the individual was a victim of a severe form of human trafficking as defined by statute.⁵²⁵ Another obstacle to obtaining CP is the requirement that the victim cooperate with law enforcement and prosecutors, which is a subjective determination. Currently, the ICE office in Portland is not providing explanations for denials.⁵²⁶

c. Prosecuting Cases

i. Charging Criteria

(1) Federal

Federal prosecutors are advised in their training manual to charge the most serious offense consistent with the crime likely to garner a conviction.⁵²⁷ The federal Speedy Trial Act obligates the government to process all criminal trials within 70 days of the indictment or charges being filed.⁵²⁸ Furthermore, due process requires the government to prove each element of the offense beyond a reasonable doubt. According to the office of the U.S. Attorney for Oregon, the evidence required to build a federal trafficking case is significantly higher than for state trafficking cases. For instance, the prosecution of customers who use the services of a minor victim of trafficking requires proof that the defendant actually knew the victim was under the age

⁵²⁰ ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 33.

⁵²¹ *Id.*

⁵²² 28 C.F.R. § 1103; ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 33.

⁵²³ ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 33.

⁵²⁴ During FY 2008, the U.S. DHS ICE Law Enforcement Parole Branch approved 225 requests for continued presence and 101 extensions for preexisting CPs nationally. See OFFICE TO MONITOR & COMBAT TRAFFICKING IN PERSONS, U.S. DOS, TRAFFICKING IN PERSONS REPORT, 57 (June 2009) available at <http://www.state.gov/g/tip/rls/tiprpt/2009/> [hereinafter MONITOR & COMBAT TRAFFICKING].

⁵²⁵ ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 33.

⁵²⁶ Interviews with Keith Bickford, Dir. OHTTF, Portland, Or. (Oct. 19, 2009) and (Feb. 08, 2010).

⁵²⁷ UNITED STATES ATTORNEY'S MANUAL (1997), Title 9, USAM Chapter 9-27.000 Principles of Federal Prosecution, 9-27.3000 Selecting Charges – Most Serious Offenses (A).

⁵²⁸ Speedy Trial Act of 1974, 18 U.S.C. §§ 3161, 3162 (1979).

of eighteen years.⁵²⁹ In addition, evidence collection is time-consuming and is inhibited by a lack of witness cooperation, a paucity of physical evidence, and constitutional restrictions on the use of statements from absent witnesses.

(2) State

Once a suspect is identified under the state system, the responsibility shifts from the police to the District Attorney to determine what offenses are chargeable. This process requires assessing the evidence that is provided by police, determining what can be charged under available statutes, and whether there are other avenues to prove the offenses. The District Attorneys have a short time-line to determine which charges to file. If there is insufficient evidence or a charge is not filed on the same day the District Attorney receives the police report the suspect is released. At this point, the case may be re-directed to law enforcement to gather more evidence. Felony charges need to be filed within a week of receiving the police report for a grand jury to indict.⁵³⁰ The victim is released until the indictment, during which time the prosecutor frequently loses contact with the victim, who is also the primary witness. This is a major obstacle in successfully prosecuting cases.

ii. Charges

(1) Federal

- The federal statutes used in prosecuting trafficking cases include the following.⁵³¹
 - 18 U.S.C. § 1581 (peonage)
 - 18 U.S.C. § 1583 (enticement for slavery)
 - 18 U.S.C. § 1584 (sale into involuntary servitude)
 - 18 U.S.C. § 1589 (forced labor)
 - 18 U.S.C. § 1590 (trafficking with respect to peonage/slavery/involuntary servitude/forced labor)
 - 18 U.S.C. § 1591 (sex trafficking of children or by force, fraud or coercion)
 - 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of TIP)
 - 18 U.S.C. § 1594 (general provisions)
 - 18 U.S.C. § 2422 (coercion and enticement)
 - 18 U.S.C. § 2423 (transporting minors with intent to engage in criminal sexual activity)
 - 18 U.S.C. § 2421 (transportation of persons [adults] for prostitution)

The U.S. Attorney for Oregon has received some referrals on cases involving labor issues in the past. None of these cases reportedly contained all the necessary elements under the federal trafficking law.⁵³²

⁵²⁹ It is easier to demonstrate that the client “should have known” the person was underage.

⁵³⁰ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

⁵³¹ ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 495, at 42.

(2) State

Currently, state prosecution of sex trafficking cases is being achieved under the compelling prostitution statute.⁵³³ Prosecutors are not using the trafficking statute primarily because of the inherent difficulty in proving the elements in a sex trafficking case.⁵³⁴ In fact, there has never been a conviction under the Oregon trafficking statute. All charges have either been dismissed or received an acquittal.⁵³⁵ An additional concern with prosecuting trafficking charges is that the investigation takes longer, and additional time increases the chance that the witness will change her mind about testifying or even return to her pimp.⁵³⁶ Another reason the trafficking statute is not being used is because it does not carry a specified sentence. The offense is in fact unranked on the Oregon sentencing grid. Compelling prostitution, however, is a Measure 11 offense which carries a mandatory minimum sentence of 7 years for first time offenders. It is also easier to prove than trafficking. The elements of force, fraud or coercion do not need to be proven in cases involving minor victims. The prosecutor need only demonstrate that the minor victim received money for sex in order to get the minimum sentence applied to the trafficker for compelling prostitution. Convictions for compelled prostitution of adults are much harder to obtain, as the prosecutor must show that force, fraud or coercion were used to exploit the victim.⁵³⁷

The involuntary servitude statutes are available for prosecuting labor trafficking cases.⁵³⁸ These statutes carry many of the same impediments as the (sex) trafficking statute; the elements are difficult to prove and the crime is unranked on the sentencing grid. While there were 10 involuntary servitude charges made in 2008 and 2009, all were eventually dismissed or acquitted.⁵³⁹

⁵³² Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, in Portland, Or. (Mar 17, 2010).

⁵³³ OR. REV. STAT. § 167.017 (2009).

⁵³⁴ OR. REV. STAT. § 163.266 (2009).

⁵³⁵ Email from Michael Wilson, Public Safety Policy Coordinator, Oregon Criminal Justice Commission (June 10, 2009) (on file with Clinic).

⁵³⁶ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010); Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland Or. (Oct. 16, 2009).

⁵³⁷ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland, Or. (Oct. 16, 2009).

⁵³⁸ OR. REV. STAT. §§163.263 (2009) and 163.264 (2009).

⁵³⁹ Email from Michael Wilson, Public Safety Policy Coordinator, Oregon Criminal Justice Commission, (June 10, 2009) (on file with Clinic). The outcome of one of the (subjecting to) involuntary servitude charges in 2008 was not included in the arrest/charging data compilation sheet provided by the CJC.

iii. Process

(1) Federal

Bail: The federal Constitution prohibits imposing “excessive bail” on a defendant, which is any amount higher than necessary to ensure the defendant’s appearance at trial.⁵⁴⁰ A judge must conduct a detention hearing for a defendant charged with violent crimes, or who has had two or more previous felonies, or for cases involving intimidation of prospective witnesses.⁵⁴¹ Unless a judge determines that the individual is a flight risk or poses a danger to others if released, the judge must release the defendant ‘on his own recognizance’ or through a set bail amount.⁵⁴² Under certain criteria, a defendant can be deemed too dangerous to be released, including if the defendant has already been convicted of either a violent crime, an offense with a maximum sentence of life imprisonment or death, or a drug offense with a maximum sentence of ten years or more; if the prior convicted offense occurred while he/she was on release pending another crime; or if the pending offense occurred within five years of his/her last conviction or release from prison.⁵⁴³

Grand Jury: If a victim of human trafficking is in immediate danger and is willing to cooperate, the federal prosecutor will try to get the case before a Grand Jury within 24 hours.⁵⁴⁴ If the Grand Jury determines there is sufficient evidence for trial, an indictment is issued with all charges against the defendant. Federal rules require that a defendant be brought before a judicial officer “without unnecessary delay.”⁵⁴⁵

Prosecution Timeline: The 6th Amendment guarantees that a defendant is entitled to a public and speedy trial, which under the federal Speedy Trial Act is 70 days from the date of the indictment or information filing. If the right to a speedy trial is violated, the charges not only can be dismissed, but any future prosecution for the offense is barred.⁵⁴⁶

Investigating a federal trafficking case can reportedly take up to one year.⁵⁴⁷ The reasons for this length of time include the increased evidentiary requirements, the lack of cooperation from victims and witnesses, a paucity of physical evidence, and the difficulty in locating corroborating witnesses. It became extremely difficult to prosecute cases without a witness after a 2004 U.S. Supreme Court decision that prohibits the use of prior witness statements unless defense counsel has had an opportunity to cross examine that witness.⁵⁴⁸ If a trafficked victim decides not to cooperate, his/her initial statements to the police about the trafficker will be inadmissible and the

⁵⁴⁰ U.S CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”)

⁵⁴¹ Bail Reform Act of 1984, 18 U.S.C. § 3142(f)(1) (1990).

⁵⁴² *Id.*; 18 U.S.C. §§ 3141-3150 (1990).

⁵⁴³ *Supra* note 541; 18 U.S.C. § 3142(e) (1990).

⁵⁴⁴ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney’s Office, in Portland, Or. (Mar 17, 2010).

⁵⁴⁵ FED. R. CRIM. P. 5(a).

⁵⁴⁶ *Strunk v. United States*, 412 U.S. 434 (1973).

⁵⁴⁷ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney’s Office, in Portland, Or. (Mar 17, 2010).

⁵⁴⁸ See *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). Testimonial evidence is barred unless the witness is unavailable to testify at trial and defense counsel has had a prior opportunity to cross examine the witness.

case must instead be proved by a confession or physical evidence alone. Federal cases, unlike a state trial, require a unanimous verdict from a 12-member jury.⁵⁴⁹

(2) State

Bail: Constitutionally, everyone is entitled to bail unless charged with either murder or treason. Bail cannot be set at an excessive amount. Generally, bail is set for \$20,000 for an involuntary servitude charge because it is a Class B felony. On the other hand, Measure 11 offenses call for bail to be set at \$250,000. As mentioned above, trafficking is not a Measure 11 offense.

Under Oregon criminal law, there are primary and secondary criteria for releasing defendants prior to trial. The primary criteria for release require a judge to balance the potential danger that the suspect presents to the public, the nature of the current charge, and the probability that the suspect will appear in court. The timeline for prosecuting a case is extended if the perpetrator remains in custody. The relevant provisions on bail under the Oregon Constitution and relevant case law regarding bail are as follows:

- Constitution Art. I, § 14: “Offences, except murder, and treason, shall be bailable by sufficient sureties.”
- Constitution Art. I, § 43(1)(b) and (2):⁵⁵⁰ “...Other violent felonies shall not be bailable when a court has determined there is probable cause to believe the criminal defendant committed the crime, and the court finds, by clear and convincing evidence, that there is danger of physical injury or sexual victimization to the victim or members of the public by the criminal defendant while on release....(2)...Except as otherwise specifically provided, this section supersedes any conflicting section of this Constitution.”
- *State v. Sutherland*:⁵⁵¹ A statutory disallowance of bail for “measure 11” offenses is unconstitutional because it violates Art. I, § 14.⁵⁵²
- *Delaney v. Shobe*:⁵⁵³ The court reaffirmed that the trial court has discretion to determine the bail amount and will not be overturned except in clear abuse of discretion. Factors that should be taken into consideration in fixing bail are: (1) ability of the accused to give bail, (2) nature of the offense, (3) penalty for the offense charged, (4) character and reputation of the accused, (5) health of the accused, (6) character and strength of the evidence, (7) probability of the accused appearing at trial, (8) forfeiture of other bonds, (9) whether the accused was under

⁵⁴⁹ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney’s Office, in Portland, Or. (Mar 17, 2010).

⁵⁵⁰ OR. CONST. art. I, § 43 was incorporated into the Oregon Constitution in December 1999, two months after *State v. Sutherland*, 987 P.2d 501 (Or. 1999), was decided.

⁵⁵¹ 987 P.2d 501 (Or. 1999).

⁵⁵² This holding directly contradicts OR. CONST. art. I, § 43, but remains good law. The court in *Rico-Villalobos v. Giusto*, 118 P.3d 246 (Or. 2005), discussed § 43, but declined to address the issue of how to interpret it.

⁵⁵³ 346 P.2d 126 (Or. 1959).

bond in other cases, and (10) whether the accused was a fugitive from justice when arrested.⁵⁵⁴

Grand Jury: Questions presented to the grand jury are whether there is sufficient evidence for a trial jury to convict the suspect, and whether the offense can be proven without a victim that is present to testify. The time needed to prepare the victim/witness is always a concern, as there is frequently no remaining evidence of physical violence. Also, many trafficking cases involve a prolonged period of case preparation, during which time the ability of victims to recall specific events and details is diminished. Without victim cooperation, the responsibility shifts to law enforcement to uncover sufficient evidence to prove a trafficking case absent a victim.

Prosecution Timeline: A compelling prostitution case takes approximately 4-6 months to prosecute compared to a trafficking case, which typically takes much longer, given the elements.⁵⁵⁵ There have been no convictions under the trafficking statute in Oregon to date.

iv. Sentencing

(1) Federal

Under the TVPA, traffickers can be sentenced to up to 20 years in prison for each victim, and up to life imprisonment for aggravating circumstances. The average prison sentence imposed for trafficking crimes nationally is 9.3 years,⁵⁵⁶ ranging from 1 to 50 years.⁵⁵⁷ Of the 79 defendants convicted in FY 2008, 67 received a prison sentence, two received probation, two received a fine, and seven received a suspended sentence.⁵⁵⁸ Twenty-six defendants were sentenced from 1-5 years, 19 were sentenced from five to ten years, and 21 defendants were sentenced to more than ten years.⁵⁵⁹ While there is a Constitutional restriction against imposing a sentence that is grossly disproportionate to the crime,⁵⁶⁰ the national average is noticeably lower than what is statutorily permissible.

(2) State

Compelling Prostitution: Measure 11, which went into effect in 1994, establishes mandatory minimum sentences for 21⁵⁶¹ “serious crimes against persons.”⁵⁶² Under this legislation, compelling prostitution convictions impose a 5-year, 10-month sentence. Other relevant crimes and their mandatory sentences include:

- Using Child in a Display of Sexually Explicit Conduct: 5 yrs., 10 mos.

⁵⁵⁴ *Id.* at 628.

⁵⁵⁵ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

⁵⁵⁶ MONITOR & COMBAT TRAFFICKING, *supra* note 524, at 57.

⁵⁵⁷ ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 495, at 42.

⁵⁵⁸ The sentence for one defendant was unknown. *See* ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 495, at 42.

⁵⁵⁹ ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 495, at 42.

⁵⁶⁰ *Weems v. United States*, 217 U.S. 349 (1910).

⁵⁶¹ Measure 11 originally applied to 16 crimes, but was expanded to include a total of 21.

⁵⁶² Bill Taylor, Judiciary Committee Counsel, *Background Brief on Measure 11*, Legislative Services Committee, (June 11, 2008).

- Rape II: 6 yrs., 3 mos.
- Unlawful sexual penetration II: 6 yrs., 3 mos.
- Assault I: 7 yrs., 6 mos.
- Rape I (when victim is under 12): 25 years
- Rape I (otherwise): 8 yrs., 4 mos.
- Unlawful sexual penetration I (victim under 12): 25 yrs
- Unlawful sexual penetration I (other): 8 yrs., 4 mos.

A complete list of Measure 11 offenses and their mandatory minimum sentences is provided in the Appendices.

Trafficking: For offenses not included within the Measure 11 framework, such as trafficking and involuntary servitude, sentencing is either determined by the rank encompassed within sentencing guidelines or by the discretion of the judge. According to the Criminal Justice Commission (“CJC”), a crime’s ranking is directly related to its sentencing guidelines. A crime carrying a level six rank or higher results in substantial prison sentences. Currently the trafficking statute is an unranked crime, while compelling prostitution is ranked “8.” Prosecutors understandably/inevitably levy the charges most likely to impose the stricter sentence, which in the case of a minor victim of sex trafficking, is compelling prostitution. While some DAs initially file both trafficking and compelling prostitution charges, the trafficking charge is usually dropped because of difficulty proving the legal elements and a concern that judicial discretion on the sentence will result in bad precedence.

Johns’ School: There is a current effort in Portland to reinvigorate the “johns’ school,” which was a diversion program for first-time offenders. Under the previous initiative, offenders who pleaded guilty to a misdemeanor charge were enrolled in an education program and given community service. Upon successful completion of a 2-hour class, the offender received a discharged sentence, although the conviction remained. The course focused on acceptable behavior towards women; the culture of prostitution; and self-examination. Another class was offered in Spanish which contained an additional focus on culturally acceptable behavior towards women in the United States. If the offender did not complete the class, the offender served a five-day jail sentence. Only 2% of eligible offenders chose not to enroll in the johns’ school and received community service instead.⁵⁶³ The johns’ school was funded through private grants and student fees,⁵⁶⁴ but was twice discontinued because of insufficient funding. The First Offender Prostitution Program (FOPP) in San Francisco is the longest-standing education program for johns in the nation. The success rate is attributed in part to the fact that participants pay a \$750-1000 fee, which makes the program sustainable.⁵⁶⁵

Efforts to reinvigorate the johns’ school in the Portland area should include designing a financially sustainable program, and should consider charging higher participant fees to help fund it. Moreover, the substantive focus of the johns’ school should not be restricted to the symptoms of prostitution, but should also examine the root of the problem. The plight of homeless youth, runaways, and young women should be highlighted to the johns to increase their

⁵⁶³ Interview with Steve Evans, Referee, Southeast Portland Community Court in Portland, Or. (Mar. 19, 2010).

⁵⁶⁴ The fees collected from the johns’ school participants ranged from \$80-90. *See id.*

⁵⁶⁵ Interview with Steve Evans, Referee, Southeast Portland Community Court in Portland, Or. (Mar. 19, 2010).

understanding of why prostitution is not a victimless crime and how it is perpetuated.. Moreover, clear and open lines of communication between interested parties should be fostered to prevent duplicative efforts in educating johns. Finally, courses for both U.S. citizens and immigrant populations should be designed.⁵⁶⁶

v. Obstacles to Prosecution

(1) Loss of Witnesses/Lack of Secured Holding Facility

According to law enforcement, one of the primary obstacles to investigating and successfully prosecuting sex trafficking cases is the fact that most minor victims of sex trafficking stop cooperating with police and eventually abandon the prosecution.⁵⁶⁷ Fear, emotional or “trauma bonding” with the pimp, misguided loyalty, and poor self-esteem are factors that contribute to victims’ lack of cooperation with law enforcement.⁵⁶⁸ Even those victims who initiate contact with the police, file complaints, and testify at Grand Jury proceedings frequently ‘disappear’ shortly thereafter. The multiple layers of trauma and the severe level of programming inflicted upon these victims make it extremely difficult for them to commit to leaving their pimps and to testify against them at trial.⁵⁶⁹

One of the primary methods to break this bond is by separating these youth from their pimps for a prolonged period of time, and by ensuring they receive intensive counseling and other services. Geographic separation, such as placing victims into voluntary facilities in other counties or even states, has proven to be ineffective in breaking the trauma bond. According to the Portland Police, every minor they have relocated to a different county or state has either returned to her pimp or found another pimp.⁵⁷⁰ Many law enforcement officials consider placing these youths in a secured lock-down facility as critical, not only to obtain evidence, but to prevent re-victimization and ensure rehabilitation.⁵⁷¹ They note that an additional benefit of a secured holding facility is that it would ensure that district attorneys would remain knowledgeable of the victim’s location throughout the case preparation process, which enhances the prospect for conviction.⁵⁷² They note, however, that a secured facility should not be a punitive setting, but rather a location where victims can receive comprehensive assistance including medical and mental health services, education and job training.⁵⁷³

There is strong opposition to this type of forced confinement/rehabilitation. Many advocates view it as criminalizing the victims,⁵⁷⁴ and/or as further control exerted upon severely

⁵⁶⁶ *Id.*

⁵⁶⁷ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland, Or. (Oct. 16, 2009).

⁵⁶⁸ *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ *Id.*

⁵⁷¹ *Id.*

⁵⁷² Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

⁵⁷³ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland, Or. (Oct. 16, 2009).

⁵⁷⁴ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

traumatized individuals.⁵⁷⁵ While there is an acknowledgment by law enforcement that detention of minor victims of sex trafficking is not the ideal solution, there is also a recognizable frustration that many victims are simply unwilling or unable to leave on their own volition, and that protecting their independence and freedom should not be prioritized over removing them from the streets and from what is federally recognized as rape and modern-day slavery. The thinking is that by allowing these youths the freedom to ‘choose’ when to leave a life of prostitution, their individual safety and recovery is compromised; and that such permits re-victimization. It also leads to victimization of others, as the pimp remains free to further expand his operation by recruiting new victims.⁵⁷⁶

Constitutional prohibitions against involuntary confinement for non-punitive purposes: A thorough understanding of constitutional and state law parameters is necessary before a practical solution a secured facility can be developed by stakeholders. The 5th Amendment’s Due Process Clause forbids the government to “depriv[e]” any “person . . . of . . . liberty . . . without due process of law.” “Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that the Clause protects.⁵⁷⁷ Any government detention will be found to violate the Constitution unless the detention is ordered in a criminal proceeding with adequate procedural protections in place,⁵⁷⁸ or under special and “narrow” non-punitive “circumstances”⁵⁷⁹ where there is a special justification, such as harm-threatening mental illness. Under such circumstances, the needs for confinement may outweigh the individual’s constitutional right to be free from physical restraint.”⁵⁸⁰ The Supreme Court has upheld preventative detention under the dangerousness criteria only for especially dangerous individuals and when there are strong procedural protections in place.⁵⁸¹ Where such preventive detention has a potentially indefinite duration, another circumstance such as mental illness must accompany the showing of dangerousness.⁵⁸² Given these parameters, it seems unlikely that law enforcement will ever be able to develop a holding facility where victims, even minors, will be held against their will, except, perhaps, in the situation outlined below

Legal framework for state guardianship: A legal basis presently exists for an Oregon court to intervene in minor trafficking victims’ cases and get a youth into a secured assessment center, foster care or a non-secure facility.⁵⁸³ The criteria for state control includes youths with severe drug and alcohol abuse, mental illness, lack of parental involvement, and risky behavior.⁵⁸⁴ While protective custody can initially be taken by DHS or the police, the case is heard by a judge

⁵⁷⁵ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010); Interview with Julie McFarlane, Supervising Attorney, Juvenile Rights Project, and Rochelle Martinson, law clerk, Juvenile Rights Project, teleconference (Apr. 04, 2010).

⁵⁷⁶ Interview with Honorable Nan Waller, Judge, Multnomah County Circuit Court, in Portland, Or. (Mar. 29, 2010). Law enforcement and victims’ advocates must be cognizant of the potential for re-victimization when victims testify, and utilize a victim-centered approach when developing a case.

⁵⁷⁷ *United States v. Salerno*, 481 U.S. 739, 746 (1987).

⁵⁷⁸ *Id.*

⁵⁷⁹ *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

⁵⁸⁰ *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

⁵⁸¹ See *Hendricks*, 521 U.S. 346, *Salerno*, 481 U.S. 739, and *Foucha*, 504 U.S. 71.

⁵⁸² *Zadydas v. Davis*, 533 U.S. 678 (2001); see also THOMAS ALEXANDER ALEINKOFF, IMMIGRATION AND CITIZENSHIP PROCESS & POLICY, at 1104 (6th ed. 2008).

⁵⁸³ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010).

⁵⁸⁴ *Id.*

within 24 hours to determine whether state guardianship is appropriate.⁵⁸⁵ The Dependency Statute, which provides the legal framework for DHS guardianship, is broad enough to assist minors when they are in danger. Thus, it does not appear necessary to implement an alternative program such as the Persons in Need of Supervision (“PINS”) implemented in New York.⁵⁸⁶ If parents want to be involved in the long-term mental and physical rehabilitation of the minor, victim courts will likely not give the state control. In-home services should be provided to parents involved in victims separated from their traffickers in order to increase the chance that minors will remain at home. In the event that placement with parents is not a safe or viable option, alternative plans should be made.⁵⁸⁷

Taking into account victims’ needs: There is consensus among stakeholders that under-age victims of sex trafficking are a population with distinct needs that cannot be adequately addressed in a cookie-cutter fashion (one-size-fits-all approach) or merely absorbed into pre-existing programs that target other vulnerable groups.⁵⁸⁸ The needs of minors who have been sexually exploited are complex and often include medical issues, mental health and psychological dependency concerns, drug addiction, physical protection from offenders, long-term reintegration support, and basic necessities such as food and shelter.⁵⁸⁹ Not only is it critical that these needs be addressed in a comprehensive and holistic manner, but that services are provided in a way that recognizes the developmental stage of this age group. In addition to their age, the prolonged and severe indoctrination by pimps impacts these victims’ initial receptivity to working with adults.⁵⁹⁰ A longer period of direct assistance and intensive counseling is necessary to counteract these influences. The structure required to truly assist these victims, both physically and psychologically, must be balanced with fostering personal empowerment and independence.⁵⁹¹ This can be achieved to some extent by adopting a survivor-driven approach to case management.⁵⁹² From the time they are identified, under-age victims of sex trafficking should be active participants in developing their assistance and reintegration plans.

While there is general consensus that victims’ services need to be provided in a safe location where trust can be rebuilt and trauma addressed without interference from traffickers, the mechanism through which victims access these services is hotly debated.⁵⁹³ The available

⁵⁸⁵ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Department of Human Services, teleconference (Apr. 08, 2010).

⁵⁸⁶ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010).

⁵⁸⁷ *Id.*

⁵⁸⁸ Interview with Christine Hermann, Executive Director, SATF, in Salem, Or. (Mar. 18, 2010); Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010); Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010).

⁵⁸⁹ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁵⁹⁰ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010).

⁵⁹¹ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010); Interview with Christine Hermann, Executive Director, SATF, in Salem, Or. (Mar. 18, 2010).

⁵⁹² Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁵⁹³ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010); Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010); Interview with Christine Hermann, SATF, in Salem, Or. (Mar. 18, 2010).

options range from voluntary placement, to state guardianship, to charging victims with minor infractions and later expunging their records. Detention through charging is largely not supported by the assistance community because of its punitive aspect, the ensuing stigma, and the overall impact on victims.⁵⁹⁴ Services are available through the Juvenile Rights Project to assist youth in expunging their records, the process of which can be empowering for applicants.⁵⁹⁵ However, there is a concern that truly erasing a record is difficult in the age of the worldwide web and the internet.

State guardianship is another avenue through which minor victims can be assisted. The Department of Human Services (“DHS”) is institutionally responsible for child protection and welfare in the state of Oregon. Minor victims of sex trafficking under state guardianship can be placed back with their families or placed into foster care if their families are either unwilling or unable to appropriately protect them. Individual placements in some cases are successful, particularly when the victim is part of the decision-making process.⁵⁹⁶ Some victims’ advocates are concerned about the potential for further abuse in foster care, stating that virtually every trafficked victim they had assisted had been sexually assaulted while under the care of DHS.⁵⁹⁷ The Juvenile Reception Center, which is a 24-hour holding facility, is one example of a facility where the entrance is locked from the inside to prevent people from entering, but does not restrict victims from leaving.⁵⁹⁸ As mentioned above, many advocates are strongly opposed to a lock-down facility where under-age victims themselves are restricted from leaving.⁵⁹⁹ These victims do not respond to forced change; “they’ll run harder, better, and further from the help that they need.”⁶⁰⁰ Services that engage youth and help them come to the decision themselves to leave prostitution is necessary.⁶⁰¹ Some advocates think it may be appropriate for trafficked victims to be held in detention in certain circumstances, but that clear rules and criteria should be developed on when to use this option.⁶⁰² Currently a youth can be placed into a secured assessment center when that person presents a danger to himself, such as by exhibiting signs of mental illness, severe alcohol or drug addiction, or risky behavior.⁶⁰³ Circumstances in which a minor could be detained could include situations where he/she wants to return to a pimp, or when a minor needs protection from organized crime. Isolated and voluntary shelters, such the one in

⁵⁹⁴ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010).

⁵⁹⁵ Most applications have been granted, but require a two-year period with no further contact with the criminal justice system. Interview with Julie McFarlane, Supervising Attorney, and Rochelle Martinson, law clerk, Juvenile Rights Project, teleconference (Apr. 04, 2010).

⁵⁹⁶ Interview with Julie McFarlane, Supervising Attorney, and Rochelle Martinson, law clerk, Juvenile Rights Project, teleconference (Apr. 04, 2010).

⁵⁹⁷ Marion County Trafficking Forum, Speakers Esther Nelson, Sexual Assault Case Manager, SARC, and Patty Iwamoto, Dept. of Community Justice, in Salem, Or. (Mar. 09, 2010).

⁵⁹⁸ *Id.*

⁵⁹⁹ Interview with Christine Hermann, Executive Director, SATF, in Salem, Or. (Mar. 18, 2010); Interview with Julie McFarlane, Supervising Attorney, and Rochelle Martinson, law clerk, Juvenile Rights Project, teleconference (Apr. 04, 2010).

⁶⁰⁰ Interview with Julie McFarlane, Supervising Attorney, and Rochelle Martinson, law clerk, Juvenile Rights Project, teleconference (Apr. 04, 2010).

⁶⁰¹ *Id.*

⁶⁰² *Id.*

⁶⁰³ The above-mentioned criteria also provide a basis for a court to place a minor into foster care or a non-secure facility. Interview with Honorable Judge Nan Waller, Multnomah County Circuit Court, in Portland, Or. (Mar. 29, 2010). *See also* OR. REV. STAT. § 419B.100 on Juvenile Court Jurisdiction, Dependency Proceedings.

Clackamas County, are an alternative to lock-down facilities.⁶⁰⁴ Other advocates have voiced concern that victims need to be alive in order to be treated, and that maintaining separation from pimps can take precedence over fostering self-empowerment, at least in the initial stage of recovery.⁶⁰⁵ Some advocates report that every victim assisted to date has had a pimp, and there is a belief that there is a strong gang presence in prostitution rings. Girls require intense supervision to prevent returning to their trafficker.⁶⁰⁶ Given current estimates that one-quarter to one-third of all children, especially girls, who runaway or end up on the streets are lured into prostitution within 48 hours,⁶⁰⁷ the power and influence of pimps and other sex trafficking offenders on these victims cannot be overestimated.

Regardless of the physical structure or legal framework through which victims are assisted, many believe that the shelter program that is eventually developed must be designed to create a space and environment that respects the victim and her or his experience; a “safe space,” not just in terms of lack of danger but an atmosphere that is empowering and free from judgment.⁶⁰⁸ Many believe that the program must aim to normalize the experience for minors in its care to the extent possible, such as including skills training⁶⁰⁹ and extracurricular activities like dance or sports, and avoid re-traumatization.⁶¹⁰ While many agencies consider 18-24 months an ideal period for assistance provision, at a minimum, some believe 30-90 days should be provided.⁶¹¹ It would be extremely beneficial for agencies with a focus on human trafficking in Oregon to engage in a dialogue on how to provide assistance to under-age sex trafficking victims; whether it should be on a strictly voluntary basis, forced, or somewhere in the middle (e.g., by providing incentives). Participants in this dialogue should include child welfare workers (policy guidance on regulations and protective role of the state), a family law judge (statutory framework), victims’ advocates from SATF, SARC, FBI, and the police.⁶¹²

(2) Exclusion of Testimony

In addition to losing contact with or cooperation from key witnesses, the exclusion of certain types of evidence also impedes efforts to successfully prosecute cases, particularly sex trafficking cases. In 2004, the U.S. Supreme Court determined that defendants have a

⁶⁰⁴ *Id.*

⁶⁰⁵ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010); Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland P.D., in Portland, Or. (Oct. 16, 2009).

⁶⁰⁶ Marion County Trafficking Forum, Speakers Esther Nelson, Sexual Assault Case Manager, SARC, and Patty Iwamoto, Dept. of Community Justice, in Salem, Or. (Mar. 09, 2010).

⁶⁰⁷ *Supra* note 24; HEATHER J. CLAWSON, NICOLE DUTCH, AMY SOLOMON, & LISA GOLDBLATT GRACE, HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE, at 10 (Aug. 2009), *available at* <http://aspe.hhs.gov/hsp/07/humantrafficking/LitRev/index.shtml>.

⁶⁰⁸ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁶⁰⁹ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland Or. (Oct. 16, 2009).

⁶¹⁰ Interview with Honorable Nan Waller, Judge, in Portland, Or. (Mar. 29, 2010).

⁶¹¹ Interview with Sergeant Doug Justus, Detective Division, Vice Detail; Sergeant Michael Geiger, Sexual Assault Detail, Detective Division; Slavica Jovanovic-Bubic, Sex Crimes Unit, Detective Division, Portland Police, in Portland, Or. (Oct. 16, 2009).

⁶¹² Interview with Christine Hermann, Executive Director, SATF, in Salem, Or. (Mar. 18, 2010).

constitutional right to be confronted by the witnesses accusing them of a crime.⁶¹³ This is a substantive right, not a rule of evidence. This essentially bars courts from accepting testimonial evidence unless the witness actually testifies at trial.⁶¹⁴ If a witness is unwilling to testify at trial, his/her testimony is excluded. Statements made to police in assault reports or made to government officials cannot be introduced as evidence unless the defense has had a prior opportunity to cross examine the witnesses who made the statement. In essence, trials without victims testifying become evidence-based or confession-based prosecutions, which are inherently difficult to prove.⁶¹⁵ Confessions by defendants should be accompanied by observations by an officer of a physical injury.⁶¹⁶

Statements by a victim that are non-testimonial in nature, however, are not barred by the Confrontation Clause. Whether a statement is testimonial or non-testimonial is determined on a case-by-case basis. However, non-testimonial statements must still fit within “hearsay” exceptions to be admissible. This means statements that are not in response to direct questioning during an ongoing emergency may be admissible.⁶¹⁷ Requests for help, such as a “911” call, or statements to non-law enforcement officials, such as gas station workers, may be admissible. Medical and business records are also admissible. Evidence of past abuse or threats cannot be used as evidence of the crime, but may be admissible to explain why a victim is uncooperative or unwilling to testify.⁶¹⁸

Overall, the restrictions on admissible testimony have seriously impeded the ability of prosecutors to convict defendants of sex trafficking. A myriad of psychological and security-related issues discourage victims from cooperating with law enforcement thorough-out the entire legal proceeding. When a victim abandons the process, prosecutors lose their key witness. The evidence restrictions prohibit using most statements made by that victim while they were still cooperating with police and providing evidence against their pimps. Those statements cannot be used in court.⁶¹⁹ Prosecutors are forced to build a case based on evidence. Aside from the financial trail, physical evidence of forced prostitution act is difficult to obtain.

(3) Difficulty in Proving Trafficking Elements

The difficulty in proving the elements of human trafficking and involuntary servitude impedes the use of Oregon’s trafficking statutes for prosecution purposes.⁶²⁰ Force, fraud or coercion must be shown in addition to the commercial sex act or the particular form of forced labor. Furthermore, it is difficult to convince a victim to identify, let alone testify against, his/her

⁶¹³ See *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). Testimonial evidence is barred unless the witness is unavailable to testify at trial and defense counsel has had the opportunity to cross examine the witness.

⁶¹⁴ Testifying at trial includes testifying by video. Previously recorded testimony is excluded.

⁶¹⁵ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

⁶¹⁶ *Id.*

⁶¹⁷ FED. R. EVID. 803(2).

⁶¹⁸ Interview with Greg Moawad, Deputy District Attorney, Multnomah County, in Portland, Or. (Feb. 10, 2010).

⁶¹⁹ They can be used in court if they fall within an exception, such as an excited utterance that is non-testimonial and not in response to questioning by law enforcement. Greg Moawad, Assistant District Attorney Multnomah County, “Prosecution 101” presentation, Sexually Exploited Youth Conference, Reynolds High School, Portland, Or. (May 21, 2009).

⁶²⁰ OR. REV. STAT. §§ 163.263, 163.264, 163.266.

assailant.⁶²¹ Even if a victim is willing to testify, maintaining access to that victim throughout the investigation process until trial is rare. Victims often ‘disappear’ out of fear of retaliation to themselves or their family. Not only does this prevent the victim from accessing much-needed medical and psychological services, it also hinders the successful prosecution of the case.⁶²²

While a material witness statute does exist, the District Attorney must demonstrate probable cause that a crime has been committed and that there is a risk of flight in order to utilize it. Application of the material witness statute is generally associated with serious cases only.⁶²³ An unranked crime with insufficient sentencing guidelines, like the trafficking statute, is not considered a serious crime and thus renders the material witness statute inapplicable to trafficking cases.

(4) Insufficient Sentencing

The Oregon trafficking statute carries insufficient sentencing specifications. It is an unranked crime which leaves substantial room for judicial discretion to impose sentences. For non-Measure 11 offenses, sentencing is determined using Sentencing Guidelines. According to the Criminal Justice Commission (“CJC”), a crime’s ranking is directly related to its sentencing guidelines. A crime carrying a level six rank or higher results in substantial prison sentences. Compelling prostitution is a Measure 11 offense and carries a minimum sentence of 70 months. Prosecutors in Multnomah County file charges under both statutes, but later drop the trafficking charge to ensure the defendant receives the mandatory minimum. Not only does judicial discretion allow for inconsistent sentencing, it also poses the danger of establishing a bad precedent.

(5) Inconsistent Data Recording

Accessibility to accurate data is necessary to provide a quantifiable justification that there is a trafficking problem in Oregon. As it stands, there is not a shortage of victim identification; however, the lack of empirical evidence attesting to the number of convicted trafficking cases weakens the argument that there are a large number of trafficking cases present.

The inconsistency of data recording and access to information is an identified problem. Agencies currently use a variety⁶²⁴ of systems for recording information.⁶²⁵ The cross-referencing needed to track offenders for various crimes recorded in various databases becomes impaired. Furthermore, victim identification, witness information, and original arrest charges are lost or do not ever make it into a system. This information is crucial to law enforcement and groups such

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ Interview with Doug Harclerod, former District Attorney of Lane County, in Salem, Or. (Oct. 27, 2009).

⁶²⁴ Thirty-one percent of state agencies, primarily smaller agencies in rural areas, use NIBRS. The agencies that use this are representing only 29% of the population of the state.

⁶²⁵ Various databases in use include but are not limited to: OJIN (Oregon Judicial Information Network), NIBRS (National Instant Based Reporting System), and LEDS (Law Enforcement Data System).

as the Criminal Justice Commission in order for recommendations for stricter sentencing and legislation to be substantiated.⁶²⁶

vi. Statistics

(1) Federal Prosecutions

The office of the U.S. Attorney for Oregon would not formally release any official data on the level of cases referred to or prosecuted by the U.S. Government in this state. Therefore, a more detailed analysis of the level of identified cases and the rates of conviction, acquittal and/or reduction of charges could not be done by the Clinic. The reported reasons for withholding these statistics from the public were internal policy reasons, such as confidentiality, pending investigations, technical issues with data and coding, and a lack of ability to retrieve accurate information on what cases other federal prosecutors in Oregon are working on.⁶²⁷ Limited information provided on an informal basis from the Violent Crimes Prosecutor at the U.S. Attorney's Office in Portland indicates that between the fall of 2008 and the end of May 2010, "approximately 10 defendants" have been "indicted, charged via information, and or convicted" of human trafficking crimes in Oregon under federal statutes.⁶²⁸

While data on the number of sex and labor trafficking cases in Oregon can theoretically be captured through a coding system the U.S. Department of Justice uses for statistical purposes, these statistics were unavailable to the Clinic. Nonetheless, through countless requests of multiple agencies by the Clinic, some national statistics for federal investigations and prosecutions of human trafficking cases were identifiable and are as follows:

FY 2008: Nationally, the USDOJ Civil Rights Division and the office of the U.S. Attorney in Oregon initiated 183 investigations and charged 82 individuals; 34 for labor trafficking, and 48 sex trafficking.⁶²⁹ There were 77 convictions in 40 separate cases: 27 for labor trafficking and 50 for sex trafficking.⁶³⁰ Traffickers were ordered to pay restitution awards totaling approximately \$4.2 million.⁶³¹ Between Jan. 1, 2007 and Sept. 30, 2008, there were 1,229 investigations of suspected incidents of human trafficking by 38 federally-funded human trafficking task forces: 83% of the cases involved sex trafficking, 12% involved labor exploitation, and 5% involved other forms of trafficking. Of the sex trafficking cases investigated, 38% involved minors and 62% involved adults.⁶³² The FBI opened 132 cases, arrested 139 persons, filed 129 complaints/indictments/informations, and obtained 94

⁶²⁶ Interview with Mike Stafford, Public Safety Standard Coordinator, Criminal Justice Commission, in Salem, Or. (Nov. 03, 2009).

⁶²⁷ Interview with Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, in Portland, Or. (Mar. 17, 2010).

⁶²⁸ Email Communication to Clinic from Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, Portland, Or. (May 21, 2010) (on file with Clinic). ("Most of the cases are still pending trial, change of plea, or sentencing, while others have been resolved.")

⁶²⁹ ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 42.

⁶³⁰ *Id.*; MONITOR & COMBAT TRAFFICKING, *supra* note 524, at 57.

⁶³¹ ATTORNEY GENERAL'S ANNUAL REPORT, *supra* note 495, at 41.

⁶³² *Id.* at 40.

convictions.⁶³³ The USDHS and ICE conducted 432 investigations: 170 for forced labor and 262 commercial sex incidents. There were 189 arrests, 61 for forced labor and 128 sex cases.⁶³⁴ The ICE office would not provide data on the number of investigations conducted in Oregon because they reportedly do not all result in criminal charges.⁶³⁵ In Oregon, two traffickers were arrested in FY 2008.⁶³⁶

FY 2009: No information was provided by ICE on the number of traffickers arrested in Oregon in FY 2009.⁶³⁷ The national statistics will be released by the Attorney General in June, too late to be included in this report.

(2) State Prosecutions

The statistics for state prosecutions within Oregon are set forth below, in chart form:

Charges Filed⁶³⁸

YEAR	Trafficking	Compelling Prostitution	Promoting Prostitution	Involuntary Servitude ⁶³⁹	Coercion
2009	4	6	8	8	8
2008	4	3	0	2	0

Case Outcomes⁶⁴⁰

2009

	Conviction	Acquittal	Dismissal	Charge Replacement
Trafficking	0	0	4	0
Compelling Prostitution	0	0	4	2
Promoting Prostitution	0	0	8	0
Involuntary Servitude	0	0	8	0
Coercion	0	0	6	2

2008

	Conviction	Acquittal	Dismissal	Charge Replacement
Trafficking ⁶⁴¹	0	2	0	0

⁶³³ *Id.* at 36.

⁶³⁴ *Id.* at 38.

⁶³⁵ Information provided by Lorie Dankers, Spokeswoman & Public Affairs Officer for Alaska, Idaho, and Washington, U.S. ICE, U.S. DHS (May 11, 2010).

⁶³⁶ *Id.*

⁶³⁷ *Id.*

⁶³⁸ Email from Michael Wilson, Public Safety Policy Coordinator, Oregon Criminal Justice Commission (June 10, 2009) (on file with author).

⁶³⁹ This column includes both Involuntary Servitude and Subjecting to Involuntary Servitude charges.

⁶⁴⁰ Email from Michael Wilson, Public Safety Policy Coordinator, Oregon Criminal Justice Commission (June 10, 2009) (on file with author).

Compelling Prostitution ⁶⁴²	1	0	0	0
Promoting Prostitution	N/A	N/A	N/A	N/A
Involuntary Servitude ⁶⁴³	0	1	0	0
Coercion	N/A	N/A	N/A	N/A

vii. Identified Victims

(1) Domestic Minor Victims of Sex Trafficking

The following numbers reflect domestic, underage victims of sex trafficking in Oregon:

- 120 estimated reports of suspected victims (2009)⁶⁴⁴
- 83 confirmed underage victims of sex trafficking in Portland (Oct. 2007-Mar 2010)⁶⁴⁵
- 57 cases assisted by a sexual assault service agency (2009)⁶⁴⁶
- 10-19 human trafficking incidents investigated in Oregon (Jan.1, 2007 - Sept. 30, 2008)⁶⁴⁷
- 11 minors rescued in Portland by Operation Innocence Lost (Feb & Oct 2009)⁶⁴⁸
- 74 reports of youth exploited through prostitution in Multnomah County (Jul 2009-Mar 2010)⁶⁴⁹

(2) Foreign-born Victims

- 100 estimated suspected cases (2009)⁶⁵⁰
- 50 identified victims (October 2007-March 2010)⁶⁵¹
- 247 T-visas issued to VOTs and 171 T-visas to family members in FY 2008 (nationally)⁶⁵²
- 105 cases assisted by the USDOS, PRM in FY 2008 (nationally)⁶⁵³

⁶⁴¹ The resolution of two other trafficking charges filed in 2008 is unknown; the column in the CJC chart is blank.

⁶⁴² The resolution of two other compelling prostitution cases is unknown; the column in the CJC chart is blank.

⁶⁴³ The resolution of the Subjecting to Involuntary Servitude charge is unknown; the column in the CJC chart is blank.

⁶⁴⁴ Email from Keith Bickford, Dir. OHTTF (Apr. 13, 2010) (on file with Clinic).

⁶⁴⁵ *Id.*

⁶⁴⁶ Telephone Interview with Esther Nelson, Sexual Trafficking Case Manager, SARC (Mar. 17, 2010).

⁶⁴⁷ BUREAU OF JUSTICE STATISTICS, U.S. DOJ/OJP, CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS 2007-2008, at 11, *available at* <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=550>.

⁶⁴⁸ Interview with Caroline Holmes, Victim Specialist, FBI Portland Division, U.S. DOJ in Portland, Or. (Apr. 07, 2010).

⁶⁴⁹ Interview with Miriam Green, Program Manager, Multnomah County Child Welfare Division, Oregon Dept. of Human Services, teleconference (Apr. 08, 2010). The child abuse hotlines run by the Oregon DHS receives calls from across the state and from Vancouver, Washington about suspected cases of child abuse and sex abuse involving minors. The hotline administered by Multnomah County, which also compiles data from Washington and Clackamas counties, investigated 90 reports of minor victims of sex trafficking between January 2007 and March 2010. The bulk of the cases were within Multnomah County. Between July 2009 and March 2010, 74 reports were received about 52 cases of youth exploited through prostitution.

⁶⁵⁰ Email from Keith Bickford, Dir. OHTTF (Apr. 13, 2010) (on file with Clinic).

⁶⁵¹ *Id.*

⁶⁵² MONITOR & COMBAT TRAFFICKING, *supra* note 524, at 57.

- 286 adults certified and 31 minors issued eligibility letters by USDHHS in FY 2008 (nationally)⁶⁵⁴ 45% of this caseload were adult males.

(a) Labor Victims

The Oregon Human Trafficking Task Force charged with compiling data on all trafficking cases in Oregon does not have statistics on the level of trafficking of labor workers. Anecdotal information has been received from immigration attorneys, NGO staff providing on-site medical services, and pastors that this is an extremely vulnerable population. According to the U.S. Human Trafficking and Smuggling Center, “poor conditions alone [on farms] are insufficient to constitute the forms of coercion that give rise to a trafficking crime, [but] they may be indicative of the fact that the workers are denied the opportunity to leave and are maintained in the trafficker’s service through coercion.”⁶⁵⁵ The agency cites the presence of barbed wire fences surrounding workers’ housing, armed guards, employees living and working in the same building, evidence of physical abuse, and workers who have continuous supervision as indicators of farm labor trafficking or a condition where their freedom of movement is restricted.

d. Strengths and Gaps in Oregon’s Response to Prosecute Trafficking Within the Context of Federal and International Legal Obligations

i. Strengths

There is a strong working relationship between the Portland Police Department and the Multnomah County District Attorney, which has resulted in streamlined investigation and adjudication of cases involving minor victims of sex trafficking. While the relationship between law enforcement and prosecutors in other counties is largely unknown, the collaboration in the tri-county area could be used as a model to replicate.

There are sufficient federal resources available for victims’ services that can be accessed, regardless of whether there is an indictment.

A trafficked victim can file a civil cause of action against his/her trafficker(s) to receive compensation for damages.⁶⁵⁶ A victim can also seek restitution for economic damages, which is protected by statute and by the Oregon constitution. “The right to receive prompt restitution from the convicted criminal who caused the victim’s loss or injury.”⁶⁵⁷

Cooperation and trust between service providers and the FBI in the tri-county area is very strong. As a result, some service providers were given advance notice of nation-wide sting operations, without revealing time or locations, so that they were contacted immediately following Portland raids. A unique victim response team was put into place to begin on-site need assessments, to

⁶⁵³ *Id.*

⁶⁵⁴ *Id.*

⁶⁵⁵ HUMAN SMUGGLING & TRAFFICKING CENTER, U.S. DOS, DOMESTIC HUMAN TRAFFICKING – AN INTERNAL ISSUE, 7 (2008), available at <http://www.state.gov/documents/organization/113612.pdf>.

⁶⁵⁶ OR. REV. STAT. § 30.867 (2009).

⁶⁵⁷ OR. CONST. art. 1, § 42(1)(d). See also OR. REV. STAT. §§ 137.103 (2009) and 137.109 (2009).

explain the process to victims and incorporate their input from the start, and to assign victim advocates to attend police interviews with each victim. While this model may not function in all states, the long-standing cooperation and trust between these agencies in Oregon has had a direct impact on victims and their access to services.⁶⁵⁸

The Portland Police Sexual Assault Division is in the process of liaising with the Gang Enforcement team and the Drug unit to identify and investigate traffickers and/or pimps.

ii. Gaps

Training: There is no uniform and mandatory training for law enforcement on the issue of human trafficking. Training on evidence collection for patrol officers (e.g., RINCON file) and general education and awareness-raising needs to be increased. A component on labor trafficking should be included within mandatory training. There is a notable lack of awareness among law enforcement on human trafficking in general, and specifically on labor trafficking, which must be addressed before identification procedures can be developed.

Awareness-raising: An awareness campaign that condemns the highly glamorized pimp culture needs to be carried out, targeting the general public. The impact of the music industry and other forms of media on the objectification of women and the glorification of traditional criminals has not been widely addressed.

Collaboration: Cooperation between federal and state/county agencies needs to be improved. Turf issues reportedly affect the ability to work closely; agency roles are not clear; communication on cases is not free-flowing between law enforcement agencies, and an environment for information-sharing does not exist; interagency communication between local and federal law enforcement and their respective prosecutors is not as strong as it should be (internal coordination within each agency is equally important); and there are no uniform policies and procedures between various law enforcement offices. There are no standard operating procedures on case investigations, referrals, and victim identification, and there is inconsistent reporting among the federal and state law enforcement agencies.

Identification: Insufficient information exists on indicators of sex trafficking. These indicators need to be given to potential first responders. There is currently no effort to identify victims of labor trafficking. Adult victims of both types of trafficking are also slipping through the cracks. There is a great need to increase the basic ability of law enforcement officers who come into contact with potential victims to be able to recognize key indicators of trafficking. Awareness-raising, reporting mechanisms, political commitment, and training for police, prosecutors and potential first responders needs to be increased in order to identify victims.

Temporary Holding Facility/Shelter: There is currently limited ability to separate minor VOTs from their pimps through legislation or regulation. The Juvenile Reception Center takes some cases on a temporary basis. Currently there are no shelters specifically for minor victims of sex trafficking in Oregon. The lack of a shelter and a comprehensive victim assistance program that

⁶⁵⁸ Interview with Caroline Holmes, Victim Specialist, FBI Portland Division, U.S. DOJ in Portland, Or. (Apr. 07, 2010).

address the needs of victims in a holistic and case-by-case manner impacts the ability of police and prosecutors to incarcerate offenders/remove offenders from society.

Resources: More resources, including staff, need to be funneled into internet investigations, including examining on-line activity and commercial sex advertisements. State and federal cyber detectives are dedicated to online investigations. More detectives need to be assigned to trafficking specifically. Additionally, there is only one federal task force coordinator for the entire state. A representative in Eastern Oregon would help to facilitate things.

Data Gathering: There is insufficient understanding of the scope of trafficking, and where the most rampant forms are occurring, because of a lack of case tracking and other forms of data gathering.

Prosecuting Clients: Prosecuting johns is a big deterrent, especially in the online community of predators. The U.S. Attorney's Office in Kansas has started doing this. The U.S. Attorney in Oregon has not made a policy decision yet for federal prosecutors to take this approach.

Oregon Statute: The trafficking and involuntary servitude statutes are too vague, especially for cases involving domestic victims, and they fail to address long-term strategies for victim assistance and rehabilitation. The legislative history surrounding these statutes indicates that the trafficking laws were passed to raise awareness and to demonstrate Oregon's commitment to fight human trafficking.⁶⁵⁹ They were not intended to function as a prosecutorial tool. Because the statutory elements are difficult to prove and the crime lacks a mandatory minimum sentence, the vast majority of trafficking charges never get to trial. The problem with this is that subsets of victims are overlooked when the case is prosecuted under the compelling prostitution statute. Furthermore, benefits that are available under the trafficking statute (i.e., victims of trafficking have opportunity to file civil suit) are not available under the compelling prostitution law. Yet, most of the prosecutions occur under the compelling prostitution statute.

Sentencing Guidelines: Trafficking and involuntary servitude are not ranked on the Oregon sentencing grid or considered Measure 11 offenses. Crimes ranked at a certain level, such as rank 8, carry mandatory minimum sentences, and have a coinciding fiscal impact. In essence, a high rank could cost too much and jeopardize the availability of jail beds. The concern is that the rank given to trafficking or involuntary servitude would be too low. Measure 11 offenses also carry mandatory minimum sentences for specific crimes, including compelling prostitution. The weak sentences attached to trafficking and involuntary servitude discourage prosecutors from charging these offenses, and make the material witness statute inapplicable to trafficking cases.⁶⁶⁰

Compelling Prostitution Charges: While prosecuting trafficking cases under the compelling prostitution statute may ensure higher conviction rates and sentencing for offenders, it also has

⁶⁵⁹ *Relating to trafficking in persons; creating new provisions: Hearing on SB 578 Before Sen. Comm. on Judiciary, 2007 Leg., 74th Sess. (2007).*

⁶⁶⁰ The material witness statute only applies to serious crimes. Interview with Doug Harclerod, former District Attorney of Lane County, in Salem, Or. (Oct. 27, 2009).

negative ramifications for victims. Victims lack access to trafficking-specific services,⁶⁶¹ do not have a cause of action for civil remedy claims, and are still categorized by the criminal justice system as prostitutes rather than crime victims.⁶⁶²

D. Summary of Whether Oregon Has Met Minimal Obligations Under Federal and International Trafficking Laws

1. Measuring Oregon's Compliance with the Trafficking Protocol's Standards

Oregon has criminalized human trafficking through three separate but related statutes: (1) trafficking in persons; (2) first degree involuntary servitude; and (3) second degree involuntary servitude.⁶⁶³ The mental state required under all three of these Oregon statutes is “knowingly,” which is a lower level than the Protocol requires (“intentionally”).⁶⁶⁴ Under the Oregon mens rea, the criminalization of trafficking meets the international standard, as more individuals can be considered offenders than if the law required traffickers to intentionally take part in the crime. In Oregon, they only need to be aware that the act is taking place.

These Oregon statutes do not address a victim's consent to the exploitation, which substantially impacts the prosecution of traffickers under state law. The statutes detailed various means by which traffickers gain control over their victims, signifying some legislative recognition of victims' inherent vulnerability and the lack of true voluntariness. However, the fact that the statutes do not specify that a victim's consent is irrelevant provides a possible defense for traffickers. Unlike the Protocol, the Oregon statutes also do not classify minors as de facto or per se victims of trafficking, irrespective of the specific means used by traffickers.

This failure under Oregon law to make the consent of a child irrelevant to the trafficking crime committed against them translates into a higher burden of proof to convict offenders for trafficking children under state law than under existing federal or international laws. In contrast, Oregon's statute on compelling prostitution, criminalizes any person who induces or causes a minor to engage in prostitution. Unlike compelled prostitution of adults, the use of force or intimidation does not have to be used against minors.⁶⁶⁵ Oregon should incorporate this same approach, recognized and endorsed by the Protocol, in its trafficking-related statutes order to meet international standards.

On the positive side, Oregon exceeds its obligation under the Protocol to criminalize transnational trafficking offenses. Both domestic and transnational trafficking is illegal in Oregon.

⁶⁶¹ They can access services as general victims of crime.

⁶⁶² Victims may be able to seek restitution for economic damages as general crime victims. *See* OR. REV. STAT. §§ 137.103 (2009) and 137.109 (2009).

⁶⁶³ The statutes criminalize human trafficking, and involuntary servitude in the 1st and 2nd degrees. *See* OR. REV. STAT. §§ 163.266 (2009), 163.263 (2009), and 163.264 (2009).

⁶⁶⁴ The Oregon statutes also require a person to act without legal authority, in addition to acting knowingly. *See* OR. REV. STAT. §§ 163.266(1) (2009), 163.263(1) (2009), and 163.264(1) (2009); *see also* Trafficking Protocol, *supra* note 24, art. 5(1).

⁶⁶⁵ OR. REV. STAT. §167.017(1)(a)-(b) (2007).

The trafficking and involuntary servitude statutes do not contain provisions to adequately protect victims, adversely affecting Oregon’s investigation and prosecution of traffickers, which will ultimately result in Oregon’s failure to meet international legal obligations. The Oregon Constitution does have a provision under which traffickers could potentially be denied bail, providing an added level of security to victims. A recent amendment to Article I, § 43(1)(b) and (2) states that “a person accused of a violent felony and who poses a risk of physically harming or sexually assaulting a victim or the general public can be denied bail under the Oregon Constitution.”⁶⁶⁶ Members of the judiciary have avoided interpreting this provision, however, and have continued to implement Art. I, §14, that mandates the right to bail for all defendants except those accused of murder or treason.⁶⁶⁷ Currently, bail is set for \$20,000 for an involuntary servitude charge and \$250,000 for a compelling prostitution charge.

Another legal option that could be used to protect victims, including witnesses for the prosecution of trafficking crimes in Oregon, is the material witness statute. This statute is currently inapplicable to trafficking and involuntary servitude, however, because neither crime is ranked on the Oregon sentencing grid, rendering them insufficiently serious for the purposes of material witness protection.

In 2009, Oregon enacted legislation to include trafficked victims within the scope of the Address Confidentiality Program.⁶⁶⁸ This program was established within the Oregon Department of Justice to prevent assailants or potential assailants from finding victims through public records.⁶⁶⁹ This program, while promoting greater protection of trafficking victims, does not ensure the confidentiality of victims’ participation in criminal proceedings, which is required under the Protocol. Oregon also falls short of the Protocol’s standard regarding providing information about court proceedings to victims and ensuring their access to advocates or attorneys.

The final requirement under international law regarding the criminalization of trafficking is to ensure that legal remedies are available for victim compensation.⁶⁷⁰ Victims can bring both civil causes of action and seek restitution for economic damages under Oregon law.⁶⁷¹ A civil cause of action to seek compensation for damages, including damages for emotional distress and punitive damages, must be commenced within six years of the trafficking incident.⁶⁷² This cause of action does not apply to victims of compelled prostitution.⁶⁷³ As the majority of sex

⁶⁶⁶ OR. CONST. art. I § 43(1)(b) and (2).

⁶⁶⁷ *State v. Sutherland*, 987 P.2d 501 (Or. 1999). A statutory disallowance of bail for “measure 11” offenses was found unconstitutional because it violates Art. I, § 14. This decision was made two months before Art. I, § 43 was incorporated into the Oregon Constitution in December 1999.

⁶⁶⁸ OR. REV. STAT. § 192.822 (2009).

⁶⁶⁹ This statute also ensures that victims of sexual offenses, domestic violence, and stalking are included within the Program’s protection.

⁶⁷⁰ *Id.*

⁶⁷¹ OR. REV. STAT. § 30.867 (2009), 137.103 (2009) and 137.109 (2009). A victim’s right to receive restitution is also protected in the Oregon Constitution. OR. CONST. art. I, § 42(1)(d).

⁶⁷² OR. REV. STAT. § 30.867(2)(4) (2009).

⁶⁷³ The statute states that any person injured by a trafficking or involuntary servitude violation can file a civil cause of action “irrespective of any criminal prosecution or the result of a criminal prosecution.” In theory, traffickers who were prosecuted under the compelling prostitution statute could still be liable for punitive damages in a civil cause of action. Realistically, though, these victims would have a difficult time proving they are legitimate victims of

trafficking cases are prosecuted under the compelling prostitution statute, most victims in Oregon do not have access to this important legal remedy. They are only eligible, as general crime victims, to seek restitution for economic damages.⁶⁷⁴ While claims for economic damages are barred if a victim is considered a co-participant in the defendant's criminal activities,⁶⁷⁵ a victim may be able overcome this bar if the criminal actions occurred while he/she was under the control of the trafficker.⁶⁷⁶ Arguably, this duress defense brings Oregon a bit closer, in effect, to the Protocol's standard of the irrelevance of consent if the trafficking victim is under the age of 18; however, Oregon's laws still fall short in this terms of defenses available to victims, especially with respect to minor victims of trafficking.

2. Measuring Oregon's Compliance with Obligations Under Federal Trafficking Law, the TVPA and its Subsequent Reauthorizations

As reviewed above, the Clinic used the United States' minimum standards to assess other countries' efforts to combat trafficking and applied these standards internally to measure Oregon's performance along these lines. The United States requires other countries to (a) prohibit and punish severe forms of trafficking; (b) ensure that the punishment of certain forms of sex trafficking is commensurate with that of forcible sexual assault, adequately reflects the gravity of the crime, and serves as a deterrent; and (c) make serious and sustained efforts to eliminate severe forms of trafficking.⁶⁷⁷

Under the first prong, the Clinic assessed the state and federal criminal statutes available to prosecute trafficking cases. Next, the Clinic reviewed the sentences applicable to trafficking and related crimes under both state and federal law. The most comprehensive part of the analysis is under prong three, where all activities undertaken by state and federal agencies in Oregon were evaluated to determine if they demonstrate a serious and sustained effort to combat human trafficking.⁶⁷⁸

a. To prohibit and punish severe forms of trafficking

i. Federal Law Provisions Related to this Minimum Standard

Sex and labor trafficking is prohibited by federal law in the following statutes: 18 U.S.C. § 1581, § 1583-1584, § 1589-1592, § 1594, and § 2421-2423. Severe forms of trafficking include "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 is under the age of 18; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the

trafficking, which is why these cases were prosecuted under the compelling prostitution statute in the first place. *See* OR. REV. STAT. § 30.867(1) (2009).

⁶⁷⁴ OR. REV. STAT. §§137.103 (2009), 137.109 (2009).

⁶⁷⁵ OR. REV. STAT. §137.109.

⁶⁷⁶ *Relating to Trafficking in Persons: Hearing on SB 578 Before the Subcomm. on Public Safety and the H. Comm. on Joint Ways & Means*, (2007).

⁶⁷⁷ *Supra* note 66, TVPA at § 108(a) and (b); *supra* note 85, TVPRA at § 106; 22 U.S.C. §§ 7106(b)(1)-(11) and 7107.

⁶⁷⁸ TVPA of 2000, *supra* note 102, at § 108(b)(1), (2), (3), (4), (6); 22 U.S.C. § 7106(b)(1)-(11).

use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁶⁷⁹

Under federal law, trafficking victims can bring civil causes of action to recover damages and attorney fees.⁶⁸⁰ These claims cannot be filed until the criminal investigation and prosecution is completed and must commence within 10 years of the trafficking incident.⁶⁸¹ Victims are also entitled to mandatory restitution from traffickers, the amount of which should reflect the full financial loss to the victim⁶⁸² including expenses⁶⁸³ and lost earnings.⁶⁸⁴ Property that is used for the crime or was purchased from the proceeds of trafficking is forfeited to the government.⁶⁸⁵

The TVPA explicitly states that victims of severe forms of trafficking must be given access to information that explains their legal rights and to language translation services.⁶⁸⁶ HHS must ensure that unaccompanied alien children have access to counsel in order to “represent them in legal proceedings or matters and protect them from mistreatment, exploitation and trafficking.”⁶⁸⁷ Victims of human trafficking and other specified crimes⁶⁸⁸ can apply for a T visa or a U visa, both of which provide temporary legal status to people who assist with investigations or prosecutions of the criminal activity.⁶⁸⁹ Victims of severe forms of trafficking who can potentially be witnesses in criminal cases against traffickers can also be granted continued presence, which provides temporary legal immigration status.⁶⁹⁰ Continued presence is also available for victims who file civil causes of action.⁶⁹¹

The TVPA provides that during the investigation and prosecution of traffickers, law enforcement must take safety measures to shield victims and their family from “intimidation, threats of

⁶⁷⁹ *Supra* note 66, at §103(8); 22 U.S.C. § 7102(8).

⁶⁸⁰ 18 U.S.C. § 1595(a)

⁶⁸¹ *See id.* at § 1595(b) and (c).

⁶⁸² *Supra* note 66, TVPA at § 112(a)(2); *supra* note 85, TVPRA at § 221; 18 U.S.C. 1593.

⁶⁸³ The full amount of the victim’s losses includes any costs incurred by the victim for medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lost income; attorneys’ fees, as well as other costs incurred; and any other losses suffered by the victim as a proximate result of the offense. 19 U.S.C. § 1593(b)(3) and 18 U.S.C. § 2259(b)(3).

⁶⁸⁴ This amount is calculated by estimating the gross income/value of the victim’s services or labor to the trafficker, or by the value of the labor itself, whichever amount is higher. *Supra* note 66, TVPA at § 112(a)(2); *supra* note 85, TVPRA at § 221; 18 U.S.C. § 1593(b)(3).

⁶⁸⁵ *Supra* note 85, TVPRA at § 221, 18 U.S.C. § 1593(b)(4); 21 U.S.C. § 853(a)(1)-(3).

⁶⁸⁶ *Supra* note 66, TVPA at § 107(c)(2).

⁶⁸⁷ *Supra* note 66, TVPA at § 235(c)(5); 8 U.S.C. § 1232(c).

⁶⁸⁸ The enumerated crimes are “rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt; conspiracy; or solicitation to commit any of the above mentioned crimes.” INA § 101(a)(15)(U); 8 U.S.C. § 1101(a)(15)(U) (2008).

⁶⁸⁹ U.S. Dept. of Homeland Security, Improving the Process for Victims of Human Trafficking and Certain Criminal Activity: The T and U Visa, Jan. 29, 2009, at 1, available at http://www.dhs.gov/xlibrary/assets/cisomb_tandu_visarecommendation_2009-01-26.pdf.

⁶⁹⁰ *Supra* note 66, TVPA at § 107(c)(3), *supra* note 85, TVPRA at § 205(a); 22 U.S.C. § 7105(c)(3).

⁶⁹¹ Continued presence is applicable for the duration of the civil proceeding. *Supra* note 85, TVPRA at § 205(a); 22 U.S.C. § 7105.

reprisals, and reprisals.”⁶⁹² In particular, federal government officials must keep the names and identifying information of victims and their relatives confidential.⁶⁹³ The TVPA also outlines special protective measures for victims of severe forms of trafficking while in federal custody, and specifies that they should not be placed in facilities inappropriate for crime victims.⁶⁹⁴ However, these provisions are couched in the language of “to the extent practicable.”⁶⁹⁵

The TVPA mandates that any violation of 18 U.S.C. 1594 (which covers sections 1581, 1583, 1584, 1589, 1590, and 1591) is considered organized criminal activity for the purposes of providing witness protection.⁶⁹⁶

ii. State Law Provisions Related to this Minimum Standard of “Prohibit and Punish”

Trafficking and involuntary servitude is prohibited by state law under the following statutes: Or. Rev. Stat. §163.266 (2009), §163.263 (2009), and §163.264 (2009). None of these state laws meet the federal standards for the effective prohibition and punishment of trafficking crimes, as such offenses in Oregon do not carry minimum sentences, mandate victim compensation analogous to federal provisions, or even punish traffickers through asset forfeiture provisions.

Nonetheless, victims can bring civil causes of action under Or. Rev. Stat. § 30.867 (2009) and seek restitution for economic damages under Or. Rev. Stat. §§ 137.103 (2009) and 137.109 (2009).⁶⁹⁷ Under the civil cause of action, a victim can recover special, general and punitive damages, as well as attorney fees, regardless of the outcome of the criminal proceeding.⁶⁹⁸ This right of recovery could be interpreted as effectively “prohibiting and punishing” trafficking crimes, albeit indirectly. In any case, the action must be commenced within six years of the trafficking incident.⁶⁹⁹ While claims for economic damages are barred if the victim is considered a co-participant in the defendant’s criminal activities,⁷⁰⁰ a victim may be able overcome this bar if the criminal actions occurred while he/she was under the control of the trafficker.⁷⁰¹ There is no property forfeiture provision in the Oregon trafficking statutes. No provision for victim or material witness protection exists under Oregon law.

⁶⁹² See *supra* note 85, TVPRA at § 107(c)(i).

⁶⁹³ See *supra* note 85, TVPRA at § 107(c)(ii).

⁶⁹⁴ *Supra* note 66, TVPA at § 107(c)(1).

⁶⁹⁵ *Supra* note 66, TVPA at § 107(c)(1).

⁶⁹⁶ *Supra* note 66, TVPA at § 112(a)(1)(§ 1594).

⁶⁹⁷ A victim’s right to receive restitution is also protected in the Oregon Constitution. OR. CONST. art. 1, § 42(1)(d).

⁶⁹⁸ OR. REV. STAT. § 30.867(1)-(3) (2009).

⁶⁹⁹ *Id.* at § 30.867(4) (2009).

⁷⁰⁰ OR. REV. STAT. §137.109.

⁷⁰¹ *Relating to Trafficking in Persons: Hearing on SB 578 Before the Subcomm. on Public Safety and the H. Comm. on Joint Ways & Means* (2007). This is relevant because many victims of trafficking engage in prostitution or serve as mules for the defendant. If the victim can demonstrate she was forced to engage in these offenses, she would still be entitled receive award for damages.

b. To ensure that the punishment of certain forms of sex trafficking is commensurate with that of forcible sexual assault, adequately reflects the gravity of the crime, and serves as a deterrent⁷⁰²

i. Federal Law Provisions Related to this Minimum Standard

Under the TVPA, traffickers can be sentenced up to 20 years for each victim, and up to life imprisonment for aggravating circumstances. The average prison sentence imposed for trafficking crimes nationally is 9.3 years,⁷⁰³ ranging from 1 to 50 years.⁷⁰⁴ While there is a constitutional restriction against imposing a sentence that is grossly disproportionate to the crime,⁷⁰⁵ the national average is noticeably lower than that which is statutorily permissible. Under the minimum standards, “suspended or significantly-reduced sentences for convictions of principal actors in cases of severe forms of trafficking in persons” can be disregarded as an “indicator of serious and sustained efforts to eliminate severe forms of trafficking in persons.”⁷⁰⁶

Unless a judge determines that the individual is a flight risk or poses a danger to others if released, the judge must release the defendant ‘on his own recognizance’ or through a set bail amount.⁷⁰⁷ Under certain criteria, a defendant can be deemed too dangerous to be released including if the defendant has already been convicted of either a violent crime.⁷⁰⁸

ii. State Law Provisions Related to this Minimum Standard

The Oregon statutes on human trafficking neither reflect the gravity of the crime nor act as a deterrent. Trafficking and involuntary servitude are unranked offenses in Oregon. Fiscal considerations were prioritized over imposing sufficiently stringent sentences upon traffickers.⁷⁰⁹ Sentence determination is left solely up to the discrimination of presiding judges. As there has never been a conviction for trafficking, the average sentence has not been established yet. District Attorneys are in fact reluctant to follow through with prosecuting trafficking charges out of fear that a poor sentencing precedent will be set.

The statute on compelling prostitution is included in the measure 11 legislation, which attaches a 5 year 10 month mandatory minimum sentence. Crimes against minors do not require any showing of force or inducement, facilitating the punishment for crimes against children. The

⁷⁰² 22 U.S.C. 7106(a)(2)-(3). For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault. For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

⁷⁰³ MONITOR & COMBAT TRAFFICKING, *supra* note 524, at 57.

⁷⁰⁴ ATTORNEY GENERAL’S ANNUAL REPORT, *supra* note 495, at 42.

⁷⁰⁵ *Weems v. United States*, 217 U.S. 349 (1910).

⁷⁰⁶ This is done on a case-by-case basis. 22 U.S.C. 7106(b)(1).

⁷⁰⁷ *Supra* note 541; 18 U.S.C. §§ 3141-3150 (1990).

⁷⁰⁸ *Supra* note 541; 18 U.S.C. § 3142(e) (1990).

⁷⁰⁹ Trafficking and involuntary servitude offenses are not included within the Measure 11 legislation, which attaches mandatory minimum sentences to certain crimes, and is not ranked on the sentencing grid.

mandatory minimum sentences for sexual assault and related crimes are as follows: Using Child in a Display of Sexually Explicit Conduct: 5 yrs., 10 mos.; Rape I (when victim is under 12): 25 years; Rape I (otherwise): 8 yrs., 4 mos.; Rape II: 6 yrs., 3 mos.; Unlawful sexual penetration II: 6 yrs., 3 mos.; Unlawful sexual penetration I (victim under 12): 25 yrs; Unlawful sexual penetration I (other): 8 yrs., 4 mos.; Assault I: 7 yrs., 6 mos.

The fact that neither the trafficking nor involuntary servitude statutes contain special provisions for crimes against minors decreases the effectiveness of the law to protect children. Unlike the TVPA and the Protocol, prosecuting child trafficking cases under Oregon law requires the same burden of proof as for prosecuting crimes against adults. Other state criminal statutes recognize the inherent vulnerabilities of children, as well as the heinousness of when violence is inflicted upon them, through statutory language or enhanced sentencing provisions.

c. To make serious and sustained efforts to eliminate severe forms of trafficking⁷¹⁰

The office of the U.S. Attorney for Oregon has indicted, charged, and/or convicted approximately 10 defendants with sex trafficking of minors and adults between the fall of 2008 and May 2010.⁷¹¹ The same office provided no information on the number of labor trafficking prosecutions. Statistics on the exact level of federal prosecutions in Oregon have not been released to the public.⁷¹²

Oregon participates in the FBI Innocence Lost Initiative, which is a cross-country sting operation carried out to rescue minor victims of sex trafficking. During the last sting, law enforcement involved victims' advocates who provided immediate counseling to minors and were present during the victims' interviews with police. The prearranged involvement of victims' advocates in a raid is unique and reflects the strong cooperation between police and service providers in Oregon.

The FBI also investigates cases involving adult victims of trafficking, both sex and labor, although would not release information on procedures. Public information on national FBI efforts state that field offices conduct threat assessments, and investigate and gather intelligence on trafficking operations.

The Detention and Removal Office (DRO) of the U.S. Department of Homeland Security (USDHS), does not screen foreign-born minors or adults who are referred from local law enforcement to detect TIP cases.⁷¹³ DRO officers are trained on human rights and trafficking issues, and the staff includes a victim specialist who conducts needs assessments for all crime victims. The lack of standard screening, however, could result in potential trafficked victims being returned to their countries of origin without any assistance or security assessment being conducted. This is in direct violation of the TVPA. Additionally, federal law prohibits minor

⁷¹⁰ *Supra* page 88.

⁷¹¹ Email Communication to Clinic from Kemp Strickland, Violent Crimes Prosecutor, U.S. Attorney's Office, Portland, Or. (May 21, 2010) (on file with Clinic). ("Most of the cases are still pending trial, change of plea, or sentencing, while others have been resolved.")

⁷¹² *Id.*

⁷¹³ Inquires about trafficking are made at the discretion of the interviewing DRO officer.

victims of trafficking from being placed in facilities inappropriate to their status as victims, such as a detention center.

The ICE Office of Investigations, USDHS, is responsible for investigating suspected cases of trafficking. While ICE reportedly has standard operating procedures in place to address human trafficking, the office refused to release any details on them. It is questionable whether ICE is the appropriate agency within USDHS to identify and investigate suspected cases of trafficking, given its role as enforcement agency

Under the TVPA, federal agencies have an obligation to combat all forms of human trafficking in the United States, regardless of whether an investigation is conducted or the charges are filed by state prosecutors. Federal and state agencies need to cooperate on the investigation and prosecution of traffickers in each state. While jurisdictions are sometimes unclear or even concurrent, law enforcement agencies that fail to cooperate create an atmosphere where crimes fall through the cracks of both systems.

There is currently no data on the scope of trafficking in Oregon, despite the fact that the U.S. Attorney General is required to compile and analyze data from state and local law enforcement authorities in order to increase the understanding of domestic trafficking.⁷¹⁴ Research on severe forms of trafficking are supposed to include the estimated number of perpetrators involved, their demographic profile, the number of investigations, arrests, prosecutions and incarcerations in each state.⁷¹⁵ The Attorney General is also required to compile data on prosecutions, victim restitution, cases assisted, charges, convictions and sentences imposed, as well as how many continued presence applications have been authorized. While national statistics have been compiled, there has not been data disseminated that is specific to each state. Additionally, all federal agencies queried in Oregon either refused or were unable to release statistics compiled in their respective field offices. The lack of available data on the scope and nature of cases in each state inhibits the development of a comprehensive program to combat trafficking. It also impacts funding, political and institutional prioritization, the level of training conducted, and the ability to investigate and successfully prosecute traffickers. In assessing other countries' efforts to combat trafficking, the U.S. Department of State presumes that governments that do not share data have not in fact "vigorously investigated, prosecuted, convicted or sentenced such acts."⁷¹⁶

There has not been a single conviction in the state of Oregon under the trafficking or involuntary servitude statutes, which were enacted over three years ago. The four trafficking and eight involuntary servitude charges that were filed in 2009 were later dismissed. All convictions for sex trafficking have been accomplished under the compelling prostitution statute.

⁷¹⁴ 42 U.S.C. § 14044(a)(1)(A).

⁷¹⁵ *See id.*

⁷¹⁶ 22 U.S.C. 7106(b)(1). "After reasonable requests from the Department of State for data regarding investigations, prosecutions, convictions, and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts. [T]he Secretary of State may disregard this presumption . . . if the government has provided some data to the USDOS regarding such acts and the Secretary has determined that the government is making a good faith effort to collect such data."

One of the ramifications of not prosecuting cases under the trafficking statutes is that the civil cause of action will most likely be unavailable to victims. It also means that certain trafficked victims are most definitely falling through the cracks, as their cases do qualify for prosecution under the compelling prostitution statute. Charges brought under the compelling prostitution statute also fail to recognize victims as trafficked victims; they are still been associated with prostitution, albeit forced, perpetuating the notion that the sellers, and not the buyers or purveyors of sex, are criminals, even if they legally cannot consent to sex because they are under the age of 18. Additionally, cases prosecuted in Oregon under state law to date address only one category of victims trafficked for one particular form of trafficking. There is virtually no state action to prosecute sex trafficking of adults, or labor trafficking of adults and minors.

Overall, Oregon's statute on human trafficking lacks sufficient punitive measures and is difficult to use, rendering it virtually useless in the overarching goals to protect victims and punish traffickers. Additionally, the law's lack of punitive teeth fails to act as a deterrent to traffickers.

The lack of prosecutions under the state trafficking statute is primarily due to the difficulty in proving the elements of trafficking, loss of witnesses, and the U.S. Constitution's restrictions against using out-of-court testimonial evidence. While the latter is beyond Oregon's control, state legislators can improve the statute. The loss of witnesses in sex trafficking cases signifies a profound flaw in the overall infrastructure to combat human trafficking here.⁷¹⁷ The loss of witnesses impacts prosecution rates, the ability to punish perpetrators and prevent re-victimization. The inability to successfully prosecute traffickers also affects the general level of crime in each state, as traffickers are frequently involved in many illegal activities aside from human trafficking.

There are comprehensive police procedures to identify and rescue victims of sex trafficking, using a victim sensitive approach, in the tri-county area. While the primary focus is on minor victims of sex trafficking, these procedures apply to adult victims as well. There are no procedures in place to investigate labor trafficking in the tri-county area. None of the 36 sheriff's offices in Oregon reported having any specific procedures to identify or investigate human trafficking cases. The Oregon Department of Health and Human Services administers a child welfare hotline through which the vast majority of minor victims of sex trafficking have been identified. These operators are trained on child protection issues.

There is inconsistent data recording and access to information in Oregon. Agencies currently use a variety⁷¹⁸ of systems for recording information, which impairs law enforcements' ability to cross-reference and track offenders.⁷¹⁹ Furthermore, victim identification, witness information,

⁷¹⁷ First and foremost, the loss of witnesses means that victims are not receiving the assistance services they need, and decreases the ability to break the trauma bond. This is discussed in the section on victim protection and assistance.

⁷¹⁸ Thirty-one percent of state agencies, primarily smaller agencies in rural areas, use NIBRS. The agencies that use this are representing only twenty-nine percent of the population of the state.

⁷¹⁹ Various databases in use include but are not limited to: OJIN (Oregon Judicial Information Network), NIBRS (National Instant Based Reporting System), and LEDS (Law Enforcement Data System).

and original arrest charges are often lost or are not recorded into a single system. This information is crucial to for recommending stricter sentences and new legislation.⁷²⁰

V. RECOMMENDATIONS

“When I get some money, I am going to give it to Keith’s organization [the Oregon Human Trafficking Task Force] because he has helped me so much. If I could tell Oregon what to do, I would say the police should crack down on the people doing these crimes. They know where these places are and where the prostitution happens and they don’t do anything. I also think the deputies should not leave a case, especially without telling you. I felt like killing myself when that happened. Please say in your report that I think that the counselors should know more about how to talk to people this happens to and get better training. Also, when people stay in touch with me instead of acting like I was just for the job and their paycheck, I feel like someone cares. When they call me and ask me how I am doing, like Keith does, that helps me a lot. I agreed to talk with you because you are doing this work. And I want to help your report so that this doesn’t happen to more people.”

–Manuel, Oregon Victim of Human Trafficking

Many recommendations on specific topics and problems facing Oregon in its response to human trafficking have been made throughout this Report. However, several additional and summary recommendations follow.

1. Safe and Secure Shelters

Oregon urgently needs a safe and secure shelter specifically tailored to the needs of trafficking victims, especially for minor victims of sex trafficking, who are particularly vulnerable and need extra supervision and attention. Among those interviewed for this Report, this recommendation was deemed the top priority and was virtually unanimous. Cultural and linguistic differences for foreign-born trafficking victims need to be taken into account in planning shelter programs. Comprehensive services, including the provision of emergency and medical care, toiletries, transportation and food vouchers, clothing, case management, substance abuse and mental health treatment options, and access to legal help, including immigration legal aid, should ideally be available through shelters serving trafficking victims. Immigrant and undocumented victims may also benefit from alternate forms of shelter such as motel vouchers, an “apartment living” or group home setting that can accommodate entire families.

Any such shelter, whether secure or voluntary, should be a safe haven where victims can focus on recovery from trauma and rehabilitation. Training and practical skills essential for reintegration into society and building successful future lives should be offered or coordinated.

⁷²⁰ Interview with Mike Stafford, Public Safety Standard Coordinator, Criminal Justice Commission, in Salem, Or. (Nov. 03, 2009).

Programs sheltering and serving trafficking victims must be as holistic and flexible as possible to effectively meet the therapeutic needs of trauma survivors. Individualized care and treatment plans are best, whether carried out in an institutionalized residence or home-based setting. Funding for such a shelter may be public, private, or both. The two main shelters for minor victims of sex trafficking that have been successful (GEMS in New York and Children of the Night in Los Angeles) have secured private funding.

Minor victims of sex trafficking require special care to break the trauma bond with their trafficker or pimp, so that they do not return to the abuser or streets and instead can help investigate and prosecute the crimes committed against them. Experts disagree on whether even temporary holding facilities for minors should be voluntary or mandatory. However, the juvenile justice system and DHS make such placement (voluntary or involuntary) decisions on a case-by-case, individualized basis for all children. Judges and caseworkers can and will continue to do this for trafficking victims as well. While law enforcement and prosecutorial interests in having and maintaining access to victims' cooperation and testimony to capture and prosecute traffickers must be taken into account, the best interests of the child and protection of the victim must always come first.

In any case, a secured facility should not be or resemble a punitive setting, but rather a place where victims can receive necessary services and additional support. Some experts believe a minimum stay of 30 to 90 days should be allowed by the juvenile justice and child protection system; many believe one to two years is ideal. Several states have passed "Safe Harbor Laws" for trafficking victims, especially domestic minor victims of sex trafficking, which Oregon should also consider.

Victims of all forms of human trafficking need secure shelters and services, not only to be protected from their traffickers, but also to recover enough physical, emotional, and mental health to make critical decisions regarding cooperation in investigating and prosecuting trafficking crimes. While short-term shelter and housing options constitute the first step in meeting trafficking victims' basic survival needs, long-term programs and services must also be instituted and strengthened throughout Oregon in order to successfully launch victims into new lives of relative freedom—freedom from crime, their traffickers, and terror, as well as freedom to regain, or even enjoy for the very first time in their lives, fundamental human rights and dignity.

2. More Attention to Runaway and Homeless Youth

Special attention must be paid to Oregon's large homeless, runaway, and "throwaway" youth populations moving forward. The high percentage of children in foster care in the state should be addressed and reduced so that this population does not join youth on the streets who are particularly vulnerable to, and targeted by, traffickers. Funding and services for youth throughout the state must be increased and improved in general. Better management and care of at-risk children in Oregon demands immediate and thoughtful attention.

3. Expanded, Improved, and Mandatory Training for Law Enforcement

Human trafficking training of law enforcement, both in basic training for recruits and in continuing education for officers, must be improved, expanded to cover the entire state, and made mandatory. The current system of voluntary attendance at human trafficking trainings is a beginning and should be maintained for officers choosing continuing education units. However, a mandatory training protocol for all law enforcement officers, including at least a three hour session during basic training, as well as continuing training modules every few years, should be developed. This standardized curriculum, once created, should be regularly provided throughout the state and ideally presented by fellow law enforcement officials.

While voluntary training on human trafficking, especially on domestic minor sex trafficking, has been conducted in the Portland tri-county area, law enforcement officials in other counties in the state have not received any training on recognizing trafficking cases or identifying and assisting victims. Law enforcement training should also include practice in using Standard Operating Procedures (which need to be developed state-wide) for identification of victims, sensitive and culturally-appropriate questioning of victims, collecting evidence needed for investigation and prosecution at both state and federal levels, referrals of victims for protection and assistance, and interagency cooperation.

Labor trafficking training likewise needs to be expanded and offered throughout the state. Any and all future sex and labor trafficking training of local, state, and federal law enforcement officials should be consistent and coordinated, both to save resources and to improve cooperation and effectiveness in combating trafficking in Oregon.

Ideally, human trafficking training should also be offered and perhaps even required for state and federal prosecutors; defense, immigration and juvenile rights attorneys; judges and detention officials; legislators; health care providers; first responders; immigration officials; and social service workers. Coordinating such training sessions so that different stakeholders and professionals could attend simultaneously would reduce the costs of offering the training and promote better coordination among all the different authorities and service providers potentially or actually in contact with trafficking victims.

If formal training is not possible in the near-term, at the very least, awareness-raising efforts and educational campaigns on trafficking issues should be expanded to cover these groups.

4. Human Trafficking Laws Need to Be Strengthened and Made More Comprehensive

Oregon's laws on involuntary servitude and human trafficking should be strengthened and made more comprehensive. Changing these crimes from Class C and B felonies, with a maximum punishment of ten years, to Class B and A felony offenses would bring Oregon's criminal code closer to the trafficking statutes and the associated penalties imposed in neighboring states. It would also help Oregon meet the minimum standard set forth in the federal TVPA, which states that punishment for certain forms of sex trafficking should be commensurate with that for forcible sexual assault.

Making human trafficking a Measure 11 offense, with mandatory minimum sentencing, should also be considered in the next legislative session. Penalties for trafficking of all minors, regardless of the child's "consent" and irrespective of means used, should be enhanced. This should be done, at a minimum, for minor victims of sex trafficking to bring Oregon's law into compliance with the TVPA. The issue of "consent" should also be addressed in Oregon's legal code for all minor victims in order to align Oregon's laws more closely with the Trafficking Protocol, which deems "consent" to the "exploitation" of any person under 18 to be legally irrelevant.

State prosecutors should make every effort to charge and prosecute traffickers under existing (and future) trafficking statutes, not just the Compelling Prostitution or other statutes. Successful prosecutions and convictions of trafficking crimes in Oregon are imperative not just to punish traffickers and protect victims, but also to increase public awareness of, and thus funding for combating, the problem. Domestic minors of sex traffickers are not "child prostitutes" or criminals, they are victims, but prosecuting the sex trafficking of minors only under the prostitution label impedes victims' ability to recover and the public's ability to perceive the nature and scope of the crimes committed. This misperception damages victims further and contributes to public apathy or ignorance. Consequently, legislators, officials, and service providers are less able to secure the resources and support to appropriately or adequately deal with the gravity of offenses as well as their ability to prevent or deter them and to mitigate further harm to victims.

5. More Services Afforded to Victims Funded through Forfeiture of Assets

Along these lines, Oregon's laws should be improved so that greater compensation and service options are afforded trafficking victims, which could be funded by forfeiture of traffickers' assets provisions that have been incorporated into law by other states and provided for through the federal government and the TVPA's provisions.

6. Expand Public Outreach and Awareness Raising

Strengthening the recently-enacted sticker bill so that displaying the human trafficking hotline number in all establishments with a liquor license is mandatory instead of voluntary could be considered in the next legislative session. Other states have made posting such trafficking notices mandatory in other types of establishments frequented by traffickers and their victims. Oregon should consider this kind of expanded public outreach as well to raise awareness of human trafficking in all parts of the state.

Community awareness-raising events already being offered by nongovernmental organizations and OATH should continue to be publicized and supported in the community, not just in the Portland area, but throughout the state. Outreach and distribution of trafficking educational and victim assistance materials must be increased not just in the venues already being served, such as homeless, domestic violence, and youth shelters as well as health care, social and immigrant services establishments, but also in places of worship, as traffickers often allow their victims this one liberty—attendance at religious services—just as U.S. slaveholders did in former centuries.

7. More Federal Prosecutions in Coordination with Law Enforcement

Federal prosecutors in Oregon also should increase efforts to investigate and prosecute trafficking offenses in the state, in closer coordination with federal and state law enforcement and prosecutors. Resources and personnel assigned to federal investigation and prosecution of all trafficking activities, including labor trafficking, need to be increased so that crimes do not “fall through the cracks” of the parallel yet overlapping state and federal laws and legal systems.

8. Better Coordination Between Immigration Agencies, Law Enforcement, and Prosecutors

Likewise, federal immigration agencies and officials must enhance their understanding of both state and federal trafficking laws and crimes, so that victims are properly protected and better served within Oregon. Closer cooperation with federal and state law enforcement, prosecuting and defense attorneys, including attorneys representing minor victims of trafficking, is needed.

9. Comprehensive Statistics and Improved Information Systems

Accurate, consistent, and coordinated systems for collecting and entering information on trafficking arrests, investigations and prosecution of cases, and victims identified and assisted are urgently needed. Statistics on trafficking crimes in Oregon must be kept and made available to the public, not just through vast national databases that do not disaggregate data by state and are extremely difficult to access or interpret. The more databases and statistics regarding trafficking can be made collective or shared, while still respecting victims’ privacy and not compromising ongoing investigations or cases, the more successful prosecutions of traffickers will be. Additionally, the lack of data that leads to problems with lack of funding for fighting trafficking will also be reduced or resolved if such information collection and sharing efforts are improved.

10. More Resources

Finally, funding is the key to all of the other recommendations. Increasing the allocation of resources devoted to combating human trafficking of all forms is strongly and urgently recommended. The Clinic hopes that shedding light on the various aspects of the problem and possible solutions in this Report will assist decision-makers in dedicating adequate funding to the best possible programs and initiatives seeking to end human trafficking and heal its victims in our state, as soon as possible.

Appendix A: Copy of Blank Surveys

SURVEY FOR LAW ENFORCEMENT

The Willamette University College of Law, International Human Rights Clinic, is conducting a study on Oregon's response to human trafficking. We are gathering information on the procedures, policies and practices of state and federal agencies being used to combat trafficking. The results and recommendations will be published and distributed to all key players in Oregon.

Your feedback on the current needs and efforts of law enforcement in Oregon is important. Our hope is that this assessment will shed light on the strengths and obstacles affecting anti-trafficking efforts here. If you have any questions or concerns, please contact the W.U. Clinic at (503) 370-6140. Please return the completed survey to traffickingstudy@willamette.edu by 5:00 pm on April 5. Thank you!

1. What percentage of your office has received training on human trafficking?
 - a. Who trained them and when? (e.g. USDOJ training CD, Catholic Charities)
 - b. When was the last training?
 - c. What was missing to adequately address the needs of your office/county?

2. Is there a procedure in place to screen detained prostitutes or migrant laborers, to determine if they may be trafficked victims? Explain.

3. What steps does your office take after identifying a trafficked victim?
 - a. To coordinate with other agencies? (please list these agencies)
 - b. To provide witness protection?
 - c. To ensure victim has access to assistance services?
 - d. Do you forward case details to the Federal Marshal, Keith Bickford, for statistics and intelligence gathering?

4. What are the main obstacles to your office in investigating trafficking cases?
 - a. What steps do you take to overcome these obstacles?
 - b. What other measures need to be taken in Oregon?

SURVEY FOR DISTRICT ATTORNEYS

The Willamette University College of Law, International Human Rights Clinic, is conducting a study on Oregon's response to human trafficking. We are gathering information on the procedures, policies and practices of state and federal agencies being used to combat trafficking. The results of the study, including recommendations for action, will be published and distributed to policy-makers, law enforcement, NGOs and service providers, and interested members of the public.

Your feedback on the current needs and efforts of prosecutors in Oregon is important. Our hope is that this assessment will shed light on the strengths and obstacles affecting anti-trafficking efforts here.

If you have any questions or concerns, please contact the Willamette University Clinic at (503) 370-6140. Please return the completed survey to traffickingstudy@willamette.edu by 5:00 pm on April 5. Thank you!

1. How many people in your office have received training on human trafficking?
 - a. Was it mandatory? If so, required by what authority?
 - b. Who trained them? (e.g. USDOJ training CD, Catholic Charities)
 - c. When was the last training?
2. What did the training cover?
 - a. Were labor and sex trafficking both covered? Cases involving domestic and foreign-born victims?
 - b. Did the training adequately address the needs of your office/county? If not, what was missing?
3. Is there a designated contact person in your office on human trafficking? If not, how are such calls and concerns handled?
4. Is there a procedure in place to screen prostitutes and migrant laborers who have been charged with a crime, to determine if they may be trafficking victims? If so, please explain.

5. Is there a procedure in place to screen migrant laborers, or other foreign-born people who have been charged with criminal offenses to determine if they are victims of trafficking? If so, please explain.
6. Are there special procedures in place for interviewing minors, who may be victims of trafficking?
 - a. Does the procedure differ if the minor is American or foreign born? If so, please describe.
7. What criteria is used to determine whether there is sufficient evidence to charge a trafficker?
 - a. What information and materials are necessary from law enforcement?
 - b. What are the primary obstacles in obtaining sufficient evidence?
 - c. When is a case transferred to the federal prosecutor? (how are cases allocated between state and federal prosecutors)
8. What steps have been taken by your office once a trafficked victim has been identified?
 - a. To provide witness protection?
 - b. To coordinate with other agencies? (please list agencies)
 - c. To ensure the victim has access to basic assistance?
 - d. Do you forward case details to the Multnomah County Sheriff's Office, Detective Keith Bickford, who maintains the statistics and intelligence databases on trafficking in Oregon?
9. How do you identify a trafficking victim? What are the obstacles?
 - a. Sex trafficking?
 - b. Labor trafficking?
10. What are the main obstacles your office faces in investigating and prosecuting trafficking cases?
 - a. What steps do you take to address these obstacles?

- b. What further measures need to be taken in Oregon to address these obstacles?
-
- 11. What language assistance is provided to suspected victims of trafficking? Do you have access to interpreters who can interpret indigenous languages?

 - 12. Are restitution remedies pursued on behalf of victims? If so, for what types of harm are covered?

Appendix B: List of Interviewees

Esther Nelson
Sexual Trafficking Case Manager, Sexual Assault Resource Center (SARC)

Steve Evans
Judge, Portland Community Court

Andrew Olson
Policy Advisor, Multnomah County Commissioner, Diane McKeel

Chris Killmer
Office for Services to Special Immigrant Populations (OSSIP) Program Coordinator/Case Manager, Catholic Charities

Carl Wilmsen
Executive Director, Forest Alliance

Meg Garvin
Executive Director, National Crime Victims Law Institute (NCVLI)

Diane Schwartz-Sykes
Senior Assistant Attorney General, Department of Justice, Civil Rights Unit

Greg Moawad
Deputy District Attorney, Multnomah County

Elizabeth Gottfried
Detention and Removal Officer, ICE

Doug Harclerod
Former District Attorney, Lane County

Carol Fenton
Board Member, Oregonians Against Trafficking Humans (OATH)

Diane Mckeel
Multnomah County Commissioner

James Pond
Founder & Executive Director, Transitions Global

Janice R. Morgan
Farmworker Program Director, Legal Aid Services of Oregon

Nargess Shadbeh

Farmworker Program Director, Oregon Law Center

Pam Heimuller
Victim Witness Specialist, U. S. Attorney's Office

Francisco Lopez
Executive Director, CAUSA Immigrant Rights Coalition

Keith Bickford
Director, Oregon Human Trafficking Task Force (OHTTF)

Lorraine Anglemier
Legal Services Coordinator, Department of Public Safety Standards and Training (DPSST)

Mike Stafford
Public Safety Standard Coordinator, Criminal Justice Commission (CJC)

Kemp Strickland
Assistant U.S. Attorney, Violent Crime Unit, U.S. Attorney's Office, Portland

Doug Justus
Police Sergeant, Vice Detail, Detective Division, Portland Police Department

Mike Geiger
Police Sergeant, Sexual Assault Detail, Detective Division, Portland Police Department

Slavika Jovanovic-Bubic
Victim Advocate, Sex Crimes Unit, Detective Division, Portland Police Department

Brent Barton
Oregon State Representative, House District 51

James Barta
Legislative Assistant for Representative Brent Barton

Christine Hermann
Executive Director, Attorney General's Sexual Assault Task Force

Siovhana Sheridan-Ayala
Immigration Attorney

Stephanie Mathis
Executive Director, Oregon Center for Christian Values (OCCV)

Caroline Holmes
Victim Specialist, Portland Division, FBI, U.S. Department of Justice

Miriam Green
Program Manager, Multnomah County Child Welfare Division,
Oregon Department of Human Services

Laura Janssen
Legislative Assistant, Senator Bruce Starr

Manuel⁷²¹
Victim of Human Trafficking

Keith Cunningham-Parmeter
Professor, Willamette University College of Law

Julie McFarlane
Supervising Attorney, Juvenile Rights Project

Rochelle Martinson
Law Clerk, Juvenile Rights Project

Deborah Boone
Oregon State Representative, House District 32

Bill Taylor
Legal Counsel, House Judiciary Committee

Corie Wiren
Chief of Staff, Multnomah County Commissioner, Diane McKeel

Joslyn Baker
Collaboration Specialist and Victim Advocate, Department of Community Justice

Nan Waller
Judge, Multnomah County Circuit Court

Ed Sale
Community Relations Officer, U.S. Citizen and Immigration Services

Lorie Dankers
Spokeswoman & Public Affairs Officer for Alaska, Idaho, and Washington, U.S. Immigration
and Customs Enforcement (ICE), U.S.D.H.S.

Sharon Rummery
Public Affairs Officer, U.S. Citizen and Immigration Services

⁷²¹ The trafficking victim's name was changed to protect privacy.

Appendix C

2010 Sentencing Guidelines Grid

Crime Seriousness of All Ranked Felonies

ABANDONMENT OF CHILD 163.535	7,3*
ABUSE OF CORPSE I 166.087	5
ABUSE OF CORPSE II 166.085	3
AGGRAVATED ANIMAL ABUSE I 167.322	3
AGGRAVATED DWI 163.196	7
AGGRAVATED HARASSMENT 166.070	6
AGGRAVATED MURDER 163.095	U
AGGRAVATED MURDER - SOLICITATION 163.095	10
ALTERATION OF GIFT DOCUMENT 97.982	4
ANIMAL ABUSE I 167.320	3
ARSON II 164.315	PROPERTY
ARSON I 164.325 [See MEASURE 11 Box]	10,9,8,7*
ASSAULT III 163.165	6,8
ASSAULT IV 163.160(3)(a) or (b)	6
ASSAULT PUBLIC SAFETY OFFICER 163.208	6
ASSAULT LAW ENFORCEMENT ANIMAL 167.339	6
ATHLETIC AGENT NOTICE REQUIREMENT 702.042	1
ATTEMPT TO ELUDE 811.540(1)(b)(A)	2
ATTEMPT 2 BELOW CRIME (MIN CS 1)	1
BIGAMY 163.515	1
BLUE SKY/SECURITIES (ORS CH 59)	PROPERTY
BRIBE GIVING 162.015/ RECEIVING 162.025	6/6
BRIBE GIVING SPORTS 165.085/ RECEIVING SPORTS 165.090	2/2
BRIBE RECEIVING BY A WITNESS 162.275	6
BRIBING A WITNESS 162.265	6
BURGLARY II 164.215	PROPERTY
BURGLARY I 164.225	9,8,7*
BUYING/SELLING CUST MINOR 163.537	8,5*
CAUSE ANOTHER INGEST C.S. 475.984	9,8*
CELLULAR COUNTERFEITING I 165.581/ II 165.579	4/2
CHEATING AT GAMBLING 167.167	2
CHILD NEGLECT I 163.547	6
COERCION 163.275	7,6*
COMPUTER CRIMES 164.377	PROPERTY
CONSPIRACY 161.450	U
CRIMINAL MISCHIEF I 164.365	PROPERTY
CRIMINAL MISTREATMENT I 163.205	7
CRIMINALLY NEGLIGENT HOMICIDE 163.145	8,9*
CRIMINAL NONSUPPORT 163.555	3
CRIMINAL POSS. RENTED VEHICLE 164.138	PROPERTY
CUSTODIAL INTERFERENCE I 163.257/ II 163.245	6/4
CUSTODIAL SEXUAL MISCONDUCT I 163.452	7
DRUG OFFENSES	DRUG TABLE
DISPOSAL METH WASTES 475.977	4
DISCHARGE FIREARM/SCHOOL 166.370(3)(a)	6
DISORDERLY CONDUCT I 166.023	4
DISTRIBUTE DRUGS TO MINOR 475.906	8,6,4*
DRIVING WHILE SUSPENDED/REVOKED 811.182	6
DUII FELONY (4th CONV. IN 10 YEARS) 813.010(5)	8/5
ENCOURAGING CHILD SEX ABUSE I 163.684/ II 163.686	8/5
ENGAG MONEY TRANSMISSION W/O LIC 717.905	1
ESCAPE I 162.165	7
ESCAPE II 162.155	6
FACTORIZING - CREDIT CARDS 165.074	PROPERTY
FAIL TO APPEAR I 162.205	4
FAIL TO MAINTAIN DRUG RECORDS 475.993(2)(a)	1
FAIL TO REG SEX OFFENDER 181.599	4
FALSE INFO ENVIRONMENT AGENCY 468.953	1
FALSE LAW ENFORCEMENT ID 162.367	3
FALSE STMT MONEY TRANSMISSION 717.905(2)	1
FALSE SWEARING /VEHICLE BUSINESS 822.605	2
FELON IN POSSESSION-BODY ARMOR 166.642	1
FELON IN POSSESSION-FIREARM 166.270	6
FEMALE GENITAL MUTILATION 163.207	8
FILING FALSE HEALTH CARE CLAIM 165.692	6
FIREARMS-ALTER ID MARK 166.450	1
FIREARMS-MANUF/IMPORT/TRANSFER 166.410	6
FIREARMS/UNLAWFUL POSSESSION 166.272	6
FORCIBLE RECOVERY OF FIGHTING BIRD	1
FOOD STAMP FRAUD 411.840	2
FORGED/ALTER VEHICLE TITLE/REG 803.230	1
FORGED INSTRUMENT/POSSESSION-1 165.022	PROPERTY
FORGERY DEVICE/POSSESSION 165.032	4
FORGERY I 165.013	PROPERTY
FRAUD - CREDIT CD (\$1000+) 165.055(3)(a)	PROPERTY
FURNISH FIREARM COMMIT FELONY 166.429	7
GAMBLING FELONIES 167.137	3
HINDERING PROSECUTION 162.325	6
HIT & RUN - INJURY 811.705	8,6*
HIT AND RUN - BOAT 830.475	6
IDENTITY THEFT 165.800	PROPERTY
IDENTITY THEFT - AGGRAVATED 165.803	5
IMPERSONATE OFFICER/JUDGE/JUP 162.365(2)(b)	3
INCEST 163.525	6,1*
INDUCING ATHLETE/CONTRACT 702.032	8,7*
INMATE-POSS FIREARM /WEAPON 166.275	1
INTERFER W/AG RESEARCH 164.889	PROPERTY
INTERFER W/LIVESTOCK PROD 167.388	PROPERTY
INTIMIDATION I 166.165	6
LABELING VIDEOTAPE 164.872	PROPERTY
LABELING SOUND RECORDING 164.868	PROPERTY
LURING A MINOR 167.057	6
MAINTAINING A DANGEROUS DOG 609.990(3)(b)	5
NEGOT BAD CHECK (2D CONV) 165.065	PROPERTY
ONLINE SEX CORRUPT I 163.433/ II 163.432	8/6

Post-Prison Supervision (years)		Crime Seriousness									Probation duration	Dispositional departure maximum sentence
		A	B	C	D	E	F	G	H	I		
3	11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 yrs	
	10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60		
	9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36	OPT PRO	
	8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18		
	7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90	3 yrs	7 F-I 6 F-I 5 F 18 mo
	6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90		
2	5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60	2 yrs	5G-I 4C-I 3A-F 12 mo
	4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60		
	3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30	18 mo	3 G-I 1&2 6 mo
2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30			
1	2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	18 mo	6 mo
	1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30		

ORS 137.700 [MEASURE 11]		
AGG VEHICULAR HOMICIDE 163.149	240	10
ARSON I 164.325 (CS 10 ONLY)	90	10
ASSAULT I 163.185	90	10,9
ASSAULT II 163.175	70	9
ATTEMPTED AGG MURDER 163.095	120	10
ATTEMPTED MURDER 163.115	90	9
COMPPELLING PROSTITUTION 167.017	70	8
KIDNAPPING I 163.235	90/300*	10
KIDNAPPING II 163.225	70	9
MANSLAUGHTER I 163.118	120	10
MANSLAUGHTER II 163.125	75	9,8
MURDER 163.115	300	11
RAPE I 163.375 (1)(a), (1)(c), (1)(d)	100	10,9
RAPE I 163.375 (1)(b)	300	10
RAPE II 163.365	75	8
ROBBERY I 164.415	90	9
ROBBERY II 164.405	70	9
SEXUAL ABUSE I 163.427	75	8
SEXUAL PEN I 163.411 (1)(a), (1)(c)	100	10,9
SEXUAL PEN I 163.411 (1)(b)	300	10
SEXUAL PEN II 163.408	75	8
SODOMY I 163.405 (1)(a), (1)(c), (1)(d)	100	10,9
SODOMY I 163.405 (1)(b)	300	10
SODOMY II 163.395	75	8
USE CHILD DISPLAY SEX 163.670	70	8
ORGANIZED RETAIL THEFT 164.098	4	
ORGANIZE SPEED RACING EVENT 811.127	2	
PARAMILITARY ACTIVITY 166.660	1	
PAYMENT FOR INTERNET GAMBLING 167.109	3	
PERJURY 162.065	6	
POSSESS BODY ARMOR 166.643	6,4*	
POSSESS FAKE COMMUNICATIONS DEVICE 165.070	3	
POSSESS FICTITIOUS ID 165.813	2	
POSSESS FIREARM/ WEAPON IN PUB BLDG 166.370(1)	6	
POSSESS GRAY MACHINE 167.164	2	
POSSESS HOAX DESTRUCT DEVICE 166.385	5	
POSSESS/MANUF DESTRUCT DEVICE 166.382/166.384	6	
POSSESS PERSONAL ID DEVICE 165.810	4	
POSSESS RENTED PROP 164.140(4)	PROPERTY	
POSS SEX EXPLICIT MATERIALS RE CHLD I 163.688/ II 163.689	6/4	
POSSESS STOLEN VEHICLE 819.300	PROPERTY	
PRODUCTION ODOT ID CARDS	2	
PROMOTING A LIVE SEX SHOW 167.062(4)	3	
PROMOTING PROSTITUTION 167.012	8	
PUBLIC ASSISTANCE FRAUD 411.630	2	
PUBLIC INDECENCY 163.465(2)(b)	6	

PUBLIC INVESTMENT FRAUD 162.117	6
PUBLISH CERT OF TITLE 803.080	1
PURCHASE/SALE OF BODY PART 97.981 (ORS CH 681)	5
RAPE III 163.355	6
RECORDING LIVE PERFORMANCE 164.869	PROPERTY
RIOT 166.015	6
ROBBERY III 164.395	5
SEXUAL ABUSE II 163.425	7,8
SIMULATING LEGAL PROCESS 162.355	3
SODOMY III 163.385	6
SOLICITATION 2 BELOW CRIME (MIN CS 1)	8
STALKING (FELONY) 163.732 or 163.750	9,6*
SUBJECT OTHER TO SERVIDUTE I 163.264	5
SUBJECT OTHER TO SERVIDUTE II 163.263	7,6,5,4*
SUPPLY CONTRABAND 162.185	3
TAMPER WITH LOTTERY RECORDS 162.305(2)(b)	6
TAMPERING WITH A WITNESS 162.285	1
TAMPERING WITH DRUG RECORDS 167.212	7, PROPERTY*
THEFT BY EXTORTION 164.075	PROPERTY
THEFT I (\$1000+) 164.055	6, 5*
THEFT I - AGGRAVATED 164.057	PROPERTY
THEFT BY DECEPTION 164.085	7, PROPERTY*
THEFT BY RECEIVING 164.095	PROPERTY
THEFT OF LOST/MISLAID PROPERTY 164.065	PROPERTY
THEFT OF SERVICES 164.125	PROPERTY
THROW OBJECT OFF OVERPASS 166.651	1
TRADEMARK COUNTERFEITING I 647.150/ II 647.145	PROPERTY
TRAFFICKING IN PERSONS 163.266	U
TRAFFICK IN STOLEN VEHICLE 819.310	6,5*
TREE SPIKING-INJURY 164.877(3) & (1)	8,6*
UNLAW USE OF VEHICLE 164.135	PROPERTY
UNLAW ADMINISTRATION OF C.S. 475.910	9,8,5*
UNLAW CONTACT WITH A CHILD 163.479	7
USE OF VITAL RECORD 432.993	1
USE MINOR IN DRUG OFFENSE 167.262	8,4*
USE STUN GUN, TEAR GAS, MACE 1 163.213	6
WEAPON - UNLAWFUL USE 166.220	6
WILDLIFE VIOLATION FEL 496.992(3)	2

Person crime [RED] Drugs [GREEN] Property [BLUE]
* See back of form U-Unranked

Grid by Lane County DA's Office - March 2010
DO NOT REPRODUCE WITHOUT PERMISSION

Property Offenses – Crime Seriousness

	Pers use motor veh	Other property crimes
6		\$50,000+
5		\$10,000+; organized theft by rec.
4	\$10,000+	\$5,000+
3	\$1,000+	\$1000+; theft by rec. (by buying/selling)
2		less than \$1,000

Repeat Property Offenders – ORS 137.717

(HB 3508 suspends M57 property from February 15, 2010 – January 1, 2012)

	Offenses	Criteria
19	Burg I, Agg Theft I, Agg ID Theft USE "A" OR "B" ▶	A: Prior Burg I, Agg Theft I, Rob I, Rob II, Agg ID Theft B: Four or more priors from "E"
13	Burg II, Crim Mischief I, Computer Crime, Forg I, Identity Theft, Poss Stolen Vehicle, Theft I, Traffick Stolen Vehicle, UUV USE "B" OR "C" ▶	C: Prior Agg Theft I, Burg I, Poss Stolen Vehicle, Rob I, Rob II, Trafficking Stolen Vehicle, UUV, or Agg ID Theft
E: Agg Theft I, Burg I, Burg II, Crim Mischief I, Crim Mischief II, Computer Crime, Forgery I, Forgery II, FUCC, Identity Theft, Poss Forged Instrument I, Poss Forged Instrument II, Poss Stolen Vehicle, Theft I, Theft II, Trafficking Stolen Vehicle, UUV		

AIP Eligibility ORS 137.751

Prohibited: M11 crimes; Agg Murder; Sex crimes, including attempts (as defined in ORS 181.595(4)). Stipulation Required: Crim Neg Hom; Assault III (163.165(a) or (b)); Incest; Felony Hit & Run ORS 811.705(2)(b). Without the stipulation of the parties, the court must find (after a hearing) **ALL** of the following: **1)** D not being sentenced for a prohibited crime/ a crime for which a stipulation is required; **2)** At the time of commission of current crime, D was not on probation, parole, PPS for any offense listed in ORS 137.712(4) or ORS 811.705(2)(b); **3)** D not previously released on PPS under ORS 421.508(4) (prior AIP); **4)** Harm/ loss caused is not greater than usual for type of crime; **5)** Crime not part of organized criminal operation; **AND 6)** After considering nature of offense/ harm to V, D's successful completion of program would a) increase public safety, b) enhance the likelihood that D be rehabilitated; and c) not unduly reduce the appropriate punishment.

Departure Sentences OAR 213-008-0002(1)(a)-(b)

AGGRAVATING FACTORS: 1) Deliberate cruelty; 2) Vulnerable V; 3) Threat of actual violence 4) Persistent involvement unrelated to current crime; 5) Use of a weapon 6) Violation of public trust/ professional responsibility; 7) Multiple Vs or incidents, unrelated to current crime; 8) Organized criminal operation; 9) Permanent injury to V; 10) Harm/ loss significantly greater than typical; 11) Motivated entirely/in part by V's race, color, nat origin, sex orientation. (Non-Exclusive List)

MITIGATING FACTORS: 1) V was an aggressor/ participant in criminal conduct; 2) D acted under duress/ compulsion; 3) Diminished mental capacity (excluding drugs or alcohol); 4) Offense principally accomplished by another and D exhibited extreme caution or concern for V; 5) D played a minor or passive role; 6) D cooperated with the state; 7) Degree of harm/ loss attributed to the current crime of conviction was significantly less than typical; 8) D conviction free for a significant period of time; 9) Same as optional probation criteria. (Non-Exclusive List)

Optional Probation OAR 213-005-0006

If offense classified in GB 8 G, H or I the court may impose opt pro upon making following specific findings on the record: **1)** An appropriate treatment program is likely to be more effective than presumptive prison term in reducing the risk of offender recidivism; **2)** The recommended treatment program is available and the offender can be admitted to it within a reasonable period of time; **and 3)** The probationary sentence will serve community safety interests by promoting offender reformation. *This option is not available if:* 1) A firearm was used in the commission of the offense; or 2) if the offender was under supervision for a felony, or juvenile felony adjudication; or 3) for MCS/meth (substantial quantity); or 4) repeat meth offenders. (see box)

Determinate Sentences ORS 137.635-7

If D is convicted of Murder, Man I, Assault I, Kidnapping I, Rape I, Sodomy I, Sexual Penetration I, Burg I, Arson I, or Rob I, **and** has been convicted of any one of the above named crimes, then the defendant must receive a determinate DOC sentence. D not eligible for probation. (The sentencing judge must indicate that sentence is a 137.635 sentence in the sentencing order.)

Commercial Drug Offense Factors 475.900

ANY THREE OR MORE OF THE FOLLOWING:

- a) for consideration
- b) poss \$300+ cash
- c) stolen property
- d) dangerous security
- e) packaging materials
- f) modification of structure
- g) drug records
- h) > 3g heroin, 8g cocaine/meth/hash, 110g marijuana, 10g psilocybin/psilocyn, 20 units LSD; 4g/20 pills ecstasy
- i) weapon use/ex-con in poss
- j) manufacturing paraphernalia
- k) public land use for MCS

CRIME SERIOUSNESS ("CS") CATEGORIES

Abandonment of Child: CS7 if child placed in immediate danger by defendant's conduct; otherwise CS3. **Agg. Theft I:** CS6 if value of property is \$50K/+; CS8 if value of property is \$10K/+ and victim is 65+ years old at time of offense; otherwise CS5. **Arson I:** CS10 if offense represented threat of serious physical injury; CS9 w/\$50K/+ and no threat of serious physical injury; CS8 if \$25K/+ and no threat of serious physical injury; otherwise C7. **Assault I:** CS10 if victim did not substantially contribute to the commission of offense by precipitating the crime; otherwise CS9. **Assault III:** CS8 if injury by motor vehicle and DUII; otherwise CS6. **Burglary I:** CS9 if armed with deadly weapon; or caused/ threatened/ attempted physical injury to victim; CS8 if dwelling occupied; otherwise CS7. **Buying/ Selling Custody of a Minor:** CS8 if conduct likely to endanger the health or welfare of child; otherwise CS5. **Cause Another to Ingest C.S.:** CS9 if with intent to commit/facilitate crime of violence; otherwise CS8. **Coercion:** CS7 if defendant threatened physical injury; otherwise CS6. **Crim Neg Hom:** CS9 if DUII; otherwise CS8. **Distribute C.S. to Minor:** CS9 if any of following 1) cocaine, meth, heroin, ecstasy and offender is 3/+ years older than minor; 2) previous conviction for UDCS to minor; CS8 if marijuana and offender 3/+ years older than minor; otherwise per ORS 475.900. **Hit & Run:** CS8 if death or serious injury; otherwise CS6. **Incest:** CS6 if one of participants is less than 18; otherwise CS1. **Inmate Poss Weapon:** CS8 if firearm; otherwise CS7. **Kidnapping I:** 300 mo if in furtherance of the commission or attempted commission of Rape I, Sodomy I or Sexual Penetration I and victim is under 12. **Manslaughter II:** CS9 if DUII; otherwise CS8. **Possess Body Armor:** CS6 if offender committed person felony or violent misdo; otherwise CS4. **Rape I/Sodomy I/Sexual Penetration I:** CS10 if any of the following: 1) offender used or threatened use of weapon; 2) offender caused/threatened serious physical injury; 3) victim under 12; 4) victim incapable of consent because of mental defect, incapacitation, physical helplessness; otherwise CS9. **Sex Abuse II:** CS8 if V incapable of consent because under age 18, offender is 21 +, and offender was victim's coach prior to offense; otherwise CS7. **Stalking:** CS8 if prior conviction for stalking; otherwise A misdo. **Subjecting Person to Servitude I:** CS9 if causing or threatening death or serious phys injury; otherwise CS6. **Supplying Contraband:** CS7 if firearm; CS6 if dangerous weapon; CS5 if controlled substance; otherwise CS4. **Theft By Extortion:** CS7 if defendant threatened physical injury; otherwise property crime. **Theft by Receiving:** CS7 if acting as part of an organized fencing operation; otherwise property crime. **Trafficking In Stolen Vehicles:** CS6 if any of the following: a) organized operation; or b) value of property \$50K/+; otherwise CS5. **Tree Spiking:** CS8 if spiking results in serious physical injury to someone; otherwise CS6. **Unlawful Admin. of C.S.:** CS9 if schedule I or II; CS8 if schedule III; CS5 if schedule IV. **Use Minor in Drug Offense:** CS8 if offender more than 3 years older than minor; otherwise CS4.

Drug Offenses – Crime Seriousness

10	DCS/MCS mixture/ substance containing: 500/+ g cocaine; 500/+ g meth, salts, isomers, isomer salts; 100/+ g heroin; 100/+ g or 500/+ pills, tablets, capsules ecstasy
9	DCS/ MCS mixture/ substance containing: 100/+ g cocaine; 100/+ g meth, salts, isomers, isomer salts; 50/+ g heroin; 50/+ g or 250/+ pills, tablets, capsules ecstasy DCS cocaine, meth, heroin, ecstasy to minor, if: Offender is 3+ yrs older than minor, or Prior conviction for UDCS cocaine, meth, heroin, ecstasy to minor
8	DCS/MCS substantial quantity MCS/DCS/PCS commercial drug offense MCS/DCS within 1000 ft of school MCS meth DCS marijuana to minor and offender is 3+ yrs older than minor DCS Schedule I, II, or III to minor
6	DCS cocaine, meth, heroin, ecstasy for consideration PCS precursor sub. w/intent to manufacture PCS substantial quantity
4	All other MCS/DCS
1	All other PCS

Repeat Meth Offenders – ORS 475.935

Offenses	Departure Limitations/ Presumptive
MCS Meth ORS 475.866/ 475.888	- if prior from "F", the court may not impose opt prob or grant a downward dispositional departure or a downward durational departure imposing less than ½ presumptive prison sentence
DCS Meth ORS 475.890/ 475.892	- if two or more priors from "F", presumptive 19 mo sentence - if delivery involved a substantial quantity and prior from "F", the court may not impose opt prob or grant downward dispositional departure.
F: DCS Meth, MCS Meth, DCS/ MCS Meth w/in 1000 ft of school, PCS precursor substance with intent to manufacture	

Controlled Substances Substantial Quantities 475.900

COCAINE/METH - 10g; MARIJUANA - 150g; HASH - 100g; LSD - 200 units; HEROIN - 5g; PSILOCYN/PSILOCYBIN - 60g; ECSTASY - 5g or 25 pills

Sentencing grid available from Lane County District Attorney's Office -- 125 E. 8th Avenue, Eugene, OR 97401 -- (541) 682-4261

DO NOT REPRODUCE WITHOUT PERMISSION – MARCH 2010

Appendix D: Text of Selected Statutes

Criminal Statutes

Or. Rev. Stat. §163.266

- (1) A person commits the crime of trafficking in persons if the person knowingly:
 - (a) Recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person knowing that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264; or
 - (b) Benefits financially or receives something of value from participation in a venture that involves an act prohibited by this section or ORS 163.263 or 163.264.
- (2) Trafficking in persons is a Class B felony.

Or. Rev. Stat. §163.264

- (1) A person commits the crime of subjecting another person to involuntary servitude in the second degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:
 - (a) Abusing or threatening to abuse the law or legal process;
 - (b) Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
 - (c) Threatening to report a person to a government agency for the purpose of arrest or deportation;
 - (d) Threatening to collect an unlawful debt; or
 - (e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.
- (2) Subjecting another person to involuntary servitude in the second degree is a Class C felony.

Or. Rev. Stat. §163.261

As used in ORS 163.263 and 163.264, “services” means activities performed by one person under the supervision or for the benefit of another person.

Or. Rev. Stat. §167.017

- (1) A person commits the crime of compelling prostitution if the person knowingly:
 - (a) Uses force or intimidation to compel another to engage in prostitution; or
 - (b) Induces or causes a person under 18 years of age to engage in prostitution; or
 - (c) Induces or causes the spouse, child or stepchild of the person to engage in prostitution.
- (2) Compelling prostitution is a Class B felony.

H.B. 3623: “Trafficking Hotline Bill” or the “Sticker Bill”
2010 Oregon Laws 1st Sp. Sess. Ch. 65

SECTION 1.

(1) As used in this section, 'tax exempt' means recognized as tax exempt under section 501(c) of the Internal Revenue Code.

(2) A tax exempt nonprofit organization may supply to the Oregon Liquor Control Commission copies of informational materials regarding human trafficking. The organization may not charge the commission for the materials. The form of the materials may include, but need not be limited to, adhesive stickers. The materials may not include information on topics other than human trafficking. The materials must be limited in content to objectively verifiable information, except that the materials may include logos, symbols, graphics or similar devices and may include a cover letter to commission licensees urging the posting of stickers or other materials at the premises licensed by the commission.

(3) Except as provided in this subsection, if a tax exempt nonprofit organization supplies the commission with informational materials described in subsection (2) of this section, the commission shall include a copy of the materials with each license renewal notice that the commission sends to an on-premises sales, off-premises sales or brewery-public house licensee. The number of copies of the materials that the commission sends to licensees may not exceed the number of copies that the organization supplies to the commission. If the commission determines that the informational materials have offensive or inappropriate content, the commission may refuse to include the materials with license renewal notices or to otherwise assist in distribution of the materials.

SECTION 2. { + Section 1 of this 2010 Act applies to license renewal notices that the Oregon Liquor Control Commission sends to licensees on or after the effective date of this 2010 Act and before January 1, 2012. + }

SECTION 3. { + Section 1 of this 2010 Act is repealed January 2, 2012. + }

SECTION 4. { + This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage. + }

Or. Rev. Stat. § 192.822 (2009): Address Confidentiality Bill

192.820 Definitions for ORS 192.820 to 192.868. As used in ORS 192.820 to 192.868:

(1) “Actual address” means:

(a) A residential, work or school street address of an individual specified on the application of the individual to be a program participant; or

(b) The name of the county in which the program participant resides or the name or number of the election precinct in which the program participant is registered to vote.

(2) “Address Confidentiality Program” means the program established under ORS 192.822.

(3) “Application assistant” means an employee of or a volunteer serving a public or private entity designated by the Attorney General under ORS 192.854 to assist individuals with applications to participate in the Address Confidentiality Program.

(4) “Program participant” means an individual accepted into the Address Confidentiality Program under ORS 192.820 to 192.868.

(5) “Public body” has the meaning given that term in ORS 174.109.

(6) “Public record” has the meaning given that term in ORS 192.410.

(7) “Substitute address” means an address designated by the Attorney General under the Address Confidentiality Program.

(8) “Victim of a sexual offense” means:

(a) An individual against whom a sexual offense has been committed, as described in ORS 163.305 to 163.467, 163.427, 163.466 or 163.525; or

(b) Any other individual designated by the Attorney General by rule.

(9) “Victim of domestic violence” means:

(a) An individual against whom domestic violence has been committed, as defined in ORS 135.230, 181.610 or 411.117;

(b) An individual who has been a victim of abuse, as defined in ORS 107.705; or

(c) Any other individual designated a victim of domestic violence by the Attorney General by rule.

(10) “Victim of human trafficking” means:

(a) An individual against whom an offense described in ORS 163.263, 163.264 or 163.266 has been committed; or

(b) Any other individual designated by the Attorney General by rule. In adopting rules under this subsection, the Attorney General shall consider individuals against whom an act recognized as a severe form of trafficking in persons under 22 U.S.C. 7102 has been committed.

(11) “Victim of stalking” means:

(a) An individual against whom stalking has been committed, as described in ORS 163.732; or

(b) Any other individual designated by the Attorney General by rule. [2005 c.821 §1; 2007 c.542 §1; 2009 c.11 §18; 2009 c.468 §1]

Note: 192.820 to 192.868 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 192 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

192.822 Address Confidentiality Program; substitute addresses. (1) The Address Confidentiality Program is established in the Department of Justice to:

(a) Protect the confidentiality of the actual address of a victim of domestic violence, a sexual offense, stalking or human trafficking; and

(b) Prevent assailants or potential assailants of the victim from finding the victim through public records.

(2) The Attorney General shall designate a substitute address for a program participant and act as the agent of the program participant for purposes of service of all legal process in this state and receiving and forwarding first-class, certified or registered mail.

(3) The Attorney General is not required to forward any packages or mail other than first-class, certified or registered mail to the program participant.

(4) The Attorney General is not required to track or otherwise maintain records of any mail received on behalf of a program participant unless the mail is certified or registered. [2005 c.821 §2; 2009 c.468 §2]

Note: See note under 192.820.

Dependency Statutes

O.R.S. § 419B.100—Juvenile Court Jurisdiction, Dependency Proceedings

(1) Except as otherwise provided in subsection (6) of this section and ORS 107.726, the juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:

- (a) Who is beyond the control of the person's parents, guardian or other person having custody of the person;
- (b) Whose behavior is such as to endanger the welfare of the person or of others;
- (c) Whose condition or circumstances are such as to endanger the welfare of the person or of others;
- (d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for the best interest of the person;
- (e) Whose parents or any other person or persons having custody of the person have:
 - (A) Abandoned the person;
 - (B) Failed to provide the person with the care or education required by law;
 - (C) Subjected the person to cruelty, depravity or unexplained physical injury; or
 - (D) Failed to provide the person with the care, guidance and protection necessary for the physical, mental or emotional well-being of the person;
- (f) Who has run away from the home of the person;
- (g) Who has filed a petition for emancipation pursuant to ORS 419B.550 to 419B.558; or
- (h) Who is subject to an order entered under ORS 419C.411 (7)(a).

(2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having physical custody of the child.

(3) The practice of a parent who chooses for the parent or the child of the parent treatment by prayer or spiritual means alone may not be construed as a failure to provide physical care within the meaning of this chapter, but does not prevent a court of competent jurisdiction from exercising that jurisdiction under subsection (1)(c) of this section.

(4) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.

(5) The court does not have further jurisdiction as provided in subsection (1) of this section after a minor has been emancipated pursuant to ORS 419B.550 to 419B.558.

(6)(a) An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.

(b) Upon the petition of either parent, the Indian custodian or the Indian child's tribe, the juvenile court, absent good cause to the contrary and absent objection by either parent, shall transfer a proceeding for the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe, to the jurisdiction of the tribe.

(c) The juvenile court shall give full faith and credit to the public acts, records and judicial proceedings of an Indian tribe applicable to an Indian child custody proceeding to the same extent that the juvenile court gives full faith and credit to the public acts, records and judicial proceedings of any other entity.

O.R.S. § 419B.875—Parties to a Dependency Proceeding

(1)(a) Parties to proceedings in the juvenile court under ORS 419B.100 and 419B.500 are:

(A) The child or ward;

(B) The parents or guardian of the child or ward;

(C) A putative father of the child or ward who has demonstrated a direct and significant commitment to the child or ward by assuming, or attempting to assume, responsibilities normally associated with parenthood, including but not limited to:

(i) Residing with the child or ward;

(ii) Contributing to the financial support of the child or ward; or

(iii) Establishing psychological ties with the child or ward;

(D) The state;

(E) The juvenile department;

(F) A court appointed special advocate, if appointed;

(G) The Department of Human Services or other child-caring agency if the agency has temporary custody of the child or ward; and

(H) The tribe in cases subject to the Indian Child Welfare Act if the tribe has intervened pursuant to the Indian Child Welfare Act.

(b) An intervenor who is granted intervention under ORS 419B.116 is a party to a proceeding under ORS 419B.100. An intervenor under this paragraph is not a party to a proceeding under ORS 419B.500.

(2) The rights of the parties include, but are not limited to:

(a) The right to notice of the proceeding and copies of the petitions, answers, motions and other papers;

(b) The right to appear with counsel and, except for intervenors under subsection (1)(b) of this section, to have counsel appointed as otherwise provided by law;

(c) The right to call witnesses, cross-examine witnesses and participate in hearings;

(d) The right of appeal; and

(e) The right to request a hearing.

(3) A putative father who satisfies the criteria set out in subsection (1)(a)(C) of this section shall be treated as a parent, as that term is used in this chapter and ORS chapters

419A and 419C, until the court confirms his paternity or finds that he is not the legal or biological father of the child or ward.

(4) If no appeal from the judgment or order is pending, a putative father whom a court of competent jurisdiction has found not to be the child or ward's legal or biological father or who has filed a petition for filiation that was dismissed is not a party under subsection (1) of this section.

(5)(a) A person granted rights of limited participation under ORS 419B.116 is not a party to a proceeding under ORS 419B.100 or 419B.500 but has only those rights specified in the order granting rights of limited participation.

(b) Persons moving for or granted rights of limited participation are not entitled to appointed counsel but may appear with retained counsel.

(6) If a foster parent, preadoptive parent or relative is currently providing care for a child or ward, the Department of Human Services shall give the foster parent, preadoptive parent or relative notice of a proceeding concerning the child or ward. A foster parent, preadoptive parent or relative providing care for a child or ward has the right to be heard at the proceeding. Except when allowed to intervene, the foster parent, preadoptive parent or relative providing care for the child or ward is not considered a party to the juvenile court proceeding solely because of notice and the right to be heard at the proceeding.

(7) When a legal grandparent of a child or ward requests in writing and provides a mailing address, the Department of Human Services shall give the legal grandparent notice of a hearing concerning the child or ward and the court shall give the legal grandparent an opportunity to be heard. Except when allowed to intervene, a legal grandparent is not considered a party to the juvenile court proceeding solely because of notice and an opportunity to be heard.

(8) Interpreters for parties and persons granted rights of limited participation shall be appointed in the manner specified by ORS 45.275 and 45.285.



Appendix E: Oregon's Policy on State and Local Law Enforcement Officials' Legal Obligations Regarding Federal Immigration Enforcement, sent out March 22, 2010.

DEPARTMENT OF JUSTICE
CRIMINAL JUSTICE DIVISION

Oregon Association of Chiefs of Police
Oregon District Attorneys Association
Oregon State Sheriffs Association

Re: Oregon Revised Statute 181.850: Enforcement of Federal Immigration Laws

Dear ____:

The Attorney General has asked me to remind you of your legal obligations under ORS 181.850. Law enforcement officials should be mindful that ORS 181.850 prohibits expenditure of state or local law enforcement resources “for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.” This statute prohibits the use of state agency money, equipment and personnel solely to enforce federal immigration laws. Consequently, state and local law enforcement officials must not let collaboration with federal agencies evolve into conduct prohibited by ORS 181.850.

There are limited exceptions to this statute. The statute permits law enforcement officials to exchange information with federal immigration agencies to verify the immigration status of arrested persons. ORS 181.850(2). ORS 181.850(3) also permits law enforcement agencies to arrest persons for violation of federal immigration laws only if a federal magistrate issued the arrest warrant. Additionally, in *State v. Rodriguez*, 317 Or 27, 32 (1993) the Oregon Supreme Court held that nothing in the statute “prohibits state officers whose purpose is to determine whether any state law has been violated” from accompanying a federal immigration official to arrest a deportable alien.

However, I recommend strict adherence to the statutory obligations set forth in ORS 181.850. Law enforcement officials should take precautions to not allow contact with illegal aliens to fall under the prohibited conduct of ORS 181.850.

Sincerely,

Sean J. Riddell
Chief Counsel
Criminal Justice Division