Human Trafficking in the United States: A Perspective on Domestic Legislation at the Federal and State Levels

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“We will have an unchallenged, open, panoramic opportunity on a global scale to demonstrate the finest aspects of what we know in this country: peace, freedom, democracy, human rights, benevolent sharing, love, the easing of human suffering. Is that going to be our list of priorities or not?”

Introduction

Twenty-five year old Lisa walks into my office one day and tells me she has been a victim of human sex trafficking. Lisa grew up in a rural area of Mexico. She was poor, unemployed, and had practically no education. Eventually, she met a group of men who promised her a better life in America. One of these men even promised to marry her upon arriving in the United States, enticing her that much more. After illegally crossing the border with these men, neither legitimate employment nor a better life was waiting for Lisa. The men told her she was in debt to them for traveling expenses, and would be forced into prostitution. Lisa was held against her will and intimidated with verbal and physical abuse. Lisa was monitored by the men during the day and taken to various hotels for prostitution at night.

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2 The facts of Lisa’s story are based off of U.S. v. Cortez-Meza, 411 F. App’x 284 (11th Cir. 2011). The names and location of the incident have been changed, but the relevant facts remain the same.

3 Cortez-Meza, 411 F. App’x at 286.

4 Id.

5 Id.

6 Id.

7 Id.

8 Id.

9 Id.

10 Id.
tells me she was sold for $25 per fifteen minute session. At times, she was required to service over twenty clients a night. When Lisa objected, the men threatened to call her father and tell him she was now a prostitute. As her potential attorney, Lisa asks me, “What can I do?”

Sadly, Lisa’s story is not unique. Human trafficking is on the rise in the United States. Between January 2008 and June 2010, there were 2,515 suspected incidents of human trafficking in America. Approximately eight in ten incidents are classified as sex trafficking, while one in ten are labor trafficking. However, these statistics present a skewed landscape because they represent only confirmed incidents of human trafficking. As Professor Susan Tiefenbrun remarks, “[s]tatistics on trafficking are unreliable and difficult to verify because of the secrecy of the sex trafficking industry and the social stigma attached to sexual activity.” It is estimated that primarily women and children, between 14,500 to 17,500 people, are trafficked to the U.S. each year. More troubling is the number of American youths who are at risk of becoming victims of sex trafficking. According to the U.S. Department of Health and Human Services, “between 244,000 and 325,000 American youth are considered at risk for sexual exploitation.”

Emphasis is usually placed on the international level regarding the atrocities of human trafficking. Therefore, this Note will focus on trafficking at the domestic level, particularly human sex trafficking. First, this Note will provide a definition of human trafficking used at the international and domestic levels. Second, it will address legislation at the domestic level by examining federal legislation and state legislation viewed through a regional lens. Third, the

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11 Id.
12 Id.
13 Id.
15 Id.
16 Id.
17 Id.
21 Id.
22 Brief comparisons to international principles will be used in order to highlight the problem of human trafficking at the domestic level.
23 The regional lens will encompass legislation from Pennsylvania, New Jersey and Delaware.
shortcomings of existing federal legislation will be explored. Finally, this Note will explain what additional steps need to be taken domestically so that victims such as Lisa can receive the justice they rightfully deserve.

I. WHAT IS HUMAN TRAFFICKING?

A. Definition of Human Trafficking Used at the International Level

A lay definition of trafficking is a practical starting point. Trafficking can be defined as “concentrating one’s efforts or interests; to trade or barter.”\(^\text{24}\) Expounding upon this basic concept is the legal definition of human trafficking: “the illegal recruitment, transportation, transfer, harboring, or receipt of a person, esp. one from another country, with the intent to hold the person captive or exploit the person for labor, services, or body parts.”\(^\text{25}\) The United Nations Office on Drugs and Crime provides a comprehensive definition used at the international level.\(^\text{26}\) Article III of The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons defines human trafficking as:

[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.\(^\text{27}\)

This modern definition of human trafficking contains broad terms, such as force or fraud, to describe how a victim is trafficked.\(^\text{28}\) Furthermore, “victims do not need to be transported across


\text{\footnotesize \(25\) BLACK’S LAW DICTIONARY (9th ed. 2009).}


\text{\footnotesize \(27\) Id.}

\text{\footnotesize \(28\) CLAWSON ET AL., supra note 20, at 3.}
international or other boundaries in order for trafficking to exist.”

Congress expanded upon this definition of human trafficking at the domestic level.

B. Definition at the Domestic Level – Two Categories of Severe Trafficking

Congress divides severe human trafficking into two distinct categories: sex trafficking and labor trafficking. Sex trafficking is defined as “the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person forced to perform such an act is under the age of 18.” Moreover, “a commercial sex act means any sex act on account of which anything of value is given to or received by any person.” Labor trafficking is defined “as the recruitment, harboring, transportation, provision or obtaining of a person for labor services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”

Trafficking arises in settings such as: “domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.” This paper’s focus is on the latter aspect of severe trafficking as a form of modern day slavery.

C. Victims of Sex Trafficking

Sex trafficking victims are more likely to be White (26%) or Black (40%). More startling, however, is that “four-fifths of victims in confirmed sex trafficking incidents were identified as U.S. citizens (83%).”

Although trafficking occurs internationally and

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29 Id.  
31 Id.  
33 Id.  
34 Id. at 3-4.  
35 Id. at 4.  
36 BANKS ET AL., supra note 14, at 1. In contrast, victims of labor trafficking were more likely to be Hispanic (63%) or Asian (17%).  
37 Id. Conversely, labor trafficking victims were identified as undocumented aliens (67%) or qualified aliens (28%).
domestically, the victims share very similar characteristics. Most traffickers take advantage of an individual’s vulnerability.

Traffickers prey on those with few economic opportunities and those struggling to meet basic needs. Traffickers take advantage of the unequal status of women and girls in disadvantaged countries and communities, and capitalize on the demand for cheap, unprotected labor and the promotion of sex tourism in some countries. Victims of human trafficking, both international and domestic, share other characteristics that place them at risk for being trafficked. These include poverty, young age, limited education, lack of work opportunities, lack of family support (e.g., orphaned, runaway/throwaway, homeless, family members collaborating with traffickers), history of previous sexual abuse, health or mental health challenges, and living in vulnerable areas (e.g., areas with police corruption and high crime).

Additionally, trafficking victims are stereotyped as passive victims of sexual exploitation. International victims “are also unfamiliar with the language and culture of the United States – especially when traffickers constantly move them within a nationwide network of brothels to keep them isolated and disoriented.” Furthermore, victims of sex trafficking are frequently classified as malnourished and hungry.

D. Mechanisms Traffickers Employ to Entice their Victims

Traffickers typically hoodwink international victims into the United States by promising a better life and greater economic opportunities. The majority of international victims come from poor nations where there is prevalent organized crime, violence against women and children, and government corruption with political instability and armed conflict. Additionally, traffickers “recruit women in clubs by drugging them and then using the drug or alcohol dependency to maintain control over the victims.” Moreover, these victims often suffer further abuse from traffickers when traveling documents are destroyed, families are threatened with

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38 CLAWSON ET AL., supra note 20, at 7 (providing a comprehensive list of traits).
39 Id.
40 Id. (citations omitted).
43 Id.
44 CLAWSON ET AL., supra note 20, at 8.
45 Id. at 7 (citations omitted).
harm, or victims are bonded with debt they cannot repay.47 Victims who are subject to physical and psychological abuse from their traffickers often develop “severe physical disabilities, drug addictions and mental health problems, such as rape trauma, post-traumatic stress disorder, depression, and memory loss.”48

Individuals trafficked domestically are typically minors.49 Statistically, minors comprise about half of the estimated 600,000-800,000 yearly victims of human trafficking across international borders.50 The most susceptible victims are runaway youth and minors.51 However, the domestic statistics are not nearly as comprehensive or reliable as statistics referencing the number of women trafficked into the United States.52 Moreover, minors are not the only segment of the population who are at risk.53 For example, the Department of Justice concluded that “nearly half of all [trafficking] incidents investigated between January 1, 2008 and June 30, 2010, involved allegations of adult prostitution (48%).”54 Since the statistics do not paint a full picture of the issue of human trafficking within the United States,55 it is imperative to analyze the domestic legislation used to combat it.

II. DOMESTIC LEGISLATION

A. Federal Legislation – The Trafficking Victims Protection Act

Human trafficking is often called “modern day slavery.”56 The master-slave relationship is the defining characteristic of “antebellum” slavery, wherein the “master had the power to deny those facets of life that constitute essential attributes of personhood and thereby transform persons into little more than property.”57 Elements of the antebellum slavery ideology, which

47 CLAWSON ET AL., supra note 20, at 8 (citation omitted).
48 Nack, supra note 46, at 824.
49 CLAWSON ET AL., supra note 20, at 4.
50 Id.
51 Id. at 4-5.
52 Id. at 5.
53 Id.
54 BANKS ET AL., supra note 14, at 3.
55 Id.
56 CLAWSON ET AL., supra note 32, at 4.
57 Nidhi Kumar, Note, Reinforcing Thirteenth and Fourteenth Amendment Principles in the Twenty-First Century: How to Punish Today’s Masters and Compensate Their Immigrant Slaves, 58 RUTGERS L. REV. 303, 308
dominated the southern states before and during the Civil War, continue in some aspects of American society today. For instance, traffickers, functioning as de facto masters by taking away victims’ passports, forbid communication with other people, and frequently deny medical treatment to intentionally isolate victims.

The Thirteenth Amendment can be thought of as the starting point to fighting modern day slavery. This reconstruction amendment was ratified by the states on December 6, 1865. Section I of the Thirteenth Amendment formally abolished slavery stating “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” Section II of the amendment is the enforcement mechanism wherein “Congress [has the] power to enforce this article by appropriate legislation”, thus, armed with the authority to pass laws necessary and proper for abolishing slavery.

Congress enacted its first piece of federal legislation to combat sex trafficking in 2000. The Trafficking Victims Protection Act (“TVPA”) was enacted to eradicate the evils of human trafficking at the domestic level. The purposes of this Act are “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.” Prior to the adoption of the TVPA, no comprehensive law existed to penalize the range of offenses involved in trafficking. The TVPA is a three-pronged piece of legislation that addresses prevention, prosecution, and protection. The Presidential-level interagency task force (“Task Force”), which includes the Secretaries of State, Labor, and Health and Human

(2005) (quoting Baher Azmy, Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda, 71 FORDHAM L. REV. 981, 995 (2002)).

58 Id.
59 Id.
61 U.S. CONST. amend. XIII, § 1.
63 See generally Trafficking Victims Protection Act, 22 U.S.C. §§ 7101-7200 (2000); see also U.S. CONST. art. I, § 8, cl. 18 (Necessary and Proper clause).
65 § 7101(a).
66 § 7101(b)(14).
67 § 7103(d)(2).
Services, as well as the Attorney General and other high-level federal officials, enforces these objectives. Therefore, it is imperative to discuss each prong individually.

i. The Prevention Prong of TVPA

The TVPA requires the elite Task Force to complete a number of requirements in order to prevent the trafficking of persons. The Task Force is responsible for measuring and evaluating the progress of the United States and other countries in eliminating trafficking. Additionally, it is charged with collecting and organizing data, which requires “significant research and resource information on domestic and international trafficking.” The State Department then “issue[s] an annual report on the anti-trafficking efforts of foreign countries,” as required by the TVPA. This report contains a list of countries who fully comply with the minimum standards set forth by the TVPA. Moreover, the annual report also contains lists of countries that have not yet fully complied with TVPA standards but are making significant efforts to be in compliance, as well as those countries which are not making significant efforts to comply with the TVPA. The Task Force uses the data to “establish and implement international initiatives . . . includ[ing] micro-lending programs, job training and counseling, educational programs, public awareness programs, and grants to non-governmental organizations (NGOs).” Any country that fails to “comply with minimum standards for the elimination of trafficking” and does “not mak[e] significant efforts to bring itself into compliance with such standards” is ineligible to receive “nonhumanitarian, nontrade-related foreign assistance” from the United States.

Intuitively, the prevention prong of TVPA is designed to prevent human trafficking domestically. The TVPA also attempts to mitigate the problem internationally. Because the

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70 § 7103(d)(2).
71 § 7103(d)(3).
72 Srikantiah, supra note 41, at 174.
73 § 7107(b)(1)(A).
74 § 7107(b)(1)(B), (C).
75 Clawson et al., supra note 32, at 5.
76 § 7107(a)(1)-(2).
77 §§ 7103, 7104, 7107.
78 Id.
TVPA is advocated as a “victim-centric” piece of legislation, the prosecution and protection prongs are the most pivotal parts of this legislation.\textsuperscript{79}

\textit{ii. The Prosecution Prong of TVPA}

The TVPA provides various crimes under which traffickers may be prosecuted.\textsuperscript{80} For example, it punishes crimes for sex trafficking children, forced labor, and confiscating passports of victims or other documents in furtherance of a trafficking scheme.\textsuperscript{81} Most importantly, the TVPA “extended the definition of involuntary servitude to include non-violent coercion such as psychological coercion.”\textsuperscript{82} This is significant because it overrules the Supreme Court’s decision in \textit{United States v. Kozminski}, which held that “violations of involuntary servitude must include threats or acts of physical or legal coercion.”\textsuperscript{83} Furthermore, the burden of proof has been lowered by the most recent version of the TVPA for individuals accused of sex trafficking.\textsuperscript{84} The \textit{mens rea} has been amended from “knowledge” to “reckless disregard” for those “defendants who come into contact with victims forced to engage in commercial sex acts.”\textsuperscript{85} This provision, however, only applies to the component relating to minor victims of sex trafficking.\textsuperscript{86} The Act uses the “reckless disregard” standard for “offsite brothel landlords who have not had reasonable opportunity to observe the victims.” Thus, the Act permits “ancillary supporters of trafficking to be convicted if they were willfully blind to the minor status of the victims engaged in commercial sex.”\textsuperscript{87} This change to TVPA is substantial because it makes the burden of proof less stringent for offenders who claim to have no knowledge of a minor’s age.\textsuperscript{88}

Additionally, the TVPA provides harsh penal punishments for individuals convicted of human trafficking.\textsuperscript{89} Defendants convicted of crimes involving trafficking are punishable by a

\textsuperscript{79} See 22 U.S.C. §§ 7101-7200 (2000). Because TVPA provides benefits to victims of severe trafficking while not criminalizing those subjected to human trafficking within America’s borders, it can be classified as a victim oriented piece of federal legislation.


\textsuperscript{82} CLAWSON ET AL., \textit{supra} note 32, at 5.


\textsuperscript{85} Id.


\textsuperscript{87} Id.

\textsuperscript{88} Id.

\textsuperscript{89} Srikantiah, \textit{supra} note 41, at 173.
twenty year sentence, or life for cases of sex trafficking in children under fourteen.\textsuperscript{90} Moreover, “if death resulted from the incident, or if the violation included kidnapping and/or aggravated sexual abuse, the defendant could be imprisoned for any term of years up to life.”\textsuperscript{91} Additionally, those found guilty pursuant to the “reckless disregard” standard of a minor’s age face a mandatory minimum sentence of 10 to 15 years.\textsuperscript{92}

The TVPA also contains harsh economic penalties for those found guilty of human trafficking.\textsuperscript{93} Arguably, the greatest deterrent effect of TVPA is the mandatory provision requiring restitution to victims.\textsuperscript{94} The restitution “must be for the ‘full amounts of the victim’s losses,’ plus the greater of the value of the victim’s services or minimum wage under the Fair Labor Standards Act.”\textsuperscript{95} Moreover:

\begin{quote}
[t]he “full amount of victim’s losses” as defined by section 2259(b)(3) includes medical services related to physical, psychiatric, or psychological care, physical or occupational therapy or rehabilitation, necessary transportation, temporary housing, child care expenses, lost income, attorney’s fees, as well as other costs incurred, and any other losses incurred by the victim as a proximate result of the offense.”\textsuperscript{96}
\end{quote}

Beyond the monetary gain to victims, they may also be eligible for various benefits.\textsuperscript{97}

\textit{iii. The Protection Prong of the TVPA}

The TVPA provides additional protections to individuals who qualify as victims of severe trafficking.\textsuperscript{98} It expressly states that victims “should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without...
If a victim is afforded protections under the TVPA, she may be provided with immigration relief and/or social services.

Regarding immigration relief, law enforcement officials may request “continued presence” or the T-visa for victims. Continued presence provides illegal aliens and immigrants “a temporary legal status for witnesses during a trafficking prosecution.” However, this status does not provide victims a permanent residence in America; it simply prevents the victim from being deported. Conversely, the T-visa may provide victims an opportunity to gain lawful residence in the United States. The T-visa “is a three-year temporary visa with a pathway to permanent legal status.” In order for a victim to qualify for a T-visa, trafficking victims must meet the following qualifications:

1. The victim is or has been a victim of a severe form of trafficking in persons as defined in section 7102(8) of the TVPA;
2. The victim is physically present in the United States on account of such trafficking;
3. The victim has complied with requests for help in the investigation or prosecution of traffickers or has not reached the age of 15; and
4. The victim would suffer extreme hardships involving unusual or severe harm upon removal from the United States.

Additionally, the number of T-visas issued is limited to 5,000 per year by TVPA. Most importantly, a victim must complete a certification stating she is either “willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons” or is “unable to cooperate with such a request due to physical or psychological trauma.” After three years under the T-visa status, the victim is eligible to adjust her “status to lawful permanent residence and, subsequently, to naturalize and become a U.S. citizen.”

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99 Id.
101 Srikantiah, supra note 41, at 174.
103 Srikantiah, supra note 41, at 174.
105 Srikantiah, supra note 41, at 174.
107 8 U.S.C. § 1184(o)(2) (Supp. IV 2004); Srikantiah, supra note 41, at 175.
109 Srikantiah, supra note 41, at 175; See 8 U.S.C. § 1255(l).
In addition to immigration protection, a victim may also be entitled to social services from the Department of Health and Human Services (HHS). HHS can provide both medical and social services to victims. According to HHS, such benefits may include the following:

cash assistance and medical care, Temporary Assistance for Needy Families (TANF), Medicaid, food stamps and other federally funded or administered benefits and services. Young people who have been victims of trafficking and choose to cooperate with law enforcement officials to prosecute traffickers can benefit from a new streamlined process to apply for and receive federal financial aid for college. . . . In addition, HHS will carry out pilot programs to establish residential treatment facilities in the United States for children and teenagers subjected to domestic trafficking.

Yet, this list is not exclusive. Other benefits may include shelter, food, legal assistance, and translation services. However, to be eligible for benefits, the victim must complete the same aforementioned certification and additional requirements, which will be discussed in part three of this Note.

B. State Legislation to Combat Human Trafficking

My potential client may also have a cause of action at the state level. Forty-nine states and the District of Columbia have at least one form of anti-trafficking law. However, this Note will focus on state legislation at the regional level, which will include Pennsylvania, New Jersey, and Delaware, in that order.

i. Pennsylvania’s Anti-Trafficking Legislation

Pennsylvania criminalizes traffickers who subject victims to forced labor or services. Similar to TVPA, Pennsylvania provides a working definition of what constitutes forced labor or services. The statute outlaws forced labor or services procured through threat of bodily injury,

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110 Srikanthiah, supra note 41, at 175.
111 Sadruddin et al., supra note 68, at 387.
114 Id.
117 18 PA. CONS. STAT. § 3001 (2012).
118 §§ 3001-3004.
physically retraining a person unlawfully, “abuse or threat[] to abuse the law or legal system,” confiscating a person’s passport or legal documents, or “engag[ing] in criminal coercion of another person.”119 Regarding the burden of proof, the mens rea to prove a trafficking offense in Pennsylvania is “knowingly.”120 Unlike TVPA, Pennsylvania’s statute does not contain a lesser degree of mens rea when proving a defendant has committed a trafficking crime against a minor.121

Similar to TVPA, Pennsylvania harshly penalizes traffickers.122 If convicted, a trafficker could face up to ten years in prison.123 However, if the victim is under the age of eighteen, a trafficker could face up to twenty years in prison.124 In addition to incarceration, individuals found guilty of human trafficking must provide restitution to the victim, including: (1) gross income or value to the person who received labor or services from the victim; or (2) the value of the victim’s labor based on the minimum wage of the state.125 This provision is almost identical to its federal counterpart.126

Although Pennsylvania imposes harsh penalties upon those convicted of human trafficking, unlike the TVPA, it does not contain provisions for prevention.127 Despite the fact that Pennsylvania does not mandate statutory reporting requirements, the National Human Trafficking Resource Center (NHTRC) has provided annual reports since 2009.128 The NHTRC reports are akin to the TVPA’s prevention requirements.

As previously stated, Pennsylvania legislation does not contain mandatory anti-trafficking protection provisions like the TVPA.129 However, there are a variety of organizations and referral options available to victims in Pennsylvania.130 For example, Dawn’s Place “is a non-profit organization that proactively supports women negatively affected by commercial

119 § 3001(1)-(5).
120 § 3002(a).
121 § 3002(a)-(b).
123 18 PA. CONS. STAT. § 1103(2) (2012).
125 18 PA. CONS. STAT. § 3003(a)(1)-(2) (2012).
126 See Sangalis, supra note 42, at 419.
127 §§ 3001-3004.
130 POLARIS PROJECT, supra note 116, at 15.
sexual exploitation by providing services to women and raising awareness through education, prevention, public policy reform and community collaborations."  

In January, 2012, Pennsylvania successfully prosecuted its first offender under the state’s anti-trafficking legislation. A man and woman from Delaware County were convicted of human trafficking after a source informed law enforcement officials that the traffickers had posted pictures of a victim online in order to solicit clients for prostitution. The victim told detectives “about a list of ‘rules’ she was supposed to follow, such as ‘daddy is the law,’ ‘never tell daddy no,’ and ‘any disrespect can cause you to get your head knocked off.’” The male trafficker was sentenced “to 18-60 months in a state correctional facility with 10 years of sexual offender probation . . . [and] must also register as a sex offender under Megan’s Law for 10 years.” The female trafficker “was sentenced to one to two years in prison with five years of sex offender probation.” As evidenced by the above-mentioned case, Pennsylvania’s anti-trafficking legislation is clearly working.

ii. New Jersey’s Anti-Trafficking Legislation

New Jersey’s legislation aimed at combatting human trafficking is similar to the current legislation in Pennsylvania. New Jersey does not explicitly define sex or labor trafficking. However, an individual commits a crime of trafficking when he “knowingly holds, recruits, lures, entices, harbors, transports, provides or obtains, by any means, another, to engage in sexual activity . . . or to provide labor or services.” Trafficking can occur through threats of

132 See POLARIS PROJECT, supra note 116, at 15.
135 Id.
136 Id.
137 Id.
139 Id.
140 § 2C:13-8(1).
seriously bodily harm, by a plan intended to deceive the victim that he or she would be subject to severe bodily harm, or by “destroying, concealing, removing, confiscating, or possessing” immigration or government documentation regarding the victim’s identity.\textsuperscript{141}

New Jersey has legislation that also provides harsh penal and economic penalties for those convicted of human trafficking.\textsuperscript{142} New Jersey’s human trafficking statute categorizes the crime as a felony in the first degree.\textsuperscript{143} A trafficker could face incarceration up to twenty years without the possibility of parole; or, he could be subject to twenty years to life in prison with the possibility of parole after serving twenty years.\textsuperscript{144} Similar to federal legislation, those convicted of trafficking must provide restitution to victims.\textsuperscript{145}

The New Jersey legislature has incorporated the protections provided in the TVPA into its own statute:

In a case involving a victim of human trafficking . . . the Office of Victim-Witness Advocacy or the county prosecutor's office involved in the case shall ensure that the victim of human trafficking obtains assistance in receiving any available benefits or services, including assistance in receiving any necessary certifications or endorsements needed to be recognized as having federal T non-immigrant status for the purpose of receiving any federal benefits or services available pursuant to the "Trafficking Victims Protection Reauthorization Act of 2003[]."\textsuperscript{146}

New Jersey has gone a step further in providing additional social services to victims. A victim of human trafficking can qualify as an “eligible alien,” who may be entitled to welfare benefits pursuant to the Work First New Jersey (WFNJ) program.\textsuperscript{147} WFNJ is a program designed to provide “temporary cash assistance and many other support services to families through the Temporary Assistance for Needy Families (TANF) program.”\textsuperscript{148} The social services provided by WFNJ are similar to those provided at the federal level by the Department of Health and Human Services.

\textsuperscript{141} § 2C:13-8(1)(a)-(d).
\textsuperscript{142} § 2C:13-8(2)(d)(e).
\textsuperscript{143} § 2C:13-8(2)(d).
\textsuperscript{144} Id.
\textsuperscript{145} § 2C:13-8(2)(e).
\textsuperscript{146} N.J. STAT. ANN. § 52 4B-44(e) (West 2012).
\textsuperscript{147} § 44:10-44; § 44:10-55.
Similar to Pennsylvania, New Jersey does not contain a prevention prong to its anti-trafficking legislation.\textsuperscript{149} However, similarly in Pennsylvania, the National Human Trafficking Resource Center (NHTRC) provides an annual report of trafficking incidents within the state.\textsuperscript{150} New Jersey also has an organization in place to aid those individuals who have been victims of human trafficking.\textsuperscript{151} In January, 2012, New Jersey, held its Second Annual Human Trafficking Awareness Day to “train and assist law enforcement,” to “coordinate statewide efforts,” and “increase the successful interdiction and prosecution of trafficking of human persons.”\textsuperscript{152}

\textit{iii. Delaware’s Anti-Trafficking Legislation}

Delaware’s human trafficking legislation is essentially a miniature version of the TVPA.\textsuperscript{153} It contains a model that is similar to the TVPA’s three-pronged system of prevention, prosecution and protection; however, it is much less detailed than its federal counterpart.\textsuperscript{154} Regarding the prevention prong, Delaware’s Attorney General, together with the state’s Department of Health and Social Services, must issue a report “outlining how existing victim/witness laws and regulations respond to the needs of trafficking victims . . . and suggesting areas of improvement and modification.”\textsuperscript{155} In addition, they must also issue a report detailing “how existing social service programs respond or fail to respond to the needs of trafficking victims…and areas needing improvement and modification.”\textsuperscript{156}

Regarding prosecution, Delaware criminalizes traffickers who subject victims to “commercial sexual activity” and “forced labor or services.”\textsuperscript{157} A trafficker will be found guilty if proven that he knowingly caused or threatened to cause physical harm, by “physically restraining or threatening to physically restrain another person,” “abusing or threatening to abuse the law,” or destroying or confiscating passports, immigration documents, or other forms of government identification documents.\textsuperscript{158} Traffickers who are convicted could face from five

\begin{itemize}
\item \textsuperscript{149} § 2C:13-8.
\item \textsuperscript{150} POLARIS PROJECT, National Human Trafficking Resources Center, New Jersey, http://www.polarisproject.org/state-map/new-jersey (last visited October 28, 2013).
\item \textsuperscript{151} \textit{Id}.
\item \textsuperscript{152} Division of Criminal Justice, New Jersey Human Trafficking Task Force, N.J. DEP’T OF LAW & PUBLIC SAFETY, OFFICE OF THE ATTORNEY GENERAL, http://www.nj.gov/oag/dcj/humantrafficking/ (last visited October 28, 2013). This event was held on January 11, 2012.
\item \textsuperscript{153} DEL. CODE ANN. tit. 11, § 787 (2013).
\item \textsuperscript{154} \textit{Id}.; 22 U.S.C. §7101-7200 (2000).
\item \textsuperscript{155} § 787(d)(1).
\item \textsuperscript{156} § 787(d)(2).
\item \textsuperscript{157} § 787(a)(2)-(3).
\item \textsuperscript{158} § 787(b)(1)(a)-(d).
\end{itemize}
years to life in prison, depending on the classification of the felony.\textsuperscript{159} Additionally, like TVPA and other states in the region, Delaware mandates that offenders pay restitution to victims.\textsuperscript{160}

In terms of protection, the statute does not expressly mandate immigration or social services like the TVPA.\textsuperscript{161} However, it can be implicitly read into the statute pursuant to the above-mentioned reporting requirements.\textsuperscript{162} Delaware’s Department of Health and Social Services provides social services such as cash assistance, temporary assistance for needy families (TANF), and food stamps. In addition to state funded social services, non-profits also exist in Delaware to assist victims of human trafficking.\textsuperscript{163} For example, People’s Place provides programs and services to families, adults, and children, such as counseling, education, prevention, intervention, supportive services, and advocacy.\textsuperscript{164}

III. NEGATIVE ASPECTS AND PROBLEMS ASSOCIATED WITH THE TVPA

In theory, the three-pronged approach to the TVPA appears to operate as an effective countermeasure to human sex trafficking. In practice, however, the prosecution and protection prongs place high burdens on victims in order to receive justice and benefits they rightfully deserve. Part three of this Note will briefly address some of the problems associated with the TVPA.

A. Identifying Victims of Sex Trafficking is Easier Said that Done

Congress has conceded that the greatest challenge in helping victims of sex trafficking is locating and identifying them.\textsuperscript{165} Sex trafficking victims are quickly labeled by law enforcement officials as illegal immigrants and prostitutes when they do come forward to law enforcement officials.\textsuperscript{166} Labeling victims as prostitutes is a “disservice to all victims of human

\textsuperscript{159} tit. 11, § 4205(b)(1)-(5).
\textsuperscript{160} § 787(c)(1)-(2).
\textsuperscript{161} Id.
\textsuperscript{162} § 787(d)(2).
\textsuperscript{165} Rieger, supra note 113, at 245.
\textsuperscript{166} Id. at 246.
Criminalizing victims as prostitutes goes against the fundamental reasons for enacting TVPA. Therefore, “it is essential that these officials receive the proper training to be able [to] seek out trafficking victims by proper investigation and identification of these women as victims rather than criminals.” Additionally, “the TVPA provides funding for training programs, but it is underutilized.”

### B. Meeting the TVPA’s Stringent Standard of “Severe Trafficking”

In order for a victim to receive benefits under the protection prong or subject her trafficker to prosecution pursuant to the TVPA, the survivor must be able to prove that she was subjected to a “severe form of trafficking in persons.” The TVPA defines a severe form of sex trafficking in persons as:

> sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or [ . . . ] services, through the use of force, fraud, or coercion for the purpose of involuntary servitude, peonage, bondage, or slavery.

Victims who do not meet this rigid definition do not receive benefits and are unable to bring a cause of action against their trafficker. Typically, women who meet the severe component of the TVPA are kidnapped, taken to another country, sold into trafficking, and forced to work in the sex industry. However, the women who often do not qualify as victims of a severe form of sex trafficking are migrant sex workers. These victims “have consented to come to the United States and to work in the sex industry, but . . . find themselves in slave-like conditions.”

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168 Rieger, supra note 113, at 245-46.

169 Id. at 246.

170 Srikantiah, supra note 41, at 174.


172 Rieger, supra note 113, at 245, 251.

173 Id. at 249.

174 Id.

175 Id.
C. The Certification Process & The Mandatory Provision to Assist the Prosecution May Preclude a Victim Access to Her Benefits

Meeting the definition of severe trafficking is a threshold issue. A survivor must also be certified as a victim of a “severe form of trafficking.”\textsuperscript{176} To complete the certification, “[a]n adult victim has to prove that she was ‘subject to performing commercial sex acts’ induced by force, fraud, coercion.”\textsuperscript{177} In addition to the certification, a victim must be prepared to reasonably assist in the prosecution of her traffickers.\textsuperscript{178} Moreover, a victim must validly apply for a T-visa or must be available to prosecute the traffickers.\textsuperscript{179} The process of certification is usually long and arduous, spanning weeks or months.\textsuperscript{180}

Moreover, in order to be eligible for immigration benefits, a victim must be willing to cooperate with law enforcement officials in the prosecution of her trafficker.\textsuperscript{181} Victims “who are unwilling or unable to cooperate will not be entitled to TVPA protection from immigration detention or deportation.”\textsuperscript{182} If a victim is granted the “continued presence” status under the immigration protection prong of the TVPA, it “may be revoked at any time should officials deem the victim uncooperative.”\textsuperscript{183}

D. Obtaining a T-Visa Can Be Very Difficult

In addition to the above problems, actually obtaining a T-visa can be an extremely difficult process.\textsuperscript{184} In order to qualify, the victim must also demonstrate “extreme hardship involving unusual and severe harm upon removal.”\textsuperscript{185} Many victims are unable to establish the extreme hardship elements\textsuperscript{186} and are deported from the United States.

\textsuperscript{176} See CLAWSON ET AL., supra note 32, at 6-7.
\textsuperscript{177} Rieger, supra note 113, at 247.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} Id.
\textsuperscript{181} Sadruddin et al., supra note 68, at 388.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
\textsuperscript{184} Rieger, supra note 113, at 252.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
IV. OPTIONS BEYOND TVPA: A CALL TO DO MORE AT THE DOMESTIC LEVEL

Many scholars and advocates argue the federal government needs to do more at the domestic level to truly ensure traffickers are punished for their atrocious crimes. The TVPA purports to be a victim-centric law; however, more needs to be done domestically in order to provide these victims with actual justice. Part four of this Note will briefly address ways in which Congress can strengthen the TVPA, while also providing alternative means to prosecute offenders.

A. Reforming the Requirements for Benefits Under TVPA

To qualify for benefits under the TVPA, an international adult must be a victim subjected to a “severe form of trafficking.” In practice, “this has proven difficult, given the struggle to define trafficking and the inexperience of law enforcement in recognizing it.” Next, the victim “must then be willing to cooperate with all reasonable requests by law enforcement” in order to receive benefits under the TVPA. Despite Congress’ assurances that the TVPA focuses on victims, low numbers of victims are granted protection. In 2003, President George W. Bush announced a $50 million initiative to combat human trafficking. However, since TVPA’s enactment in 2000, “the law granted benefits to several hundred victims out of a pool of tens of thousands.” Furthermore, “as of 2008, the Department of Homeland Security received 394 applications and only granted 247 T-visas.”

As statistics can only be taken at their face value, more needs to be done at the domestic level, including reforms to federal legislation, in order to truly fight the evils of human trafficking.

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188 Sangalis, supra note 42, at 436.
189 Id.
190 Sadruddin et al., supra note 68, at 391.
192 Sadruddin et al., supra note 68, at 393.
B. Creating an International Sex Trafficking Registry Akin to the United States’ Sex Offender Registry to Combat Trafficking of Persons

One scholar argues for an international human trafficking registry to eradicate the evils of human trafficking.194 Professor Brown advocates for U.S. sex offender laws to provide a model “for the creation of an international trafficking registry that would both increase public support for the prosecution of trafficking offenders and potentially deter sex trafficking on a global scale.”195 Combating sex trafficking on a global level would help eradicate trafficking at home and abroad.196 Moreover, “a sex trafficking registry would also be an additional strategy for law enforcement,” to ultimately strengthen TVPA.197 An international sex registry would bolster the prevention and prosecution aspects of TVPA because “collecting trafficker information and creating a database that is accessible to law enforcement agencies internationally will assist in the prosecution of traffickers everywhere.”198

C. Prosecuting Traffickers Through Other Legislative Means: Common Law Claims

If all else fails with prosecuting human traffickers under TVPA, the government should resort to common law tort claims. The civil claims of false imprisonment and intentional infliction of emotional distress may provide victims alternative means for holding traffickers accountable. Tort claims may provide victims “greater flexibility” than federal statutory claims.199 Moreover, “tort law may be a more appropriate means to address such claims because it has traditionally evolved in response to changing social circumstances and needs.”200 Most importantly, since judges are hesitant to overrule the legislature, these alternative means may be more effective as the courts may be more receptive to common law claims.201

The Second Restatement of Torts defines false imprisonment as:

(1) An actor is subject to liability to another for false imprisonment if
    (a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and

194 See generally id.
195 Id. at 31.
196 Id. at 39-40.
197 Id. at 40.
198 Id.
200 Id.
201 Id.
(b) his act directly or indirectly results in such a confinement of the other, and
(c) the other is conscious of the confinement or is harmed.

(2) An act which is not done with the intention stated in Subsection (1, a) does not make the actor liable for the other for a merely transitory or otherwise harmless confinement, although the act involves an unreasonable risk of imposing it and therefore would be negligent or reckless if the risk threatened bodily harm.  

The most crucial aspect of false imprisonment is “restrain of the individual.” In order for a victim to satisfy the elements of this cause of action, the trafficker “must have deprived [the victim] of [their] liberty or forced [the victim] to go or remain somewhere against [their] will.” Additionally, if the trafficker’s words or conduct cause the victim to reasonably believe that he or she was not at liberty to leave, then violence or physical restraint is not necessary to prove false imprisonment.

The Second Restatement of Torts defines the intentional infliction of emotional distress as:

(1) One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.  (2) Where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress  

To prove the aforementioned elements, a victim must demonstrate that the trafficker’s conduct was so outrageous it caused severe emotional distress. This may be a difficult task to prove because the conduct must exceed that which is usually tolerated in a civilized society, be “regarded as atrocious and utterly intolerable in a civilized community”, or be outside the bounds of decency. Notwithstanding the high burden of proof, courts have identified limited circumstances where human trafficking will qualify as outrageous. For example, the following circumstances are deemed outrageous conduct: “trafficking victims were living in isolated circumstances and facing language and cultural barriers, were of a young age, suffered physical

202 Restatement (Second) of Torts § 35 (1965).
203 Note, supra note 199, at 2593.
204 Id.
205 Id.
206 Restatement (Second) of Torts § 46 (1965).
207 Note, supra note 199, at 2591.
208 Id.
abuse by the trafficker of his affiliates, or were laboring or living under other difficult circumstances.”

Pennsylvania, New Jersey and Delaware all have statutory and common law claims for false imprisonment and intentional infliction of emotional distress. These three states all have statutes regarding false imprisonment, which are similar to the Restatement’s definition. However, a cause of action for intentional infliction of emotional distress defers to the Restatement’s definition, and therefore remains a common law claim.

A potential negative ramification of bringing these tort actions is the applicability of the statute of limitations. For these regional states, the statute of limitations is two years for tortious personal injury claims. Nevertheless, “[c]ivil suits are also a means of giving control back to the victim.” While prosecuting a trafficker under TVPA, a victim must be willing to cooperate at all times with federal prosecutions; in contrast, “civil suits...are exclusively controlled and directed by the victims from beginning to end.” The potential for monetary damages awarded by the court is another benefit for victims who file a civil complaint. Not only do civil damages aid victims who are greatly in need of economic compensation, high awards of damages may deter future traffickers.

V. Conclusion

It is apparent the federal government is attempting to eradicate the problem of human trafficking within the United States via its comprehensive legislation known as the Trafficking Victims Protection Act. Although TVPA is admirable, much work remains at the domestic level to further prevent human trafficking, as well as providing easier mechanisms to prosecute

209 Id. at 2592.


214 Id. at 254.

215 Id.

216 Id.
traffickers and provide benefits to victims. Strengthening the TVPA will help aid in the demise of human trafficking both domestically and internationally. Moreover, bringing tort actions against traffickers may be an easier way to prosecute offenders. The federal government is making steps in the right direction to end modern day slavery; but, more needs to be done so my potential client, Lisa, can truly receive the benefits and justice she deserves.