

ARTICLE

LEGAL STRATEGIES IN THE FIGHT TO END HUMAN TRAFFICKING

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I. INTRODUCTION

With an estimated twenty-seven million people around the world currently subject to labor or sex trafficking, human trafficking is a widespread global epidemic.¹ Human trafficking is the second-largest and fastest-growing criminal industry in the world today, tied in size with illegal arms dealing and superseded only by drug dealing.² The federal Trafficking Victims Protection Act of 2000 (TVPA) defines human trafficking as the “recruitment, harboring, transportation, provision, or obtaining of a person . . . through the use of force, fraud, or coercion” for labor services or a commercial sex act.³ According to the TVPA, force, fraud, or coercion need not be proven to convict a person of trafficking when the victim is a child.⁴ Human trafficking is a serious domestic problem in the United States, with U.S. citizens and permanent residents being trafficked within our own borders. In fact, more domestic than international victims are currently being trafficked in the United States, and a large percentage of domestic victims are children. While exact numbers are hard to ascertain, an estimated 14,500 to 17,500 international victims are trafficked within this country,⁵ compared to an estimated 100,000 to 300,000 domestic minors being prostituted nationally.⁶

Human trafficking comes in many forms, with labor and sex trafficking being the most prevalent. In the United States, sex trafficking is the most common form of trafficking among domestic victims, and within the realm of domestic trafficking, domestic minor sex trafficking is especially rampant.⁷ Many child

1. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2012), *available at* <http://www.state.gov/documents/organization/192587.pdf>.

2. *About Anti-Trafficking in Persons*, ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP’T OF HEALTH & HUMAN SERVS., <http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking/about> (last visited Mar. 24, 2013).

3. 22 U.S.C. § 7102(8)–(9) (2006) (defining “severe forms of trafficking in persons” and “sex trafficking”).

4. 22 U.S.C. § 7102(8)(A) (2006).

5. U.S. DEP’T OF JUSTICE, ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 5 (2006), *available at* http://www.justice.gov/archive/ag/annualreports/tr2004/us_assessment_2004.pdf.

6. *Human Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview> (last visited Mar. 5, 2013); Patricia Leigh Brown, *In Oakland, Redefining Sex Trade Workers as Abuse Victims*, N.Y. TIMES, May 24, 2011, at A13.

7. See U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC. FOR PLANNING & EVALUATION, HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 4 (2009) (estimating 199,000 annual incidents of sexual exploitation of minors in the United States), *available at* aspe.hhs.gov/hsp/07/humantrafficking/litrev/index.pdf; Amanda Walker-Rodriguez & Rodney Hill, *Human Sex Trafficking*, FED. BUREAU OF INVESTIGATION,

trafficking victims are runaway or “throwaway” youth (children who have been kicked out of their homes) who have experienced abuse or neglect.⁸ Traffickers or pimps take advantage of these children’s emotional vulnerabilities and their need for food, shelter, and money, by providing these necessities in exchange for the child’s sexual exploitation. Children are likely to be approached by traffickers within forty-eight hours of leaving or losing their homes.⁹ The demand for commercial sex is so high that some traffickers even resort to abducting children.¹⁰ While domestic trafficking victims come from all races, nationalities, and socioeconomic classes, the average age of entry into sex trafficking for domestic victims is twelve to fourteen years old, and the vast majority are female.¹¹

To get a sense of what domestic minor sex trafficking looks like in the real world, it is instructive to hear the stories of survivors. Keisha was a sixteen-year-old girl from Florida who was raised by her aunt and then placed in foster care.¹² She ran away at the age of fourteen to avoid sexual harassment within her foster home, and met a twenty-six-year-old man named “Mastur D” who offered to help her find her biological family.¹³ He drove her back to Florida but insisted that she engage in commercial sex with men of his choosing to pay for the hotel and gas costs.¹⁴ When they arrived in Florida, he claimed that she had not made enough money and physically assaulted her.¹⁵ Keisha continued to engage in commercial sex for Mastur D until she

http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march_2011/human_sex_trafficking (last visited Mar. 14, 2013).

8. U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 7, at 10.

9. CHILDREN AT RISK, THE STATE OF HUMAN TRAFFICKING IN TEXAS 10 (Robert Sanborn et al. eds., 2010), available at <http://childrenatrisk.org/wp-content/uploads/2010/11/State-of-Human-Trafficking-in-Texas-FINAL.pdf>. (noting that one out of every three runaways will be lured into sex trafficking within the first forty-eight hours of leaving home)

10. See, e.g., Stephanie Chuang, *Sex Trafficking, Abductions, Sad Reality in Bay Area*, NBC BAY AREA (Jan. 29, 2013, 8:09 AM), <http://www.nbcbayarea.com/news/local/Sex-Trafficking-a-Reality-in-Bay-Area-188846671.html> (chronicling the story of a seventeen-year-old developmentally disabled female who was abducted and sold for sex via Craigslist ads).

11. LINDA A. SMITH, SAMANTHA HEALY VARDAMAN, & MELISSA A. SNOW, SHARED HOPE INT’L, THE NATIONAL REPORT ON DOMESTIC MINOR TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 31, 33 (2009), available at http://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf.

12. *Keisha—Domestic Minor Sex Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/client-services/survivor-stories/464-keisha-domestic-minor-sex-trafficking> (last visited Mar. 24, 2013).

13. *Id.*

14. *Id.*

15. *Id.*

was arrested for solicitation in Florida.¹⁶ After serving time in a juvenile detention center, she was returned to her foster family, and thus, to the sexual harassment she had originally fled.¹⁷ Keisha ran away again and called Mastur D to help her get back to Florida.¹⁸ He agreed under the same terms, and she was arrested again.¹⁹ This time, however, service providers at the detention center learned Keisha's story and worked with her probation officer to have her placed at a residential program for minor sex trafficking victims, where she was able to start earning her GED.²⁰

Sarah was a seventeen-year-old girl who ran away from home in rural Ohio because her mother and stepfather were alcoholics.²¹ While walking to the store alone, she was approached by a thirty-year-old man who asked her why she looked so upset and offered to take her to get her nails done to cheer her up.²² She agreed, and over the next couple of months, he took her out to eat, gave her compliments, and acted like a caring boyfriend.²³ He asked her to move in with him, but after a month of living together, he said he could not afford the rent and asked her to engage in commercial sex with older men to pay the bills.²⁴ Sarah was uncomfortable but was adamantly against returning home and wanted to please him.²⁵ She began prostituting until one night on the street when she was raped by a stranger.²⁶ She called the police, and they took her to the hospital and called specialized services.²⁷ She was provided with emergency housing and counseling and decided to leave her trafficker and move into a shelter.²⁸ With help from a nonprofit, she obtained a part-time job and her own apartment and was able to attend classes.²⁹

Although Keisha and Sarah's stories end on hopeful notes, their outcomes may have been much worse if not for the services

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Sarah—Domestic Minor Sex Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/client-services/survivor-stories/465-sarah-domestic-minor-sex-trafficking> (last visited Mar. 1, 2013).

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

they received after being recognized as sex trafficking victims. Unfortunately, most victims are not so fortunate. Many trafficking victims face severely limited choices with little opportunity to ever reclaim their lives.

Nationally, Texas bears the unfortunate distinction of being a hub for human trafficking.³⁰ This is due in part to Texas's "many busy interstate highways, international airports, bus stations, the shipping commerce through the Gulf of Mexico, and its shared border with Mexico."³¹ Additionally, Texas cities such as Dallas, Houston, and Austin have many runaway and homeless youth, and are also home to universities, professional sporting events, and major conventions that attract many visitors and create even greater demand for the commercial sex industry.³² The I-10 corridor is the most heavily traveled route for human trafficking in the country, with as many as one-in-four trafficking victims in the United States passing through Texas.³³ Of all the calls to the National Human Trafficking Hotline, 14% originated from Texas.³⁴ Within Texas, Houston is the primary hub of exploitation. In 2009, over 30% of the calls from Texas to the National Human Trafficking Hotline were from Houston.³⁵

Notwithstanding the challenges posed by the extent of human trafficking within the state, Texas has responded aggressively to address the issue of human trafficking by passing some of the most progressive and comprehensive anti-trafficking laws in the country. The City of Houston has also taken significant action to combat human trafficking. A variety of legal approaches have been used to address human trafficking, including: legislation aimed at increasing penalties for traffickers and purchasers of commercial sex while decriminalizing victims, the use of nuisance laws to shut down sexually oriented businesses involved in human trafficking, immigration

30. CHILDREN AT RISK, *supra* note 9, at 8.

31. *Id.*

32. *Id.* at 9.

33. RESCUE & RESTORE, TEXAS FACTS ON HUMAN TRAFFICKING (2008), www.texasimpact.org/UMW/HumanTraffickFactSheet.doc.

34. *Hotline Statistics*, POLARIS PROJECT, <http://www.polarisproject.org/resources/hotline-statistics> (last visited Mar. 25, 2013) (collecting call statistics 2008–2011).

35. *See National Human Trafficking Resource Center (NHTRC) Call Data Breakdown—Texas State Report*, POLARIS PROJECT (2009), <http://www.polarisproject.org/state-map/texas> (noting how of the 889 total calls from Texas, 290 came from Houston). However, the number of calls to the National Human Trafficking Hotline from Texas, and Houston specifically, does not necessarily indicate the scope of the problem as there may be other factors that contribute to call volume; for instance, the extent to which the hotline number is disseminated.

considerations to provide international victims legal status, criminal and civil suits to obtain restitution for victims, the establishment of specialty courts for sex trafficking victims, and the creation of safe houses for the rehabilitation of child victims. The involvement of the legal community is vital to these efforts, as attorneys are uniquely positioned to be powerful advocates in the fight against human trafficking and have a key role to play in supporting and furthering these various legal approaches.

II. LEGAL STRATEGIES

A. Legislation Regarding Human Trafficking

Texas has emerged as a national leader in crafting and passing anti-trafficking legislation. In 2003, it became the second state, after the state of Washington, to enact a law against human trafficking.³⁶ During the 80th Legislative Session in 2007, Texas became the first state to approve a straightforward piece of legislation requiring the posting of the Human Trafficking Hotline number at specified establishments.³⁷ The law requires all establishments with a liquor license who do not also serve food and all lodging establishments that have received a nuisance violation to post the hotline number.³⁸ The sign must be written in English and Spanish, and states:

WARNING: Obtaining forced labor or services is a crime under Texas law. Call the national human trafficking hotline: 1-888-373-7888. You may remain anonymous.³⁹

The 80th Legislature also expanded the definition of forced labor under the law to include coercive acts such as threatening bodily injury, physically restraining victims, and threatening to destroy a victim's identification or travel documents.⁴⁰

36. H.B. 2096, 78th Leg., R.S. (Tex. 2003) (codified as amended at TEX. TRANSP. CODE § 545.4191 (2011), TEX. PENAL CODE § 20A.01-02 (2011), and amending TEX. PENAL CODE § 71.02(a) (2011)); Dr. Robert Sanborn & Dawn Lew, *Fighting Human Trafficking in Texas*, 75 TEX. BAR J. 778, 779 (2012), http://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=20269.

37. POLARIS PROJECT, *Human Trafficking Legislative Issue Brief: Posting the National Human Trafficking Resource Center Hotline* (2012), available at http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/nhtrc_issue_brief_september_2012.pdf.

38. TEX. CIV. PRAC. & REM. CODE ANN. § 125.002(f-1) (West 2011); TEX. ALCO. BEV. CODE ANN. § 104.07 (West Supp. 2012); see also POLARIS PROJECT, *supra* note 37.

39. S.B. 1287, 80th Leg., R.S. (Tex. 2007) (codified at TEX. ALCO. BEV. CODE ANN. § 104.07 (West Supp. 2012)).

40. H.B. 1121, 80th Leg., R.S. (Tex. 2007). The 82nd Legislature has since condensed this definition by redefining "forced labor" as "labor or services . . . obtained

Additionally, the Legislature authorized judges to provide verification that a person has been a victim of human trafficking, thus facilitating international victims' applications for immigration relief and their eligibility for services under federal law.⁴¹

Substantial progress in the fight against human trafficking was made by the 81st and 82nd Texas Legislatures with the passage of omnibus bills in 2009 and 2011 respectively. In 2009, the Legislature mandated training on human trafficking for newly licensed law enforcement officers, as well as those officers wishing to advance in rank.⁴² This legislation significantly increases victims' chances to be rescued, as contact with police officers is often the first opportunity for victims to be identified. The same piece of legislation established the Human Trafficking Prevention Task Force in the Office of the Attorney General, which provided a unified network of stakeholders across the state to share information and develop policy solutions.⁴³ No single statewide entity focusing on human trafficking existed before the establishment of this task force.⁴⁴

In 2011, the 82nd Legislature focused on enhanced criminal and civil penalties against traffickers, buyers of commercial sex, and facilitators who benefit from the crime, with even stricter penalties being enacted when child victims are involved. The Legislature amended the human trafficking statute to include criminal penalties against buyers of commercial sex and added a distinction to enhance criminal penalties when a child victim is involved, whether or not the buyer knew the age of the child at the time of the offense.⁴⁵ Under the statute, the offense for soliciting a child for sexual services is now a first-degree felony in Texas, punishable by five years to life imprisonment and a fine of up to \$10,000.⁴⁶ Under the prostitution statute, solicitation of a

through an actor's use of force, fraud, or coercion." TEX. PEN. CODE § 20A.01(2) (West Supp. 2012).

41. *Id.* (amending TEX. CODE CRIM. PRO. ANN. art. 42.0191 (West Supp. 2012)).

42. H.B. 4009, 81st Leg., R.S. (Tex. 2009), (codified at TEX. OCC. CODE ANN. §§ 1701.258, 1701.402 (West 2012)); Sanborn & Lew, *supra* note 36, at 78.

43. H.B. 4009, 81st Leg., R.S. (Tex. 2009) (codified at TEX. GOV. CODE ANN. § 402.035 (West 2012)); *see also* OFFICE OF THE ATTORNEY GEN., TEXAS HUMAN TRAFFICKING PREVENTION TASK FORCE REPORT 2011, at 29 (2011), *available at* http://www.oag.state.tx.us/ag_publications/pdfs/human_trafficking.pdf.

44. *See* OFFICE OF THE ATTORNEY GENERAL, *supra* note 43, at 29; *New Texas Law Establishes State Task Force and Victim Assistance for Domestic Victims of Trafficking*, THE HUMAN TRAFFICKING PROJECT, <http://www.traffickingproject.org/2009/08/new-texas-law-establishes-state-task.html> (Aug. 26, 2009).

45. TEX. PENAL CODE ANN. § 20A.02(a)(4), (b)(1) (West Supp. 2012).

46. TEX. PENAL CODE ANN. §§ 12.32, 20A.02(b)(1) (West 2012 & Supp. 2012).

child age fourteen and older but younger than eighteen qualifies as a third-degree felony, and solicitation of a child younger than fourteen is a felony of the second degree (both previously Class B misdemeanors prior to 2011).⁴⁷

Additionally, in 2010, between the 81st and 82nd legislative sessions, the Texas Supreme Court decided a landmark case, *In re B.W.*⁴⁸ B.W. was a thirteen-year-old girl who was trafficked by her thirty-two-year-old “boyfriend.”⁴⁹ She was arrested by law enforcement for prostitution and adjudicated as delinquent for the offense.⁵⁰ The Court, noting the conflict in the law which qualifies children who engage in sexual conduct as victims of abuse, but also classifies children who engage in sexual conduct for a fee as juvenile delinquents, held that children under the age of fourteen who engage in sexual conduct, with or without the exchange of money, are the victims of sexual abuse and cannot be charged with the offense of prostitution.⁵¹

Currently, the 83rd session of the Texas Legislature is addressing human trafficking yet again. Advocates are pushing the legislators to shift their focus to victim services in the 83rd Session, while continuing to find ways to hold those who profit from trafficking accountable. Over twenty bills relating to human trafficking were filed in the 83rd Legislative Session, as more and more lawmakers become aware of this pressing issue.⁵² One important measure seeks to extend the jurisdiction of the Human Trafficking Prevention Task Force through 2015.⁵³ Another would create a pre-adjudication diversion program for juveniles with prostitution charges.⁵⁴ The bill would require each county to designate a court to hear cases of juveniles charged with prostitution, and would allow that court to have access to the juvenile’s child welfare records.⁵⁵ Furthermore, it would allow the court to prescribe a treatment and rehabilitation program for the child, integrating services provided by child welfare, and would

47. H.B. 2014, 82d Leg., R.S. (Tex. 2011) (amending TEX. PENAL CODE ANN. § 43.02(c) (West 2011)).

48. *In re B.W.*, 313 S.W.3d 818 (Tex. 2010).

49. *Id.* at 819.

50. *Id.*

51. *Id.* at 821–22, 826.

52. Search Results for Human Trafficking Bills introduced during the 83rd Legislature, TEX. LEGISLATURE ONLINE, <http://www.capitol.state.tx.us/> (Click “Search” on the top toolbar, then “Bill Search”; enter “Human Trafficking” in the “Subjects” field).

53. S.B. 93, 83d Leg., R.S. (Tex. 2013) (proposing amendment to TEX. GOV’T CODE ANN. § 402.035(h) (West Supp. 2012)).

54. S.B. 92, 83d Leg., R.S. (Tex. 2013).

55. *See id.* (proposing amendment to TEX. FAM. CODE §§ 51.04(b),(e), 51.0413 (2011)).

mandate the dismissal of charges against the child upon the child's completion of the program.⁵⁶ Still other pieces of proposed legislation mandate training on human trafficking awareness for the Department of Family and Protective Services, the Texas Education Agency, medical providers, and the Texas Juvenile Justice Department.⁵⁷ Another bill would require shelters that provide services to domestic minor sex trafficking victims to adhere to certain basic minimum standards, to ensure adequate and appropriate care.⁵⁸ Finally, the Legislature is considering a number of bills that would enhance criminal and civil penalties for those involved in human trafficking.⁵⁹

Texas made important strides implementing legislation to curb human trafficking in the 81st and 82nd Legislatures, and it is vital the 83rd Legislature continues this work by passing the bills detailed above. The legal community can support these efforts by lending their voices and the voices of their professional organizations in support of legislation aimed at fighting human trafficking and providing services to victims. Interested attorneys can also work with advocacy organizations to draft model legislation in Texas and throughout the country.

B. Justice and Restitution for Victims

1. *Criminal Prosecution.* Perhaps the most direct attack on human trafficking is the prosecution of the traffickers themselves. Federal law criminalizes sex trafficking, which is defined as causing a person to engage in commercial sex by the use of force, threat of force, fraud, or coercion.⁶⁰ However, if the victim is under the age of eighteen, it is sufficient simply to show that the defendant caused the child to engage in commercial sex; no force, threats, fraud or coercion must be proven.⁶¹ In practice, traffickers often use a combination of force, threats of force, fraud, and coercion to compel their victims to perform commercial sex acts. Force can take the form of physical or

56. *Id.* (proposing amendment to TEX. FAMILY CODE § 54.0326 (2008)).

57. *See* H.B. 2393, 83d Leg., R.S. (Tex. 2013); H.B. 1272, 83d Leg. R.S. (Tex. 2013); H.B. 804, 83d Leg. R.S. (Tex. 2013); H.B. 3407, 83d Leg., R.S. (Tex. 2013).

58. *See* H.B. 2725, 83d Leg., R.S. (Tex. 2013).

59. *See, e.g.*, H.B. 3241, 83d Leg., R.S. (Tex. 2013) (civil prosecution of racketeering related to trafficking); H.B. 1483, 83d Leg., R.S. (Tex. 2013) (creating the offense of commercial sexual exploitation of a child); H.B. 386, 83d Leg., R.S. (Tex. 2013) (parole eligibility of those convicted of human trafficking); S.B. 94, 83d Leg., R.S. (Tex. 2013) (civil liability for compelled prostitution and certain promotion of prostitution); H.B. 32, 83d Leg. R.S. (Tex. 2013) (enhancing punishment for certain promotion of prostitution).

60. 18 U.S.C. § 1591(a) (2006 & Supp. V 2012).

61. *Id.*

sexual abuse, control of the victim's movements, constant surveillance, or restrictions on the victim's communication with friends or family.⁶² Fraud is often manifested as misrepresentations about the type of work; the working conditions, wages, and immigration benefits of the job; and nonpayment or underpayment of wages.⁶³ Coercion can involve exploitation of an immigrant's unfamiliarity with the language and laws of the United States, verbal and psychological abuse, threats of harm to the victim or the victim's family and friends, threats of deportation, isolation, confiscation of travel and identification documents, and the imposition of debt through inflated fees to the sexually oriented business or trafficking network.⁶⁴ Under federal law, the punishment for sex trafficking that involves a child under the age of fourteen or that involves a victim of any age and includes force, fraud, or coercion, is fifteen years to life.⁶⁵ If the victim is between the ages of fourteen and eighteen, and does not include force, fraud, or coercion, the punishment is ten years to life.⁶⁶

a. Prosecution of Traffickers. Federal law not only mandates lengthy prison terms for sex trafficking, but also provides for mandatory restitution to the victim. 18 U.S.C. § 1593 provides that upon conviction for sex trafficking, the defendant must pay mandatory restitution to the victim for the full amount of the victim's losses.⁶⁷ The victim's losses are defined as "the gross income or value to the defendant of the victim's services or labor or the value of the victim's labor" as guaranteed by federal minimum wage and overtime regulations.⁶⁸ While it is fairly straightforward to calculate damages for victims of labor trafficking by simply multiplying the wage they should have earned by the hours that they worked, it can be more complicated in the case of sex trafficking. Since it would be offensive to assign an hourly wage to the work that sex trafficking victims were forced to perform, the only appropriate way to assess their

62. *Hostess/Strip Clubs—Sex Trafficking*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/hostessstrip-clubs> (last visited Mar. 1, 2013).

63. *Id.*

64. *Id.*; see also 18 U.S.C. § 1591(e)(2) (Supp. V 2012) (defining "coercion" to include "threats of serious harm"; "any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm"; and "abuse or threatened abuse of law or legal process").

65. 18 U.S.C. § 1591(b)(1) (Supp. V 2012).

66. 18 U.S.C. § 1591(b)(2) (2006 & Supp. V 2012).

67. 18 U.S.C. § 1593(b)(1) (Supp. V 2012).

68. 18 U.S.C. § 1953(b)(3) (2006).

damages is to calculate the trafficker's profits. Thus, the statute allows prosecutors to go after the profits traffickers make off their victims, rather than a crude estimation of the victim's hourly wage. This ensures fair restitution is available for victims, but may be hard to determine without adequate evidence. The statute also provides for the forfeiture of a defendant's property in order to pay the restitution award.⁶⁹

At the state level, Texas recently passed a mandatory restitution law where a defendant convicted of the sex trafficking of a child must pay the victim restitution "in an amount equal to the cost of necessary rehabilitation, including medical, psychiatric, and psychological care and treatment."⁷⁰

i. Case Studies. A number of traffickers throughout the country have been brought to justice and ordered to pay victim's restitution, however, the number of prosecutions and convictions pale in comparison to the scale of the problem.⁷¹ Still, the cases that have been brought are instructive for the sentences and restitution awards that prosecutors have been able to obtain. For instance, nine members of an international sex trafficking conspiracy were convicted of a scheme that brought women from Eastern Europe to the United States through Mexico and forced them to work at strip clubs in Detroit.⁷² The lead defendant in that case, Aleksandr Maksimenko, was sentenced to fourteen years in prison and was ordered to pay the victims \$1.57 million in restitution.⁷³ Maria de Jesus Valle-Maldonado was sentenced to four-and-a-half years in prison and ordered to pay \$135,542 in restitution for smuggling girls as young as fourteen into the United States from Mexico and forcing them to work as prostitutes in massage parlors and brothels to pay off the debt they incurred in the passage.⁷⁴ Len Wah Chong was sentenced to

69. 18 U.S.C. § 1593(b)(4) (Supp. V 2012).

70. H.B. 2014, 82d Leg., R.S. (Tex. 2011) (amending TEX. CODE CRIM. PROC. art. 42.0372(a) (West 2012)).

71. For instance, in 2010, the Department of Justice Civil Rights Division and U.S. Attorney's Offices brought just fifty-two human trafficking cases to court. OFFICE OF LEGAL POLICY, U.S. DEPT OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS—FISCAL YEAR 2010, at 61 (2011), available at <http://www.justice.gov/archive/ag/annualreports/agreporthumantrafficking2010.pdf>.

72. *Final Defendant Pleads Guilty for His Role in International Conspiracy Involving the Forced Labor of Eastern European Women in Detroit-Area Exotic Dance Clubs* (Sept. 13, 2011), U.S. DEPT OF JUSTICE, <http://www.justice.gov/opa/pr/2011/September/11-crt-1182.html>.

73. *Id.*

74. U.S. DEPT OF JUSTICE, REPORT TO CONGRESS FROM ATTORNEY GENERAL ALBERTO R. GONZALES ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS IN FISCAL YEAR 2004, at 25 (2005), available at

six years in prison and ordered to pay \$350,000 in restitution after she pleaded guilty to the “sex trafficking of persons by force, fraud and coercion” of eleven victims through a chain of four massage parlors.⁷⁵ In one of the harshest criminal penalties involving human trafficking to date, Juan Mendez was sentenced to fifty years in prison and ordered to pay \$100,000 in restitution to two child victims, aged thirteen and seventeen, who he lured into the country with the promise of a job in a restaurant.⁷⁶ Once in the country, he forced the girls into prostitution with physical threats and psychological abuse.⁷⁷

In other cases, while traffickers are prosecuted by law enforcement and face prison time, no restitution for the victims is ordered. In *United States v. Grandt*, twenty-two defendants were charged with conspiracy in a human trafficking ring that recruited women from Korea to come to the United States with the promise of making money to help their families.⁷⁸ Once in the United States, the traffickers confiscated the women’s travel documents and threatened to harm the women’s families in Korea and turn the women over to law enforcement if they did not work as prostitutes in the traffickers’ brothels in New York.⁷⁹ Six defendants have pleaded guilty to date.⁸⁰ In Boston, five traffickers faced indictment for a human trafficking ring that brought women from China to the United States and forced them to work as prostitutes in brothels and massage parlors, under the threat of serious harm to their loved ones should they try to run away.⁸¹ Two defendants in the case face up to life in prison if convicted.⁸²

<http://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1001&context=humtraffdat>
a; *Operator of L.A. Brothel is Sentenced*, L.A. TIMES, Nov. 2, 2004, at B3.

75. *Court: Massage Parlor Owner Takes Plea*, NIAGARA GAZETTE (Apr. 17, 2008), <http://niagara-gazette.com/local/x681306307/FEDERAL-COURT-Massage-parlor-owner-takes-plea/print>.

76. *Tennessee Man Sentenced for Sex Trafficking of Adults and Juveniles* (June 27, 2008), U.S. DEP’T OF JUSTICE, <http://www.justice.gov/opa/pr/2008/June/08-crt-580.html>.

77. *Id.*

78. *See* U.S. DEP’T OF JUSTICE, *supra* note 74, at 43.

79. *Id.*

80. *Id.*

81. John P. Kelly, *Feds: Greater Boston Sex Ring Included Quincy Brothel*, PATRIOT LEDGER (Apr. 1, 2010, 11:01 AM), <http://www.patriotledger.com/homepage/breaking/x905412914/Quincy-residents-among-five-indicted-in-prostitution-ring>.

Three of the traffickers ultimately pled guilty while two currently await trial. Lane Lambert, *Second Quincy Man Sentenced on Sex Trafficking Charges*, PATRIOT LEDGER (Mar. 16, 2012, 2:45 PM), <http://www.patriotledger.com/topstories/x1617892679/Second-Quincy-man-sentenced-on-sex-trafficking-charges>.

82. Kelly, *supra* note 81.

2. *Prosecution of Buyers of Commercial Sex.* Sex trafficking would not exist without the demand for commercial sex. Sex buyers may be unaware, uninformed, or in denial about the violent and abusive realities of sex trafficking as a part of the broader commercial sex trade.⁸³ The sex industry is often glamorized in popular movies and music, which fail to acknowledge the ubiquity of sex trafficking.⁸⁴ Additionally, most victims of trafficking do not discuss their situation with customers or ask them for help, so “johns” may not fully realize the truth about the desperate situation in which trafficking victims find themselves.⁸⁵ Often, during prostitution stings, law enforcement will let the buyer, or “john,” walk away while arresting and charging the prostitute with a crime.⁸⁶ With enhanced education about human trafficking however, more law enforcement entities are holding buyers of commercial sex accountable through arrest and criminal charges.⁸⁷ Unless the demand for illicit commercial sex is addressed, authorities will find it exceedingly difficult to end sex trafficking, as traffickers will always find creative ways to respond to demand with a ready supply of victims. As detailed above, Texas recently increased the penalties for buyers of commercial sex when the victim is a child. However, more action is needed to address and curb the demand for commercial sex.

3. *Civil Remedies.* A powerful but underutilized tool in the fight against human trafficking is the civil remedy, which provides an additional method to force traffickers to pay restitution to their victims. Civil suits can provide the survivors of human trafficking with the opportunity to regain control of their lives, have their day in court, hold the traffickers accountable in the event that the government does not bring a criminal case, and gain economic independence and compensation for their injuries. Bringing a civil suit gives a trafficking victim the opportunity to exercise some control over the case, in that he or she can choose the defendants to

83. *Why Trafficking Exists*, POLARIS PROJECT, <http://www.polarisproject.org/human-trafficking/overview/why-trafficking-exists> (last visited Mar. 1, 2013).

84. *Id.*

85. *Id.*

86. *See, e.g.*, Ayanna Pressley & Lina Nealon, *Targeting the “Johns”*, BOSTON GLOBE (Feb. 11, 2013), <http://bostonglobe.com/editorials/2013/02/11/targeting-johns/ZILfH8snlMnr1o7Im9WgdN/story.html> (“Buy a body: get caught, but get off. That’s been the norm”)

87. *See id.* (describing efforts targeting sex buyers, including a National Day of Johns Arrests).

pursue.⁸⁸ As the standard of proof is lower in a civil case than a criminal proceeding, a civil suit may provide greater opportunity to hold perpetrators accountable.⁸⁹

Federal law creates a private right of action for the victim against a trafficker and indicates that the victim “may recover damages and reasonable attorneys’ fees.”⁹⁰ However, there is a dire lack of access to legal services among trafficking victims, evidenced by the fact that out of the 841 victims who received trafficking certifications and letters of eligibility from the Department of Health and Human Services between 2001 and 2005, fewer than twenty brought civil trafficking suits under the federal law.⁹¹ There is a pressing need for pro bono attorneys to step in and provide representation to trafficking victims who wish to pursue civil actions. However, in addition to limited access to legal services, trafficking victims may voluntarily forego a civil suit against their trafficker or traffickers. Many victims are fearful of the potential repercussions of testifying against their traffickers, while some victims simply desire to “move on” with their lives.

A number of states, including Alabama, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Maine, Massachusetts, Minnesota, Missouri, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Vermont, Washington, Wisconsin, and the District of Columbia, provide victims of human trafficking with the opportunity to pursue civil remedies.⁹² Many provide that trafficking victims may pursue “actual damages, compensatory damages, punitive damages, injunctive relief, and attorney’s fees and costs.”⁹³ They may additionally allow for treble damages in the event that the court finds the defendant acted willfully and maliciously.⁹⁴

C. Shutting Down Sexually Oriented Businesses

An issue of particular relevance in Houston, but also nationwide, is the proliferation of sexually oriented businesses.

88. POLARIS PROJECT, *Human Trafficking Legislative Issue Brief: Civil Remedy* (2012), available at http://www.polarisproject.org/storage/documents/policy_documents/Issue_Briefs/issue_brief_civil_remedy_september_2012.pdf.

89. *Id.*

90. 18 U.S.C. § 1595(a) (2006).

91. *Legal Options to Stop Human Trafficking: Hearing Before S. Judiciary S. Com. on Human Rights and the Law*, 110th Cong. 82 (Mar. 26, 2007) (statement of Martina Vandenberg), available at <http://www.gpo.gov/fdsys/pkg/CHRG-110shrg37695/pdf/CHRG-110shrg37695.pdf>.

92. POLARIS PROJECT, *supra* note 88.

93. *Id.*

94. *Id.*

Traffickers use many different methods to translate their control over their victims into profits, but one of the most prevalent is through sexually oriented businesses. Generally, a sexually oriented business is any business that, as one of its principal business purposes or its primary purpose, involves trade or activities relating to a specified anatomical area or specified sexual activities.⁹⁵ These businesses dovetail perfectly with the trafficker's intent to profit from the exploitation of their victims, as they provide a ready-made market.

Depending upon how a sexually oriented business is defined and therefore regulated, businesses are often established as nonsexual in nature in an attempt to evade regulation and licensure. While some sexually oriented businesses, such as strip clubs, are easily identifiable as sexually oriented, other businesses are established as "massage parlors," "modeling studios," "tea houses," or other nonsexual business entities in an effort to disguise their true identities as brothels and venues for labor and sex trafficking. Furthermore, even businesses that are clearly sexually oriented, such as strip clubs and gentlemen's clubs, are often difficult to regulate due to lack of manpower to enforce regulation and licensure requirements.⁹⁶

Complicit actors in these illegal business operations may include owners and operators of the businesses as well as the property owners who knowingly permit the business to operate despite their knowledge about the business' illegal activities. Traffickers, who do not necessarily have an interest in the ownership or management of a sexually oriented business, may nonetheless make arrangements with the owners and managers as a way to facilitate the marketing and exploitation of their victims. Essentially, the businesses provide the venue for the traffickers to market and sell their "products," and the traffickers pay a portion of their profits to the business owners and operators. Also complicit in these illegal business ventures are the clients, or "johns," who patronize the establishments for the purpose of commercial sex. Like any commercial enterprise, human trafficking is fueled by the business law of supply and demand—but for the customers willing to pay for commercial sex, these illegal businesses would not be in existence.

95. See e.g., *Young v. Am. Mini Theaters, Inc.*, 427 U.S. 50, 53 (1976) (describing businesses which feature "Specified Sexual Activities" and/or "Specified Anatomical Areas" as "adult").

96. See e.g., Flint McColgan, *Woman Pleads Guilty to Prostitution*, MINOT DAILY NEWS (Jan. 10, 2013), <http://www.minotdailynews.com/page/content.detail/id/572276/Woman-pleads-guilty-to-prostitution.html> (giving one example of how the lack of resources makes it difficult to crack down on prostitution).

Despite the challenges involved in shutting down illegal sexually oriented businesses, the City of Houston has made cracking down on businesses involved in human trafficking a priority. In 2004, the Texas Alcoholic Beverage Commission (TABC) was approached by Special Agents from the white-collar crimes unit of the Houston FBI.⁹⁷ The FBI was investigating human sex trafficking in several bars in Houston, and asked for the assistance of the TABC since it involved alcohol retail establishments.⁹⁸ This began a collaboration of FBI, Immigration and Customs Enforcement (ICE), and TABC agents, as well as the Harris County Deputy Sheriff to target human trafficking rings operating out of TABC licensed facilities.⁹⁹

The collaboration between the TABC, the FBI, ICE officials, and the Harris County Sheriff's Office resulted in the bust of one of the nation's largest sex trafficking rings and the rescue of 120 women and girls.¹⁰⁰ Traffickers had forced the victims into prostitution and had physically, sexually, and emotionally abused them in TABC-licensed cantinas in Houston.¹⁰¹ In 2005, through the joint cooperation of all law enforcement entities involved, enough evidence was collected to make arrests.¹⁰² In November of 2005, the police raided three bars, two restaurants, and two houses.¹⁰³ The 120 victims of human trafficking who were rescued as a result of the criminal investigation were placed in a safe environment.¹⁰⁴ Many of the victims were women and girls enticed by the promise of legitimate employment to come to the United States, but who were quickly forced into prostitution upon their arrival.¹⁰⁵ They were kept under constant surveillance and were told that if they tried to escape, their families would be harmed.¹⁰⁶

The main suspects in the case were Maximino Mondragon, Oscar Mondragon, and Victor Lopez, who all held TABC

97. *TABC Breaks Up Trafficking Ring in Houston Cantinas*, TEX. ALCOHOL BEVERAGE COMM'N, http://www.tabc.state.tx.us/enforcement/trafficking_ring.asp (last visited Dec. 11, 2012).

98. *Id.*

99. *Trafficking in Texas*, TEX. ALCOHOL BEVERAGE COMM'N, http://www.tabc.state.tx.us/enforcement/trafficking_in_texas.asp (last visited Dec. 11, 2012).

100. *TABC Breaks Up Trafficking Ring in Houston Cantinas*, *supra* note 97.

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

permits.¹⁰⁷ For over a decade, Maximino Mondragon ran a ring of cantinas in northwest Houston where women and girls were held captive by constant surveillance and threats of violence to themselves and their families back in Latin America if they attempted to escape.¹⁰⁸ He controlled the women and girls' money, their clothes, and their movements, and even subjected the women to forced abortions if they became pregnant during their involuntary prostitution.¹⁰⁹ In total, courts convicted and sentenced ten individuals for a series of different crimes, including probation for making false statements on a TABC application, to over fifteen years in prison for forced labor and human smuggling violations.¹¹⁰ Maximino Mondragon was sentenced to thirteen years in prison and ordered to pay \$1.7 million in restitution to his victims.¹¹¹

In March of 2009, Harris County Attorney Vince Ryan created the Special Prosecutions Unit (SPU), a team of attorneys, investigators, and support staff dedicated solely to addressing the needs of individual neighborhoods regarding issues that directly affect the health, safety, and welfare of the residents.¹¹² The SPU has been very active in battling criminal enterprises, including human trafficking, that function within sexually oriented businesses.¹¹³ Beginning with police reports of criminal activity, the interagency cooperation continues with Fire Marshal and Building Code inspectors going to the site in question to inspect the premises.¹¹⁴ Prosecutors may, in appropriate circumstances, coordinate with the TABC for enforcement of its regulations as well.¹¹⁵ The criminal violations become the backbone of the County Attorney's legal petitions, and the additional civil or administrative violations help provide a judge

107. *Id.*

108. Lise Olsen, *Crackdown on Houston Sex Ring Freed 120 Women*, HOUS. CHRON. (June 29, 2008), <http://www.chron.com/neighborhood/cyfair-news/article/Crackdown-on-Houston-sex-ring-freed-120-women-1790132.php>.

109. *Id.*; Susan Carroll, *Houston Called Major Hub for Human Trafficking*, HOUS. CHRON. (Oct. 28, 2007), <http://www.chron.com/news/houston-texas/article/Houston-called-major-hub-human-trafficking-1839951.php>.

110. *TABC Breaks Up Trafficking Ring in Houston Cantinas*, *supra* note 97.

111. Lise Olsen, *Houston Sex-Trafficking Ringleader Gets 13 Years in Prison*, HOUS. CHRON. (Apr. 27, 2009), <http://www.chron.com/news/article/Houston-sex-trafficking-ringleader-gets-13-years-1735028.php>.

112. Linda S. Geffin, *Harris County's Battle Against Human Trafficking Using Civil Remedies*, 50 HOUS. LAW., Sept.–Oct. 2012, at 28, 29.

113. See *Human Trafficking*, OFFICE OF THE HARRIS COUNTY ATTORNEY, <http://www.co.harris.tx.us/coatly/humantrafficking.aspx> (last visited Mar. 1, 2013).

114. Geffin, *supra* note 112, at 29.

115. *Id.*

with sufficient evidence that not only is criminal activity occurring in the location, but also that the activity occurring in the location is endangering the health, safety and welfare of the neighborhood.

In 2012, the Special Prosecutions Unit partnered with the nonprofit advocacy group CHILDREN AT RISK to create a dynamic new force in the fight against human trafficking.¹¹⁶ CHILDREN AT RISK connected local pro bono attorneys with the SPU to enlist the help of the attorneys in filing nuisance abatement suits to close down businesses suspected of trafficking persons. Continuing legal education (CLE) training was provided to the attorneys, where they were briefed in the crisis of human trafficking and the ways in which sexually oriented businesses often facilitate sex trafficking. The attorneys were trained in how to go about filing nuisance abatement cases and were given case files by the SPU that contained detailed notes of investigations of specific sexually oriented businesses to assist the attorneys in building their cases against the establishments.

Putting a case together to close down a sexually oriented business involves a number of steps:

- (1) Legal Research
- (2) Criminal Investigations
- (3) Compliance Checks
- (4) Notification Letters to Financial Stakeholders
- (5) Meetings with Interested Parties
- (6) Cease & Desist Letters
- (7) Lawsuit

The SPU created a checklist to ensure that all involved parties, from paralegals to investigators and attorneys, completed the necessary steps to successfully pursue a nuisance abatement case.¹¹⁷ A sample nuisance abatement notification letter, sent to the financial stakeholders of a sexually oriented business, was also included in the SPU training.¹¹⁸ In addition to the sample nuisance abatement notification letter, the CLE training for pro bono attorneys included a sample cease and desist letter and sample motions and orders for temporary

116. *A New Partnership with the Harris County Attorney's Office*, CHILDREN AT RISK (July 2, 2012), <http://childrenatrisk.org/2012/07/a-new-partnership-with-the-harris-county-attorneys-office/>.

117. Office of Vince Ryan, Harris Cnty. Attorney, *Fighting Human Trafficking Through Pro Bono Service* 11,18 (2011) (unpublished CLE material, on file with HLRe).

118. *Id.* at 26–33.

injunction. To date, over 60 local pro bono attorneys have been trained to file nuisance abatement complaints against area businesses suspected to be involved in human trafficking.¹¹⁹ Additionally, since its inception in 2009, the Harris County SPU has successfully closed over thirty sexually oriented businesses and criminal enterprises.¹²⁰ The participation of more attorneys in this effort would go a long way towards ensuring that the City of Houston does not tolerate the operation of sexually oriented businesses that facilitate human trafficking.

III. SAFE HARBOR

A. Decriminalization

As important as tactics that seek to shut down venues for human trafficking and bring traffickers to justice are, equally essential are approaches that seek to decriminalize prostitution when human trafficking is involved, and to treat and rehabilitate trafficking victims. Such approaches are embodied in safe harbor legislation, which has two essential components: decriminalization and the provision of services. The first component, decriminalization, ensures that victims of sex trafficking are not convicted of prostitution. A variety of methods exists to shield trafficking victims from prosecution, including complete immunity, the availability of an affirmative defense or a rebuttable presumption, or deferred adjudication or probation. The first method, complete immunity, bars prosecution entirely. In the case of minors, many states have amended their statutes to set a minimum age for a prostitution charge, which may be tied to the age of consent in the state. For instance, in Illinois and Tennessee, a person must be eighteen years of age or older to be charged with prostitution.¹²¹ In Texas, the Supreme Court ruling in *In re B.W.* means that children under the age of fourteen are immune from prosecution on prostitution charges.¹²² In the case of adults, states such as Vermont provide that any person who is a victim of human trafficking cannot be found in violation of the prostitution or obscenity statutes.¹²³ While

119. Interview with Dawn Lew, Senior Staff Attorney, CHILDREN AT RISK (March 25, 2013).

120. *Human Trafficking*, *supra* note 113.

121. 720 ILL. COMP. STAT. ANN. 5/11-14(d) (LexisNexis Supp. 2012); TENN. CODE ANN. § 39-13-513(d) (Supp. 2012).

122. See *In re B.W.*, 313 S.W.3d 818, 820 (Tex. 2010) (agreeing with B.W. that the Legislature did not intend to apply prostitution offenses to children under fourteen).

123. *E.g.*, VT. STAT. ANN. tit. 13, § 2652(c)(1)(A) (2012); see also N.J. STAT. ANN. § 2C:13-8(c) (West 2005).

immunity achieves the goal of ensuring that human trafficking victims are not criminally prosecuted, and therefore in a sense re-victimized, it presents a problem for law enforcement officers who want to remove a trafficking victim from exploitative conditions. Trafficking victims often do not self-identify, and may be wary of authorities. Thus, sympathetic law enforcement officers sometimes use criminal charges as a way of separating trafficking victims from their traffickers and bringing them into the justice system, where they may have access to services.

The availability of an affirmative defense or a rebuttable presumption is another method that allows trafficking victims to avoid criminal liability for prostitution. An affirmative defense requires the defendant to prove that he or she was a victim of trafficking in order to avoid liability. A rebuttable presumption shifts the burden of proof to the prosecution, requiring the state to disprove certain elements which are otherwise presumed to be true and which shield the defendant from liability. Connecticut utilizes both methods: for children aged sixteen or seventeen, prosecutors wishing to obtain a prostitution conviction must overcome a presumption that the child was a trafficking victim; and defendants of any age may use coercion by a trafficker as an affirmative defense to a prostitution charge.¹²⁴ New Jersey also provides two affirmative defenses to prostitution—defendants can avoid liability by proving that they were under the age of eighteen at the time of the offense, or that they were victims of human trafficking.¹²⁵

A third method for decriminalization offers children a path to avoid criminal liability by completing a diversion or probation program. New York passed the first example of this model in the nation in 2008.¹²⁶ New York's legislation allows children with prostitution charges to substitute a petition that they are a respondent in need of supervision in place of a delinquency petition, unless they have been previously adjudicated as a juvenile delinquent, or are unwilling to accept services for sexually exploited youth.¹²⁷ The New York law operates under the rebuttable presumption that children under the age of eighteen charged with prostitution are trafficking victims.¹²⁸

124. CONN. GEN. STAT. ANN. § 53a-82(b),(c) (West 2012).

125. N.J. STAT ANN. § 2C:34-1(e) (West Supp. 2012).

126. Safe Harbor for Exploited Children Act § 447-b (2008) (codified at N.Y. FAM. CT. ACT § 311.4(3) (McKinney Supp. 2011)).

127. N.Y. FAM. CT. ACT § 311.4(3) (McKinney Supp. 2011).

128. *Id.* (providing a presumption that “the respondent meets the criteria as a victim of trafficking” under 22 U.S.C. § 7105).

Massachusetts has a similar statute, which allows a court to indefinitely stay a juvenile delinquency proceeding or place the child in pretrial probation when the child has been charged with prostitution.¹²⁹ The court may restore the charges if the child violates the conditions of the probation or fails to complete the diversion program.¹³⁰ In Washington State, prosecutors are required to divert defendants to alternate programming if the prostitution charge is their first offense.¹³¹ Texas is currently considering whether to implement a diversion program for children charged with prostitution, as the bill detailed above proposes.¹³²

B. Specialty Courts

Specialty courts designed to handle specific criminal offenses and offenders can be utilized to ensure that women and children charged with prostitution, many of whom are trafficking victims, get the services they need rather than punitive treatment and incarceration. Such courts have guidelines regarding the specific cases they will hear and often have a limited caseload. The courts aim to offer wraparound services, such as drug treatment, counseling, and housing assistance, while keeping participants under close supervision through probation. The goal of such courts is to reduce recidivism and to rehabilitate participants to the point that they are able to be independent and self-sufficient.

A number of these specialty courts exist in Texas. The Growing Independence Restoring Lives (GIRLS) Court of the 315th District Court of Texas serves young girls in Houston who are victims of human trafficking or have resorted to prostitution as a way to survive on the streets.¹³³ The court employs a multi-disciplinary team that aims to decriminalize juvenile prostitution and offers girls intensive supervision and therapeutic services, including residential placement, to “address their underlying trauma, at-risk behavior, and delinquent conduct.”¹³⁴ Upon graduation from GIRLS Court, the girls are able to seal their juvenile records and, if

129. MASS. GEN. LAWS ANN. ch. 119, § 39L(c) (West Supp. 2012).

130. *Id.*

131. WASH. REV. CODE ANN. § 13.40.070(6) (2004).

132. *See supra* note 55–56 and accompanying text.

133. HARRIS CNTY. JUVENILE PROBATION DEP’T, GETTING BACK TO THE BASICS 14 (2011), http://www.hcjpd.org/annual_reports/2011.pdf.

134. HARRIS COUNTY JUVENILE PROBATION DEPARTMENT 2011 ANNUAL REPORT, *supra* note 133, at 14; *Harris County Continues Reforms*, HARRIS COUNTY JDAI (HARRIS CNTY. JUVENILE DETENTION ALTERNATIVES INITIATIVE), July 2011, at 1, *available at* <http://www.hcjpd.org/JDAINewsletter/Newsletter%20July%202011%20Final.pdf>.

successful, have developed the skills and self-esteem necessary to heal and redirect their lives.¹³⁵

Another specialty court that focuses on troubled girls is the Experiencing Success Through Empowerment, Encouragement and Mentoring (ESTEEM) Court in Dallas.¹³⁶ ESTEEM Court accepts girls who:

- (1) have committed a child in need of supervision (CINS) offense, or have had misdemeanor charges deferred by the District Attorney; and
- (2) have either run away at least four times in a year; spent at least one residential stay at a homeless shelter; or been victims of child exploitation, including trafficking.¹³⁷

The court provides wraparound services for the participants as well as their families and develops a plan for the success of the girls after their completion of the program, thus aiming to reduce the participants' further future entry into the juvenile justice system.¹³⁸ The ESTEEM Court program includes a group session for the girls to debrief and build relationships with each other, as well as a group session for parents to teach parenting skills and allow parents to provide mutual support to each other.¹³⁹ The court also provides a treatment group run by clinical staff, specifically designed for the court's population.¹⁴⁰ Finally, the court partners with Big Brothers/Big Sisters and AIM Truancy to provide mentoring for the girls.¹⁴¹

The Strengthening, Transition and Recovery (STAR) Court in Dallas accepts adult women who have a pending charge for felony prostitution, which means they already have two prior misdemeanor prostitution convictions.¹⁴² The court's goal is to "do everything [it] can to keep [the women] from taking drugs, keep

135. HARRIS COUNTY JUVENILE PROBATION DEPARTMENT 2011 ANNUAL REPORT, *supra* note 133, at 14.

136. Memorandum from Dr. Terry S. Smith, Director of Juvenile Services, Henry Wade Juvenile Justice Center, to the Dallas County Juvenile Board (Aug. 27, 2012), *available at* http://www.dallascounty.org/department/juvenile/media/board/2012/JBP_2012_Aug27.pdf.

137. Cheryl Lee Shannon, E.S.T.E.E.M. Court: Experiences Success Through Empowerment, Encouragement and Mentoring (2012) (Microsoft PowerPoint presentation, on file with HLRe).

138. Memorandum from Dr. Terry S. Smith, *supra* note 136.

139. *Id.*

140. *Id.*

141. Minutes of Meeting, Dallas County Juvenile Board (Feb. 27, 2012), *available at* http://www.dallascounty.org/department/juvenile/media/board/2012/JBP_2012_Mar26.pdf.

142. Sam Merten, *Courting Hookers*, DALL. OBSERVER (July 10, 2008), <http://www.dallasobserver.com/2008-07-10/news/courting-hookers>.

them off the street and find them housing.”¹⁴³ The court aims to reduce recidivism by using extensive judicial oversight, drug treatment, counseling, classes, and job training as part of a fifteen-month program, rather than traditional jail time.¹⁴⁴ STAR Court has space for thirty-five women on the docket at one time, and has a waiting list.¹⁴⁵ Rather than viewing the women as habitual criminals, STAR Court instead understands that the women are often victims who, with the right support, may be able to break the cycle of prostitution and lead productive, healthy lives. STAR Court is not specifically aimed at sex trafficking victims, but its approach of replacing punishment with social services is the appropriate response to trafficking victims facing prostitution charges.

C. *Safe Houses*

In order for diversionary justice programs to be effective, they must be able to access a network of community providers to provide treatment and services to victims. Residential placement centers are a crucial component of these services, especially for minor trafficking victims. Known as “safe houses,” these facilities provide immediate shelter and specialized assistance specifically tailored for victims of child sex trafficking, including counseling, medical and psychiatric care, life skills training, and access to GED or other educational programs.¹⁴⁶ Importantly, safe houses create distance between the victims and their trafficker, and ideally help the victims create new and healthy relationships, build their self-esteem, and realize that they are victims of a crime, not criminals themselves.¹⁴⁷

Due to the overwhelming prevalence of domestic minor sex trafficking in Texas, services and treatment options for these victims are in great demand. Unfortunately, only two safe houses currently exist in Texas for child sex trafficking victims; Letot Center in Dallas and Freedom Place just outside of Houston, although two others, Home of Hope and Isaiah’s House, plan to

143. *Id.*

144. Megan Feldman, *An Innovative Court Offers New Tricks to Turn Ex-Prostitutes into Real Working Girls*, DALL. OBSERVER (Jan. 14, 2010), <http://www.dallasobserver.com/2010-01-14/news/an-innovative-court-offers-new-tricks-to-turn-ex-prostitutes-into-real-working-girls>.

145. *Id.*

146. HEATHER J. CLAWSON & LISA GOLDBLATT GRACE, U.S. DEP’T OF HEALTH & HUMAN SERVS., *FINDING A PATH TO RECOVERY: RESIDENTIAL FACILITIES FOR MINOR VICTIMS OF DOMESTIC SEX TRAFFICKING* 3, 6–8 (2007), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/ResFac/ib.pdf>.

147. *Id.* at 2, 5–6.

begin serving victims soon.¹⁴⁸ Still, the numbers of beds available for child sex trafficking victims is far exceeded by the need. Letot Center in Dallas currently only offers short-term residential placement for children referred from the Child Exploitation/High Risk Victims and Trafficking Unit of the Dallas Police Department.¹⁴⁹ However, Letot Center is planning an expansion to create a long-term residential treatment program for girls between the ages of thirteen and seventeen.¹⁵⁰ The Letot Girls' Residential Treatment Center will have the capacity to serve up to ninety-six girls at a time, and will address issues of sexual exploitation, including sex trafficking.¹⁵¹ Letot Center plans to work with the Dallas County Juvenile Justice System to identify girls who need long-term residential treatment and provide them with clinical, educational, medical, recreational, and case management services.¹⁵² The center aspires to develop intensive aftercare and ongoing community services to re-integrate the girls successfully back into the community.¹⁵³

Freedom Place, located outside Houston, is a residential treatment center run by the faith-based organization Arrow Child & Family Ministries, and specifically serves female domestic minor sex trafficking victims.¹⁵⁴ The facility is located on 110 acres in a rural environment and has the capacity to house thirty girls at a time.¹⁵⁵ Residents at Freedom Place receive medical care, substance abuse treatment, psychiatric evaluation and treatment, psychological and trauma counseling, life skills training, spiritual counseling, and equine therapy for an expected stay of nine to eighteen months.¹⁵⁶ Freedom Place endeavors to

148. See OFFICE OF THE ATTORNEY GEN., *supra* note 43, at 14; see generally STREETLIGHT TUCSON, U.S. & CANADIAN RESIDENTIAL FACILITIES FOR VICTIMS/SURVIVORS OF SEX TRAFFICKING (2012), <http://traffickinginpersonssymposium.files.wordpress.com/2012/03/list-of-us-homes-for-trafficking-victims-may-2012-31.pdf> (listing existing and planned safe houses in Texas).

149. *The Problem*, LETOT GIRLS' CTR., <http://letotgirlscenter.org/problem.htm> (last visited Mar. 2, 2013).

150. *Transforming Invisible Girls*, LETOT GIRLS' CTR., <http://letotgirlscenter.org/transforming.htm> (last visited Jan. 19, 2013).

151. *Id.*

152. *Id.*

153. *Id.*

154. *Overview*, FREEDOM PLACE, <http://www.freedomplaceus.org/about-us/about-us.html> (last visited Mar. 24, 2013).

155. *The Campus*, FREEDOM PLACE, <http://www.freedomplaceus.org/freedom-place/our-background.html> (last visited Mar. 24, 2013).

156. Emily Foxhall, *New Facility is Haven for Victims of Sex Trafficking*, TEX. TRIBUNE (July 16, 2012), available at <http://www.texastribune.org/2012/07/16/safe-house-without-safe-harbor/>; *The Program*, FREEDOM PLACE, <http://www.freedomplaceus.org/freedom-place/the-program.html>.

reunite residents with their families when appropriate.¹⁵⁷ In cases where the child is unable to reunite with her family, Freedom Place seeks out foster care placements or, if the girl is of age, prepares her to live independently.¹⁵⁸

Advocates from the legal community are needed to encourage lawmakers to provide funding to existing safe houses so that they can continue to function, as well as to provide resources so that additional safe houses can begin serving victims. Pro bono attorneys may also aid these organizations by providing legal counseling regarding incorporation, liability, applicable regulations, and licensure requirements.

D. Immigration Status

For international human trafficking victims, immigration status can be a major issue and a deterrent to seeking help from the authorities or from trying to escape. In 2000, Congress attempted to address this problem by granting victims of “severe forms of human trafficking” temporary non-immigrant status in the form of a T-visa, on the condition that they cooperate with law enforcement efforts to investigate and prosecute human trafficking crimes, and in the event that they would face extreme hardship if forced to return to their home country.¹⁵⁹ If the victim is under eighteen years old, however, the law does not require cooperation with police to obtain a T-visa; cooperation may also be excused in cases of physical or psychological trauma.¹⁶⁰ The T-visa allows victims to stay in the United States for four years from the date of the visa’s approval, or longer if law enforcement certifies that the victim’s presence in the country is necessary to the investigation or prosecution of the crime.¹⁶¹ Recipients of T-visas may apply for permanent resident status at the expiration of their visa.¹⁶² With the granting of a T-visa, employment authorization is also granted automatically, which allows the victim to work legally in the United States.¹⁶³ Victims may also apply for T-visas for their immediate family members.¹⁶⁴ Recipients of T-visas may also be eligible for federal benefits,

157. *The Program*, *supra* note 156.

158. *Id.*

159. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified at 8 U.S.C. § 1101(a)(15)(T)(i) (2006)).

160. 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb)–(cc) (Supp. V 2012).

161. 8 C.F.R. § 214.11(p)(1) (2012).

162. *Id.* § 214.11(p)(2).

163. *Id.* § 214.11(l)(4).

164. *Id.* § 214.11(o).

including financial help, health care, social services, employment assistance, and housing assistance, and may qualify for aid from non-governmental organizations as well.¹⁶⁵

Additional immigration relief is available to trafficking victims through the U-visa, which grants non-immigrant status to victims of a number of crimes, including trafficking, if the victim suffered substantial physical and mental abuse as the result of the crime.¹⁶⁶ Victims must possess information about the crime and be willing to work with law enforcement in the investigation and prosecution of the crime.¹⁶⁷ Recipients of U-visas are given temporary legal status and work eligibility for up to four years.¹⁶⁸ However, only 10,000 U-visas are granted each year, and that cap is often reached before the end of the year.¹⁶⁹ A bill to increase the cap from 10,000 to 15,000 failed to pass Congress in 2012.¹⁷⁰

Finally, law enforcement officials who encounter victims of human trafficking in the course of their investigations who are potential witnesses to that trafficking may request that the victims be granted continued presence status to remain in the United States.¹⁷¹ Continued presence status is unusual and distinct from T- and U-visas in that it is sought by law enforcement agencies on behalf of victims, rather than by victims themselves. Victims may be granted employment authorization along with continued presence status.¹⁷²

While legal authorization to stay in the United States through a T-visa, U-visa, or continued presence status can be very meaningful for trafficking victims, the application process for such relief is complicated and time-consuming. To effectively access immigration relief and benefits, trafficking victims are in dire need of legal representation. For instance, in contrast to the U-visa, T-visas are grossly underutilized. Although 5,000 T-visas

165. *Fact Sheet: Victim Assistance*, OFFICE OF REFUGEE RESETTLEMENT (Aug. 7, 2012), www.acf.hhs.gov/programs/orr/resource/fact-sheet-victim-assistance-english. See, e.g., *Non-governmental Organizations*, HUMANTRAFFICKING.ORG, http://www.humantrafficking.org/countries/united_states_of_america/ngos (listing non-governmental organizations who provide assistance to human trafficking victims).

166. 8 C.F.R. § 214.14(a)(9), (b) (2011).

167. *Id.* § 214.14(b)(2).

168. *Id.* § 214.14(c)(7), (g)(1).

169. *U Visas Hit a Ceiling*, N.Y. TIMES (Sept. 3, 2012), http://www.nytimes.com/2012/09/04/opinion/special-visas-for-abused-women-hit-a-ceiling.html?_r=0 (noting that in 2012, the limit for U-visas was reached by the beginning of September).

170. *Id.*; see also S. 1925, 112th Cong. § 805(a)(2) (2012).

171. 28 C.F.R. § 1100.35(a) (2012).

172. *Id.* § 1100.35(b)(1).

are available each year, only 557 were granted in 2011.¹⁷³ Although many charitable organizations and nonprofits offer immigration assistance to trafficking victims, there is a need for the wider legal community to lend its support and services. Many law firms now offer pro bono support, including representation in immigration matters, which can make a huge difference in allowing victims of human trafficking to put their lives back together.

IV. CONCLUSION

Human trafficking is a horrific crime that is reaching epidemic proportions nationwide and occurring with alarming frequency here in Texas. The involvement of the legal community is critical to ending this crime, which so often victimizes children. There are myriad ways that concerned attorneys and legal professionals can take action, from being a voice for change in one's personal, community and political spheres, to providing pro bono assistance to victims and service providers. Texas has taken great strides through a variety of legal approaches to end human trafficking and must continue to lead the way in this important fight.

173. *US Immigration Raises Awareness for Visas Available to Trafficking Victims*, WORKPERMIT.COM (Mar. 25, 2012), <http://www.workpermit.com/news/2012-03-25/us-immigration-raises-awareness-for-visas-available-to-trafficking-victims.htm>.