

Human Trafficking in the United States:
Proposing Concrete Solutions to Better Data
Collection



IMMIGRANT WOMEN & CHILDREN PROJECT

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The City Bar Justice Center is a division of the City Bar Fund, the non-profit affiliate of The New York City Bar. The Justice Center's mission is to increase access to justice by leveraging the resources of the legal profession to provide high quality free civil legal services to poor and low-income New Yorkers. The Justice Center recruits, trains and mentors volunteer attorneys who provide advice and representation to 20,000 low income New Yorkers annually through a number of projects including the Consumer Bankruptcy Project, the Legal Clinic for the Homeless, the Immigrant Women and Children Project, the Elderlaw Project, the Cancer Advocacy Project, the Refugee Assistance Project, the General Immigration Project, the Neighborhood Entrepreneur Law Project and the Veterans Assistance Project. The City Bar Justice Center's telephone legal hotline provides referrals and brief advice to nearly 1,000 people per month.

The Immigrant Women and Children Project (IWC) of the City Bar Justice Center is one of the leading providers of immigration services to survivors of violent crimes in New York City. With the assistance of volunteer attorneys from the private bar, IWC helps survivors of domestic violence, human trafficking, sexual assault and child abuse seek freedom from their abusers and attain legal status in the United States.

Suzanne Tomatore, Esq. is the Director of the Immigrant Women and Children Project at the City Bar Justice Center. She represents survivors of domestic violence, human trafficking, child abuse and violent gender-based crimes in legal matters and trains and mentors other attorneys to do so. She has trained community-based organizations, health-care providers, law enforcement and government officials, and judges on human trafficking. She has lectured on this topic across the United States and abroad, including Canada, Venezuela, Mongolia and the Philippines. She has also travelled with the U.S. State Department to speak about human trafficking internationally. Ms. Tomatore is a co-chair of the Freedom Network, a coalition of thirty non-governmental organizations and individuals that provide services to, and advocate for the rights of, trafficking survivors in the United States. She is an active participant of multiple anti-trafficking task forces including the New York City Mayor's Anti-Trafficking Task Force, the New York State Human Trafficking Advisory Committee, and she is a founding member of the New York Anti-trafficking Network. She taught immigration law at the City University of New York Graduate Center School of Professional Studies. Prior to joining the City Bar, Ms. Tomatore was a recipient of the Open Society Institute Community Fellowship for implementing and directing the Immigrant Community Domestic Violence Project.

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Introduction

Human trafficking is a severe violation of human rights in which an individual is compelled into labor or commercial sex through force, fraud, or coercion. Contrary to popular belief, a person does not have to be physically restrained or moved from country to country to be a victim of trafficking. Trafficking happens both internationally and within the borders of the United States. It is not about the movement of a person, but rather the acts of power and control by the trafficker. Traffickers create a climate of fear to control their victims and traffic people into many different forms of work, including domestic work, working in factories, farms or restaurants, construction, and the commercial sex industry. Victims of trafficking experience a loss of power, isolation and invisibility, and have little or no access to help.

At the City Bar Justice Center, we have worked with survivors of human trafficking on a daily basis for more than a decade. As lawyers, we assist our clients by helping them assert their legal needs through a human rights lens. Our goal is to help our clients transform from victim to empowered survivor. Working closely with pro bono lawyers to ensure access to justice, we help our clients in various ways, such as filing for lawful immigration status, obtaining legal name changes, coordinating access to public benefits, and recovering identification documents. We also assist our clients in reporting their traffickers to law enforcement and counseling them on criminal issues, and we offer assistance with civil relief, such as filing for compensation through restitution or by litigation. In addition, we partner with social service providers and health professionals to help our clients heal holistically. By guiding our clients through the legal process, we help stabilize their lives and empower them to become independent and less vulnerable to re-trafficking and further abuse.

We have seen firsthand how destructive traffickers have been to our client's lives, both in the labor and sex trafficking contexts. However, law enforcement, prosecutors, the media and activists often focus only on the salacious side of sex trafficking. This exclusive focus discourages survivors of labor trafficking, many of whom were compelled through sexual and physical violence, from seeking help. There are few accurate or methodologically sound statistics on trafficking.¹ Those statistics that are available vary widely and frequently have no basis in

¹ The Trafficking Victims Protection Act of 2000 initially cited that 50,000 persons are trafficked into the U.S. each year. The 2003 Trafficking in Persons Report from the U.S. Department of State reduced this number to between 18,000 and 20,000 victims trafficked yearly into the U.S. Reports are available here: <http://www.state.gov/j/tip/rls/tiprpt/index.htm>

In 2005, the Department of Justice further reduced this number to between 14,500 and 17,500, and this number remains the most recent U.S. government estimate of victims trafficked into the U.S. each year. UNITED STATES

fact. If labor trafficking was more clearly understood, trafficking victims would have a much better chance of reaching help faster—or perhaps they would not be trafficked at all. In an effort to better train law enforcement, first responders, the judiciary and society at large, it is crucial to have a more accurate picture of the issue through better data capture.

Key Recommendations for Better Capturing Statistics:

1. Create Central Registries on Human Trafficking in Each State

Each state should establish a state central registry that collects accurate data on human trafficking, as the states are best positioned to both create and oversee the implementation of such a registry. The federal government attempts to trace human trafficking by collecting data from prosecutors and law enforcement. However, this attempt does not produce an accurate picture because not all cases are reported to law enforcement, taken seriously, or prosecuted. One

DEPARTMENT OF JUSTICE, ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS ON U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS, FISCAL YEAR 2005 (2006), *available at* <http://www.justice.gov/archive/ag/annualreports/tr2005/agreporthumantrafficking2005.pdf>.

Between fiscal year 2002 and May 1, 2009, only 1,431 T-1 Visas were issued to foreign national victims of trafficking. LIANA SUN WYLER & ALISON SISKIN, CONGRESSIONAL RESEARCH SERVICE, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 22 (2010), *available at* <http://fpc.state.gov/documents/organization/139278.pdf>.

In the New York City metropolitan area, Lifeway Network and the Department of Sociology at Hofstra University (hereinafter, "Lifeway Network") found that private service providers had interacted with at least 11,268 survivors of human trafficking between the years 2000 to 2010.¹ However, New York State confirmed only 121 victims of human trafficking between 2009 and 2011,¹ way below Lifeway Network's estimate. GREGORY M. MANEY ET. AL., LIFEWAY NETWORK, MEETING THE SERVICE NEEDS OF HUMAN TRAFFICKING SURVIVORS IN THE NEW YORK CITY METROPOLITAN AREA: ASSESSMENT AND RECOMMENDATIONS 4, 16 (2011), *available at* <http://lifewaynetwork.org/wp-content/uploads/2011/11/Hofstra-University-LifeWay-Network-Report-2011.pdf>.

Statistics on demographic characteristics vary just as much as the numbers on the size of the victim population. A joint 2008 report published by the Center for Court Innovation and John Jay College of Criminal Justice (hereinafter, "John Jay") found that 54% of youth under age 18 in New York City who were engaged in commercial sex were male. RIC CURTIS ET AL., CENTER FOR COURT INNOVATION AND THE JOHN JAY COLLEGE OF CRIMINAL JUSTICE, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN NEW YORK CITY, VOLUME ONE: THE CSEC POPULATION IN NEW YORK CITY: SIZE, CHARACTERISTICS, AND NEEDS 37 (2008), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/225083.pdf>. However, the 2011 Lifeway Network report on the New York City metropolitan area, which studied both adults and children, found that 87.6% of trafficking survivors were female.

Another frequent—but disputed—claim is the average age of entry into prostitution. Age ranges of 11 to 14 as well as 12 to 16 are often cited as fact, but these numbers are not verified. The most likely origin of this claim is a 2001 study by Richard J. Estes and Neil Alan Weiner of the University of Pennsylvania School of Social Work. This study purported only to measure the number of children "at risk" of commercial sexual exploitation in the United States, and the study sample was comprised almost exclusively of homeless minors. The authors themselves caution that the numbers presented do not reflect the actual number of cases and, thus, this number is hardly one to be used as fact regarding the number of child victims of sex trafficking in the United States. RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 143 (2001), *available at* http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf.

of the largest resources on human trafficking data in the United States is the National Human Trafficking Resource Center (NHTRC), managed by the Polaris Project.² The NHTRC's hotline is operational 24 hours a day, seven days a week, and it tracks calls from any source, including tips from individuals, service providers, lawyers and others. Yet, this database does not track actual services rendered, prosecutions, arrests, or convictions. NHTRC also does not track the outcomes of most of its referrals to law enforcement or service providers.

If created, a state Central Registry on Human Trafficking should use the federal definition of human trafficking as defined in the TVPRA³ for national consistency.⁴ State definitions of human trafficking vary significantly and some do not include labor trafficking. Social and legal service providers should be requested to report to the registry, and provisions must be made to protect confidentiality. Any agency that receives federal, state or local funding to provide services to survivors of human trafficking should be required to report. Federal law enforcement with jurisdiction should be encouraged to report as well. In addition, state agencies dealing with crime victims need to implement better data tracking and should update their forms and materials to include human trafficking as a crime, which would ensure reimbursement for medical bills and other harm for survivors. The state agencies that should report to such a Central Registry include, but are not limited to:

- Office of crime victims
- Child welfare agency
- Health, Elderly and disabled agencies
- New immigrant agency
- State, local, transportation and other specialized police departments
- Prosecutor's office
- State Attorneys General
- Family Justice Centers
- Labor departments
- Restaurant inspectors
- Building code inspectors
- Agencies that inspect hotels, entertainment businesses, or who provide licensing such as liquor authorities
- Other relevant agencies who may encounter survivors of trafficking

² Polaris Project, *National Human Trafficking Resource Center Overview*, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview>, (last visited November 15, 2012).

³ Trafficking Victims Protection Act of 2000 (TVPRA), Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18 and 22 U.S.C.), amended by Trafficking Victims Protection Reauthorization Act of 2003 (2003 TVPRA), Pub. L. No. 108-193, 117 Stat. 2875 (codified in scattered sections of 8, 18 and 22 U.S.C.), Trafficking Victims Protection Reauthorization Act of 2005 (2005 TVPRA), Pub. L. No. 109-164, 119 Stat. 3558 (2006) (codified in scattered sections of 18, 22 and 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (2008 TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (codified in scattered sections of 6, 8, 18, 22, and 42 U.S.C.).

⁴ In fact, the Uniform Law Commission is currently developing a model state law on human trafficking. This definition may be a standard alternative to the federal definition once finalized. See <http://www.uniformlaws.org> for more information.

These agencies should designate a Human Trafficking Liaison (HTL) who will be responsible for gathering data and organizing staff trainings and who will be mandated to report data to a state Human Trafficking Coordinator (HTC). Data should then be provided to the state agency best suited for data collection. These designees need not be full-time staff positions but, rather, could be persons who already work on related training and data collection on related topics, thus having a minimal fiscal impact by using existing resources.

2. Training Necessary for City Agencies and Service Providers

In order to implement a state Central Registry on Human Trafficking, relevant staff at government agencies should be trained on human trafficking in order to increase awareness of the issue, the relevant law, and to facilitate the data collection. These trainings should be comprehensive and inclusive of both labor and sex trafficking. Various comprehensive modules already exist including the Freedom Network Training Institute,⁵ which has been used by federal government agencies to train their staff. The training should be more comprehensive for key staff who can then train agency staff internally through distribution of materials and guidelines for the Central Registry. Non-governmental partners, such as agencies that serve crime victims, new immigrants and others, should be included in these trainings or encouraged to attend other trainings on trafficking.

As part of this training, government staff should be trained to use a screening tool as well as trained in interviewing survivors of trauma. The quick and easy-to-understand screening tool will be aimed at first responders and frontline staff who may encounter victims of trafficking. There are currently two screening tools under development in New York City that can be reviewed as model tools.⁶ Training on human trafficking and the screening tool should be repeated or reviewed at a target of every 18 months to ensure new staff is trained.

With more frequent and comprehensive training, as well as a concise and easy-to-use screening tool, law enforcement and government agencies, can identify more cases of human trafficking, track the data, and support the appropriate response that includes providing social and other services more effectively.

3. Legislative Changes

In order to capture more realistic data on human trafficking, there are a few key points for the refinement of state human trafficking laws that should be taken into consideration for proposal.

⁵ Freedom Network USA, "Training," <http://www.freedomnetworkusa.org/training/index.php> (last visited November 15, 2012). Note co-author of this memo, S. Tomatore, is currently a co-chair of this Network.

⁶ The first tool is being developed by Covenant House and the second is being developed by the Vera Institute of Justice. Neither of these tools is currently ready for dissemination, but both are empirically validated assessment tools that should be reviewed. Note co-author L. Matthews-Jolly was involved with the validation assessment of both the Covenant House tool and the Vera Institute of Justice tool.

First, while most states in the United States have passed human trafficking legislation - some including only sex trafficking crimes, while others are more comprehensive - most do not include a linkage with the existing laws on child abuse. We recommend legislation that includes classifying as an “abused child” any child whose parent or legal guardian traffics them for labor or sex or knowingly permits them to be trafficked. Minors whose parent or legal guardian traffics them or knowingly allows them to be trafficked need specialized intervention and assistance. This amendment will raise awareness among employees of child welfare agencies about the unique needs of these child victims.

Second, any minor arrested for prostitution should be automatically referred to a child welfare agency with a presumption of confirmation as a trafficking victim. This legislative change will institutionalize automatic referrals in order to enable child crime victims to receive the child welfare services that they are entitled to receive. The child should be offered services rather than being criminally charged. This would allow for state human trafficking laws to become more in line with the federal TVPRA.

Third, service providers, counselors, attorneys, and other stakeholders should be allowed to directly report to the Central Registries on Human Trafficking. Currently, many states only accept referrals of human trafficking cases to data collection databases *if* the referral is made directly from a law enforcement agency. This is a greatly limited perspective, as many trafficking cases are neither investigated nor prosecuted. Furthermore, there is no current mechanism to capture data of trafficked persons who decline to report to law enforcement. Legislative changes to allow an array of stakeholders to report to the Central Registry are vital to expanding the scope of who is counted. Other stakeholders in the process must be allowed to refer victims for confirmation to ensure proper data collection and a more holistic view of the issue.

Conclusion

The experience of the Immigrant Women and Children Project at the City Bar Justice Center is that data collection in this important area would be aided by creation of a state-wide Central Registry on Human Trafficking in each state. This Registry will allow for a more accurate picture of human trafficking by providing a tangible snapshot of those survivors who encounter law enforcement or service providers for assistance. It will also allow for a detailed, regional approach for law enforcement and service providers in order to target scarce resources in specific areas. While it is impossible to estimate how large the problem really is when survivors are hidden, it will bring to light a better picture of what is being done to help. Training is key to help capture accurate data. In addition, these statistics will be more reflective of the problem if specific amendments are made to state human trafficking laws. The above amendments in particular would align the state law with the federal definition, which would allow for enhanced data collection and a more comprehensive response to the issue. By amending child protection statutes to align with the federal definition of human trafficking, states will be able to provide more comprehensive services and treat these children as crime victims rather than criminals.