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### Criminal Law—Human Trafficking—Arkansas’s Human Trafficking Laws: Steps in the Right Direction or a False Sense of Accomplishment?

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CRIMINAL LAW—HUMAN TRAFFICKING—ARKANSAS’S HUMAN TRAFFICKING LAWS: STEPS IN THE RIGHT DIRECTION OR A FALSE SENSE OF ACCOMPLISHMENT?

The existence of law does not—in and of itself—combat modern slavery. If making slavery illegal was enough, we would be 146 years away from the last slave in America. . . . And so our challenge, as government actors, as international lawyers, as multilateralists, is to look at our norms and laws and structures to see if they are making an impact in the real world. If they are implementable. If they are being implemented. Because law without commensurate implementation gives a false sense of accomplishment. It punishes no one, and frees no one.<sup>1</sup>

I. INTRODUCTION

Social scientists estimate that as many as twenty-seven million people around the world are victims of modern slavery, also known as human trafficking or trafficking in persons.<sup>2</sup> In 2004, the United States Department of State reported that an estimated 14,500 to 17,500 of those victims were trafficked into the United States in the preceding year.<sup>3</sup> Additionally, nearly 300,000 American children are at risk of becoming victims of commercial sexual exploitation within the United States each year,<sup>4</sup> and unknown numbers of American children and adults are trafficked for sex and labor.<sup>5</sup>

Many Arkansans may be only vaguely aware of human trafficking, if they are aware of it at all. Others may believe that it only happens in other countries or large metropolitan areas. Unfortunately, the tragedy of human trafficking is happening in Arkansas. Although the scope of the problem within the state is still unclear, the experiences of both the joint state and

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1. Luis CdeBaca, *Keynote Address: Successes and Failures in International Human Trafficking Law*, 33 MICH. J. INT’L L. 37, 50–51 (2011).

2. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 7–8 (2013), available at <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm> [hereinafter DOS TIP REPORT].

3. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), available at <http://www.state.gov/j/tip/rls/tiprpt/2004/index.htm>.

4. RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U. S., CANADA AND MEXICO 146–48 (2001), available at <http://www.hawaii.edu/hivandaids/Commercial%20Sexual%20Exploitation%20of%20Children%20in%20the%20US,%20Canada%20and%20Mexico.pdf>.

5. See HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 5 (2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/LitRev/index.shtml>.

federal Denied Innocence Task Force<sup>6</sup> and Catholic Charities Immigration Services,<sup>7</sup> at least three federal prosecutions in the last several years involving trafficking activities in Arkansas,<sup>8</sup> and calls to the National Human Trafficking Resource Center (NHTRC) hotline all indicate that trafficking is happening in the state.<sup>9</sup>

In response to this pervasive problem and in recognition of the need for each state to address it individually, several groups have drafted model state human trafficking statutes, including the United States Department of Justice, the National Conference of Commissioners on Uniform State Laws (NCCUSL), and various nongovernmental organizations (NGOs).<sup>10</sup> These model statutes include the provisions that, based on their experience and expertise, the drafters believe will most effectively punish traffickers and protect their victims.<sup>11</sup>

The Arkansas General Assembly took on human trafficking in 2013 by enacting several new statutes and amending several old ones.<sup>12</sup> The resulting Arkansas Human Trafficking Act of 2013 (“Act”) and other legislation intended to address human trafficking are important steps in the right direc-

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6. See Telephone Interview with Sherri Funk, Victim Specialist, Little Rock Field Office, Fed. Bureau of Investigation (Feb. 14, 2014); see also Press Release, U.S. Attorney’s Office for the E. Dist. of Ark., Little Rock Man Found Guilty on Federal Sex Trafficking Charge (June 7, 2013), [http://www.justice.gov/usao/are/news/2013/June/Roy\\_guilty\\_060713.html](http://www.justice.gov/usao/are/news/2013/June/Roy_guilty_060713.html) (reporting on a sex trafficking case investigated by the Denied Innocence Task Force).

7. Interview with Reagan Stanford, Crime Victims Services Coordinator, Catholic Charities Immigration Services and Co-Chair, Attorney General’s State Task Force for the Prevention of Human Trafficking, in Little Rock, Ark. (Nov. 12, 2013).

8. See Indictment at 1, *United States v. Handy*, No. 4:09CR00052 JLH (E.D. Ark. Feb. 4, 2009) [hereinafter *Handy Indictment*]; Superseding Indictment at 17, 31, 46, 60, *United States v. Robinson*, No. 1:CR-05-443 (M.D. Pa. Dec. 8, 2005), 2005 WL 5982057, ¶¶ 10.33, 10.90, 10.92, 27, 54 [hereinafter *Robinson Superseding Indictment*]; Press Release, U.S. Attorney’s Office for the E. Dist. of Ark., *supra* note 6.

9. See NAT’L HUMAN TRAFFICKING RES. CTR., ARKANSAS STATE REPORT 1/1/2013–6/30/2013 (2013), available at [https://na4.salesforce.com/sfc/p/300000006E4S/a/600000004Sb3/7nevyt4v3JEEyDP.aw2v2w97jFZRLY\\_Pq0f.E6s\\_ts=](https://na4.salesforce.com/sfc/p/300000006E4S/a/600000004Sb3/7nevyt4v3JEEyDP.aw2v2w97jFZRLY_Pq0f.E6s_ts=).

10. See UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUMAN TRAFFICKING (2013), available at [http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013\\_UPRHT\\_Final%20Act\\_NC.pdf](http://www.uniformlaws.org/shared/docs/Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking/2013_UPRHT_Final%20Act_NC.pdf) [hereinafter *NCCUSL STATUTE*]; Michelle Crawford Rickert, *Through the Looking Glass: Finding and Freeing Modern-Day Slaves at the State Level*, 4 LIBERTY U.L. REV. 211, 248–66 (2010).

11. Rickert, *supra* note 10, at 248–66.

12. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)); Act of Apr. 16, 2013, No. 1257, 2013-5A Ark. Adv. Legis. Serv. 202 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-103, 5-70-102 to -103, 9-27-323, 12-18-1201 to -1202, 19-5-1252 (Supp. 2013)); ARK. CODE ANN. §§ 5-5-201 to -204, 9-27-303, 12-19-102 to -103, 16-90-123 (Repl. 2006 & Supp. 2013).

tion, but Arkansas's human trafficking laws still leave something to be desired when compared with the provisions of model statutes, and the State needs to take further steps to ensure that its laws and their implementation adequately confront this problem.

Part II of this Note discusses human trafficking both in general and in Arkansas and provides an overview of the model statutes and Arkansas's legislative response to human trafficking. Part III compares Arkansas's legislative response with the provisions of three model state human trafficking statutes. Based on these comparisons, it then suggests how Arkansas can use its existing human trafficking laws to combat this scourge, and it suggests changes to fill several of the remaining gaps that may hinder the effective implementation of the existing laws so that the state can make as great an impact on this horrifying problem as possible.

## II. BACKGROUND

Human trafficking is a vast and multifaceted problem that is international in its scope.<sup>13</sup> This Note cannot begin to describe this topic in any great detail, but this section provides a brief overview of the overall problem before discussing human trafficking in Arkansas more specifically.

### A. What Is Human Trafficking?

The United Nations defines trafficking in persons as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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.<sup>14</sup>

Human trafficking takes two primary forms: labor trafficking and sex trafficking.<sup>15</sup> Within these two categories, trafficking can include many vari-

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13. See U.N. OFFICE ON DRUGS & CRIME, GLOBAL REPORT ON TRAFFICKING IN PERSONS 2012, at 9–14, Sales No. E.13.IV.1 (2012), available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf) [hereinafter U.N. TIP REPORT]; DOS TIP REPORT, *supra* note 2, at 7–8.

14. U.N. TIP REPORT, *supra* note 13, at 16.

15. See DOS TIP REPORT, *supra* note 2, at 8.

ations of forced labor or sexual exploitation,<sup>16</sup> and labor trafficking often involves sexual exploitation of female victims as well.<sup>17</sup> Labor trafficking exists in a variety of forms in the United States, including forced work in domestic service, agriculture, factories, peddling rings, landscaping, construction, nail salons, restaurants, the hospitality industry, and industrial cleaning,<sup>18</sup> but it can happen in any industry in which traffickers force victims to work.<sup>19</sup> Sex trafficking likewise occurs in a variety of settings, such as fake massage parlors, hostess clubs, strip clubs, residential brothels, escort services, and pimp-controlled prostitution conducted through the Internet, on the streets, at truck stops, and in various other locations.<sup>20</sup>

Anyone can become a victim of human trafficking, but most victims come from vulnerable groups such as women, children, the poor, undocumented immigrants, people with disabilities, and marginalized ethnic minorities.<sup>21</sup> Members of such vulnerable groups may be easier targets for traffickers for a variety of reasons: they may be easier for traffickers to control, either physically or psychologically; they may be more susceptible to promises of legitimate jobs that turn out to be only a means of luring them into forced labor or sexual servitude; they may be afraid to seek help from authorities; and they may be more likely to be isolated from the rest of society.<sup>22</sup> Traffickers are likely to target members of these groups because they are easier to exploit and the risk of detection is lower.<sup>23</sup>

Although most human trafficking victims are women and children, traffickers victimize men as well.<sup>24</sup> Approximately fifteen percent of the trafficking victims that authorities discovered around the world between 2007 and 2010 were men.<sup>25</sup> While most male victims are probably involved in labor trafficking, some, especially boys, are victims of sex trafficking as well.<sup>26</sup> Unfortunately, authorities often fail to identify men as victims, con-

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16. See POLARIS PROJECT, TYPES OF TRAFFICKING CASES IN THE UNITED STATES (2010), available at <https://na4.salesforce.com/sfc/play/index.jsp?oid=00D300000006E4S&viewId=05H60000000jJpm&d=0i1GKP5PVjb5g7wWmouadOJ20Kk%3D&v=06860000001dEMc> [hereinafter TYPES OF TRAFFICKING]; DOS TIP REPORT, *supra* note 2, at 29–37.

17. DOS TIP REPORT, *supra* note 2, at 31.

18. TYPES OF TRAFFICKING, *supra* note 16, at 1.

19. See Polaris Project, *Labor Trafficking in the US*, POLARIS PROJECT (copyright 2013), <http://www.polarisproject.org/human-trafficking/labor-trafficking-in-the-us>; DOS TIP REPORT, *supra* note 2, at 31.

20. Polaris Project, *Sex Trafficking in the U.S.*, POLARIS PROJECT (copyright 2013), <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us>; TYPES OF TRAFFICKING, *supra* note 16, at 1–2.

21. U.N. TIP REPORT, *supra* note 13, at 15; DOS TIP REPORT, *supra* note 2, at 8–9.

22. See U.N. TIP REPORT, *supra* note 13, at 15; DOS TIP REPORT, *supra* note 2, at 8–9.

23. See U.N. TIP REPORT, *supra* note 13, at 15.

24. *Id.* at 25–28; DOS TIP REPORT, *supra* note 2, at 8, 35.

25. U.N. TIP REPORT, *supra* note 13, at 27.

26. See DOS TIP REPORT, *supra* note 2, at 35.

sidering them to be only illegal immigrants subject to deportation and possible criminal charges or viewing their terrible working conditions as mere labor infractions rather than criminal exploitation.<sup>27</sup>

## B. Human Trafficking in Arkansas

Information is scarce regarding the prevalence of human trafficking in Arkansas and the specific forms of trafficking taking place within the state. It is clear, however, that trafficking is happening here,<sup>28</sup> and this section discusses evidence that supports this conclusion.

### 1. *The Denied Innocence Task Force and Sex Trafficking of Domestic Minors*

The experience of the Denied Innocence Task Force (“Denied Innocence”) indicates that more human trafficking is happening in Arkansas than even law enforcement agencies expected.<sup>29</sup> Denied Innocence is a partnership between the Federal Bureau of Investigation’s Little Rock Field Office; Arkansas State Police; the Little Rock, North Little Rock, Benton, Bryant, and Conway Police Departments; the Saline County Sheriff’s Office; Homeland Security Investigations; and the United States Marshals Service.<sup>30</sup> Formed in 2012,<sup>31</sup> it focuses on investigating sex trafficking of domestic minors in Arkansas.<sup>32</sup> When Denied Innocence began, its members expected to find only a few cases of trafficking in Arkansas each year, but its sting operations have uncovered many more cases than the participants originally expected.<sup>33</sup> In fact, each sting operation Denied Innocence has undertaken has uncovered at least one victim, indicating that sex trafficking of domestic

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27. *See id.*

28. *See, e.g.*, Judgment in a Criminal Case at 1, *United States v. Handy*, No. 4:09CR00052-01 JLH (E.D. Ark. Mar. 15, 2010) [hereinafter *Handy Judgment*]; Judgment in a Criminal Case at 1, *United States v. Cooney*, No. 4:09CR00052-02 JLH (E.D. Ark. Jan. 28, 2010) [hereinafter *Cooney Judgment*]; *Handy Indictment*, *supra* note 8; *Plea Agreement at 2, United States v. Scott*, Nos. 1:CR-05-443-11, 1:CR-07-292 (M.D. Pa. Sept. 28, 2007), 2007 WL 4860155, ¶ 1 [hereinafter *Scott Plea Agreement*]; *Robinson Superseding Indictment*, *supra* note 8, ¶¶ 53–54; NAT’L HUMAN TRAFFICKING RES. CTR., *supra* note 9, at 3; *Press Release, U.S. Attorney’s Office for the E. Dist. of Ark.*, *supra* note 6.

29. *See Telephone Interview with Sherri Funk*, *supra* note 6; *Press Release, U.S. Attorney’s Office for the E. Dist. of Ark.*, *supra* note 6.

30. *Press Release, U.S. Attorney’s Office for the E. Dist. of Ark.*, *supra* note 6.

31. *See Interview with Reagan Stanford*, *supra* note 7.

32. *Telephone Interview with Sherri Funk*, *supra* note 6.

33. *Id.*

minors is more prevalent in Arkansas than most of the state's citizens would likely imagine.<sup>34</sup>

2. *Catholic Charities Immigration Services and Trafficking of Foreign Nationals*

Catholic Charities Immigration Services (“Catholic Charities”) in Little Rock has handled cases that indicate that both sex and labor trafficking of foreign nationals are also occurring in Arkansas.<sup>35</sup> Although the author does not have exact statistics, Catholic Charities’ Crime Victims Services Coordinator Reagan Stanford stated that the cases of trafficking of foreign national victims that Catholic Charities has dealt with have been divided approximately evenly between sex trafficking and labor trafficking.<sup>36</sup> In addition, although what attention there has been on trafficking in Arkansas tends to focus on sex trafficking, Stanford noted that there have been reports of labor trafficking from across the state.<sup>37</sup>

3. *Federal Human Trafficking Cases Involving Arkansas*

The most concrete and readily available evidence that human trafficking is happening in Arkansas comes from several federal prosecutions of human trafficking activities that took place at least partly in Arkansas.<sup>38</sup> Although these prosecutions reveal very little about the scope of trafficking in the state, they provide evidence that it is happening and give some indication of the type of trafficking that is occurring.<sup>39</sup>

a. *United States v. Scott*<sup>40</sup>

A 2005 federal prosecution from Pennsylvania involved human trafficking activities in Arkansas.<sup>41</sup> A grand jury in the Middle District of Pennsylvania indicted Robert Scott Sr. (“Scott”), along with several others, for a variety of sex trafficking activities, most of which allegedly occurred in

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34. *See id.*

35. *See* Interview with Reagan Stanford, *supra* note 7.

36. *Id.*

37. *Id.*

38. *See* Handy Indictment, *supra* note 8, at 1–2; Robinson Superseding Indictment, *supra* note 8, ¶¶ 10.33, 10.90, 10.92, 27, 54; Press Release, U.S. Attorney’s Office for the E. Dist. of Ark., *supra* note 6.

39. *See* Handy Indictment, *supra* note 8, at 1–2; Robinson Superseding Indictment, *supra* note 8, ¶¶ 10.33, 10.90, 10.92, 27, 54; Press Release, U.S. Attorney’s Office for the E. Dist. of Ark., *supra* note 6.

40. 434 F. App’x 103 (3d Cir. 2011).

41. *See* Robinson Superseding Indictment, *supra* note 8, ¶¶ 10.33, 10.90, 10.92, 27, 54.

Pennsylvania and Ohio.<sup>42</sup> These activities also, however, included Scott's alleged transportation of a minor from Pennsylvania to Arkansas in order for the minor to engage in prostitution.<sup>43</sup> Scott pled guilty to the charge involving Arkansas,<sup>44</sup> which implies that this incident did happen, but neither the indictment nor the plea agreement provide further details about the incident.<sup>45</sup>

b. *United States v. Handy*<sup>46</sup>

In 2009, a grand jury in the Eastern District of Arkansas indicted Tommy Handy ("Handy") and Everette Cooney ("Cooney") for the sex trafficking of two minors and several adult women in Arkansas between 2002 and 2008.<sup>47</sup> The government eventually dismissed most of the charges against the pair, but both Handy and Cooney pled guilty to sex trafficking of a minor to whom the pleadings referred as "DB."<sup>48</sup> According to the indictment, Handy recruited DB in 2005 by giving her crack cocaine and requiring her to repay him by working as a prostitute.<sup>49</sup> DB was only fourteen years old at the time, and Handy gave her the nickname "Baby Girl" because of her age.<sup>50</sup> For approximately the next three years, both Handy and Cooney forced DB to engage in prostitution.<sup>51</sup> On at least one occasion, Handy beat DB because she defied him, and on another occasion he threatened her with a gun when she tried to leave.<sup>52</sup> In May 2008, Cooney arranged for DB to engage in prostitution with undercover police officers, which presumably led to this prosecution.<sup>53</sup>

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42. *See id.*

43. *Id.* ¶¶ 53–54.

44. *See* Scott Plea Agreement, *supra* note 28, ¶ 1.

45. *See* Scott Plea Agreement, *supra* note 28; Robinson Superseding Indictment, *supra* note 8.

46. No. 4:09CR00052 JLH (E.D. Ark. Mar. 15, 2010).

47. *See* Handy Indictment, *supra* note 8, at 1–2.

48. *See* Handy Judgment, *supra* note 28, at 1; Cooney Judgment, *supra* note 28, at 1; Superseding Information at 1, *United States v. Handy*, No. 4:09CR00052-02 JLH (E.D. Ark. Oct. 23, 2009); Superseding Information at 1, *United States v. Cooney*, No. 4:09CR00052-02 JLH (E.D. Ark. July 10, 2009).

49. Handy Indictment, *supra* note 8, at 3.

50. *Id.*

51. *See id.*

52. *See id.*

53. *Id.* at 4.



c. *United States v. Roy*<sup>54</sup>

The first federal conviction for human trafficking in Arkansas occurred in June 2013 when a jury convicted Jermaine Roy (“Roy”), a pimp operating in Little Rock, of using force, fraud, or coercion to cause a woman working for him as a prostitute to engage in commercial sex.<sup>55</sup> Roy’s arrest was a result of a Denied Innocence undercover sting operation, and a jury convicted him based on testimony from the victim, the victim’s family, and another prostitute that he routinely used force or threats of force to induce the victim to engage in commercial sex.<sup>56</sup>

4. *Statistics from the National Human Trafficking Resource Center*

The NHTRC is a program of Polaris Project, an NGO dedicated to the issue of human trafficking.<sup>57</sup> NHTRC operates a toll-free hotline that is available twenty-four hours a day, seven days a week to take calls and text messages from across the country reporting tips about trafficking activities, requesting services for victims, and inquiring about other resources, such as training and general information.<sup>58</sup>

Call statistics from the NHTRC hotline provide indirect evidence of trafficking, since information that callers provide may or may not be accurate and a human trafficking situation does not necessarily exist for each call that comes in.<sup>59</sup> Nevertheless, the hotline received 105 calls from Arkansas in the first six months of 2013, thirteen of which NHTRC considered to have high or moderate indicators of a trafficking situation, providing some evidence that trafficking likely continues to occur in the state.<sup>60</sup>

5. *Summary*

These lines of evidence do little to establish the scope of human trafficking in Arkansas, and they do not provide much more information about the exact types of trafficking that are occurring. They do indicate, however,

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54. 4:13CR00010 JLH, 2013 WL 5673419 (E.D. Ark. Oct. 15, 2013).

55. Press Release, U.S. Attorney’s Office for the E. Dist. of Ark., *supra* note 6.

56. *Id.*

57. *NHTRC and BeFree Hotlines*, POLARIS PROJECT, <http://www.polarisproject.org/what-we-do/national-human-trafficking-hotline/the-nhtrc/overview> (last visited Nov. 25, 2014).

58. *Id.*

59. *See* NAT’L HUMAN TRAFFICKING RES. CTR., *supra* note 9, at 3.

60. *See id.* at 1, 3.

that both sex and labor trafficking are happening in Arkansas.<sup>61</sup> Furthermore, because human trafficking is by its nature largely hidden from view, it is likely that much more trafficking is occurring in the state than what law enforcement has discovered, Catholic Charities has dealt with, or callers have reported to the NHTRC.<sup>62</sup> Therefore, human trafficking is not only the nation's problem or the world's problem. It is Arkansas's problem as well, and it is imperative for the state to have the tools that it needs to combat this tragedy whenever and wherever it is found within the state.

### C. Arkansas's Legislative Response to Human Trafficking

Arkansas enacted its first human trafficking statute in 2005.<sup>63</sup> This statute specified that a person committed human trafficking when he or she used force, fraud, or coercion to recruit, harbor, transport, or obtain another person for the purpose of debt bondage, involuntary servitude, peonage, or sexual conduct (all of which the statute defined) or slavery, marriage, or adoption.<sup>64</sup> In 2013, the General Assembly repealed this statute and replaced it with the Act, which, although incorporating much of the original statute's language, is much broader in its definitions and application.<sup>65</sup> The General Assembly also enacted and amended several other statutes that address human trafficking in 2013.<sup>66</sup> This Note discusses the Act and Arkansas's other new and amended statutes concerning human trafficking in detail below.<sup>67</sup>

### D. Model Human Trafficking Statutes

Several groups have created model state human trafficking statutes with the provisions that each group finds best suited for combating human trafficking.<sup>68</sup> This Note compares Arkansas's human trafficking laws with three model state human trafficking statutes ("Model Statutes") that are rep-

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61. See Handy Judgment, *supra* note 28; Scott Plea Agreement, *supra* note 28; Telephone Interview with Sherri Funk, *supra* note 6; Interview with Reagan Stanford, *supra* note 7; Press Release, U.S. Attorney's Office for the E. Dist. of Ark., *supra* note 6.

62. See U.N. TIP REPORT, *supra* note 13, at 16; DOS TIP REPORT, *supra* note 2, at 7-9.

63. See ARK. CODE ANN. § 5-11-108 (Repl. 2006) (repealed 2013).

64. See *id.*

65. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)); *infra* Part III.A.

66. See Act of Apr. 16, 2013, No. 1257, 2013-5A Ark. Adv. Legis. Serv. 202 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-103, 5-70-102 to -103, 9-27-323, 12-18-1201 to -1202, 19-5-1252 (Supp. 2013)); ARK. CODE ANN. §§ 5-5-201 to -204, 9-27-303, 12-19-102 to -103, 16-90-123 (Repl. 2006 & Supp. 2013).

67. See *infra* Part III.A.

68. See Rickert, *supra* note 10, at 248-66; *supra* Part I.

representative of the various sources of these statutes: the United States Department of Justice (“DOJ Model Statute”),<sup>69</sup> the NGO Polaris Project (“Polaris Project Model Statute”),<sup>70</sup> and the National Conference of Commissioners on Uniform State Laws (“NCCUSL Model Statute”).<sup>71</sup>

The Model Statutes address the “three Ps” of human trafficking: prosecution, protection, and prevention.<sup>72</sup> The prosecution component includes broad definitions of human trafficking offenses that cover a wide variety of actions by traffickers and stiff penalties for traffickers convicted of these offenses, including significant jail time, restitution to victims, and forfeiture of assets acquired through trafficking.<sup>73</sup> The protection component focuses primarily on providing services for victims, shielding victims from prosecution for acts (particularly prostitution) they committed because they were victims, and giving victims a civil cause of action against their traffickers.<sup>74</sup> The prevention component calls for the creation of a state human trafficking task force, training for law enforcement officials, and efforts to raise public awareness of human trafficking.<sup>75</sup> These objectives of the Model Statutes will provide the context for evaluating the scope and effectiveness of Arkansas’s human trafficking laws in the next part of this Note.

### III. ANALYSIS AND ARGUMENT

This part of the Note uses the framework of the three Ps to compare Arkansas’s human trafficking statutes with the Model Statutes and analyze whether Arkansas’s laws achieve the objectives that the Model Statutes set out. It then argues for several changes to Arkansas’s laws and strategies for implementing the existing laws that would help Arkansas achieve the Model Statutes’ objectives and address human trafficking as effectively as possible.

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69. MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE (U.S. Dep’t of Justice 2004), available at [http://pdba.georgetown.edu/Security/citizenssecurity/eeuu/documents/model\\_state\\_regulation.pdf](http://pdba.georgetown.edu/Security/citizenssecurity/eeuu/documents/model_state_regulation.pdf) [hereinafter DOJ STATUTE].

70. MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING (Polaris Project 2010), available at [http://www.polarisproject.org/storage/documents/Final\\_Comprehensive\\_ModelLaw\\_\\_8\\_2010.pdf](http://www.polarisproject.org/storage/documents/Final_Comprehensive_ModelLaw__8_2010.pdf) [hereinafter POLARIS STATUTE].

71. NCCUSL STATUTE, *supra* note 10.

72. *See id.*; POLARIS STATUTE, *supra* note 70, at 1–2; DOJ STATUTE, *supra* note 69; DOS TIP REPORT, *supra* note 2, at 7. The DOJ Model Statute focuses almost entirely on prosecution, although it includes a couple of victim protection provisions. *See* DOJ STATUTE, *supra* note 69.

73. *See* NCCUSL STATUTE, *supra* note 10, §§ 2–11; POLARIS STATUTE, *supra* note 70, at 3–8; DOJ STATUTE, *supra* note 69, at 1–4.

74. *See* NCCUSL STATUTE, *supra* note 10, §§ 13, 15–18, 21; POLARIS STATUTE, *supra* note 70, at 13–17; DOJ STATUTE, *supra* note 69, at 4.

75. *See* NCCUSL STATUTE, *supra* note 10, §§ 19–20; POLARIS STATUTE, *supra* note 70, at 10–12, 18.

## A. Analysis of Arkansas's Human Trafficking Laws

### 1. Prosecution of Traffickers

This section compares several aspects of the Model Statutes' approach to the prosecution of trafficking with Arkansas's laws on the subject.

#### a. Definitions and Offenses

Arkansas defines the means and actions that constitute human trafficking very similarly to the Model Statutes, including provisions for a variety of means of controlling victims and a variety of actions that constitute trafficking.<sup>76</sup> The Model Statutes define the means and actions that constitute trafficking broadly.<sup>77</sup> They each state that a variety of means of controlling victims constitute trafficking, including not only the use of physical force but also threats against the victim, threats against others (such as the victim's family), blackmail, control of a victim's access to drugs, control of a victim's identification documents, and other forms of fraud and coercion.<sup>78</sup>

The Model Statutes also each provide that a variety of actions constitute trafficking, including recruiting, enticing, soliciting, isolating, harboring, transporting, transferring, receiving, providing, obtaining, or maintaining a victim for purposes of forced labor or sex.<sup>79</sup> These broad definitions are necessary because traffickers are constantly looking for new ways to exploit their victims and elude prosecution,<sup>80</sup> and defining trafficking broadly ensures that the laws cover these changing tactics.<sup>81</sup>

Arkansas's human trafficking offenses are also similar to the Model Statutes' offenses. All three Model Statutes explicitly prohibit both labor and sex trafficking,<sup>82</sup> and the Polaris Project and NCCUSL Model Statutes prohibit knowingly patronizing a victim of human trafficking for commercial sex as well.<sup>83</sup> Arkansas's statutes contain the same provisions.<sup>84</sup> Addi-

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76. See ARK. CODE ANN. §§ 5-18-102 to -103 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 2-5; POLARIS STATUTE, *supra* note 70, at 3-4; DOJ STATUTE, *supra* note 69, at 1-3.

77. See NCCUSL STATUTE, *supra* note 10, §§ 2-5; POLARIS STATUTE, *supra* note 70, at 3-4; DOJ STATUTE, *supra* note 69, at 1-3.

78. See NCCUSL STATUTE, *supra* note 10, §§ 2-7; POLARIS STATUTE, *supra* note 70, at 3-5; DOJ STATUTE, *supra* note 69, at 1-3.

79. See NCCUSL STATUTE, *supra* note 10, § 3; POLARIS STATUTE, *supra* note 70, at 4; DOJ STATUTE, *supra* note 69, at 3.

80. See DOS TIP REPORT, *supra* note 2, at 8.

81. See Rickert, *supra* note 10, at 250.

82. NCCUSL STATUTE, *supra* note 10, §§ 3-5; POLARIS STATUTE, *supra* note 70, at 4; DOJ STATUTE, *supra* note 69, at 2-3.

83. NCCUSL STATUTE, *supra* note 10, § 6; POLARIS STATUTE, *supra* note 70, at 5.

tionally, under the Polaris Project and DOJ Model Statutes and under Arkansas law, anyone who knowingly benefits financially or receives anything of value from participating in a human trafficking venture is also guilty of trafficking.<sup>85</sup>

#### b. Penalties and Scope of Liability

The Model Statutes and Arkansas law include similar grading for human trafficking offenses.<sup>86</sup> While the Model Statutes' exact grading varies, all three make all human trafficking offenses felonies,<sup>87</sup> and the DOJ and NCCUSL Model Statutes also provide that offenses involving minor victims carry higher penalties than offenses involving only adults.<sup>88</sup>

Arkansas also makes all human trafficking a felony and provides stiffer penalties for offenses involving minors.<sup>89</sup> Human trafficking is generally a Class A felony in Arkansas, but it becomes a Class Y felony if the victim is a minor.<sup>90</sup> Likewise, patronizing an adult victim of human trafficking is a Class B felony, but if the victim is a minor it becomes a Class A felony.<sup>91</sup> Therefore, the penalties for human trafficking in Arkansas are comparable to those that the Model Statutes recommend.<sup>92</sup>

Unlike the Model Statutes, Arkansas does not provide for enhanced sentences in trafficking cases that involve aggravating factors.<sup>93</sup> The Model Statutes each allow enhanced sentences in cases that include various aggravating factors, such as death, rape, kidnapping, bodily injury, a longer time in servitude, a larger number of victims, and even procurement of the victim from a shelter of some sort.<sup>94</sup> Although Arkansas does not specifically provide for enhanced sentences, prosecutors could still charge human traffick-

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84. See ARK. CODE ANN. §§ 5-18-102 to -104 (Supp. 2013).

85. *Id.* § 5-18-103(a)(2); POLARIS STATUTE, *supra* note 70, at 4–5; DOJ STATUTE, *supra* note 69, at 3.

86. See ARK. CODE ANN. §§ 5-18-103 to -104; NCCUSL STATUTE, *supra* note 10, §§ 3–6; POLARIS STATUTE, *supra* note 70, at 4–5; DOJ STATUTE, *supra* note 69, at 2–3.

87. See NCCUSL STATUTE, *supra* note 10, §§ 3–6; POLARIS STATUTE, *supra* note 70, at 4–5; DOJ STATUTE, *supra* note 69, at 2–3.

88. See NCCUSL STATUTE, *supra* note 10, §§ 3–7; DOJ STATUTE, *supra* note 69, at 2–3.

89. See ARK. CODE ANN. §§ 5-18-103 to -104.

90. *Id.* § 5-18-103(c). A Class A felony carries a sentence of six to thirty years; a Class Y felony carries a sentence of ten to forty years or life. *Id.* § 5-4-401(a)(1)–(2) (Repl. 2013).

91. *Id.* § 5-18-104(b). A Class B felony carries a sentence of five to twenty years. *Id.* § 5-4-401(a)(3).

92. See *id.* §§ 5-18-103 to -104; NCCUSL STATUTE, *supra* note 10, §§ 3–6; POLARIS STATUTE, *supra* note 70, at 4–5; DOJ STATUTE, *supra* note 69, at 2–3.

93. See ARK. CODE ANN. §§ 5-18-103 to -104; NCCUSL STATUTE, *supra* note 10, § 9; POLARIS STATUTE, *supra* note 70, at 9; DOJ STATUTE, *supra* note 69, at 3–4.

94. See NCCUSL STATUTE, *supra* note 10, § 9; POLARIS STATUTE, *supra* note 70, at 9; DOJ STATUTE, *supra* note 69, at 3–4.

ing defendants with other crimes that the Model Statutes consider to be aggravating factors, such as murder or kidnapping, or with multiple counts of trafficking for cases involving multiple victims. Arkansas does not, however, give traffickers enhanced sentences for some of the Model Statutes' aggravating factors, such as a longer time in servitude or procurement of victims from a shelter.<sup>95</sup>

Like the Polaris Project and NCCUSL Model Statutes, Arkansas makes organizations that engage in human trafficking criminally liable.<sup>96</sup> The Model Statutes provide for criminal liability for business entities, with penalties ranging from loss of licenses or permits, disgorgement of profits, and potentially very large fines to forced dissolution or reorganization.<sup>97</sup> The Polaris Project Model Statute includes government agencies in the definition of business entities, while the NCCUSL Model Statute does not.<sup>98</sup>

Arkansas has similar penalties for business entities and other organizations that engage in trafficking, including revocation or suspension of licenses or permits issued by state or local government, forced dissolution or reorganization, and a catchall provision for other equitable relief, in addition to any other statutory sentences or fines.<sup>99</sup> These penalties are important because they can make the business of human trafficking less profitable and prevent traffickers from simply reopening their businesses elsewhere or even continuing to control their operations from prison.<sup>100</sup>

### c. Defenses

Arkansas's laws are comparable to the Polaris Project and NCCUSL Model Statutes in prohibiting certain defenses in prosecutions for sex trafficking of minors, but they do not go as far as the Polaris Project Model Statute in barring defenses against trafficking charges generally.<sup>101</sup> The NCCUSL Model Statute does not allow the use of a minor's consent to engage in commercial sex or a defendant's belief that a minor was an adult as defenses to a prosecution for sexual servitude of a minor,<sup>102</sup> while the Polaris Project Model Statute similarly provides that the defendant does not have to

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95. See ARK. CODE ANN. §§ 5-18-103 to -104.

96. See *id.* § 5-18-105 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 8; POLARIS STATUTE, *supra* note 70, at 6.

97. See NCCUSL STATUTE, *supra* note 10, § 8; POLARIS STATUTE, *supra* note 70, at 6.

98. See NCCUSL STATUTE, *supra* note 10, § 8; POLARIS STATUTE, *supra* note 70, at 6.

99. See ARK. CODE ANN. § 5-18-105.

100. See Rickert, *supra* note 10, at 237.

101. See ARK. CODE ANN. § 5-18-103(b) (Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 5(b); POLARIS STATUTE, *supra* note 70, at 4, 6.

102. NCCUSL STATUTE, *supra* note 10, § 5(b).

know the victim's age and reasonable mistake of the victim's age is not a defense to a charge of sexual servitude of a minor.<sup>103</sup>

The Polaris Project Model Statute goes on to bar several other defenses in all human trafficking prosecutions: (1) the victim's sexual history or history of participation in commercial sex, (2) the victim's relation by blood or marriage to the defendant or anyone else involved in the victim's trafficking, (3) consent by the victim or someone else on behalf of the victim to engage in commercial sex or a sexually explicit performance, or (4) any discretionary age, including the age of consent to sex or the legal age of marriage.<sup>104</sup>

Arkansas disallows mistake or lack of knowledge of a victim's age as defenses against a charge of sex trafficking of a minor, but it does not preclude the use of the other defenses that the Polaris Project Model Statute prohibits.<sup>105</sup> The State's failure to bar these other defenses may be problematic in some cases. For example, a victim's initial consent to engage in prostitution or to work for a defendant should no longer be relevant if the defendant later used force, fraud, or coercion to keep the victim in that situation against his or her will,<sup>106</sup> but a defendant who can plead a victim's initial consent as a defense may be able to escape the consequences of his or her later actions that fit the definition of trafficking.

#### d. Restitution

Each of the Model Statutes requires convicted traffickers to pay restitution to their victims,<sup>107</sup> but Arkansas does not.<sup>108</sup> At the very least, the Model Statutes require traffickers to reimburse victims for the value of the victims' labor or services.<sup>109</sup> The DOJ and NCCUSL Model Statutes also require restitution for victims' other losses in general terms,<sup>110</sup> and the Polaris Project Model Statute goes even further by specifically requiring restitution for a number of categories of losses such as costs of medical and psychological

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103. POLARIS STATUTE, *supra* note 70, at 4.

104. *Id.* at 6.

105. See ARK. CODE ANN. § 5-18-103(b).

106. See DOS TIP REPORT, *supra* note 2, at 29, 31.

107. See NCCUSL STATUTE, *supra* note 10, § 10(a)(2); POLARIS STATUTE, *supra* note 70, at 7; DOJ STATUTE, *supra* note 69, at 4.

108. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)).

109. See NCCUSL STATUTE, *supra* note 10, § 10(a)(2); POLARIS STATUTE, *supra* note 70, at 7; DOJ STATUTE, *supra* note 69, at 4.

110. See NCCUSL STATUTE, *supra* note 10, § 10(a)(1); DOJ STATUTE, *supra* note 69, at 4.

treatment, attorney's fees, relocation expenses, and emotional distress, pain, and suffering.<sup>111</sup>

The original version of the Act in the House of Representatives would have added mandatory restitution by convicted traffickers to Arkansas's general restitution statute.<sup>112</sup> The proposed amendment would have required restitution for all of a victim's economic losses, specifically including the total amount of the victim's lost wages, costs of medical and psychological treatment, and nonmedical costs that directly resulted from the trafficking.<sup>113</sup> The final version of the Act did not include these mandatory restitution provisions.<sup>114</sup> Although courts can still order traffickers to pay restitution under Arkansas's general criminal restitution statute,<sup>115</sup> this may be less likely without the mandatory provisions.

#### e. Property Forfeiture

The Polaris Project and NCCUSL Model Statutes both include broad property forfeiture provisions, but Arkansas only has a narrow forfeiture provision for human trafficking.<sup>116</sup> The Model Statutes make all sorts of real or personal property that traffickers used in or obtained by means of trafficking subject to forfeiture.<sup>117</sup> The original version of the Act in the House of Representatives also contained a broad forfeiture provision that would have made the same sorts of property subject to forfeiture.<sup>118</sup> The part of this forfeiture provision that survived to enactment, however, makes only conveyances that traffickers used in the commission or attempted commission of human trafficking subject to forfeiture, but not other property they used in or obtained by means of the crime.<sup>119</sup>

#### f. Summary

Arkansas's statutes for prosecuting human trafficking generally compare favorably with the Model Statutes, particularly those concerning the

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111. See POLARIS STATUTE, *supra* note 70, at 7.

112. See H.R. 1203, 89th Gen. Assemb., Reg. Sess. § 2 (Ark. 2013) (as introduced, Jan. 30, 2013).

113. See *id.*

114. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)).

115. See ARK. CODE ANN. § 5-4-205 (Supp. 2013).

116. See *id.* §§ 5-5-201 to -204 (Repl. 2006 & Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 11; POLARIS STATUTE, *supra* note 70, at 8.

117. See NCCUSL STATUTE, *supra* note 10, § 11; POLARIS STATUTE, *supra* note 70, at 8.

118. See H.R. 1203 § 4.

119. See ARK. CODE ANN. §§ 5-5-201 to -204.



definitions of trafficking offenses and the grading of those offenses.<sup>120</sup> The primary improvements Arkansas needs in this area involve its restitution and property forfeiture provisions, which are much less stringent than the Model Statutes.<sup>121</sup> It is also vitally important for prosecutors to put these laws to good use against traffickers. This Note discusses these suggestions more fully below.<sup>122</sup>

## 2. *Protection of Victims*

The Polaris Project Model Statute and, to a somewhat lesser extent, the NCCUSL Model Statute include various measures to protect victims of trafficking,<sup>123</sup> while the DOJ Model Statute primarily focuses on prosecution and includes only limited provisions for victim protection.<sup>124</sup> This section discusses some of the Model Statutes' victim protection provisions and compares them with the steps Arkansas has taken to protect victims of trafficking.

### a. *Affirmative defense or immunity from prosecution*

While Arkansas and the Polaris Project and NCCUSL Model Statutes each give human trafficking victims some protection from prosecution for crimes they committed because they were victims, Arkansas's protections are not as strong as those of the Model Statutes.<sup>125</sup> The Polaris Project Model Statute gives all trafficking victims immunity from prosecution for commercial sex acts or illegal sexually explicit performances that they engaged in as a result of being a victim.<sup>126</sup> The NCCUSL Model Statute gives minor victims immunity from prosecution for prostitution and suggests that states should also give minors immunity from prosecution for other state-selected nonviolent offenses they committed as a direct result of being victims of trafficking,<sup>127</sup> but it only gives adult victims an affirmative defense against

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120. See *id.* §§ 5-18-102 to -104 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 2-6; POLARIS STATUTE, *supra* note 70, at 3-5; DOJ STATUTE, *supra* note 69, at 1-3.

121. See ARK. CODE ANN. §§ 5-4-205, 5-5-201 to -204 (Repl. 2006 & Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 10(a)(2), 11; POLARIS STATUTE, *supra* note 70, at 7-8; DOJ STATUTE, *supra* note 69, at 4.

122. See *infra* Part III.B.1, 3-4.

123. See NCCUSL STATUTE, *supra* note 10, §§ 12-23; POLARIS STATUTE, *supra* note 70, at 13-18.

124. See DOJ STATUTE, *supra* note 69, at 4-5.

125. See ARK. CODE ANN. §§ 5-70-102 to -103, 16-90-123 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 15-17; POLARIS STATUTE, *supra* note 70, at 7.

126. POLARIS STATUTE, *supra* note 70, at 7.

127. See NCCUSL STATUTE, *supra* note 10, § 15.

charges of prostitution or other state-selected nonviolent offenses.<sup>128</sup> The NCCUSL Model Statute also allows a victim to petition the appropriate court to vacate a record of conviction for prostitution or other state-selected nonviolent offenses upon the court's finding that the victim participated in the offense as a direct result of being a victim of human trafficking.<sup>129</sup>

Arkansas's laws do not give immunity to any trafficking victims, although they do provide victims with some protection.<sup>130</sup> The Act amended Arkansas's prostitution and sexual solicitation statutes to give trafficking victims an affirmative defense against these charges when the victim engaged in that conduct because he or she was a victim of trafficking.<sup>131</sup> In addition, a 2013 law allows courts to seal a conviction for prostitution and redact the defendant's name from related police and court records.<sup>132</sup> In order to have a conviction sealed, Arkansas requires the defendant to show by a preponderance of the evidence that the conviction resulted from the defendant's being a victim of trafficking.<sup>133</sup>

These provisions may be problematic depending on who has the burden of proving that a victim is actually a victim. The Model Statutes do not specify what the burden of proof is or who carries it,<sup>134</sup> while Arkansas gives defendants the burden of proving affirmative defenses by a preponderance of the evidence<sup>135</sup> and requires a defendant to prove by a preponderance of the evidence that he or she was a victim in order to seal a conviction.<sup>136</sup> The Model Statutes may assume that state statutes specify who has the burden of proving an affirmative defense, but this could be an unfortunate gap in the Model Statutes if a state does not have such a statute. More importantly, due to trafficking victims' likely lack of resources, fear of law enforcement and legal processes, and other obstacles that are often inherent in being a trafficking victim,<sup>137</sup> common sense suggests that it would be nearly impossible for victims to bear the burden of proving they were victims for purposes of an affirmative defense or sealing a conviction. Thus, these measures may not help victims as much as it might appear at first glance.

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128. *See id.* § 16.

129. *See id.* § 17.

130. *See* ARK. CODE ANN. §§ 5-70-102 to -103, 16-90-123.

131. *See* Arkansas Human Trafficking Act of 2013, No. 133, §§ 4–5, 2013-1A Ark. Adv. Legis. Serv. 519, 524–25 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-70-102 to -103 (Supp. 2013)).

132. *See* ARK. CODE ANN. § 16-90-123.

133. *See id.* § 16-90-123(b)(4).

134. *See* NCCUSL STATUTE, *supra* note 10, §§ 15–17; POLARIS STATUTE, *supra* note 70, at 7.

135. ARK. CODE ANN. § 5-1-111(d)(1) (Repl. 2013).

136. *Id.* § 16-90-123(b)(4).

137. *See* DOS TIP REPORT, *supra* note 2, at 8–9.

Unlike the NCCUSL Model Statute, Arkansas's laws do not protect victims who committed nonviolent offenses other than prostitution or solicitation, but the Polaris Project Model Statute does not provide immunity for any nonsexual offenses either.<sup>138</sup> Otherwise, Arkansas's laws protecting adults from prosecution are basically comparable to the NCCUSL Model Statute,<sup>139</sup> but Arkansas does not give any immunity to minors as both the Polaris Project and NCCUSL Model Statutes do.<sup>140</sup>

b. Statute of limitations

The Polaris Project and NCCUSL Model Statutes provide extended statutes of limitations for prosecuting human trafficking offenses, but Arkansas law does not.<sup>141</sup> The Polaris Project Model Statute suggests using the state's statute of limitations for sex offenses or kidnapping in trafficking cases involving adult victims, with the limitations period to begin running at the time the victim escapes the trafficking situation.<sup>142</sup> It also tolls the limitations period in two situations: (1) if the victim is a minor and the statute of limitations would otherwise bar a prosecution, it tolls the limitations period until the victim turns eighteen and (2) it may toll the limitations period if conditions resulting from the trafficking situation, such as psychological trauma or a language barrier, kept the victim from reasonably discovering the crime.<sup>143</sup> The NCCUSL Model Statute simply provides for a statute of limitations of twenty years.<sup>144</sup>

Arkansas does not specifically address human trafficking in its criminal statute of limitations; therefore the normal six-year limitations period for Class Y and Class A felonies or the three-year limitations period for Class B felonies applies.<sup>145</sup> These periods are shorter than the limitations periods that the Polaris Project and NCCUSL Model Statutes recommend, assuming that if Arkansas adopted the Polaris Project Model Statute, it would insert into the model statute its six-year statute of limitations for kidnapping, a Class Y

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138. See POLARIS STATUTE, *supra* note 70, at 7.

139. See ARK. CODE ANN. §§ 5-70-102 to -103, 16-90-123 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 15-17.

140. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)); NCCUSL STATUTE, *supra* note 10, § 15; POLARIS STATUTE, *supra* note 70, at 7.

141. See ARK. CODE ANN. § 5-1-109 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 12; POLARIS STATUTE, *supra* note 70, at 8.

142. See POLARIS STATUTE, *supra* note 70, at 8.

143. See *id.*

144. See NCCUSL STATUTE, *supra* note 10, § 12.

145. See ARK. CODE ANN. § 5-1-109(b)(1)-(2).

felony,<sup>146</sup> rather than its unlimited statute of limitations for sexual offenses.<sup>147</sup> Arkansas also has no tolling provisions for human trafficking offenses.<sup>148</sup>

Arkansas's shorter statute of limitations for human trafficking might make little practical difference in any case. Even if a trafficker kept control of a victim for a period of time longer than the statute of limitations, several of the actions that constitute trafficking, including harboring, isolating, and maintaining the victim,<sup>149</sup> would continue until someone discovered the victim or the victim escaped from the trafficker. Assuming that the victim or the person who discovered the victim promptly reported the trafficking situation to the authorities and that enough evidence was available to make out a case against the trafficker, a prosecutor should be able to file a case well within a six-year limitations period. Nevertheless, Arkansas does provide a shorter period to prosecute traffickers than do the Model Statutes.

c. Civil cause of action

The Act created a civil cause of action that is very similar to those included in both the Polaris Project and NCCUSL Model Statutes.<sup>150</sup> Each allows victims to recover both compensatory and punitive damages from their traffickers and also to obtain an injunction or any other appropriate relief.<sup>151</sup> Each mandates an award of attorney's fees and costs for a prevailing plaintiff.<sup>152</sup> In addition to those provisions, Arkansas and the Polaris Project Model Statute require a court to award three times the plaintiff's actual damages if the defendant's actions were willful and malicious.<sup>153</sup>

Arkansas's civil cause of action also includes tolling provisions that are very similar to those in the Polaris Project Model Statute.<sup>154</sup> Both state that the statute of limitations does not begin to run until the plaintiff discovers that the trafficking occurred and that the defendant was responsible for or profited from it.<sup>155</sup> Both toll the statute of limitations until a minor plaintiff

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146. *See id.* § 5-11-102(b)(1) (Repl. 2006).

147. *See id.* § 5-1-109(a)(1)(D)–(L).

148. *See id.* § 5-1-109.

149. *See id.* § 5-18-103(a)(1) (Supp. 2013).

150. *See id.* § 16-118-109 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 18; POLARIS STATUTE, *supra* note 70, at 13.

151. *See* ARK. CODE ANN. § 16-118-109(c); NCCUSL STATUTE, *supra* note 10, § 18(a); POLARIS STATUTE, *supra* note 70, at 13.

152. *See* ARK. CODE ANN. § 16-118-109(d); NCCUSL STATUTE, *supra* note 10, § 18(b); POLARIS STATUTE, *supra* note 70, at 13.

153. *See* ARK. CODE ANN. § 16-118-109(e); POLARIS STATUTE, *supra* note 70, at 13.

154. *See* ARK. CODE ANN. § 16-118-109(f); POLARIS STATUTE, *supra* note 70, at 13.

155. *See* ARK. CODE ANN. § 16-118-109(f)(1); POLARIS STATUTE, *supra* note 70, at 13.

reaches the age of eighteen.<sup>156</sup> Both provide that the statute of limitations does not include the period of a disability that makes it impossible or impracticable for a plaintiff to bring the action at the time the action accrues.<sup>157</sup> Both exclude from the limitations period any time during which the defendant or another person acting in the defendant's interest threatened, intimidated, manipulated, or defrauded the plaintiff.<sup>158</sup> Finally, both estop a defendant from asserting the statute of limitations as a defense if the statute of limitations expired because the defendant induced the plaintiff to delay filing the action or the defendant placed the plaintiff under duress.<sup>159</sup>

The Polaris Project Model Statute includes three provisions in its civil cause of action that Arkansas should consider adding to its own law.<sup>160</sup> First, it specifies that the statute of limitations does not begin to run until the last incident occurs in a series of human trafficking incidents involving the same plaintiff and defendant.<sup>161</sup> Second, it explicitly allows joining plaintiffs or defendants when they have at least one defendant or plaintiff, respectively, in common.<sup>162</sup> Third, it prevents a defendant from escaping liability by conveying an interest in real property or making an indemnification or similar agreement that supposedly shows consent by the victim.<sup>163</sup>

Arkansas's enactment of tolling provisions for civil actions but not criminal prosecutions against traffickers seems inconsistent. Nevertheless, enacting a civil cause of action for human trafficking is an important step for protecting victims because it empowers them to enforce a remedy against their traffickers themselves and gives them an opportunity to recover financially even if the State does not prosecute the traffickers and order them to pay restitution.<sup>164</sup> In addition, a civil cause of action can work together with prosecution to decrease the profitability of trafficking and therefore deter traffickers.<sup>165</sup>

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156. See ARK. CODE ANN. § 16-118-109(f)(2); POLARIS STATUTE, *supra* note 70, at 13.

157. See ARK. CODE ANN. § 16-118-109(f)(3); POLARIS STATUTE, *supra* note 70, at 13.

158. See ARK. CODE ANN. § 16-118-109(f)(4); POLARIS STATUTE, *supra* note 70, at 13.

159. See ARK. CODE ANN. § 16-118-109(f)(5); POLARIS STATUTE, *supra* note 70, at 13.

160. See ARK. CODE ANN. § 16-118-109; POLARIS STATUTE, *supra* note 70, at 13.

161. POLARIS STATUTE, *supra* note 70, at 13.

162. See *id.*

163. *Id.*

164. See Kathleen Kim & Kusia Hreshchysyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN'S L.J. 1, 16, 34 (2004).

165. *Id.* at 36.

d. Access to crime victims compensation fund

The Polaris Project Model Statute guarantees trafficking victims access to the state's crime victims compensation fund,<sup>166</sup> but Arkansas does not. The original House version of the Act would have guaranteed compensation for trafficking victims from the State's Crime Victims Reparations Revolving Fund ("Victims Reparations Fund"),<sup>167</sup> but the final version of the Act did not include this guarantee.<sup>168</sup> Trafficking victims may still seek compensation from the Victims Reparations Fund,<sup>169</sup> but obtaining it may not be as easy as it would have been if the General Assembly had enacted the original version of the Act and guaranteed victims a right to compensation for the horrendous ordeals they have been through.

e. Access to services for victims

All three Model Statutes and Arkansas's laws address services for human trafficking victims to some extent, but Arkansas's efforts in this area focus more on minor victims than on adults.<sup>170</sup> The Polaris Project Model Statute requires the state to develop a plan for providing services to trafficking victims (including United States citizens and foreign nationals) and certain family members of victims.<sup>171</sup> The NCCUSL Model Statute similarly specifies that victims are eligible for state benefits and services regardless of their immigration status, and it also requires state agencies that come into contact with victims of sex trafficking to notify other state agencies that the victims may be eligible for state benefits or services.<sup>172</sup> Finally, the DOJ Model Statute requires the state's Attorney General and Department of Health and Social Services to report on the adequacy of existing social services to meet the needs of trafficking victims and make suggestions for improvement.<sup>173</sup> While the NCCUSL Model Statute allows state grants, subject to the availability of funds, to local governments, Indian tribes, and NGOs in

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166. See POLARIS STATUTE, *supra* note 70, at 16.

167. See H.R. 1203, 89th Gen. Assemb., Reg. Sess. § 9 (Ark. 2013) (as introduced, Jan. 30, 2013).

168. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)).

169. See ARK. CODE ANN. §§ 16-90-701 to -717, -719 (Repl. 2006 & Supp. 2013).

170. See *id.* §§ 9-27-303(17)(H), 9-27-323, 12-19-101(d)(6), -103, 19-5-1252(b) (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 21, 23; POLARIS STATUTE, *supra* note 70, at 12, 16; DOJ STATUTE, *supra* note 69, at 4-5.

171. See POLARIS STATUTE, *supra* note 70, at 16.

172. See NCCUSL STATUTE, *supra* note 10, § 21.

173. See DOJ STATUTE, *supra* note 69, at 4-5.

order to provide services to trafficking victims, the Polaris Project Model Statute requires such grants.<sup>174</sup>

Arkansas enacted several measures pertaining to services for trafficking victims in 2013, several of which require state agencies to develop policies for providing services to victims.<sup>175</sup> One of these requires the Arkansas Department of Human Services (DHS) to develop a protocol for helping victims of human trafficking apply for state or federal benefits to which they may be entitled.<sup>176</sup> Another requires the State Task Force for the Prevention of Human Trafficking (“Task Force”), if created, to develop policies for the State to work with NGOs to provide services to trafficking victims.<sup>177</sup> A third requires DHS to create a protocol to coordinate services for sexually exploited children, including minor victims of sex trafficking and minors who have engaged in prostitution or solicitation.<sup>178</sup>

Two of Arkansas’s new laws concerning victim services may offer more immediately tangible benefits to minors. First, the State amended its dependency-neglect statutes to define some minor victims of trafficking as “dependent juveniles,”<sup>179</sup> which allows DHS to obtain emergency custody and initiate dependency-neglect proceedings for these children.<sup>180</sup> Second, the General Assembly created the Arkansas Safe Harbor Fund for Sexually Exploited Children (“Safe Harbor Fund”) and funded it with fines collected from defendants convicted of human trafficking, prostitution, and sexual solicitation.<sup>181</sup> The statute that created the Safe Harbor Fund requires DHS to use the fund to provide services for sexually exploited children and grants to service providers that work with sexually exploited children.<sup>182</sup> The State did not, however, create a mechanism to fund services for minor victims of labor trafficking or any adult victims.

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174. See NCCUSL STATUTE, *supra* note 10, § 23; POLARIS STATUTE, *supra* note 70, at 12.

175. See ARK. CODE ANN. §§ 9-27-323, 12-19-101(d)(6), -103.

176. See *id.* § 12-19-103.

177. See *id.* § 12-19-101(d)(6).

178. See *id.* § 9-27-323.

179. See *id.* § 9-27-303(17)(H) (Supp. 2013). The definition only applies to “[a] child who has been a victim of human trafficking as a result of threats, coercion, or fraud,” which may not include all minor victims. See *id.*

180. See *id.* §§ 9-27-303(18)(B), -314(a)(3), -315, -327, -329, -334 (Repl. 2009 & Supp. 2013).

181. See ARK. CODE ANN. § 19-5-1252(b) (Supp. 2013).

182. See *id.* § 19-5-1252(c).

f. Posting of national human trafficking resource center information

The Polaris Project and NCCUSL Model Statutes as well as Arkansas require posting of informational signs about the NHTRC hotline.<sup>183</sup> The NCCUSL Model Statute simply requires the sign to include local, state, and national hotline information.<sup>184</sup> Arkansas adopted the Polaris Project Model Statute's language for the text of the signs: a brief description of circumstances that constitute human trafficking, a statement that victims are protected by United States and state law, and information about the hotline, including its telephone number, its constant availability, its confidentiality, and the services it provides.<sup>185</sup>

Arkansas's statute has other similarities to the Model Statutes. Like the Polaris Project Model Statute, Arkansas requires the signs to be (1) printed in English, Spanish, and any other language the Voting Rights Act requires in the county where the sign is posted,<sup>186</sup> (2) available on the web sites of certain state licensing agencies,<sup>187</sup> (3) posted conspicuously near the entrance of the establishment or in the place that it normally posts similar posters and notices, and (4) no smaller than eight-and-a-half by eleven inches.<sup>188</sup> Like the NCCUSL Model Statute, Arkansas's statute imposes a fine on establishments that do not post the signs as required, but Arkansas's statute also provides for a warning before an establishment has to pay a fine.<sup>189</sup>

Each statute requires certain types of establishments in which human trafficking victims are likely to be to post NHTRC signs. The Polaris Project Model Statute requires the signs in the following establishments: massage parlors, spas, or similar businesses; establishments that have liquor licenses; strip clubs and other sexually oriented businesses; restaurants; airports; train stations; bus stations; highway truck stops; highway rest stops; hospitals, HMOs, and urgent care centers; farms over a certain size; high schools; and job recruitment centers.<sup>190</sup> The NCCUSL Model Statute requires the signs in transportation stations, rest areas, and welcome centers that are open to the public; strip clubs and other sexually oriented businesses; establishments

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183. See *id.* § 12-19-102 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, §§ 19(c)(4), 20(a)–(b); POLARIS STATUTE, *supra* note 70, at 18.

184. See NCCUSL STATUTE, *supra* note 10, §§ 19(c)(4), 20(a)–(b).

185. See ARK. CODE ANN. § 12-19-102(b)(1); POLARIS STATUTE, *supra* note 70, at 18.

186. See ARK. CODE ANN. § 12-19-102(b)(2); POLARIS STATUTE, *supra* note 70, at 18.

187. See ARK. CODE ANN. § 12-19-102(c); POLARIS STATUTE, *supra* note 70, at 18.

188. See ARK. CODE ANN. § 12-19-102(a); POLARIS STATUTE, *supra* note 70, at 18.

189. See ARK. CODE ANN. § 12-19-102(e); NCCUSL STATUTE, *supra* note 10, § 20(c).

190. See POLARIS STATUTE, *supra* note 70, at 18.



that are nuisances for prostitution under the state's nuisance law; job recruitment centers; hospitals; and emergency care providers.<sup>191</sup>

Arkansas, however, does not require the posting of these signs in some of the locations that the Model Statutes require. The Arkansas statute requires the placement of these signs in hotels, motels, or other establishments that have been cited as public nuisances for prostitution; strip clubs or other sexually oriented businesses; private clubs that have liquor licenses but do not advertise themselves as food service establishments; airports; train stations that serve passengers; bus stations; and truck stops.<sup>192</sup> Absent from this list are highway rest stops, restaurants, hospitals or other emergency medical care providers, farms, job recruitment centers, massage parlors, spas, and high schools, all locations where the drafters of the Model Statutes apparently believed trafficking victims might have an opportunity to see the potentially lifesaving information on these signs.

g. Summary

Arkansas falls short in several areas related to protecting victims in comparison with the Model Statutes. It does not provide as many services and protections for adult victims as it does for minors,<sup>193</sup> it does not give any victims immunity from prosecution (but gives victims an affirmative defense with a potentially insurmountable burden of proof),<sup>194</sup> it does not extend the statute of limitations for trafficking offenses,<sup>195</sup> it does not guarantee victims' access to the Victims Compensation Fund, and it does not require posting of NHTRC informational signs in several locations that trafficking victims are likely to be.<sup>196</sup>

On the other hand, Arkansas gives victims a civil cause of action similar to the Model Statutes<sup>197</sup> and requires informational signs about the NHTRC in some pertinent locations, such as truck stops and establishments that have been cited as nuisances for prostitution.<sup>198</sup> It also provides some services for minor victims.<sup>199</sup> Overall, though, the State needs to improve the

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191. See NCCUSL STATUTE, *supra* note 10, § 20(a)–(b).

192. ARK. CODE ANN. § 12-19-102(a).

193. See *id.* §§ 9-27-303(17)(H), 9-27-323, 12-19-101(d)(6), -103, 19-5-1252(b) (Supp. 2013).

194. See *id.* §§ 5-1-111, 5-70-102 to -103 (Repl. 2013 & Supp. 2013).

195. See *id.* § 5-1-109 (Supp. 2013).

196. See *id.* § 12-19-102(a); NCCUSL STATUTE, *supra* note 10, § 20(a)–(b); POLARIS STATUTE, *supra* note 70, at 18.

197. See ARK. CODE ANN. § 16-118-109 (Supp. 2013); NCCUSL STATUTE, *supra* note 10, § 18; POLARIS STATUTE, *supra* note 70, at 13–14.

198. See ARK. CODE ANN. § 12-19-102(a).

199. See *id.* §§ 9-27-303(17)(H), 9-27-323, 12-19-101(d)(6), -103, 19-5-1252(b) (Supp. 2013).

protections it provides for trafficking victims. This Note suggests improvements in this area in more detail below.<sup>200</sup>

### 3. *Prevention of Trafficking*

As the saying goes, an ounce of prevention is worth a pound of cure. Prosecuting traffickers and protecting their victims are certainly essential components of a state's efforts to combat human trafficking, but it is immensely better to prevent trafficking from happening at all than to address it after the fact. This section discusses the strategies the Model Statutes propose to prevent trafficking and those that Arkansas has adopted for the same purpose.

#### a. State human trafficking task force

The Polaris Project and NCCUSL Model Statutes both mandate the creation of a state task force or council on human trafficking made up of representatives from state agencies, law enforcement, and NGOs,<sup>201</sup> while the Act only permits Arkansas's Attorney General to create a similar State Task Force for the Prevention of Human Trafficking.<sup>202</sup> Arkansas's Attorney General has established the Task Force, and it began meeting in November 2013,<sup>203</sup> but the permissive nature of the Act's task force provision apparently means that the Attorney General could discontinue the Task Force at any time, potentially blunting the force of this provision.

Although the Act gives the Attorney General discretion regarding the creation of the Task Force, once it exists the Act requires it to perform several tasks.<sup>204</sup> The Act's task force provision is almost identical to that of the Polaris Project Model Statute,<sup>205</sup> so both require the task force to perform very similar functions: (1) developing and coordinating the implementation of a state plan (although neither specifies what the plan ought to include),<sup>206</sup>

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200. See *infra* Part III.B.2.

201. See NCCUSL STATUTE, *supra* note 10, § 19(a); POLARIS STATUTE, *supra* note 70, at 10. The Polaris Project Model Statute also requires the state to invite United States attorneys and federal law enforcement within the state to join the task force. See *id.*

202. See ARK. CODE ANN. § 12-19-101(a)(1). The Act does not require any particular person or group to be part of the Task Force, but it suggests including the same individuals and groups that the Polaris Project Model Statute requires to be included. See *id.* § 12-19-101(b)–(c).

203. Press Release, Ark. Attorney General's Office, McDaniel Establishes Task Force for Prevention of Human Trafficking (Nov. 6, 2013), <http://arkansasag.gov/news-and-consumer-alerts/details/mcdaniel-establishes-task-force-for-prevention-of-human-trafficking>.

204. See ARK. CODE ANN. § 12-19-101(d).

205. Compare *id.*, with POLARIS STATUTE, *supra* note 70, at 10.

206. See ARK. CODE ANN. § 12-19-101(d)(1)–(2); POLARIS STATUTE, *supra* note 70, at 10.

(2) coordinating the collection and sharing of data about trafficking between government agencies while respecting victims' privacy,<sup>207</sup> (3) coordinating information sharing among agencies in order to facilitate the detection of traffickers,<sup>208</sup> (4) exploring the establishment of state time limits for issuing law enforcement agency endorsements for foreign national victims to obtain federal immigration benefits,<sup>209</sup> (5) establishing policies for the state government to work with NGOs and other private groups or parties to prevent trafficking and assist victims,<sup>210</sup> and (6) evaluating other state and local governments' approaches to raising public awareness of human trafficking.<sup>211</sup>

Although the Act's task force provision is based closely on the Polaris Project Model Statute, it differs in a few important ways.<sup>212</sup> First, the Model Statute requires the task force to review existing services and facilities available for trafficking victims, such as health care, housing, education, and legal assistance, and recommend a system for coordinating those services.<sup>213</sup> The Act does not require this task,<sup>214</sup> but that could be because there are so few existing services and facilities in the state to review. Second, the Model Statute requires the task force to provide an annual report of its findings and recommendations to the governor, the speaker of the house, and the president pro tempore of the senate,<sup>215</sup> but the Act only requires one report to these officials,<sup>216</sup> perhaps because the General Assembly only intended the Task Force to exist temporarily. Third, the Act requires the Task Force to develop curriculum and provide training to officials in the state's criminal justice system,<sup>217</sup> while the Model Statute gives this duty to the state generally.<sup>218</sup>

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207. See ARK. CODE ANN. § 12-19-101(d)(3); POLARIS STATUTE, *supra* note 70, at 10.

208. See ARK. CODE ANN. § 12-19-101(d)(4); POLARIS STATUTE, *supra* note 70, at 10.

209. ARK. CODE ANN. § 12-19-101(d)(5); 8 C.F.R. § 214.11(f)(1) (2013); POLARIS STATUTE, *supra* note 70, at 10.

210. ARK. CODE ANN. § 12-19-101(d)(6); POLARIS STATUTE, *supra* note 70, at 10.

211. ARK. CODE ANN. § 12-19-101(d)(7); POLARIS STATUTE, *supra* note 70, at 11.

212. See ARK. CODE ANN. § 12-19-101; POLARIS STATUTE, *supra* note 70, at 10–11.

213. See POLARIS STATUTE, *supra* note 70, at 10.

214. See ARK. CODE ANN. § 12-19-101.

215. See POLARIS STATUTE, *supra* note 70, at 11.

216. See ARK. CODE ANN. § 12-19-101(d)(9). The Task Force issued its report in August 2014 as this Note was in the process of publication. See ARK. ATTY. GENERAL'S STATE TASK FORCE FOR THE PREVENTION OF HUMAN TRAFFICKING, REPORT OF THE ARKANSAS TASK FORCE FOR THE PREVENTION OF HUMAN TRAFFICKING (2014), available at <https://static.ark.gov/eeuploads/ag/HumanTraffickingTaskForceReport.pdf>.

217. See *id.* § 12-19-101(d)(8).

218. See POLARIS STATUTE, *supra* note 70, at 11.

b. Training of law enforcement and prosecutors

Both the Polaris Project and the NCCUSL Model Statutes mandate some form of human trafficking training.<sup>219</sup> The Polaris Project Model Statute requires training of law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff, others involved in the juvenile and criminal justice systems, and other officials likely to be involved in combating human trafficking.<sup>220</sup> The NCCUSL Model Statute does not mandate training as specifically as the Polaris Project Model Statute does, but it requires the state human trafficking council to coordinate trafficking prevention and victim services training for government employees who may repeatedly come into contact with victims or traffickers.<sup>221</sup>

Arkansas does not make any human trafficking training entirely mandatory, but it does have two statutes that address training.<sup>222</sup> The first statute allows the Arkansas Juvenile Officers Association, the Arkansas Law Enforcement Training Academy, or the Prosecutor Coordinator's Office to provide training to intake officers, law enforcement, prosecutors, or other appropriate staff on identifying sexually exploited children, including victims of human trafficking, and obtaining appropriate services for them.<sup>223</sup> Because the statute only permits this training rather than requiring it, however, it may have little or no practical value.

More importantly, the Act requires the Task Force to create curriculum and provide training for law enforcement agencies, prosecutors, public defenders, judges, and others who are part of the state's criminal and juvenile justice systems.<sup>224</sup> The Act's training requirements for the Task Force are almost identical to the Polaris Project Model Statute's training requirements,<sup>225</sup> except the Act does not require the Task Force to train "other officials" than those involved in the criminal and juvenile justice systems, and it does not require the Task Force to seek input and participation from NGOs in preparing and presenting the training.<sup>226</sup>

Both Arkansas's Task Force statute and the Polaris Project Model Statute require training in several areas: (1) the state's human trafficking offenses, (2) methods for identifying victims, including appropriate interview techniques, (3) methods for prosecuting traffickers, (4) methods for collabo-

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219. See NCCUSL STATUTE, *supra* note 10, § 19(c)(5); POLARIS STATUTE, *supra* note 70, at 11–12.

220. See POLARIS STATUTE, *supra* note 70, at 11–12.

221. See NCCUSL STATUTE, *supra* note 10, § 19(c)(5).

222. See ARK. CODE ANN. §§ 12-18-1201 to -1202, 12-19-101(d)(8) (Supp. 2013).

223. See *id.* §§ 12-18-1201 to -1202.

224. See *id.* § 12-19-101(d)(8).

225. Compare *id.*, with POLARIS STATUTE, *supra* note 70, at 11–12.

226. See ARK. CODE ANN. § 12-19-101(d)(8).

rating with NGOs and social service organizations during human trafficking investigations and prosecutions, (5) methods for protecting victims' rights, including consideration of human rights and the special needs of women and children, (6) the need to treat victims as victims instead of criminals, and (7) methods for promoting victims' safety.<sup>227</sup>

Arkansas does not require this training absolutely because the Act does not require the Attorney General to create the Task Force, but now that the Attorney General has created the Task Force, the Act requires the Task Force to provide the training.<sup>228</sup> It is unclear, however, how long the Task Force will continue and therefore how long the Task Force's training will continue. On the other hand, the Attorney General's Office and Catholic Charities of Arkansas were already involved in training state law enforcement agencies on human trafficking before the State created the Task Force,<sup>229</sup> so there is hope that human trafficking training would continue even if the Task Force does not.

c. Public awareness

In addition to posting information about the NHTRC hotline, the Polaris Project Model Statute requires states to make other efforts to educate potential trafficking victims and the general public about trafficking.<sup>230</sup> These efforts include distributing information intended to (1) educate potential victims and their families about the risks of becoming a victim of trafficking, victims' rights, and services available for victims, (2) educate the general public about the extent of trafficking in the United States, and (3) discourage the demand for exploitative activities that result in human trafficking.<sup>231</sup>

Arkansas's laws do not include much in the way of promoting public awareness of trafficking. The requirement for certain establishments to post information about the NHTRC hotline may promote some public awareness.<sup>232</sup> The Act also requires the Task Force to evaluate approaches other state and local governments have taken to increase public awareness of trafficking, but it does not require the Task Force to implement any of those

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227. See *id.*; POLARIS STATUTE, *supra* note 70, at 11.

228. See ARK. CODE ANN. § 12-19-101(a)(1), (d)(8).

229. Telephone Interview with Will Jones, Assistant Attorney General, Cyber Crimes Unit, Ark. Attorney General's Office and Co-Chair, Attorney General's State Task Force for the Prevention of Human Trafficking (Oct. 22, 2013); Interview with Reagan Stanford, *supra* note 7.

230. See POLARIS STATUTE, *supra* note 70, at 12.

231. See *id.*

232. See *supra* Part III.A.2.f.

approaches.<sup>233</sup> Other than that, Arkansas does not have to make any efforts to educate its citizens about trafficking.

d. Summary

Arkansas's trafficking prevention measures are largely in line with those the Model Statutes suggest,<sup>234</sup> except that Arkansas does not make the Task Force mandatory,<sup>235</sup> potentially weakening its training mandate, and it does not require any public awareness measures beyond posting information about the NHTRC hotline.<sup>236</sup> Nevertheless, Arkansas's task force provision follows the Polaris Project Model Statute's wording almost verbatim,<sup>237</sup> and as long as the Task Force is in business, the statute requires it to train law enforcement about trafficking.<sup>238</sup> This Note discusses the need for truly mandatory training in greater detail below.<sup>239</sup>

B. Proposed Changes and Suggestions for Implementation of Arkansas's Laws

The foregoing comparison of Arkansas's laws to model state human trafficking statutes suggests several improvements that Arkansas could make to its human trafficking laws. This section focuses on the most important improvements that the State should make, as well as a few ways that Arkansas can implement its laws more effectively as they now stand.

1. *Prosecution and Training*

Unfortunately, only a small percentage of human trafficking cases are ever prosecuted.<sup>240</sup> This paucity of human trafficking prosecutions is due to several obstacles, including the failure to identify victims, the unwillingness of victims to report trafficking because of fear of their traffickers and sometimes of law enforcement, and the dependence of successful prosecutions on victims' willingness and ability to cooperate.<sup>241</sup>

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233. See ARK. CODE ANN. § 12-19-101(d)(7).

234. See *id.* § 12-19-101; NCCUSL STATUTE, *supra* note 10, § 19; POLARIS STATUTE, *supra* note 70, at 10–12.

235. See ARK. CODE ANN. § 12-19-101(a)(1).

236. See *id.* §§ 12-19-101(d)(7), -102 (Supp. 2013).

237. See *id.* § 12-19-101; POLARIS STATUTE, *supra* note 70, at 10–11.

238. See ARK. CODE ANN. § 12-19-101(d)(8).

239. See *infra* Part III.B.1.

240. See Ankita Patel, *Back to the Drawing Board: Rethinking Protections Available to Victims of Trafficking*, 9 SEATTLE J. FOR SOC. JUST. 813, 821–22 (2011); Rickert, *supra* note 10, at 236.

241. See Patel, *supra* note 240, at 823–24; Rickert, *supra* note 10, at 237.

In spite of these difficulties, human trafficking prosecutions are crucial for increasing the costs of trafficking, and therefore deterring traffickers,<sup>242</sup> as well as for punishing traffickers for their despicable actions toward their fellow human beings. In order to increase prosecutions, training of law enforcement, prosecutors, and other criminal justice officials is essential for overcoming the obstacles to human trafficking prosecutions: to ensure that victims are found, that law enforcement recognizes them as victims and not criminals, and that the State treats them appropriately and provides them with the services they need so that they can be willing and able to cooperate.<sup>243</sup>

Therefore, it is important for Arkansas to make sure that human trafficking cases that occur within the state are prosecuted, either by the State or by the federal government when appropriate. In order to make that happen, Arkansas's law enforcement, prosecutors, and other criminal justice officials need to have the training to recognize trafficking situations and treat victims appropriately so that prosecutions can succeed.

Several authorities and commentators have noted the importance of training in the fight against human trafficking.<sup>244</sup> Without training, law enforcement officers and other officials who come into contact with trafficking victims are likely not to recognize these individuals as victims.<sup>245</sup> Once authorities recognize an individual as a victim, training is essential to ensure that the victim's immediate needs are met and that authorities treat the victim in a way that is sensitive to the trauma the victim has endured.<sup>246</sup>

Mandatory human trafficking training for law enforcement, prosecutors, public defenders, judges, and other participants in the State's justice system, rather than training that is dependent on the continued existence of the Task Force, would help ensure that these officials are prepared to make human trafficking prosecutions successful in Arkansas.

## 2. *Greater Protection for Adult Victims*

Prosecution of traffickers is important, but prosecution alone is not enough to effectively combat human trafficking.<sup>247</sup> Measures that protect

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242. See Rickert, *supra* note 10, at 237.

243. See *id.* at 277–80; DOS TIP REPORT, *supra* note 2, at 10, 15.

244. See Dina Francesca Haynes, *Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act*, 6 U. ST. THOMAS L.J. 77, 81–83 (2008); Suzanna L. Tiapula & Melissa Millican, *Identifying the Victims of Human Trafficking*, PROSECUTOR, Jan./Feb./Mar. 2008, at 34, 35–36, 40–41; U.N. TIP REPORT, *supra* note 13, at 90; DOS TIP REPORT, *supra* note 2, at 10–15, 19–26.

245. See Tiapula & Millican, *supra* note 244, at 35–36; DOS TIP REPORT, *supra* note 2, at 10, 13.

246. See DOS TIP REPORT, *supra* note 2, at 19–26.

247. See *id.* at 9, 15.

victims are essential to an effective response to trafficking, both to facilitate prosecution and, even more importantly, to help these wounded individuals heal from the ordeals their traffickers have put them through.<sup>248</sup>

Many of the protections available to victims of trafficking in Arkansas are targeted toward or only available to minors, including classifying some minor victims as dependent juveniles; requiring DHS to create a protocol to coordinate services for sexually exploited children; allowing the Arkansas Juvenile Officers Association, the Arkansas Law Enforcement Training Academy, or the Prosecutor Coordinator's Office to provide training on identifying sexually exploited children and obtaining appropriate services for them; and creating the Safe Harbor Fund to provide services and treatment for sexually exploited children.<sup>249</sup>

Legislative findings and a statement of legislative intent in one of the Arkansas acts addressing human trafficking in 2013 describe the General Assembly's special concern for sexually exploited children, including minor victims of trafficking.<sup>250</sup> In particular, these statements demonstrate the General Assembly's belief that sexually exploited children are crime victims, not criminals, who need services and protection so their interactions with the justice system do not traumatize them further.<sup>251</sup>

Minor victims of trafficking certainly deserve such protection, but adult victims need and deserve protection as well. Like sexually exploited children, adult trafficking victims are crime victims, not criminals, who need services and protection to prevent further trauma from their interactions with the justice system.<sup>252</sup> Although minors may be more vulnerable to traffickers in many cases, adults can and do fall prey to traffickers' tricks, and it does not matter that an adult victim initially agreed to participate, had some freedom to come and go alone, or did not report the trafficking situation at the first opportunity.<sup>253</sup> What matters is that the trafficker used some form of force, fraud, or coercion to control that person,<sup>254</sup> making that person a victim who deserves protection from the criminal or criminals who have abused him or her.

Although the services and protections that minor and adult victims need are likely to differ in some ways, Arkansas could make sure that adult

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248. *See id.*

249. *See* ARK. CODE ANN. §§ 9-27-303, 9-27-323, 12-18-1201 to -1202, 19-5-1252 (Supp. 2013).

250. *See* Act of Apr. 16, 2013, No. 1257, secs. 1–2, 8, 2013-5A Ark. Adv. Legis. Serv. 202 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-103, 5-70-102 to -103, 9-27-323, 12-18-1201 to -1202, 19-5-1252 (Supp. 2013)).

251. *See id.* at secs. 1–2.

252. *See* DOS TIP REPORT, *supra* note 2, at 8–9.

253. *See id.* at 30.

254. *See supra* Part III.A.1.



victims receive the protection that they too deserve in several ways. For instance, law enforcement and state agencies could use procedures they have developed for use with victims of domestic violence and sexual assault to assist victims of human trafficking because these procedures are likely to be useful for human trafficking victims as well.<sup>255</sup> In addition, the General Assembly could amend the Safe Harbor Fund statute to provide services to adult victims as well as minors, particularly considering that its funding comes from convictions for trafficking and prostitution of both adults and minors.<sup>256</sup> Perhaps most importantly, the General Assembly could require training for criminal justice and other state officials who are likely to come into contact with human trafficking victims so that these officials understand that adults can be victims too and can provide adult victims with the help these individuals need and deserve.

### 3. *Mandatory Restitution*

Amending the state's restitution statute to include mandatory restitution from convicted traffickers would both allow victims to recover the profits they earned for their traffickers and deprive the traffickers of their ill-gotten gains. Human traffickers can make enormous profits from their victims: the International Labour Organization (ILO), an agency of the United Nations, estimates that worldwide annual profits from forced labor are at least \$32 billion.<sup>257</sup> Furthermore, ILO estimates that victims lose at least twenty-one billion dollars annually in unpaid wages and illegal recruitment fees.<sup>258</sup> Requiring traffickers to turn over some of these profits to their victims is only just.

As it is, courts can order convicted traffickers to pay restitution under Arkansas's general restitution statute.<sup>259</sup> If the General Assembly chooses not to make restitution mandatory in human trafficking cases, the courts can still implement Arkansas's current laws to make sure that traffickers cannot enjoy the fruits of their victims' labor with impunity.

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255. See DOS TIP REPORT, *supra* note 2, at 8, 21.

256. See ARK. CODE ANN. § 19-5-1252(b) (Supp. 2013).

257. International Labour Organization, *Questions and Answers on Forced Labour*, INTERNATIONAL LABOUR ORGANIZATION (June 1, 2012), [http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS\\_181922/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_181922/lang--en/index.htm). The ILO definition of forced labor includes most types of human trafficking, with the exceptions of trafficking for organ removal, forced marriage, or adoption, unless these situations also involve forced labor.

*Id.*

258. *Id.*

259. See ARK. CODE ANN. § 5-4-205 (Supp. 2013).

#### 4. *Forfeiture of Property*

Making all kinds of property that traffickers use in or obtain with the proceeds of human trafficking subject to forfeiture would, like mandatory restitution, serve to deprive traffickers of their ill-gotten gains, and it could also fund both services for victims and law enforcement agencies fighting trafficking. The original House version of the Act would have made various types of property subject to forfeiture, including contraband, conveyances, and real property used in the commission of trafficking, the proceeds of trafficking, and personal property obtained with those proceeds,<sup>260</sup> but these forfeiture provisions were not part of the final Act.<sup>261</sup> The General Assembly subsequently made conveyances that traffickers used or intended to use in the commission of human trafficking subject to forfeiture,<sup>262</sup> but traffickers' other property is currently safe from the State's grasp.

Arkansas already has forfeiture provisions for livestock theft and drug trafficking that are similar to the forfeiture provisions in the original version of the Act,<sup>263</sup> and if property forfeiture is appropriate for those crimes, it is appropriate for human trafficking as well. Forcing human beings to work or engage in sexual activity, or both, is certainly more heinous than the mere economic loss involved in livestock theft, even though that loss may be substantial, and although drug trafficking may often include harm to individuals among its evils, it is no more heinous than human trafficking. Also, like livestock theft and drug trafficking, human trafficking can provide significant economic gains that its perpetrators should not be allowed to retain.

In addition, the State could use the proceeds from the sale of traffickers' forfeited property for restitution, services for victims, and anti-trafficking efforts. The original version of the Act contemplated some of these purposes, requiring the use of proceeds from forfeited property to pay restitution and civil damages to victims first, with the remainder to go to the Victims Reparations Fund and any local police department that used its funds to detect, investigate, apprehend, and prosecute the trafficker.<sup>264</sup> Enacting these measures could provide much-needed funding to take care of

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260. See H.R. 1203, 89th Gen. Assemb., Reg. Sess. § 4 (Ark. 2013) (as introduced, Jan. 30, 2013).

261. See Arkansas Human Trafficking Act of 2013, No. 133, 2013-1A Ark. Adv. Legis. Serv. 519 (Lexis Nexis) (codified at ARK. CODE ANN. §§ 5-18-101 to -105, 5-70-102 to -103, 12-19-101, 16-93-618(a)(1), 16-118-109 (Supp. 2013)).

262. See ARK. CODE ANN. §§ 5-5-201 to -204 (Repl. 2006 & Supp. 2013).

263. See *id.* §§ 5-5-301 to -306, 5-64-505 (Repl. 2006 & Supp. 2013).

264. See H.R. 1203 § 4.

victims and advance the fight against trafficking within the state at the same time.<sup>265</sup>

#### IV. CONCLUSION

Arkansas has made great strides in enacting laws that address the problem of human trafficking in many respects. The State now has many of the weapons it needs to combat this scourge, but adding a few crucial elements could make Arkansas's response even more effective. Particularly, providing greater protection for adult victims of trafficking, requiring restitution from traffickers to their victims, and making all of traffickers' ill-gotten gains subject to forfeiture would improve the State's ability to punish traffickers, protect victims, and prevent further human trafficking in the state. Moreover, it remains to be seen how well the State will implement its new laws in the real world. It is particularly crucial for the State to give law enforcement and criminal justice officials the training they need to identify human trafficking so that they can prosecute those who have committed this heinous crime and protect victims with whatever means are available. As Ambassador CdeBaca noted, without implementation, law only gives a false sense of accomplishment.<sup>266</sup> By making a few key changes to its laws and by effectively implementing the laws already in force, Arkansas can avoid having a false sense of accomplishment and instead can have confidence that it is taking the necessary steps to protect victims of human trafficking within the state and punish the traffickers who have exploited them.

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265. These measures could also distribute funds remaining after victims receive compensation to the Safe Harbor Fund as well as or instead of to the Victims Reparations Fund.

266. See CdeBaca, *supra* note 1, at 50–51.

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