

THE EVOLUTION OF ANTI-SLAVERY LAWS IN THE UNITED STATES

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I. INTRODUCTION TO HUMAN TRAFFICKING IN THE UNITED STATES

In this new century, the United States of America is still struggling to end slavery within its borders. Men, women, and children are being bought and sold as a commodity. Globalization has brought them to American soil with the promise of living the American dream; instead they end up being

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forced to work against their will in brothels, sweatshops, and in the rich soil of the agricultural fields.

Every year, an average of 16,000 foreigners are sold into slavery in the United States.¹ While most victims come from Asia and Latin America, the United States has discovered victims from other world regions, including Africa and Europe.² Exponentially higher is the number of U.S. citizen minors who are sold into the sex industry.

The U.S. Department of Health and Human Services estimates that around 200,000 teens in the U.S. are sold into slavery each year.³ This phenomenon is called Domestic Minor Sex Trafficking or DMST.⁴ These children either run away from home or are enticed by the promise of love or the fulfillment of a dream (*e.g.*, singing or acting) in other parts of the country. Then, they are forced to engage in prostitution, exotic dancing, or pornography.⁵ In order to address this problem, the federal government passed the Trafficking Victims Protection Act or TVPA in 2000.⁶ Since then, Congress has reauthorized this law to address the ever-changing nature and complexity of this human rights violation.

II. THIRTEENTH AMENDMENT

Historically, the U.S. Constitution addressed enslavement in the thirteenth amendment, which punished and abolished slavery. Traditionally, slavery involved a person's physical freedom being taken away and then being forced to work against their will. Today's slave trade is more complex.

1. Heather J. Clawson, Nicole Dutch, Amy Solomon & Lisa Goldblatt Grace, *Human Trafficking Into and Within the United States: A Review of the Literature*, U.S. DEP'T OF HEALTH AND HUMAN SERV., OFFICE OF THE ASSISTANT SEC'Y OF PLANNING AND EVALUATION 4 (Aug. 2009), available at <http://aspe.hhs.gov/hsp/07/humantrafficking/LitRev/index.pdf> (last visited Feb. 1, 2011) [hereinafter Clawson et al.].

2. *Id.* at 7.

3. *Id.* at 4.

4. *The National Report on Domestic Minor Sex Trafficking: America's Prostituted Children*, SHARED HOPE INT'L, 2-3 (May 2009), available at http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009%28without_cover%29.pdf (last visited Feb. 1, 2011) [hereinafter *Domestic Minor Sex Trafficking*].

5. *Female Juvenile Prostitution: Problem and Response*, NAT'L CTR. FOR MISSING AND EXPLOITED CHILDREN, 14, 54, 56 (Nov. 2002), available at www.missingkids.com/en_US/publications/NC68.pdf (last visited Feb. 1, 2011).

6. Victims of Trafficking and Violence Protection Act of 2000, Pub.L. No. 106-386, § 101, 114 Stat. 1464, 1466, available at <http://www.state.gov/documents/organization/10492.pdf> (last visited Feb. 1, 2011) [hereinafter Victims of TVPA of 2000].

Many times trafficked individuals are allowed to walk freely in the community, but they do not leave their enslavement because their lives, or that of their loved ones, have been threatened. Unlike the thirteenth amendment, the TVPA takes into consideration psychological restriction of movement.⁷ This means that a person does not need to be shackled, tied, or locked in the room to be considered a slave. Thus, if they were not able to leave their confinement because of fear or psychological abuse, it is taken into consideration in the criminal investigation.

III. TRAFFICKING VICTIM PROTECTION ACT OF 2000 (TVPA)

In October 2000, the Trafficking Victims Protection Act of 2000 (TVPA) was enacted.⁸ This law defined human trafficking as modern day slavery. Prior to that, no law existed to protect victims of this new form of slavery or to prosecute the perpetrators.

Definition: sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.⁹

This federal law sought to provide protection to foreign and domestic (U.S. citizen) victims of human trafficking, create statutes for prosecution of these cases, and raise awareness on this issue at an international level.¹⁰ The law also established the T visa, which provides foreign victims of trafficking with immigration relief.¹¹ This allows them to petition for eligible family members to come and live legally in the United States. This is to ensure the family's safety, especially if the trafficking network has connection to their home country.

In addition, the TVPA authorizes up to 5,000 victims of trafficking each year to receive permanent residence status after three to four years of

7. *Id.*

8. *Id.*

9. *Id.* § 103(8).

10. Clawson et al., *supra* note 1, at 1; Victims of TVPA of 2000, *supra* note 6, § 101.

11. *Trafficking Victims Protection Act of 2000 Fact Sheet*, U.S. DEP'T OF HEALTH AND HUMAN SERV. 1, available at http://www.acf.hhs.gov/trafficking/about/TVPA_2000.pdf (last visited Feb. 1, 2011) [hereinafter *Trafficking Fact Sheet*].

holding a T visa.¹² Then, they can adjust to becoming a U.S. citizen.¹³ Lastly, it created a mechanism called “certification,” which allows foreign victims to access public benefits, including monetary, medical, and food assistance.¹⁴

The U.S. government also focused on raising awareness on this issue at an international level. A large part of the awareness focused on education to impoverished areas, where individuals were mostly likely to fall prey to traffickers. The United States also worked to train law enforcement in other countries, such as in Ecuador, where the focus was the exploitation of children.¹⁵ Additionally, the United States encouraged these countries to create their own laws to discourage the practice of human trafficking.

IV. TRAFFICKING VICTIM PROTECTION REAUTHORIZATION ACT OF 2003 (TVPRA OF 2003)

In 2003, the federal government reauthorized the TVPA (called the Trafficking Victim Protection Reauthorization Act of 2003 (TVPRA)) to enhance the 3 P’s: prevention (of trafficking of human beings), protection (of victims), and prosecution (of traffickers) which had originally been established in 2000.¹⁶ The TVPRA of 2003 authorized an additional \$200 million budget to accomplish these goals and strengthen the initiatives to combat trafficking.¹⁷ It also created a new list of tasks for federal agencies.

First, it mandated new outreach and awareness campaigns against sex tourism, especially for the purpose of trafficking a minor.¹⁸ This same year, the PROTECT Act was passed to prosecute U.S. citizens who travel abroad for the purposes of having sex with a minor.¹⁹ Secondly, it allowed victims,

12. *Id.*

13. *Id.*

14. *Id.*

15. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 135–37 (2010), available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142759.htm> (last visited Feb. 1, 2011) [hereinafter TIP 2010].

16. See Trafficking Victim Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875, 2875–77 (2003) (codified at 22 U.S.C. § 7104), available at <http://www.state.gov/documents/organization/28225.pdf> (last visited Feb. 1, 2011) [hereinafter TVPRA of 2003]; *Trafficking Fact Sheet*, *supra* note 11, at 1.

17. *Trafficking Fact Sheet*, *supra* note 11, at 2.

18. TVPRA of 2003, *supra* note 16, § 3.

19. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, § 105, 117 Stat. 650, 653–54 (2003), available at

for the first time, to bring federal civil suits against traffickers for “actual and punitive damages, and by including sex trafficking and forced labor as offenses under the Racketeering Influenced and Corrupt Organization statute.”²⁰

Thirdly, the TVPRA of 2003 required annual reports from both the Attorney General’s Office and the State Department on their efforts to combat trafficking in persons.²¹ Lastly, the TVPRA of 2003 mandated the federal government to terminate its contracts, both domestically and abroad, with those who were involved in human trafficking.²²

V. TRAFFICKING VICTIM PROTECTION REAUTHORIZATION ACT OF 2005 (TVPRA OF 2005)

The TVPRA of 2005 was passed in an effort to address some of the main discrepancies under the federal Trafficking Victims Protection Act of 2000 and its subsequent reauthorization in 2003.²³ One of the initial purposes of the TVPA was to provide protections to foreign victims who were trafficked into the United States.²⁴ These individuals were usually undocumented and could not access public benefits or social services because of their immigration status.²⁵

The law sought to provide a system of care for victims while the authorities investigated the case and later prosecuted the traffickers. The law did not provide the same amenities to U.S. citizens. The thought was that if U.S. citizens were trafficked, they would be able to access services from agencies that assisted crime victims. While the law gave U.S. citizens the status of being a victim/survivor of human trafficking, it did not address their need for assistance.

By 2005, social service and law enforcement agencies lobbied for changes in the treatment of domestic victims.²⁶ This reauthorization looked to address this problem by allocating funding for programs that would assist

<http://www.gpo.gov/fdsys/pkg/PLAW-108publ21/pdf/PLAW-108publ21.pdf> (last visited Feb. 7, 2011) [hereinafter PROTECT ACT].

20. FREEDOM NETWORK, http://www.freedomnetworkusa.org/trafficking_us/index.php (last visited Mar. 19, 2011).

21. Clawson et al., *supra* note 1, at 4.

22. TVPRA of 2003, *supra* note 16, § 3(a).

23. Victims of Trafficking and Violence Protection Act of 2005, Pub.L. No. 109-164, §§ 2(7)–(11), 119 Stat. 3558, 3559–69 (2005), available at <http://www.state.gov/documents/organization/47255.pdf> (last visited Feb. 1, 2011) [hereinafter TVPRA of 2005].

24. *Id.*

25. *Id.*

26. Clawson et al., *supra* note 1, at 3.

domestic (U.S. citizen) trafficking survivors.²⁷ These changes included pilot programs to establish residential rehabilitative facilities for trafficked minors.²⁸ The first three programs were funded in 2009 by the federal government, and are located in New York City, Chicago, and San Francisco.

VI. THE WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008 (TVPRA OF 2008)

The TVPRA of 2008 was named after William Wilberforce, an English member of Parliament and renown abolitionist.²⁹ The new additions under this reauthorization included providing interim assistance for potential foreign child victims of trafficking and enhancing the ability to punish traffickers.³⁰ For the first time the TVPRA of 2008 addressed the plight of child soldiers, both in the United States and abroad, and revised the protections for unaccompanied foreign-born trafficked children.³¹

Author's Insight on the Interim Assistance Letter: As the former Statewide Human Trafficking Coordinator for the Florida Department of Children and Families, I worked closely with the first child trafficking case to receive the interim assistance letter in the United States. Traditionally, federal benefits were available to trafficked victims once they were “certified” by the federal government as victims of trafficking. This means that the government had proof of the victimization and would now provide the person with an official status. This process could take weeks or months. This new mechanism expedited the access to necessary services available to trafficked minors. It was created to address special situations, such as when law enforcement is certain that a child is a victim, but the minor does not collaborate or recants because of fear of persecution. Before, in a situation like this, it could take a long period of time to access services. Now benefits are received for up to 90 days,

27. TVPRA of 2005, *supra* note 23, §§ 201(a)–201(a)(2)(C).

28. Clawson et al., *supra* note 1, at 18.

29. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong., § 212(a)(2) (2008) [hereinafter William Wilberforce TVPRA of 2008].

30. “[T]he Secretary of Health and Human Services shall promptly determine if the child is eligible for interim assistance. . . .” *Id.* § 212(a)(2). “Whoever violates this section shall be fined under this title, imprisoned not more than 20 years, or both. If death results . . . or if the violation includes kidnapping, . . . aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title, imprisoned for any term of years or life, or both.” *Id.* § 222(d).

31. *See generally* William Wilberforce TVPRA of 2008, *supra* note 29.

giving ample time for authorities to corroborate the trafficking findings.

VII. THE FUTURE OF THE TVPA

A. Organ Trafficking

The United Nations, which has a broader definition of trafficking than the United States, includes trafficking of organs in its anti-slavery laws.³² The TVPA does not consider organ trafficking as a form of human trafficking. The United States defines human trafficking as an act that includes forced labor and physical and psychological confinement.³³ The transaction involving organ trafficking does not fit the parameters of U.S. law. Nonetheless, the harvesting of organs for sale has become a focus of the international community. While there is no exact data on the trafficking of organs, it is believed to be on the rise.

In September 2010, Congresswoman Ileana Ros Lehtinen stated at a conference in Miami, Florida that she would introduce a bill to combat organ trafficking.³⁴ Congresswoman Lehtinen stated that she would make this law comparable to the TVPA.³⁵ Furthermore, she stated that the United States needed to address this problem and to create a mechanism to assist those victimized.³⁶

B. The Safe Harbor Act

Despite being in the forefront of battling human trafficking, survivors in the United States are not guaranteed victims assistance. The reason is that the human trafficking statute contradicts states' laws prohibiting prostitution. In most U.S. states, it is unlawful to provide sexual services for money.

At the same time, the federal and state human trafficking laws cite that anyone under the age of eighteen (18) involved in commercial sex is a

32. D. A. Budiani-Saberi & F. L. Delmonico, *Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities*, 8 AM. J. TRANSPLANTATION 925, 926 (May 2008); Eytan Mor & Hagai Boas, *Organ Trafficking: Scope and Ethical Dilemma*, 5 CURRENT DIABETES REPORT 294, 298 (July 2005).

33. Budiani-Saberi & Delmonico, *supra* note 32; Mor & Boas, *supra* note 32.

34. Marlene Quaroni, *How to 'Break the Chains' of Modern Slavery*, ARCHDIOCESE OF MIAMI, Sept. 14, 2009, available at http://www.newmiamiarch.org/ip.asp?op=Article_10914225031779 (last visited Feb. 6, 2011).

35. *Id.*

36. *Id.*

victim of trafficking. The reasoning is that a minor cannot give consent for sex, as is the case with statutory rape; therefore, they are engaging in a commercial transaction against their will.³⁷ This means that law enforcement agents, depending on their training on this topic, can either arrest a minor for being involved in the sex trade or can refer them to the state's child protection agencies for assistance as a victim of exploitation. This allows law enforcement to have discretion on how they will proceed with the individual situation.³⁸

In 2008, New York, one of the top three states in the United States to identify victims, passed a ground-breaking piece of legislation called the Safe Harbor Act.³⁹ The New York Safe Harbor for Exploited Children Act, or simply Safe Harbor, allows the minor to avoid criminal charges of prostitution and instead be considered a person in need of supervision. This law does not legalize prostitution, but recognizes that incarcerating these minors is harmful.⁴⁰ This new statute also provides very specific services, which include safe and appropriate housing, mentoring, as well as mental health programs.

VIII. CONCLUSION

The United States has led the global fight to combat trafficking in persons. Since the passing of the TVPA in 2000, hundreds of millions of dollars have been spent to create forty-two (42) task forces nationwide to combat the problem.⁴¹ These task forces generally consist of federal and local law enforcement agencies, social service providers, prosecutors, and other professionals, who all collaborate in working different aspects of these cases.⁴² To reinforce the practice of collaboration, Secretary of State Hillary Clinton added a fourth P to the core values of the TVPA: partnership.⁴³

37. *Domestic Minor Sex Trafficking*, *supra* note 4, at 13.

38. *Id.* at 32, 55.

39. N.Y. SOC. SERV. LAW §§ 447-a, 447-b (2008) (Safe Harbour for Exploited Children Act, New York Social Services, Title 8-A).

40. *Id.* § 447-b.

41. *Trafficking Fact Sheet*, *supra* note 11, at 2.

42. Clawson et al., *supra* note 1, at 21–22.

43. Luis CdeBaca, U.S. Ambassador-at-Large, U.S. Dep't of State, Office to Monitor and Combat Trafficking in Persons, Remarks at the Department of Justice's National Human Trafficking Conference (May 3, 2010) (transcript available in the U.S. Dep't of State), *available at* <http://www.State.gov/g/tip/rls/rm/2010/141446.htm> (last visited Feb. 4, 2011).

In addition to the federal statute, forty-four (44) states have also passed their own comprehensive state anti-trafficking laws.⁴⁴ Also, through its global initiatives, the U.S. Department of State reports that 161 countries are now reporting cases of trafficking within their borders.⁴⁵ The United States continues to work closely with the international community to fight this scourge.

The United States has called this a continued priority of the Administration. With each reauthorization, the TVPA is strengthened. Victims are receiving more comprehensive, safe, and culturally-appropriate care, and traffickers are receiving higher prison sentences. Despite the progress, each year more victims are being discovered. To keep ahead of the traffickers, the U.S. government, and its partners, will need to continuously address the ever changing face of the slave trade. This means that for now, the TVPA is a work in progress.

44. *United States of America Narrative* of U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT (2010), available at <http://bangui.usembassy.gov/root/pdfs/2010-trafficking-in-persons-report-us-narvenive.pdf> (last visited Feb. 4, 2011).

45. United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns* (Vienna, 2006).