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# Human Trafficking in Maine, 2017

U.S. Commission on Civil Rights

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# **Human Trafficking in Maine**

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**Maine Advisory Committee  
to the U.S. Commission on Civil Rights**

**February 2017**

## **The United States Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency established by Congress in 1957, reconstituted in 1983, and reauthorized in 1994. It is directed to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; to appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; to serve as a national clearinghouse for information with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; to submit reports, findings, and recommendations to the President and Congress; and to issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; to receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; to forward advice and recommendations to the Commission, as requested; and to observe any open hearing or conference conducted by the Commission in their states.

## **State Advisory Committee Reports**

The State Advisory Committee reports to the Commission are wholly independent and are reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. SAC reports are not subject to Commission approval, fact-checking, or policy changes.

This report is the work of the Maine State Advisory Committee to the U.S. Commission on Civil Rights. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government.

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# **Human Trafficking in Maine**

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## Letter of Transmittal

Maine Advisory Committee  
to the U.S. Commission on Civil Rights

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Mauro Morales, *Staff Director*

The Maine Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, “Human Trafficking in Maine.” The report was adopted by the Advisory Committee by a unanimous vote of 11 to 0 with one member abstaining.

Sincerely,

Diane Khiel, *Chairperson*  
Maine Advisory Committee

## Maine Advisory Committee to the U.S. Commission on Civil Rights

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### Acknowledgments

The Maine Advisory Committee thanks all of the participants in the April 2012 and June 2014 briefings for sharing their expertise and, in some cases, deeply personal stories on this most important issue. This report could not have been possible without the guidance of Barbara de La Viez, the designated federal official assigned to the Maine Federal Advisory Committee. In addition, the Committee greatly appreciates the contributions of interns Ryan Cowdin, Colin Creagor, and Scott Dawson as well as the contributions of our members, who helped set the agenda, identify and interview the participants, and produce this report.

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## Executive Summary

Human trafficking – the coercion of human beings for the purpose of involuntary labor, sexual exploitation, or both – is a growing problem in Maine. President Obama has called human trafficking modern day slavery, declaring that the United States “must end this most serious, ongoing criminal civil rights violation.”<sup>1</sup>

The Maine Advisory Committee to the U.S. Commission on Civil Rights (Maine SAC or Committee) started examining the issue of human trafficking in 2011 and convened a briefing in April 2012. The Committee heard from law enforcement officials, prosecutors, legislators, and advocates. Survivors of human trafficking also participated, putting a human face on the problem. The briefing shined a light on the fact that Maine did not have a stand-alone dedicated human trafficking law. Committee members questioned the panelists about the absence of this legislation and encouraged panelists to consider legislative actions to help address the human trafficking in Maine. Subsequent to the briefing, the Maine legislature enacted several provisions aimed at protecting victims and increasing penalties for violators. Specifically, in 2013, the Maine legislature passed LD 1159, an Act to Address Human Trafficking, Sex Trafficking, and Prostitution. The statute broadened the definition of “human trafficking offense,” and established “sex trafficking” and “aggravated sex trafficking”<sup>2</sup> as crimes. The Maine legislature later signed LD 1730, An Act to Assist Victims of Human Trafficking, into law. The statute has two main effects: first, it provides an affirmative defense for victims of trafficking who are charged with prostitution, and second, it adds an additional fine for those convicted of aggravated sex trafficking.<sup>3</sup>

The Maine SAC convened a second briefing on human trafficking in June 2014 to learn about the impact of the new trafficking laws and to find out what still needs to be done to address human trafficking in Maine. The Committee invited additional law enforcement officials, prosecutors, legislators, advocates, and survivors of human trafficking to update the Committee.

In issuing this report, the Committee commends the state for the progress it has made in addressing human trafficking. Nonetheless, the Committee finds that more needs to be done to help victims and survivors of trafficking, especially with regards to criminal liability of victims and assistance for victims.

Regarding criminal liability, the Committee learned that two new laws are needed: a vacatur statute and a safe harbor law. A vacatur law allows courts to vacate the offenses committed by

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<sup>1</sup> Presidential Proclamation — National Slavery and Human Trafficking Prevention Month, President Barack Obama, January 4, 2010, <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month>

<sup>2</sup> LD 1159 (126<sup>th</sup> Legis. 2013); [http://www.mainelegislature.org/legis/bills/bills\\_126th/billtexts/HP082401.asp](http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/HP082401.asp), last accessed 06/25/14.

<sup>3</sup> LD 1730 (126<sup>th</sup> Legis. 2014).

victims during the course of their being trafficked. An ideal vacatur statute would allow courts to vacate any prostitution, drug possession, or other criminal conviction, provided that the act in question was committed by a victim of human trafficking during the course of being trafficked. To this end, the Maine SAC recommends that the Maine legislature enact a vacatur law.

The Maine legislature should also enact a safe harbor law that is designed to prevent minors who are victims of human trafficking from being charged with crimes committed during the period they were trafficked. Existing safe harbor laws vary significantly among the states. Thus, the Maine SAC recommends that the Maine legislature enact the safe harbor law. The Committee also recommends that the U.S. Department of Justice draft a model safe harbor law that may be introduced in state legislatures.

Finally, one of the most critical components of a proper response to human trafficking is the provision of adequate services for trafficking victims. Services are so key, in fact, that Maine prosecutors have ranked them more important in fighting human trafficking than a dedicated human trafficking statute itself.<sup>4</sup> Traffickers make great efforts to ensure that their victims are isolated and totally dependent on them not only for the material essentials of life, but also for any sort of stability or feeling of normalcy.

The Committee learned that trafficking victims are often arrested as a way to ensure that they have shelter, food, and safety. In order to adequately address human trafficking, the state needs both to create and fund programs that provide services to human trafficking victims.

An ideal system of victim assistance services in Maine would address the fundamental needs of trafficking victims, including living assistance, educational services, and working with federal agencies on immigration and citizenship services. These services would receive sufficient funding to adequately serve the growing number of individuals in Maine identified as victims of both sex and labor trafficking.

Finally, while this report focuses its findings and recommendations on the issue of sex trafficking, both briefings included testimony from advocates working on the issue of labor trafficking. Some estimate that labor trafficking constitutes almost one-third of the total human trafficking market. Labor trafficking in Maine occurs in several industries, including construction, manufacturing, agriculture, and logging. The Committee discredited the myth that labor trafficking involves exclusively undocumented workers. There are cases throughout New England — in construction, domestic help, and restaurants — where trafficked individuals are documented immigrants or U.S. citizens. We hope that Maine will consider adopting a stand-alone labor trafficking statute similar to the sex trafficking statute it recently enacted.

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<sup>4</sup> Megan Elam, testimony before the U.S. Commission on Civil Rights, briefing, Portland, ME, April 2, 2012, transcript, p. 94 (hereafter Portland Briefing Transcript).

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## I. Introduction

Human trafficking is the coercion of human beings for the purpose of involuntary labor, sexual exploitation, or both.<sup>5</sup> President Obama, among many others, has acknowledged human trafficking as modern day slavery and declared that the United States “can and must end this most serious, ongoing criminal civil rights violation.”<sup>6</sup> The task of ending human trafficking, however, is not simple. It is nearly impossible to determine how many people are enslaved at any given time — or even how many victims exist in our own communities. Global estimates indicate that millions of individuals are victims of human trafficking. The United States is both a destination for trafficked victims and its own source. Some victims can be seen on a daily basis working in “mom-and-pop” stores or walking the streets — hidden in plain sight. Others are hidden in private residences or brothels, coerced into captivity and forced to work in oppressive conditions for little or no pay. The imprecise nature of the problem highlights the challenge it presents to lawmakers, law enforcement officials, and non-governmental organizations who try to raise public awareness and combat human trafficking at the state and federal level. Human trafficking is a “hidden danger” that requires a coordinated and concerted effort to abate.<sup>7</sup>

Congress first addressed human trafficking in 2000 through the Victims of Trafficking and Violence Protection Act of 2000 (TVPA),<sup>8</sup> a comprehensive piece of legislation meant to combat trafficking in persons. The TVPA emphasized that the crime of human trafficking threatens many societal interests, including public health, effective immigration policies, and human rights. It found that current laws and services available to victims were inadequate and needed more severe punishments for perpetrators. The legislation also highlighted the extensive international scope of the commercial sex and forced labor markets, which are largely maintained by a sophisticated and expanding criminal network. Most of all, it characterized human trafficking as a grave violation of human rights that disparately impacts women and children and requires an international, national, and state-wide response.

### Defining Human Trafficking

Under the TVPA, “severe forms of trafficking in persons” include both sex trafficking and labor trafficking.

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<sup>5</sup> See *Trafficking in Persons Report 2011*, <http://www.state.gov/j/tip/rls/tiprpt/2011/164220.htm>. It notes that in “the past 15 years, ‘trafficking in persons’ or ‘human trafficking’ have been used as umbrella terms for activities involved when one person obtains or holds another person in compelled service.” See also Trafficking Victims Protection Act, 22 U.S.C §§ 7101-7112 (2000) (as reauthorized in 2003, 2005, 2008, and 2013).

<sup>6</sup> Presidential Proclamation — National Slavery and Human Trafficking Prevention Month, President Barack Obama, January 4, 2010, <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-slavery-and-human-trafficking-prevention-month>.

<sup>7</sup> Statewide Interagency Commission on Human Trafficking, “The Hidden Problem of Human Trafficking: Addressing Modern Day Slavery in New Hampshire,” November 2008, <http://www.nhcadv.org/uploads/Human%20Trafficking%20in%20NH%20Report%20-%20Nov%202008.pdf>.

<sup>8</sup> 22 U.S.C. § 7101.

- **Sex Trafficking** is the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.<sup>9</sup>
- **Labor Trafficking** is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Human trafficking” is often confused with the crime of “human smuggling” but there are important distinctions between the two. Smuggling is a crime against the state and requires transportation across borders. Human trafficking, on the other hand, is a crime against the person and requires exploitation.<sup>10</sup> Although transportation can be part of human trafficking, neither sex nor labor trafficking requires any movement of persons across or within borders. The United Nations definition of trafficking in persons, for example, has no transportation element and includes “the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>11</sup> The crime of smuggling also has a clear moment of completion once the smuggler has reached his destination and received payment. Human trafficking, on the other hand, can be an ongoing crime. A smuggled person may become a trafficked person if the smuggling leads to exploitation for commercial sex or forced labor purposes.

A person can be trafficked through an act of “force, fraud, or coercion.” Force is defined as physical restraint or threats of serious harm.<sup>12</sup> Fraud may include false employment offers, lying about working conditions, or withholding wages among other methods.<sup>13</sup> Coercion is satisfied by a broad range of behavior, from direct threats of physical violence to more subtle forms of intimidation such as demanding the repayment of debts — a situation known as “debt bondage.” These coercive methods create a “climate of fear” that prevents victims from attempting to flee.<sup>14</sup>

Perpetrators frequently prey on the trust and vulnerability of their victims, taking advantage of the victim’s drug or alcohol addictions, dire economic situations, or struggling personal relationships. In some cases the victim and perpetrator are family members. In these instances, the relationship may make it harder to prove that force, fraud, or coercion has been employed because it appears that the victim is “willing.”<sup>15</sup> Consent of the victim on occasions preceding an

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<sup>9</sup> 22 U.S.C. § 7102(9)(a); 8 C.F.R. §214.11(a).

<sup>10</sup> *See generally* Polaris Project, Human Trafficking, <https://polarisproject.org/human-trafficking>.

<sup>11</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (Trafficking Protocol), G.A. Res. 25, annex II, U.N. GAOR, 55th Sess. Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

<sup>12</sup> 22 U.S.C. § 112(a)(2).

<sup>13</sup> *See generally United States v. Sabhnani*, 599 F.3d 215 (2d Cir. 2010) (finding defendants trafficked a maid by lying about salary payments and subjecting her to extreme physical and psychological abuse).

<sup>14</sup> *See, e.g., United States v. Warren*, 772 F.2d 827, 834 (11th Cir. 1985).

<sup>15</sup> *See generally*, Holly Austin Smith, *Walking Prey: How America’s Youth are Vulnerable to Sex Slavery*, (New York: Palgrave MacMillan, 2014).

exploitative act, however, is not a sufficient defense to force, fraud, or coercion. Courts have been able to discern which acts are exploitive even when there is a prior history of consent between the parties.<sup>16</sup>

Notably, sex trafficking involving children under the age of 18 is automatically a federal crime and does not require force, fraud, or coercion.<sup>17</sup> As discussed below, this is not always true under state criminal codes.

## Global Scope

Limited data and inconsistent international reporting standards make defining the global scope of human trafficking very difficult. Recent estimates, however, indicate that human trafficking is an immense international operation that affects almost all countries. The U.S. Department of Health and Human Services (HHS) reports that human trafficking is tied with illegal arms trading as the second largest international criminal enterprise.<sup>18</sup> Human trafficking is estimated to be a 32 billion dollar industry.<sup>19</sup> In 2009, the International Labor Organization (ILO) estimated that about 12.3 million children and adults are in forced labor, bonded labor, and commercial sexual servitude.<sup>20</sup> The 2013 Trafficking in Persons Report (TIP) issued by the U.S. Department of State indicated that globally as many as 27 million people are human trafficking victims. In 2012, however, only 40,000 victims were actually identified and reported by governments to the international community.<sup>21</sup> This means the vast majority of trafficked victims remain unrecognized.<sup>22</sup>

Labor trafficking is estimated to be far larger than sex trafficking on a global scale. Of the 12.3 million people estimated to be victims of human trafficking by the ILO in 2009, only 1.39 million, or slightly over 11 percent, were estimated to be victims of sex trafficking. Women and girls are more likely to be victims for both sex and labor trafficking. Nonetheless, a substantial number of men and boys are also victims of both sex and labor trafficking.<sup>23</sup>

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<sup>16</sup> *United States v. Marcus*, 487 F. Supp. 2d 289, 309 (E.D.N.Y. 2007) (holding that a prior consensual relationship between defendant and victim that included infliction of punishment did not negate the possibility that the victim had been forced or coerced against her will), vacated on other grounds and remanded by *United States v. Marcus*, 628 F.3d 36 (2d Cir. 2010).

<sup>17</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, p. 382 (hereafter TIP Report 2013), <http://www.state.gov/documents/organization/210742.pdf>, last accessed October 30, 2014.

<sup>18</sup> U.S. Dept. of Health and Human Services, “HHS Fights to Stem Human Trafficking,” Aug. 2006, <http://www.hhs.gov/news/factsheet/humantrafficking.html>. Website no longer available.

<sup>19</sup> International Labor Organization, “A Global Alliance Against Forced Labor,” 2005. q5-p. 55, [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081882.pdf).

<sup>20</sup> TIP Report 2013.

<sup>21</sup> *Ibid.*, p. 7.

<sup>22</sup> *Ibid.*, Introductory letter from Luis C. deBaca.

<sup>23</sup> *Ibid.*, p. 8.

## Domestic Scope

The United States is one of the top three destination points for trafficked victims.<sup>24</sup> The Central Intelligence Agency estimates that up to 17,500 men, women, and children from other countries are trafficked into the U.S. each year.<sup>25</sup> These individuals predominantly come from Mexico, Thailand, the Philippines, Honduras, Indonesia, and Guatemala.<sup>26</sup> They live throughout the United States and work in both legal and illegal industries including, among others, brothels, massage parlors, janitorial services, and agricultural and manufacturing positions.<sup>27</sup>

It is important to dispel the myth that only foreign nationals or immigrants are trafficked persons in the United States. Many trafficked victims are U.S. citizens. According to one study, 41 percent of sex trafficking cases and 20 percent of labor trafficking cases in this country involve U.S. citizens;<sup>28</sup> whereas foreign nationals were estimated to comprise 61 percent of labor trafficking cases and 27 percent of sex trafficking cases.<sup>29</sup> At least 100,000 American children are exploited through pornography or prostitution every year.<sup>30</sup> Some non-governmental organizations (NGOs) have reported that Native American girls are being trafficked for prostitution, pornography, and strip clubs in the U.S. and Mexico.<sup>31</sup>

Women and more vulnerable populations such as children, the homeless, the impoverished, and the uneducated are particularly prone to becoming victims of human trafficking in the United States.<sup>32</sup> Eighty-five percent of sex trafficking victims and 61 percent of labor trafficking victims are estimated to be women and girls.<sup>33</sup>

Contrary to the global scope, sex trafficking is reported more than labor trafficking in the United States. The National Human Trafficking Resource Center found that 63 percent of reported U.S. cases are related to sex trafficking, while only 22 percent are related to labor trafficking.<sup>34</sup> Minors comprised 33 percent of these sex trafficking cases.<sup>35</sup> Based on the largely hidden nature of the problem, it is difficult to quantify the extent and scope of the problem.

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<sup>24</sup> The other two countries are Japan and Australia. "A Serious Problem: Around the Globe and in the USA," <http://www.castla.org/key-stats> (hereafter Castla).

<sup>25</sup> Ibid.

<sup>26</sup> TIP Report 2013, p. 381.

<sup>27</sup> Ibid.

<sup>28</sup> Polaris Project, National Human Trafficking Resource Center "Trafficking Trends in the US," 2007-2012, p. 9, [https://na4.salesforce.com/sfc/p/300000006E4S/a/600000004TLG/f7PldVcTt4Irtx\\_iljKxiGsERUTm6PUfmNxj9ijA6Sg](https://na4.salesforce.com/sfc/p/300000006E4S/a/600000004TLG/f7PldVcTt4Irtx_iljKxiGsERUTm6PUfmNxj9ijA6Sg), (hereafter NHTRC).

<sup>29</sup> In the remaining cases, the citizenship of the victim was unreported. NHTRC p. 9.

<sup>30</sup> Shared Hope International, FAQs, <http://sharedhope.org/learn/faqs/>.

<sup>31</sup> TIP Report 2013 p. 381.

<sup>32</sup> Mohamed Y. Mattar, "Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later," *19 Am. U. J. Gender Soc. Pol'y & L.* 1247, 1253 (2011).

<sup>33</sup> NHTRC, *supra* n. 29 at p.9.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

## II. Background

### Federal

In 1983, two intellectually disabled men worked as laborers on a Michigan farm owned by Ike and Margarethe Kozminski.<sup>36</sup> The men were in poor health, lived in squalid conditions, and were isolated from the community.<sup>37</sup> The Kozminskis were charged with conspiring to prevent the men from exercising their Thirteenth Amendment right to be free from involuntary servitude. They were also charged with knowingly holding the men in involuntary servitude. The Kozminskis were convicted by a federal jury; however, in 1988 the Supreme Court reversed the conviction on appeal, holding the Thirteenth Amendment only applied to African Americans. The court also interpreted “knowing” to require the use or threatened use of physical or legal coercion. The Court invited Congress to craft statutes to address the issue.

Twelve years later, Congress passed the Trafficking Victims Protection Act (TVPA) of 2000, which makes human trafficking a federal crime with severe penalties.<sup>38</sup> Among its findings, the TVPA cites *Kozminski* and notes that “existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved.”<sup>39</sup>

The TVPA has four core purposes:

1. Prevent trafficking across U.S. borders;
2. Provide adequate tools for prosecution;
3. Assist and protect trafficking victims in the U.S.; and
4. Monitor other nations’ activities that contribute to human trafficking in the U.S.<sup>40</sup>

Three federal agencies carry out the mission of the TVPA: The Department of Justice (DOJ), the Department of Homeland Security (DHS), and the State Department. DOJ is the primary prosecutorial agency. It investigates and prosecutes suspected traffickers and reserves funds for victim assistance and witness protection. Federal human trafficking cases are prosecuted by the Department’s 93 U.S. Attorney’s Offices and two specialized headquarter units – the Civil Rights Division’s Human Trafficking Prosecutions Unit and the Criminal Division’s Child Exploitation and Obscenity Section.<sup>41</sup> In fiscal year (FY) 2012, the DOJ convicted 138

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<sup>36</sup> *United States v. Kozminski*, 108 S.Ct. 2751, 2755 (1988).

<sup>37</sup> *Id.*

<sup>38</sup> TVPA (2000).

<sup>39</sup> TVPA (2000), §102(b)(13)-(14).

<sup>40</sup> “Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices,” Executive Summary, Grant No. 2006-NIJ-1163, *ICF International*, June 30, 2008.

<sup>41</sup> TIP Report 2013, p.382.

traffickers.<sup>42</sup> Of these convictions, 105 were for sex trafficking and 33 were for labor trafficking.<sup>43</sup>

The DHS investigates human trafficking cases, arrests traffickers, and protects survivors.<sup>44</sup> In FY 2012, the Immigrations and Customs Enforcement Division investigated 894 human trafficking cases.<sup>45</sup> The DHS also processes immigration relief for survivors of human trafficking and other crimes. This process includes issuing “T” and “U” visas, which were created pursuant to the TVPA and grant nonimmigrant status.<sup>46</sup> These visas provide important incentives for trafficked victims who otherwise might not seek help from law enforcement for fear of being deported and help federal prosecutors gather evidence for trafficking cases.

The T visa is available only for victims of human trafficking who cooperate with reasonable requests by law enforcement agencies in the course of their investigations. It is also available unconditionally for minors and those unable to cooperate due to trauma. The U visa is available for victims of human trafficking, domestic violence, sexual assault, and similar crimes. Eligibility requirements for the U visa are more stringent. A person must have information about criminal activity and must help law enforcement agencies during their investigations. If the victim is under the age of 16 or disabled, a parent, guardian, or friend may possess the information and act on the victim’s behalf. Unlike the T visa, however, the U visa is not available unconditionally regardless of age or trauma.

The State Department is tasked with advancing global anti-trafficking initiatives. This effort is led by the Office to Monitor and Combat Trafficking in Persons, which is responsible for bilateral and multilateral diplomacy, targeted foreign assistance, and public engagement on this issue. The State Department also partners with foreign governments and nongovernmental organizations to develop and implement effective counter-trafficking strategies.<sup>47</sup> It also issues an annual Trafficking in Persons report that ranks countries’ responses to human trafficking.<sup>48</sup>

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

<sup>44</sup> U.S. Department of Homeland Security, “Human Trafficking,” <http://www.dhs.gov/topic/human-trafficking>.

<sup>45</sup> TIP Report 2103, p. 382.

<sup>46</sup> U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Victims of Human Trafficking and Other Crimes,” <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes> (by issuing Continued Presence (temporary immigration status), T visas (for victims who cooperate with law enforcement investigations), and U visas (for victims who have information about criminal activity helpful to investigations)).

<sup>47</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, <http://www.state.gov/j/tip/index.htm>.

<sup>48</sup> U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, “Trafficking in Persons Report,” <http://www.state.gov/j/tip/rls/tiprpt/>.

Finally, the TVPA created the Presidential Interagency Task Force to Monitor and Combat Trafficking (PITF). This cabinet-level entity coordinates federal efforts to combat human trafficking.<sup>49</sup>

The TVPA has been criticized for struggling to effectively protect victims of human trafficking in the field. Critics contend that the implementation of the law is “top heavy.” This means that higher ranking federal officials tend to focus on the law’s meaning and purpose, while those who actually come in contact with trafficked victims, such as DHS personnel and Assistant United States Attorneys, fail to use the law to identify and protect these individuals.<sup>50</sup> The PITF is an important tool to ensure that agencies are fulfilling their responsibilities under the TVPA. PITF offers a platform for other federal agencies to share information and support the federal effort to combat human trafficking.

The TVPA has been reauthorized multiple times, most recently in 2013 as part of the Violence Against Women Reauthorization Act.<sup>51</sup> The latest reauthorization contains certain notable improvements to the law. First, it penalizes the confiscation, destruction, or possession of immigration documents. Traffickers frequently confiscate immigrant victims’ documents to prevent them from escaping.<sup>52</sup> The Act also prohibits the allocation of peacekeeping operation funds to countries that use child soldiers, but does allow allocation of funds for programs that seek to demobilize and reintegrate child soldiers.<sup>53</sup> Finally, it adds expanded reporting requirements to ensure better interagency coordination.<sup>54</sup>

## States

All states and all but one territory have enacted modern anti-trafficking criminal statutes in recent years, but these statutes are not uniform.<sup>55</sup>

Although all 50 states prohibit the prostitution of children, only 14 states have “safe harbor” laws that guarantee children are not prosecuted.<sup>56</sup> A complete safe harbor law has two functions: it protects child victims from prosecution and provides victims access to specialized services.<sup>57</sup> A full safe harbor law reflects the societal belief that trafficked minors should be immune from prosecution and diverted away from the juvenile justice system. Additionally, they should be

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<sup>49</sup> U.S Department of State, Office to Monitor and Combat Trafficking in Persons, “PITF Member and Invited Agencies, <http://www.state.gov/j/tip/response/usg/agencies/index.htm>.

<sup>50</sup> Dina Francesca Haynes, “(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act,” 21 *Geo. Immigr. L.J.* 337, 340, 365-73 (2007).

<sup>51</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-14, 127 Stat. 54.

<sup>52</sup> *Id.* at title B, Part I, Section 1211; *See United States v. Calimlim*, 538 F.3d 706 (7th Cir. 2008).

<sup>53</sup> Pub.L. No. 113-14, subtitle A, Section 1208.

<sup>54</sup> *Id.* at Part III.

<sup>55</sup> TIP Report 2013, p. 383.

<sup>56</sup> *Ibid.*

<sup>57</sup> The states that have “complete” safe harbor statutes are Illinois, Massachusetts, Minnesota, New Jersey, Ohio, Vermont, and Washington. Polaris Project, “Sex Trafficking of Minors and ‘Safe Harbor’,” <http://www.polarisproject.org/what-we-do/policy-advocacy/assisting-victims/safe-harbor>.

guaranteed access to safe housing, health care, and education to help prevent them from becoming repeat victims. The latest TVPA reauthorization includes model state criminal provisions to protect minors who have been arrested for engaging in commercial sex acts.<sup>58</sup>

States that lack safe harbor laws permit the prosecution of those children as criminal offenders. One Texas state court, however, has found that a minor cannot be charged with prostitution even if no safe harbor law exists because a minor cannot legally consent to sex.<sup>59</sup> But this decision does not substitute for a safe harbor law that provides important services in addition to immunity.

Similarly, states may implement statutes vacating the criminal convictions of human trafficking victims. Vacatur statutes allow victims to rejoin society without a record of criminal conviction – enabling them to secure loans, apply for jobs, and obtain proper housing. In New York, for example, a victim can have his or her convictions vacated at any point after conviction.<sup>60</sup> These statutes can remove a major obstacle to successfully prosecuting the perpetrators of human trafficking: obtaining cooperative witnesses. Victims often make strong witnesses in criminal trials against their attackers. Vacatur statutes incentivize victims to come forward and help convict their traffickers.

Several states implement special task forces to coordinate their efforts statewide because the solution to human trafficking requires extensive cooperation between government agencies and non-governmental organizations. These task forces help facilitate this cooperation. Currently, only 20 states have statutorily mandated human trafficking task forces,<sup>61</sup> while other states have task forces that are not mandated by law.

## Maine

Human trafficking is a growing problem in Maine.<sup>62</sup> In the spring of 2014, the National Human Trafficking Resource Center Hotline experienced an over 50 percent increase in calls from across the state of Maine.<sup>63</sup> Maine has seen not only an increase in human trafficking calls, but also an increase in prosecutions — for example, eight cases in the past year in the greater Bangor area.<sup>64</sup> In April 2014, police uncovered two separate sex-trafficking operations connected with escort services, one in a home in Sidney and the other in an Augusta trailer park.<sup>65</sup>

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<sup>58</sup> Pub.L. No. 113-14, Part IV, Section 1243.

<sup>59</sup> *In re: B.W.*, 313 S.W.3d 818 (Texas 2010).

<sup>60</sup> New York Statute § 440.10 Motion to vacate judgment.

<sup>61</sup> Polaris Project, “Training and Task Forces,” <http://www.polarisproject.org/what-we-do/policy-advocacy/capacity-building/training-and-task-forces>.

<sup>62</sup> Joy Hollowell, *WABI TV5*, “Sex Trafficking in Maine, Part 1,” April 24, 2014, <http://wabi.tv/2014/04/24/sex-trafficking-maine-part-1/>, last accessed 06/25/14.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Jesse Scardina, “Police Uncover Alleged Sex Trafficking Ring in Kennebec County,” *Portland Press Herald*, April 10, 2014.

Sex trafficking in Maine, however, is not always hidden away in rural homes or isolated trailer parks. Another notable case involved a young woman who was found by her traffickers on the popular online dating site Plenty of Fish and who was trafficked via the website Backpage.com.<sup>66</sup>

Despite the increasing reports of trafficking, Maine has been criticized as being too slow in responding to this issue. Shared Hope International, an advocacy group devoted to ending human trafficking, gave Maine a grade of “F” for 2013 as part of a study of state laws.<sup>67</sup> While Maine was commended for not requiring proof of force, fraud, or coercion in prosecuting the sex trafficking of minors, the state was criticized for having few victim protections and for providing low penalties for buyers of commercial sex and facilitators of trafficking.<sup>68</sup>

The 2013 State Rankings on Human Trafficking Laws, portrayed a slightly more optimistic outlook on the situation in Maine, but also expressed certain criticisms of Maine’s human trafficking laws.<sup>69</sup> Maine was ranked as a “Tier 2” state; Tier 2 states have some provisions relating to human trafficking but still need legislation to adequately address the problem.<sup>70</sup> According to the report, Maine had sufficient provisions in five out of ten categories: sex trafficking, labor trafficking, forfeiture of assets related to human trafficking, lower burden of proof for trafficking of minors, and access to civil remedies for survivors.<sup>71</sup> The report lamented Maine’s lack of progress in the other five categories: insufficient training, no statewide trafficking task force, no posted statewide trafficking hotline, no safe harbor provision for minors, no victim assistance programs, and no provision to vacate convictions of human trafficking victims.<sup>72</sup>

Concerned by the growing problem of human trafficking, the Maine legislature enacted several provisions aimed at protecting victims and increasing penalties for violators. In 2013, the Maine legislature passed LD 1159, a dedicated sex trafficking statute that broadened the definition of “human trafficking offense,” and established the crimes of “sex trafficking” and “aggravated sex trafficking.”<sup>73</sup>

Later, in April, 2014, LD 1730, another sex trafficking bill was signed into law with two main effects: first, it provides an affirmative defense for victims of trafficking who are charged with

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<sup>66</sup> Beth Brogan, “Affidavit Reveals Details of Alleged Gorham Sex Trafficking Case,” *Bangor Daily News*, March 21, 2014.

<sup>67</sup> Shared Hope International, “State Report Cards for Sex Trafficking Laws in the United States,” <http://sharedhope.org/what-we-do/bring-justice/reportcards/>, accessed 06/25/14.

<sup>68</sup> Shared Hope International, “Maine Report Card 2013,” [http://sharedhope.org/PICframe3/reportcards/PIC\\_RC\\_2013\\_ME.pdf](http://sharedhope.org/PICframe3/reportcards/PIC_RC_2013_ME.pdf), accessed 06/25/14.

<sup>69</sup> Polaris Project, “2013 State Ratings on Human Trafficking Laws,” <http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws>, accessed 06/25/14.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> Maine Legislature, “HP0824, LD 1159, Item 1, An Act to Address Human Trafficking, Sex Trafficking and Prostitution,” [http://www.mainelegislature.org/legis/bills/bills\\_126th/billtexts/HP082401.asp](http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/HP082401.asp), last accessed 06/25/14.

prostitution, and second, it adds an additional fine for those convicted of aggravated sex trafficking. The fine goes to the Victims' Compensation Fund.<sup>74</sup>

Maine currently has no laws specifically addressing labor trafficking, but existing criminal statutes concerning kidnapping and criminal restraint could potentially apply to labor trafficking cases.<sup>75</sup>

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<sup>74</sup> Maine Legislature, "HP 1238, LD 1730, Item 1, An Act to Assist Victims of Human Trafficking," [http://www.mainelegislature.org/legis/bills/bills\\_126th/billtexts/HP123801.asp](http://www.mainelegislature.org/legis/bills/bills_126th/billtexts/HP123801.asp), accessed 06/25/14; Shared Hope International, "Bill Tracking," <http://sharedhope.org/what-we-do/bring-justice/bill-tracking/>, last accessed 06/15/14.

<sup>75</sup> Maine Coalition Against Sexual Assault, Maine Sex Trafficking and Exploitation Network, "Labor Trafficking Provision," <http://mainesten.org/labor-trafficking-provision/>, last accessed 06/25/14.

### III. Summary of Briefings

The State Advisory Committee held two briefings about human trafficking in the state. The first briefing was held in Portland, Maine, on April 2, 2012. The second briefing was held in Lewiston, Maine on June 2, 2014. For a summary of the briefings, please see the Appendix C to this report.

### IV. Recent Developments

#### Legislation

In response to pressure from various government and non-governmental organizations, the Maine Legislature recently passed legislation that will provide trafficking victims increased protection from traffickers.<sup>76</sup> The amendments to Maine's statute,<sup>77</sup> effective July 29, 2016, allow victims of sex trafficking and aggravated sex trafficking to file for orders of protection from abuse and harassment, affording them the same protections that previously had been available to only family and household members. The rationale for this change is that the trafficking relationship is so similar to intimate partner violence that it justifies inclusion of victims of sex trafficking.

#### Statistics on Trafficking

In a report produced for the Maine Coalition Against Sexual Assault (MECASA), Hornby Zeller Associates estimates that between 200 and 300 people in Maine are victims of human trafficking annually.<sup>78</sup> The vast majority of these crimes in Maine go unreported; researchers estimate that only 14 percent of trafficking victims report the crimes committed against them.<sup>79</sup>

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<sup>76</sup> Me Stat. An Act to Protect Victims of Human Trafficking, LD 1531 (2016)

<sup>77</sup> Title 19-A M.R.S.A. §§4001-4014.

<sup>78</sup> Hornby Zeller Associates, Inc., *Maine Human Trafficking Needs Assessment*, (2015).

<sup>79</sup> Seth Koenig, *5 things you need to know about sex trafficking in Maine*, Bangor Daily News Maine, Jan. 25, 2016.



## IV. Findings of the Maine Advisory Committee

### Vacatur Statute

#### Criminal Liability of Victims

A vacatur statute is a provision designed to vacate criminal convictions under certain conditions. A vacated conviction is treated as if the trial never happened. Any punishment is eliminated and any criminal record may be expunged or erased. In the context of human trafficking, a vacatur statute would vacate convictions for actions a victim committed while being trafficked.

To effectively combat human trafficking, Maine should recognize that those who are trafficked are victims, not criminals. Human trafficking victims should not be criminally liable for the actions they were forced to commit while under the control of their traffickers for two reasons. First, the actions were merely the result of the traffickers' coercion. Second, convicting victims dissuades them from testifying against their traffickers. Survivor testimony is often the most important evidence used to prosecute traffickers. When victims fear prosecution for their own actions, they are much less likely to cooperate with prosecutors. As District Attorney Maeghan Maloney framed the issue: “. . . the prostitute is the one who is being victimized . . . the sex trafficker is the one who's making money off other people's victimization.”<sup>80</sup>

Many survivors of human trafficking have faced criminal charges as a result of having been trafficked — from prostitution, to labor or immigration violations, to drug charges. These convictions, often felonies, remain on survivors' records indefinitely. Survivors struggle against the stigma of criminal conviction and the difficulties of obtaining jobs, loans, or even housing.

Maine has recently passed a law that creates an affirmative defense against prostitution charges for victims of human trafficking. Those charged with prostitution can be found innocent if they can prove themselves to be a victim of trafficking. This provision, however, falls short in many ways. First, it only applies to prostitution charges. Trafficking victims are forced into crimes other than prostitution, including drug trafficking and other organized crime activities. Knowing the high penalties for the possession or sale of drugs, many victims will still be reluctant to come forward because they still can be charged for these offenses.

Second, the current ‘prostitution defense’ provision on the books in Maine is insufficient because it does nothing for the many victims of sex and labor trafficking who have already been charged and convicted in Maine. An affirmative defense is only useful to a defendant who has yet to be found guilty; those already convicted cannot use it to clear their criminal records. As mentioned above, these convictions affect the lives of victims severely, limiting their ability to live normal lives and move on from the crimes committed against them.

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<sup>80</sup> Maeghan Maloney, testimony before the U.S. Commission on Civil Rights, briefing, Lewiston, ME, August 2, 2014, transcript, p. 34, (hereafter Lewiston Briefing Transcript).

Maine does have a pardon system in place, a board that will pardon those unjustly convicted of crimes, or those who show they have paid their debt to society and should be forgiven. This pardon system does not adequately protect victims of human trafficking who have been convicted of a crime or who currently face criminal charges. A pardon is granted to forgive the crime that has been committed. It is unacceptable, however, to forgive the victims of human trafficking, as this implies that they have, in fact, committed an offense that would require forgiveness. Victims should not be considered criminally liable for their actions, and thus cannot be considered to have committed a crime at all.

The pardon board in Maine does not follow legislative guidelines. The power to grant pardons in Maine belongs to the executive. Nor does the pardon board have any set guidelines to follow. Rather, the board follows its own unofficial policies for deciding when to grant pardons. In these circumstances, not only is a pardon an insufficient remedy for human trafficking victims convicted of a crime, but victims cannot even be certain that their pardon would be granted. Moreover, even if a pardon is to be granted, a pardon merely forgives criminal conduct; a pardon does not expunge a criminal record. Alternatively, a vacated conviction is treated as if it never existed. Hence, those pardoned would still have convictions on their criminal record and would face problems obtaining jobs and housing.

As such, it is necessary to have provisions in place to vacate the convictions of those who are the victims of human trafficking. Across the United States, 14 states have established vacatur statutes and another nine are making efforts to do so.<sup>81</sup> New York was the first state to pass a vacatur statute in the context of human trafficking, doing so in 2010.<sup>82</sup> Under this statute, trafficking victims are allowed to move for a state court to vacate any convictions for prostitution and related offenses that arose from the victim having been trafficked.<sup>83</sup>

The New York statute explicitly mentions prostitution and authorizes courts to take “additional action as is appropriate in the circumstances.”<sup>84</sup> New York courts have interpreted this provision to mean that other offenses that were committed by victims in the course of being trafficked can also be vacated. New York courts have vacated not only prostitution charges, but also charges of drug possession and criminal trespass.<sup>85</sup>

Some states, like New Jersey, Wyoming, and Florida, have statutory language that allows courts to vacate a broad range of convictions. In other states, only prostitution-related offenses are

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<sup>81</sup> Hawaii, Washington, Nevada, Wyoming, Montana, Illinois, Mississippi, Florida, North Carolina, Maryland, New York, New Jersey, Vermont, Connecticut, and Massachusetts have all passed vacatur statutes. Oregon, Arizona, New Mexico, Oklahoma, Kansas, Arkansas, Louisiana, Ohio, and West Virginia are all making efforts to pass such a statute. Polaris Project, “2013 Analysis of State Human Trafficking Laws — Vacating Convictions for Sex Trafficking Victims,” <http://www.polarisproject.org/storage/documents/2013-Analysis-Category-10-Vacating-Convictions.pdf>, last accessed 07/01/14.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

eligible.<sup>86</sup> States likewise differ in imposing time limits on when victims are able to move to have their convictions vacated. Many states, like Maryland and New Jersey, require that motions to vacate must be filed within a “reasonable” amount of time, whereas other states, like New York, will vacate a conviction “at any time.”<sup>87</sup>

States with vacatur statutes also differ in the other restrictions on victims’ ability to have convictions vacated. Some statutes place the burden of proof on the victim, who must show they were trafficked in order for their conviction to be vacated.<sup>88</sup> Certain states even require the victim to “describe supporting evidence with particularity, and provide documentary evidence,” an approach which is criticized as making it almost impossible for victims to have convictions vacated.<sup>89</sup> In Washington, victims cannot have their convictions vacated if they are charged with any other crimes, or have had any convictions in the period when they were no longer being trafficked.<sup>90</sup> Other states, however, recognize official documentation from a state or federal agency that identifies an individual as a victim of trafficking as creating a rebuttable presumption in favor of the victim.<sup>91</sup>

Finally, there is the issue of whether a vacatur statute also provides for vacated convictions to be expunged from the victim’s public record. Generally, a judgment that has been vacated is treated as if the conviction did not take place — a victim is then able to truthfully say that they were never convicted of a crime. The record of the case, however, along with its association with the victim’s name, still remains. If a criminal conviction is expunged, on the other hand, the victim’s name is no longer associated with the case in the public record. States vary as to whether they only allow human trafficking victims to have their convictions vacated, or whether victims can also have the conviction expunged.<sup>92</sup>

## Safe Harbor

The unfortunate reality of human trafficking is that victims are often underage minors. Minors, particularly those who are already homeless or who suffer from abuse, are particularly vulnerable to traffickers. As such, it is necessary for Maine to have a comprehensive system to protect minors from trafficking and to provide adequately for those minors who, unfortunately, are already trafficking victims. It is very important that Maine recognize that victims of trafficking, and, in particular, minors, are not criminals, but victims of terrible violence, abuse, and coercion. Further, because a minor cannot legally be said to consent to having sex with an adult, it follows that a minor cannot, logically, consent to trade sex for money and cannot then be guilty of

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<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Connecticut, Hawaii, and Maryland. Ibid.

<sup>89</sup> Vermont and Maryland. Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Mississippi, Montana, New Jersey, and Wyoming. Ibid.

<sup>92</sup> Ibid. Hawaii, Illinois, Maryland, Nevada, New York, Washington, Wyoming focus on vacating convictions. Vermont, New Jersey, California, Florida, and Ohio all permit records to be expunged or sealed.

prostitution. Trafficking victims are forced to violate laws, e.g., prostitution or drug trafficking, and thus may be charged with crimes.

A safe harbor provision is designed to prevent minors who are victims of human trafficking from being charged with crimes relating to being trafficked. In some states, minors are simply declared immune from prosecution for crimes like prostitution, possession of scheduled drugs, or criminal trespass when those “crimes” were committed as a result of the minor being a victim of trafficking. In other states, minors are allowed to participate in diversion programs, that allow them to receive treatment and counseling as an alternative to criminal prosecution. Only 18 states have adopted a safe harbor provision of some kind, either age-based immunity or conditional diversion.<sup>93</sup>

## Victim Assistance

Victims of human trafficking often are totally dependent on their trafficker. Through abuse, coercion, and manipulation, traffickers ensure that their victim depends on them not only for necessities like food, shelter, and clothing, but often also for drugs, or even any human connection at all. This dependence makes it very difficult for victims of trafficking to escape. Victims typically have no money, no job, no marketable skills and may be addicted to drugs. Traffickers threaten violence against victims if they attempt to escape. In many cases, victims are so traumatized and alienated from society that the only place they feel any kind of normalcy is with their trafficker.

“I wish there were resources for these women,” stated Maeghan Maloney, District Attorney for Kennebec and Somerset Counties, “. . . I am . . . plagued with wondering if I’ve made their life better or worse.”<sup>94</sup> “. . . Some of them felt, at least, there was some predictability [with their trafficker],” she continued, “I have nothing else to offer them.”<sup>95</sup> Noting the difficulty in prosecuting cases without victim assistance support, Ms. Maloney continued in her testimony:

We’ve had a couple [instances] where we felt strongly that there was something of that nature going on and have not been successful in getting the women to talk to us, because they’re so terrified; and because, again, we can’t offer them any safety . . . we really can’t.<sup>96</sup>

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<sup>93</sup> Polaris Project, “2013 Analysis of State Human Trafficking Laws – Safe Harbor,” <http://www.polarisproject.org/storage/2013-Analysis-Category-6-Safe-Harbor.pdf>, accessed 07/03/14. In 2016, Shared Hope International released its sixth annual Protected Innocence Challenge Report Card grading all 50 states and the District of Columbia on preventing sex trafficking of children. Maine received a D grade, the same rating as in 2015, for its laws dealing with juveniles in sex trafficking and for not requiring mandatory law enforcement training. The report included 12 specific recommendations for Maine.

<sup>94</sup> Maeghan Maloney, Lewiston Briefing Transcript, p. 33.

<sup>95</sup> *Ibid.*, p. 34.

<sup>96</sup> *Ibid.*, p. 36.

For all of these reasons, victims are often unable to escape their trafficker or, if they do have the opportunity to escape, they do not take it out of fear, drug addiction, or the threat of extreme poverty, homelessness, and starvation. One of the greatest difficulties faced by prosecutors and law enforcement in Maine is that it is very challenging to secure testimony from individuals identified as potential victims because there is little to offer victims in terms of services or assistance. Such services, then, are essential both in allowing victims of human trafficking the possibility of escaping their traffickers and also in allowing law enforcement and prosecutors the tools they need to bring traffickers to justice.

These services are critical to prosecuting human trafficking because trafficking victims are often the only witness, and therefore the only source of evidence available in a trafficking case. Without these services, prosecutors cannot secure testimony, and without this testimony, they cannot win cases. These services are so essential, in fact, that Maine prosecutors have ranked them more important in fighting human trafficking than a dedicated human trafficking statute itself.<sup>97</sup> Former Maine Attorney General William Schneider agrees that providing victim services should take priority over increased focus on prosecuting human trafficking, because victim services are ultimately the key to prosecutions and to fully addressing human trafficking.<sup>98</sup> As stated by Deputy District Attorney Megan Elam: “The greatest impediment to successful prosecution of sex traffickers continues, and that is the absolute dearth of services for victims of sex-trafficking.”<sup>99</sup>

Maine is currently unable to provide services for victims of human trafficking because Maine does not have laws that specifically call for such services. Private services providers are already over-stretched trying to serve their current target populations and do not have the resources also to serve human trafficking victims.<sup>100</sup> Prosecutors report that they sometimes charge victims with a crime in order to ensure that they are kept safe and are able to receive services.<sup>101</sup> As Portland police officer Tim Farris stated at the 2012 briefing in Portland, “. . . it appears our laws and victim compensation packages are inadequate or nonexistent . . . [we] need emergency and long-term housing and support services in place to meet victim needs...[we] need money to support all these efforts.”<sup>102</sup> Auburn Police Chief Phillip Crowell affirmed this sentiment, stating “[c]urrently we do not have an aftercare system in the State of Maine . . . [it] should be one of our next priorities.”<sup>103</sup>

Despite the lack of progress in passing legislation to provide services for victims of human trafficking, the situation has received some attention. At the Portland briefing, now former Maine Attorney General Schneider stated that “[getting] services to the victims is a critical part of the

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<sup>97</sup> Megan Elam, Portland Briefing Transcript, p. 94

<sup>98</sup> Bill Schneider, Lewiston Briefing Transcript, p. 97.

<sup>99</sup> Megan Elam, Portland Briefing Transcript, p. 19.

<sup>100</sup> Megan Elam, Lewiston Briefing Transcript, p. 49.

<sup>101</sup> Phil Crowell, Lewiston Briefing Transcript p. 9; Megan Elam, Lewiston Briefing Transcript, p. 52.

<sup>102</sup> Tim Farris, Lewiston Briefing Transcript, p. 20.

<sup>103</sup> Phil Crowell, Portland Briefing Transcript, p. 10.

process . . . [all] identified victims of human trafficking must have access to food, shelter, and culturally-appropriate services and legal advocacy.”<sup>104</sup> Maine State Representative Amy Volk, author of the 2014 human trafficking law, told the Committee that she hopes Maine will establish a special fund to provide for victim services.<sup>105</sup> Representative Volk had attempted to include such a fund in her 2014 legislation, but was unable to do so because of state budget constraints.<sup>106</sup>

On the federal level, the Trafficking Victims Protection Act authorized the department of Health and Human Services to grant benefits to foreign victims of human trafficking. The Office of Refugee Resettlement administers these grants.<sup>107</sup> Domestic victims, however, were not entitled to these benefits, so there was a gap in services.<sup>108</sup> In 2008 the TVPA was amended to provide benefits to domestic victims of human trafficking, but that provision is unfunded; a service gap between foreign and domestic trafficking victims remains.<sup>109</sup> All victims of human trafficking in the United States may be eligible for assistance through the Department of Justice’s Crime Victims Fund, and states can receive grants for victim services through the Justice Assistance Grant Program, although neither of these federal programs specifically targets human trafficking victims.<sup>110</sup>

Human trafficking victims in Maine might also receive services available through the federal government, particularly if they are involved in a case that is being handled on the federal level. The FBI employs victim specialists who work with human trafficking victims to help them access legal services, immigration relief, housing, employment, job training, and childcare.<sup>111</sup> One Maine organization, Preble Street Teen Center, has received a federal grant to provide services to trafficking victims.<sup>112</sup> Preble Street works with Sexual Assault Response Services of Southern Maine and other local programs as the Preble Street Resource Center Anti-Trafficking Coalition, the first system of service providers in Maine to address the specific needs of trafficking victims.<sup>113</sup> Maine organizations, however, have generally struggled to obtain federal grants because of the lack of data about human trafficking in the state.<sup>114</sup>

In addition to the services available through the federal government, 32 states have passed legislation that creates and provides funding for services to support the victims of human

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<sup>104</sup> Bill Schneider, Lewiston Briefing Transcript, p. 72.

<sup>105</sup> Amy Volk, Lewiston Briefing Transcript, p. 29.

<sup>106</sup> *Ibid.*, p. 30.

<sup>107</sup> Polaris Project, “2013 Analysis of State Human Trafficking Laws – Victim Assistance,” August 2013, p. 1, <http://www.polarisproject.org/storage/documents/2013-Analysis-Category-8-Victim-Assistance.pdf>, accessed 07/02/14, (hereafter Polaris Project 2013-Victim Assistance).

<sup>108</sup> See FN 107 and accompanying text, Polaris Project 2013-Victim Assistance, p. 2.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> Cynthia Deitle, Lewiston Briefing Transcript, p. 9.

<sup>112</sup> Erin Albright, Lewiston Briefing Transcript, p. 92.

<sup>113</sup> Amy Thomas, Lewiston Briefing Transcript, p. 101.

<sup>114</sup> Phil Crowell, Lewiston Briefing Transcript, p. 68.

trafficking.<sup>115</sup> The services available to victims varies from state to state but all fall in the general categories of living assistance, educational and employment services, immigration and citizenship services, certification and documentation, funding, and caseworker privilege.<sup>116</sup>

Living assistance is the most common form of state-level service provided to victims of human trafficking.<sup>117</sup> Living assistance can come in the form of financial assistance, medical services, assistance securing housing and food, legal services, protection from traffickers, and, occasionally, family reunification services.<sup>118</sup> In some states, these services are provided by state agencies while in others the state funds private organizations that provide services to victims.<sup>119</sup> A few states specify in their statutes that state agencies should coordinate these services among various state agencies. For example, Nebraska’s human trafficking task force is charged with recommending services for victims.<sup>120</sup>

Living assistance is a particularly critical issue in Maine, as it is such an essential service and is, currently, so lacking within the state. “There is very little we can offer women who are trying to escape . . . except maybe a hotel room for a few nights,” stated prosecutor Megan Elam. She continued: “[There] are virtually no programs long-term for people . . . [there] is not an appropriate residential program to deal with . . . [sex trafficking] in the state of Maine.”<sup>121</sup>

Educational services are offered less frequently than living assistance services in many states.<sup>122</sup> The most common sorts of educational services include job placement and training services, legal education services, notifications about the legal/trial/release status of traffickers, and education about the benefits available in each state.<sup>123</sup> Many states also devote resources to educating the public and raising awareness about human trafficking.<sup>124</sup>

Immigration and citizenship services are available to survivors in a few states.<sup>125</sup> In these states, undocumented immigrant victims are either entitled to the same benefits as refugees or entitled to state benefits despite being ‘illegal’ immigrants.<sup>126</sup> Other states do not offer benefits to undocumented immigrants but do provide assistance in obtaining documentation in order to receive a T or U visa.<sup>127</sup> Further, because in many states documentation of ‘human trafficking victim’ status is required for any victim, domestic or otherwise, to receive certain benefits, some

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<sup>115</sup> See FN 107 and accompanying text, Polaris Project 2013-Victim Assistance, p. 1.

<sup>116</sup> *Ibid.*, p. 3.

<sup>117</sup> *Ibid.*

<sup>118</sup> *Ibid.*

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> Megan Elam, Portland Briefing Transcript, p. 19.

<sup>122</sup> See FN 107 and accompanying text, Polaris Project 2013-Victim Assistance, p. 1.

<sup>123</sup> *Ibid.*, p. 4.

<sup>124</sup> *Ibid.*, p. 5.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.*

states' statutes specify documentation and reporting requirements for state agencies and law enforcement.<sup>128</sup>

All of these services require funding to be successful. States take different paths to fund the services made available to the victims of human trafficking. Many states do not specify how services created in their statutes will be funded. Some, like California, require state agencies to seek federal funding and only provide state funding if federal money is unavailable. Other states, like Massachusetts, have established funds to support their victim assistance services. Usually, these funds are supported by the sale of assets seized from traffickers who have been prosecuted.

Funding is certainly an issue in Maine. Part of the initial difficulty in passing a stand-alone human trafficking statute in Maine was because bills that require increased levels of spending receive what is called a "fiscal note." Victim assistance services, of course, require funding and result in fiscal notes being placed on the initial bills; many bills with fiscal notes are rejected.<sup>129</sup>

There is also the issue of caseworker privilege. Victims of human trafficking often must work with caseworkers in order to receive state services. In doing so, they often must share information that many victims find deeply personal and embarrassing or that they worry will expose them to criminal liability. Many states have passed statutory language that creates a "caseworker privilege" similar to attorney-client privilege that limits the confidential information that a human trafficking caseworker is allowed or required to share.

Experts from advocacy groups emphasized that services should be engineered to function on a local level in order to provide an effective, high-quality response to human trafficking.<sup>130</sup> Advocates also stress the importance of providing long term assistance for survivors. "This is not something that you can send someone to for three to six months and think they're all set; we can go ahead and introduce them back into the community . . . [this] is something that is long-term," notes Police Chief Phillip Crowell.<sup>131</sup>

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<sup>128</sup> See FN 107 and accompanying text, Polaris Project 2013-Victim Assistance, p 5.

<sup>129</sup> Phil Crowell, Lewiston Briefing Transcript, p. 39.

<sup>130</sup> See *generally*, Lewiston Briefing Transcript, p. 10.

<sup>131</sup> Phil Crowell, Portland Briefing Transcript, p. 10.

## IV. Recommendations of the Maine Advisory Committee

Among their duties, advisory committees to the Commission are authorized to: (1) advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the federal government with respect to equal protection of the laws; and (2) initiate and forward advice and recommendations to the Commission upon matters that the Advisory Committee has studied.<sup>132</sup> Based upon its research and the testimony it received during its hearings in April 2012 and June 2014, the Maine Advisory Committee submits the following recommendations for the Commission's consideration:

### Vacatur Statute

In order to properly address human trafficking, the Maine legislature should adopt statutory language allowing courts to vacate human trafficking and related offenses committed by victims in the course of being trafficked. Maine should acknowledge that trafficked people are innocent victims and should not be charged with or convicted of crimes that they were forced to commit by their traffickers. Adopting a vacatur statute will facilitate the prosecution of human trafficking offenses in Maine because victims will not face the threat of prosecution and thus, will be more willing to cooperate with law enforcement and prosecutors. Additionally, removing the stigma and burden of criminal conviction from human trafficking victims would remove the potential disqualification from eligibility from employment, education and housing, and the infringement on other rights.

An ideal vacatur statute would allow courts to vacate any prostitution, drug possession, or other criminal conviction, provided that the "crime" in question was committed by a victim of human trafficking during the course of being trafficked. Victims should not face a time limit in having their convictions vacated but should instead be able to seek vacatur at any time following conviction. Victims seeking vacatur should have a rebuttable presumption in their favor when showing their actions were committed in the course of being trafficked. Finally, an ideal vacatur statute not only allows courts to vacate convictions but also allows these convictions to be expunged from victims' records.

Toward this end, the Maine SAC recommends that the U.S. Department of Justice draft a uniform vacatur statute that may be introduced in state legislatures, including Maine's.

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<sup>132</sup> 45 C.F.R. § 703.2.

## Safe Harbor

The Maine legislature should adopt a safe harbor statute that prevents minors who are victims of human trafficking from being charged with crimes related to being trafficked. The unfortunate reality of human trafficking is that victims are often underage minors. Minors, particularly those who are already homeless or who suffer from abuse, are particularly vulnerable to traffickers. As such, it is necessary for Maine to have a comprehensive system to protect minors from trafficking and to provide adequately for those minors who, unfortunately, are already trafficking victims. It is very important that Maine recognize that victims of trafficking, and, in particular, minors, are not criminals, but victims of terrible violence, abuse, and coercion.

In some states, minors are simply declared immune from prosecution for crimes like prostitution, possession of scheduled drugs, or criminal trespass when those “crimes” were committed as a result of the minor being a victim of trafficking. In other states, minors are allowed to participate in diversion programs, that allow them to receive treatment and counseling as an alternative to criminal prosecution.

Toward this end, the Maine SAC recommends that the U.S. Department of Justice draft a uniform safe harbor statute that may be introduced in state legislatures, including Maine’s.

## Victim Assistance

One of the most critical components of a proper response to human trafficking is the provision of adequate services for trafficking victims. Traffickers make extensive efforts to ensure that their victims are isolated and totally dependent on the traffickers for the material essentials of life and a sense of stability or normalcy. As such, it is very difficult for victims to escape their traffickers, and victims are often reluctant to testify against traffickers because of this dependence. In order to address human trafficking in Maine, the state would create and fund programs providing services to human trafficking victims.

An ideal system of victim assistance services in Maine would address the fundamental needs of trafficking victims including counseling, living assistance, educational services, and immigration and citizenship services. Maine should either pass laws creating programs to provide these services or should provide adequate funding to private organizations that are able to provide victim assistance services. Ideally, Maine would adopt a caseworker privilege provision that would allow trafficking victims to feel comfortable confiding in service providers.

Finally, human trafficking victim assistance services should be coordinated through a permanent state-level task force that brings together law enforcement, prosecutors, service providers, and other human trafficking experts.

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# APPENDICES



## Appendix 1: Vacatur Statute Example

New York Statute § 440.10 Motion to vacate judgment.

1. At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that:

i. The judgment is a conviction where the arresting charge was under section 240.37 (loitering for the purpose of engaging in a prostitution offense, provided that the defendant was not alleged to be loitering for the purpose of patronizing a prostitute or promoting prostitution) or 230.00 (prostitution) of the penal law, and the defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78); provided that:

(i). a motion under this paragraph shall be made with due diligence, after the defendant ceased to be a victim of such trafficking or has sought services for victims of such trafficking, subject to reasonable concerns for the safety of the defendant, family members of the defendant, or other victims of such trafficking that may be jeopardized by the bringing of such motion, or for other reasons consistent with the purpose of this paragraph; and

(ii). official documentation of the defendant's status as a victim of sex trafficking or trafficking in persons at the time of the offense from a federal, state, or local government agency shall create a presumption that the defendant's participation in the offense was a result of having been a victim of sex trafficking or trafficking in persons, but shall not be required for granting a motion under this paragraph.

## Appendix 2: Safe Harbor Statute Example

Violence Against Women Reauthorization Act of 2013, Section 1243, Model State Criminal Law Protection for Child Trafficking Victims and Survivors:

- (2) protects children exploited through prostitution by including safe harbor provisions that:
  - (A) treat an individual under 18 years of age who has been arrested for engaging in, or attempting to engage in, a sexual act with another person in exchange for monetary compensation as a victim of a severe form of trafficking in persons;
  - (B) prohibit the charging or prosecution of an individual described in subparagraph (A) for a prostitution offense;
  - (C) require the referral of an individual described in subparagraph (A) to appropriate service providers, including comprehensive service or community-based programs that provide assistance to child victims of commercial sexual exploitation; and
  - (D) provide that an individual described in subparagraph (A) shall not be required to prove fraud, force, or coercion in order to receive the protections described under this paragraph;[.]

## **Appendix 3: Summary of Briefings**

### **Briefing One: April 2, 2012**

The Portland briefing consisted of three panels and special testimony from a survivor of human trafficking.

#### **Panel One**

The first panel featured the following law enforcement officials: Cynthia Deitle, Supervisory Special Agent, FBI; Phillip Crowell, Chief of Police, Auburn, Maine; Tim Farris, Senior Lead Officer, Portland Police Department; Gary Cote, Deputy Assistant Director, Immigration and Customs Enforcement Division, Office of Homeland Security; and U.S. Marshal for Maine, Noel March.

#### ***Cynthia Deitle, Supervisory Special Agent, FBI.***

Agent Deitle outlined some of the FBI's efforts to stop trafficking. First, the FBI works with other local, state, and federal law enforcement operations and victim advocacy groups to form human trafficking task forces. FBI victim specialists assist trafficking victims in getting the services they need. FBI field offices produce threat assessments to evaluate trafficking in their areas. The FBI also works with the Greater Portland Coalition Against Sex Trafficking and Exploitation.

#### ***Phillip Crowell, Chief of Police, Auburn, Maine.***

Chief Crowell first described his work with the organization Not Here, which is dedicated to confronting human trafficking in Maine and his efforts to convince the Maine legislature to pass a stand-alone human trafficking statute. Crowell spoke of the plight of women, children, and men who are routinely coerced into forced labor and commercial sex operations, both worldwide and in the state. The stand-alone statute did not pass in 2006, but Crowell reported that a task force has been reinstated and is continuing to work on the legislation.

#### ***Timothy Farris, Senior Lead Officer, Portland Police Department.***

Officer Farris spoke of his experience monitoring trafficking hotels and motels in Portland. Drug and sex traffickers use these facilities to conduct their operations. In Farris' experience, prostitution traffickers use the Internet to advertise victims who are often trafficked across state and international borders. Officer Farris discussed the formation of the Greater Portland Coalition Against Sex Trafficking and Exploitation and the role played by that organization in bringing together agencies around the area to address human trafficking.

#### ***Gary Cote, Deputy Assistant Director, Immigration and Customs Enforcement Division, Office of Homeland Security.***

Agent Cote discussed the role played by the Department of Homeland Security in addressing human trafficking in Maine. Cote estimated that 25 percent of his department's resources are

currently being used to combat trafficking of both U.S. citizens and foreign nationals. He noted that in 2011 his department had initiated 722 human trafficking related investigations across the country. He also spoke of his department's trafficking in persons strategy, TIPS (not to be confused with the Trafficking in Persons Report run by the U.S. Department of Justice). The primary components of TIPS include coordinating with local law enforcement and service agencies and building coalitions to address trafficking with those organizations. Cote also spoke of his department's role in helping trafficking victims obtain T and U visas.

***Noel March, U.S. Marshal for Maine.***

U.S. Marshal March discussed his experiences with human trafficking over his 30- year law enforcement career. He testified to the committee about the importance of what he called "community-oriented policing" and working with organizations on a community level. Community-oriented policing is a victim-centered approach that focuses on building partnerships with community organizations and working together to find solutions to problems. This policing strategy seeks to train members of the community to identify victims of human trafficking. March commended the Maine Criminal Justice Academy and the Community-Oriented Policing Services Office of the Department of Homeland Security for increasing training opportunities on human trafficking for law enforcement officers and community organizations in Maine.

***Dee Clark, Survivor of Human Trafficking.***

Ms. Clark is a survivor of human trafficking who testified before to the Committee about her experiences. Clark grew up in the Boston neighborhood of Jamaica Plain and was forced into sex trafficking when she was in sixth grade. She skipped school with a friend to go to a party and was kidnapped, raped, and forced into prostitution. She was held captive in an apartment and repeatedly subjected to mental and physical abuse. Clark attempted several cries for help to no avail. Clark was finally able to escape with the help of another girl who was also in captivity, but her experience left her traumatized and unable to live the life of a typical teenager. Clark was later forced back into the sex trade in Boston's "Combat Zone." Clark has since sought help for her trauma and has begun to move on from her experiences. She works as an advocate for homeless women, men, and teens and lives in Maine.

**Panel Two**

The second panel featured federal and state prosecutors: Halsey Frank, Assistant U.S. Attorney; Megan Elam, Deputy District Attorney, Cumberland County, Maine; and Maine Attorney General William Schneider.

***Halsey Frank, Assistant U.S. Attorney.***

Assistant U.S. Attorney Frank discussed the work his office has been doing to address trafficking. Mr. Frank is the human trafficking point of contact in the U.S. Attorney's office in Maine and coordinates with local law enforcement and victim service providers to combat trafficking. Frank spoke of a few recent trafficking cases handled by his office.

***Megan Elam, Deputy District Attorney, Cumberland County, Maine.***

Deputy District Attorney Elam stated that, in her view, Maine's current statutes adequately covered the issue of human trafficking in the state and that there was no need for a stand-alone trafficking statute. The primary obstacle in prosecuting traffickers was the lack of victim assistance services that prosecutors can offer to victims and witnesses. She said victims of trafficking are afraid to involve themselves with law enforcement and are often unwilling to testify. Victims' refusal to testify makes it difficult for prosecutors to obtain convictions against traffickers.

***William Schneider, Maine Attorney General.***

Maine Attorney General Schneider told the Committee about the three directives his office follows to fight human trafficking: making the case, prosecuting traffickers, and rescuing victims. Schneider spoke of the importance of collecting more data about trafficking and evaluating that data to inform Maine's response to trafficking. Additionally, he questioned the need for a stand-alone trafficking statute. Finally, he said Maine needs to evaluate whether the current system is working to help victims. He mentioned that since 2010, Maine has mandated in-service training courses for law enforcement officers through the Maine Criminal Justice Academy.

**Panel Three**

The third panel was comprised of victim support advocates. The presenters were Destie Hohman-Sprague, Program Coordinator, Maine Coalition Against Sexual Assault; Regina Phillips, Program Coordinator, Portland Refugee Services Program; Arian Giantris, Director, Catholic Charities of Maine's Refugee and Immigration Services; Hayden Anderson, Interim Executive Director, Immigrant Legal Advocacy Project; and Amy Thomas, Executive Director, Sexual Assault Response Services of Southern Maine.

***Destie Hohman-Sprague, Program Coordinator, Maine Coalition Against Sexual Assault.***

Ms. Sprague discussed the work being done by her organization to aid victims of sexual violence, increase public awareness, assist service providers, and provide training. She spoke of the increasing number of calls from Maine to the National Human Trafficking Resource Center Hotline and the fact that between 70 to 90 percent of sex trafficking victims have a history of childhood sexual abuse. She reported that sexual abuse pervades both sex and labor human trafficking operations. Ms. Sprague said her organization was working on developing the necessary local coalitions to provide services to trafficking victims. Her major concerns include a lack of comprehensive sex trafficking legislation and a greater need for statewide coordination.

*Regina Phillips, Program Coordinator, Portland Refugee Services Program.*

Ms. Phillips discussed the general assistance programs available in Portland, Maine's largest city. Victims of trafficking can seek assistance from the city's social services division. Assistance includes food and non-food items, referrals to shelters, and prescriptions. Portland's social services division is involved with the local coalition against sex trafficking.

*Arian Giantris, Director, Catholic Charities of Maine's Refugee and Immigration Services.*

Ms. Giantris spoke about her experience as the Anti-Trafficking Advisor for the U.S. Agency for International Development in Albania and also her experience with trafficking in the United States. The U.S. remains the largest destination country for trafficking victims and the number of domestic trafficking victims is rising. She said that despite federal anti-trafficking laws and increased funding to address trafficking, public awareness of trafficking and adequate resources for victims remain weak. She described her organization's efforts to incorporate anti-trafficking services and to train service providers in New England. She said a dedicated trafficking law and more resources are needed to provide services to victims.

***Hayden Anderson, Interim Executive Director, Immigrant Legal Advocacy Project.***

Mr. Anderson discussed his work providing legal assistance to immigrants in Maine. His organization prioritizes cases where immigrants have experienced violence, crime, or trafficking. Anderson told the Committee about the T and U visas available to allow trafficking victims to remain in the United States. Because Maine has no dedicated trafficking statute, Anderson testified that his office has difficulty securing T visas for victims, which means that many potential victims have not been helped.

***Amy Thomas, Executive Director, Sexual Assault Response Services of Southern Maine.***

Trafficking victims are often subjected to sexual assault. Ms. Thomas described the unique position of rape crisis centers and sexual abuse services to identify and support these trafficking victims. She spoke of her agency's efforts to increase training and public awareness. As a result of increased awareness, the Greater Portland Coalition Against Sex Trafficking and Exploitation was formed. Although the Coalition has great momentum and has made great progress in bringing together organizations to address trafficking, it lacks resources. More resources are needed to support programs like substance abuse treatment, housing, counseling, legal services, and employment services for trafficking survivors.

**Panel Four**

The presenters on this panel were Alicia Peters, Professor of Anthropology, University of New England, and Juan Perez-Febles, State Monitor Advocate, Maine Department of Labor.

***Alicia Peters, Professor of Anthropology, University of New England.***

Ms. Peters discussed the importance of collecting more data on human trafficking in Maine. She emphasized three main points to the Committee: First, it is important to accurately define trafficking and avoid a definition that is over- or under- inclusive. Second, all forms of trafficking must be addressed equally — labor trafficking or trafficking of adults must not be neglected in favor of focusing on child sex trafficking, which often receives the most attention. Finally, the experiences of trafficking survivors must be considered when developing a response to trafficking.

***Juan Perez-Febles, State Monitor Advocate, Maine Department of Labor.***

Mr. Perez-Febles told the Committee about his experiences as State Monitor Advocate for migrant workers in Maine. He discussed the problems caused by the labor contractors who provide Maine institutions with migrant laborers recruited primarily from Mexico and Guatemala. Often these labor contractors act unethically; they may deceive workers as part of the recruitment practice, or retain workers' immigration documents as a form of coercion.

## Briefing Two: June 2, 2014

The second briefing held in Lewiston was scheduled shortly after passage of LD 1159 and LD 1730. The two panels included members of law enforcement, prosecutors, Maine legislators, victim advocates, and a survivor of human trafficking.

### Panel One

Presenters on the first panel were Phillip Crowell, Chief of Police, Auburn, Maine; Megan Elam, Deputy District Attorney, Cumberland County, Maine; Mark Keller, Police Officer, Portland, Maine; Amy Volk, State Representative from Maine's 127th District; and Maeghan Maloney, District Attorney for Kennebunk and Somerset Counties, Maine.

#### *Phillip Crowell, Chief of Police, Auburn, Maine.*

Chief Crowell said he believes that the increasing number of cases of human trafficking in Maine is not because trafficking activity has increased but because public awareness and the number of prosecutions have increased. He offered that it is now critical to address victim aftercare. In his view, Maine is doing victims a disservice because often the only way to provide a victim with assistance is to put them in jail. He suggested a 'detox model' of aftercare — a system that is able to offer victims not just immediate assistance but which also addresses victims' long-term needs. He said a significant impediment to private organizations efforts to serve trafficking victims is that the state has placed a moratorium on residential-bed facilities and will not license new facilities. Further, he noted that the lack of available data on human trafficking prevents access to federal funding. After a satisfactory after-care system is put in place, he believes that Maine should institute a statewide system to report human trafficking incidents.

#### *Megan Elam, Deputy District Attorney, Cumberland County, Maine.*

Ms. Elam commented on the presentation she made at the Committee's April 2012 briefing. At that time, she said that a stand-alone sex trafficking law was unnecessary. Although in her view, the new law did not fundamentally change the way trafficking cases are prosecuted, the new law was very useful because it gave a label to the problem and brought attention to sex trafficking as an issue in Maine. In addition, under the new law, engaging a prostitute is now a jail-eligible offense in Maine. Before this change, soliciting a prostitute could only result in a fine, as long as the perpetrator had no prior convictions. She was strongly in favor of the human trafficking bill passed in April 2014, which created an affirmative defense to prostitution charges for victims of sex trafficking and increased the surcharges that convicted sex traffickers must pay to Maine's Victims Compensation Fund.

Ms. Elam also spoke about the increased number of sex trafficking cases being pursued by her office and the increased number of convictions in Cumberland County. She specifically mentioned the case of Paul Henry, a trafficker operating in Portland, who was brought to justice as the result of cooperation between state, local, and federal law enforcement and prosecutors.

Her office intentionally publicizes the cases that they prosecute as a way of increasing public awareness.

She, too, lamented the lack of aftercare services available for victims of human trafficking. There is very little that her office can offer victims, and the charitable organizations she works with are also having trouble offering services. She stated:

I'm sad to say what I think is the greatest challenge to those of us working in the area of sex trafficking now is the same as it was in 2012, and that's our inability to help the victims of sex trafficking . . . the way they should be helped.

Her office has been trying to “patch together” services to trafficking victims for a long time. She explained that many organizations are willing to help, but they are only able to offer limited assistance, if any at all. She implored the Committee:

There really needs to be a comprehensive systemic response; and it can't be, 'gee, I hope I know somebody who knows somebody who will do me a solid and get [the victim] in line before she's . . . dead,' because that's a very real possibility . . . .

In response to a question from a committee member, Ms. Elam praised the Greater Portland Coalition against Sex Trafficking and Exploitation for bringing together local, state, and federal officials in the fight against trafficking.

***Mark Keller, Police Officer, Portland, Maine.***

Officer Mark Keller spoke of his experience dealing with sex trafficking, a problem which he testified was “alive and well” in Maine. In his experience, victims of sex trafficking in Maine come from every socio-economic background, and many victims suffer from drug addiction and mental health disorders. Officer Keller sees a direct link between sex trafficking operations, drug trafficking, organized crime, and out of state gangs operating in Maine.

He identified several challenges facing Maine law enforcement in addressing human trafficking. Currently, there is no comprehensive, top-down approach to combating sex trafficking. The state is currently operating what he called a “patchwork system.” Also, there is currently no sex-trafficking curriculum at the Maine police academy, so new officers are often not aware of how to deal with trafficking issues.

Officer Keller also spoke to the need for victim assistance services, explaining that the lack of victim services means that addressing the supply side of sex trafficking is very difficult. As a result, local law enforcement often focuses on the demand side — seeking out those who would purchase commercial sex.

He praised the efforts of the small group of law enforcement officers currently devoted to stopping sex trafficking in Maine, as well as the faith-based networks dedicated to helping victims.

***Amy Volk, State Representative from Maine's 127th District.***

Representative Amy Volk discussed her recent bill which provides a defense to prostitution charges for victims of sex trafficking and increases penalties paid by traffickers. The bill originally contained other provisions which did not pass: a provision allowing trafficking victims to have their related convictions vacated, and a provision to create a fund to assist trafficking victims and to prevent trafficking in Maine. Volk's original bill also would have made providing drugs to a prostitute an aggravated offense, which would have simplified prosecuting traffickers because drug charges are often easier for a prosecutor to prove.

Volk believes that Maine trafficking victims should have the opportunity to have convictions vacated because victims were forced or coerced to commit criminal actions and did not commit these actions under their own free will. There was, however, opposition to a vacatur provision in the Maine legislature because of a perceived conflict between a vacatur provision and the Governor's power to grant a pardon. Volk, however, asserted that the pardon process is insufficient to protect victims of trafficking because the pardon board is not governed by statute and victims would have no assurance that they would receive a pardon.

As for Volk's efforts to create a fund to provide assistance to victims and to promote education and prevention programs in Maine, the resources were not available for these provisions at the time her bill was proposed.

***Maeghan Maloney, District Attorney for Kennebec and Somerset Counties, Maine.***

Maeghan Maloney spoke of two recent prosecutions undertaken by her office and expressed appreciation for the recent [2014] bill introduced by Rep. Volk. Because of the new defense available for victims of trafficking, Maloney was able to not charge the trafficking victims involved in these prosecutions but was able to target the leaders of the operation instead. Maloney, however, stated that she wished that there were resources available for the victims, and that she was worried that their lives were now no better than when they were being trafficked, because they now have no place to live.

Maloney mentioned that the stand-alone sex-trafficking statute has done much to raise awareness of the problem of sex trafficking in Maine and that the law is a necessary step in the process of ending the misconception that sex trafficking is a victimless crime.

She was, however, concerned that she has been seeing new forms of sex trafficking operations emerging in Maine, namely out of state organizations that coerce local women into the sex trade using drugs and the threat of violence to maintain control of them. These new gangs are using a level of violence previously unseen in Maine. She mentioned that there have been many cases where her office believed they had uncovered such an operation, but because they were unable to

offer any kind of services to protect the potential victims, they were unable to secure any information. Without any evidence, her office could not prosecute. Maloney reported that, ironically, it is easier for prosecutors to find programs to help those charged with trafficking offenses than those who are victims of trafficking. “I have nothing for victims,” she stated.

Maloney stated that her hope was for increased assistance from the federal government in investigating and prosecuting human trafficking cases, as well as for increased collaboration between federal and state law enforcement officials. She explained that district attorney offices in Maine simply lack the resources to adequately address trafficking. She also mentioned a desire to set up operations that use Internet decoys to draw out traffickers and those who would purchase commercial sex similar to programs used by other states.

## **Panel Two**

The second panel included victim support advocates and federal officials involved in trafficking enforcement. The presenters were Erin Albright, Anti-Trafficking Regional Coordinator, International Institute of New England/Regional Program Director, Make Way to Freedom; Amy Thomas, Executive Director, Sexual Assault Response Services of Southern Maine; Jorge Acero, State Monitor Advocate for Migrating Seasonal Farm Workers, Maine Department of Labor; and Jeffery Stillings, Senior Special Agent, Department of Homeland Security.

### ***Erin Albright, Anti-Trafficking Regional Coordinator, International Institute of New England/Regional Program Director, Make Way to Freedom.***

Erin Albright talked about her experience working with organizations that provide case management services to victims of trafficking, and organizations that work to develop protocols and best practices for service providers and law enforcement. She highlighted the progress that has been made in addressing human trafficking in Maine and noted that a federal grant has recently made it possible for the Preble Street Teen Center to offer some services to trafficking victims.

Albright discussed labor trafficking, which is estimated to make up about one-third of the total human trafficking market. She stressed that labor trafficking in Maine can be found in industries such as construction, manufacturing, agriculture, logging, and others; she emphasized that although the conventional image held of labor trafficking involves undocumented workers, her organization has seen cases throughout New England in construction, domestic help, and restaurants where individuals being trafficked are either legal immigrants or U.S. citizens. Albright noted that because the conversation on human trafficking in Maine tends to focus on sex trafficking, we are not properly identifying many human trafficking victims. She suggested that Maine should adopt a stand-alone labor trafficking statute similar to the sex trafficking statute that has already been adopted.

Further, Albright discussed the need for increased cooperation to address trafficking. She reasoned that because trafficking cases are so complicated, and because they are rarely limited to

a single jurisdiction, no one organization would be able to address human trafficking alone. She agreed with other speakers that lack of resources is a significant issue in addressing human trafficking and suggested that more cooperation among organizations could help address resource problems.

Albright finished her statement by suggesting that data collection systems need to be improved to monitor the extent of human trafficking across New England. She cautioned that, although there may not seem to be huge numbers of trafficking cases, Maine should not adopt the attitude that trafficking is not happening, but should accept that Maine is vulnerable to trafficking and should take proactive steps to address the issue.

***Amy Thomas, Executive Director, Sexual Assault Response Services of Southern Maine.***

Amy Thomas began her presentation by explaining the role that sexual assault and rape crisis advocates can play in identifying and supporting victims of trafficking: victims of human trafficking, particularly women and children, are often subjected to sexual violence and may seek out rape crisis or sexual assault services or may be referred to those services. Thomas emphasized that trafficking victims are sexual assault victims, and should receive treatment and counseling.

Thomas stated that, since 2011, her organization had worked with 39 women who had been identified as victims of trafficking and helps them navigate the criminal justice system, refers them to organizations that provide shelter and mental health treatment, and provides emotional support. Thomas identified several areas of need in the service provider community including housing, therapy, and educational services for victims.

***Jorge Acero, State Monitor Advocate for Migrating Seasonal Farm Workers, Maine Department of Labor.***

Jorge Acero spoke of his experience overseeing the Foreign Labor Certification program for Maine, a federal program that helps certain employers obtain temporary guest workers from foreign nations. He recently started as Maine's Monitor Advocate for Migrating Seasonal Farm Workers, collaborating with agencies that service the needs of migrant workers. Acero stated that the Department of Labor does not investigate trafficking directly but can provide assistance in areas such as obtaining wages withheld from victims, ensuring that all operations using migrant labor follow safety standards, and providing job training to victims who need to find a way to support themselves.

Acero noted the importance of recognizing the role of fraud, force, and abuse in obtaining individuals for labor trafficking and the need to develop a higher proficiency in identifying victims of labor trafficking — particularly on the local level. He asserted that local service providers need to learn the traits of trafficking victims and what to do when they think they have identified a potential victim.

*Jeffrey Stillings, Senior Special Agent, Department of Homeland Security.*

Agent Jeffrey Stillings testified about his experience as a federal law enforcement official dealing with human trafficking. He described many cases he had encountered including the first federal prosecution for forced labor in 2004. Stillings said that an important part of his work before he came to Maine was establishing a human trafficking task force that brought together law enforcement at all levels with non-governmental agencies to cooperate on human trafficking issues.

Stillings outlined what he called his agency's 'HSI'<sup>133</sup> strategy to address human trafficking based on outreach, coordination, and coalition building. Stillings described outreach as making others aware of his agency's capabilities in helping trafficking victims, giving the example of granting continued presence or certifying a T visa. Coordination was described as working with other agencies to decide who would take care of certain needs of victims. Coalition building was described as forming partnerships with law enforcement agencies, foreign governments, and non-governmental organizations to work together against human trafficking.

*Jasmine Moreno, Sex Trafficking Survivor.*

The Committee also heard from Jasmine Moreno, a survivor of sex trafficking. Moreno testified to the Committee about her experience as a victim of human trafficking. She grew up in Massachusetts where she met her trafficker. Her trafficker used emotional manipulation and, later, violence to coerce her to engage in the commercial sex industry. She was forced to sell herself in Kittery, Maine, among other New England locations. Many times she considered fleeing but had nowhere to go and no money of her own. She knew that her trafficker would harm her if she tried to escape. She testified that she believed that many people knew or suspected she was being trafficked, but they looked the other way. Eventually, Moreno was able to collect enough money to escape her trafficker. Because of her traumatic experiences, however, she was unable to adjust to her new life. Eventually, she turned to drugs. It took many years before Moreno was able to seek treatment for her addiction and for the abuse she endured. She now works in real estate and speaks of her experiences for advocacy organizations in New England.

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<sup>133</sup> HSI, Homeland Security Investigations, is a division of ICE. It is the investigative arm of the U.S. Department of Homeland Security. There are three HSI offices in Maine, in Bangor, Houlton and Portland.

