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A Survey of Human Trafficking in Michigan

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EXECUTIVE SUMMARY

In 2010, students at the Human Trafficking Clinic (“Clinic”) at The University of Michigan Law School conducted approximately fifty interviews with service providers, advocates, government officials, and attorneys involved in the anti-trafficking movement in Michigan. We engaged these stakeholders in a critical discussion in order to solicit strategies for addressing the problem of human trafficking in our state. This report highlights the most pressing concerns raised by the state’s professionals and volunteers who are working to end human trafficking and to support the men, women, and children who have been exploited by traffickers.

The report is divided into four sections. Section I briefly reviews the elements of the crime of human trafficking as defined under U.S. and international law. Section II examines some the factors that increase the vulnerability of certain groups in Michigan to trafficking. Section III provides an overview of federal and state laws that address human trafficking. Section IV, the focus of this report, summarizes commentary from anti-trafficking professionals and volunteers on how to improve the response to human trafficking in Michigan.

As revealed in interviews and surveys, the respondents identified the following measures as critical to supporting the work of the state’s anti-trafficking community:

- Allocating more resources for investigating and prosecuting human trafficking cases
- Providing comprehensive victim support training to law enforcement and service providers
- Improving collaboration and communication among all groups dedicated to fighting human trafficking and serving trafficking victims
- Increasing access to social services for all trafficking victims
- Raising public awareness about human trafficking in Michigan

I. HUMAN TRAFFICKING DEFINED

Human trafficking is sometimes referred to as “modern-day slavery.” Human trafficking violates victims’ most basic human rights, foremost among these the right to be safe and secure in one’s person. Often, human trafficking exists in concert with other criminal activity.

Although legal definitions of human trafficking vary, both domestic and international anti-trafficking norms describe human trafficking as the exploitation of human beings for economic or personal gain. The comprehensive U.S. federal anti-trafficking law, the Trafficking Victims Protection Act (TVPA) of 2000, defines human trafficking as:

the recruitment, harboring, transportation, provision, or obtaining of a person for sex trafficking, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or, labor or services, through the use of force, fraud, or coercion for

the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹

It should be noted that the TVPA's definition of human trafficking does not require the movement of the victim from one geographic area to another.² It is the victim's exploitation, rather than movement, that is the essential element of the crime of human trafficking.

Human trafficking occurs throughout the United States and in many different sectors of the nation's economy. Traffickers have been convicted of forcing victims to work on farms, in hair and nail salons, in restaurants, and in motels. Domestic trafficking victims include U.S. citizens and foreign nationals, men, women, and children. All of these groups are protected by federal anti-trafficking law; however, human trafficking remains one of the world's fastest-growing crimes.³

II. THE CONTEXT FOR HUMAN TRAFFICKING IN MICHIGAN

This section explores factors that may lead to incidents of human trafficking in Michigan.

Agricultural Industry

Each year, Michigan's large agricultural industry attracts thousands of migrant farm laborers to the state.⁴ Poor English language skills, extreme poverty in countries of origin, and fear of reprisals for reporting unlawful labor conditions make many immigrant farm workers particularly vulnerable to labor trafficking.⁵ There are many reported cases in the United States where employers have used threats of deportation and criminal sanction to control and coerce immigrant workers.⁶ Additionally, limited English language skills and unfamiliarity with the U.S. legal system often discourage immigrant victims from seeking protection and assistance from law enforcement. This is especially the case with victims who have come from countries where police and other government officials are viewed as a source of corruption and exploitation.

¹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000).

² See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000); 18 U.S.C. §§ 1589-1590 (2008) (forced labor); 18 U.S.C. § 1591(a) (2008) (sex trafficking); United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, Jan. 8, 2001, G.A. Res. 55/25, Annex II, at art.3(a), U.N. Doc. A/RES/55/25 [hereinafter U.N. Trafficking Protocol].

³ JOSH ARCHAMBAULT & BIRGIT WAIMANN, ENHANCING COUNTER-TRAFFICKING EFFORTS: DIAGNOSING THE LABOR & SEX TRAFFICKING NEXUS 7 (Harvard Kennedy School, May 2010), available at <http://iahti.org/assets/CounterTrafficking--%20HKKS.pdf>.

⁴ See MICHIGAN CIVIL RIGHTS COMM'N, A REPORT ON THE CONDITION OF MIGRANT AND SEASONAL FARMWORKERS IN MICHIGAN 2 (Mar. 2010), available at http://www.michigan.gov/documents/mdcr/MSFW-Conditions2010_318275_7.pdf.

⁵ See generally SOUTHERN POVERTY LAW CENTER, CLOSE TO SLAVERY: GUESTWORKERS IN THE UNITED STATES (2007), available at http://www.splcenter.org/sites/default/files/downloads/Close_to_Slavery.pdf.

⁶ *Id.* at 15-16.

Presence of Vulnerable Persons

A significant percentage of Michigan's population fits the demographic profile associated with persons most vulnerable to human trafficking, such as those living in poverty and foreign nationals without immigration status. The National Center on Family Homelessness reported that more than 22,000 Michigan children experience homelessness each year.⁷ Between 2000 and 2009, the number of immigrants living in poverty in Michigan rose substantially, from 70,886 to 113,848.⁸

Geographic Location

The problem of human trafficking transcends political borders. Therefore, adopting regional and international perspectives helps to forge a deeper understanding of human trafficking in Michigan.

Michigan's proximity to the Canadian border increases the likelihood of trafficking in the state. A 2001 study produced by researchers at the University of Pennsylvania identified Detroit as one of main points of entry for South Korean victims trafficked into the United States.⁹ More recently, the U.S. Department of State found that "a significant number of [trafficking] victims, particularly South Korean females, transit Canada en route to the United States."¹⁰

Ohio, which borders Michigan to the East, is a locus of human trafficking in the United States.¹¹ In its 2010 report, the Ohio Trafficking in Persons Study Commission suggested that this may be due in part to the dearth of enforceable regulations governing Ohio businesses that rely on cheap labor.¹² For example, according to a 2007 study, Ohio has the fifth largest number of strip clubs

⁷ See The National Center on Family Homelessness, *America's Youngest Outcasts: State Report Card on Child Homelessness: Michigan*, http://www.homelesschildrenamerica.org/pdf/report_cards/long/mi_long.pdf (last accessed May 26, 2011).

⁸ Migration Policy Institute Data Hub: Migration Facts, Stats and Maps, *Michigan Income and Poverty*, <http://www.migrationinformation.org/datahub/state4.cfm?ID=MI> (last accessed May 26, 2011). In 2009, 18.9 percent of immigrants living in Michigan, and 16.0 percent of Michigan residents born in the United States, lived below the poverty line. *Id.*

⁹ RICHARD J. ESTES & NEIL ALAN WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO* 116 (2001), available at http://www.sp2.upenn.edu/restes/CSEC_Files/Complete_CSEC_020220.pdf.

¹⁰ DEPARTMENT OF STATE, U.S. DEPARTMENT OF STATE TRAFFICKING IN PERSONS REPORT 98-99 (2010), available at <http://www.state.gov/documents/organization/123357.pdf>.

¹¹ See Amanda Kloer, *The New Hotbed of Human Trafficking Is...Ohio*, CHANGE.ORG, Feb. 11, 2010, http://humantrafficking.change.org/blog/view/the_new_hotbed_of_human_trafficking_is_ohio (discussing Ohio as a "hotbed of human trafficking") (last accessed May 26, 2011).

¹² See OHIO TRAFFICKING IN PERSONS STUDY COMM'N: RESEARCH AND ANALYSIS SUB-COMMITTEE, REPORT ON THE PREVALENCE OF HUMAN TRAFFICKING IN OHIO, 32 (June 8, 2010), available at <http://www.ohioattorneygeneral.gov/getattachment/5880897e-09e5-4cd1-b051-4680ce560e6d/Report-on-the-Prevalence-of-Human-Trafficking-in-O.aspx>.

in the United States.¹³ Ohio is also a destination for immigrant groups seeking employment in the agricultural, textile, landscaping, manufacturing, and restaurant industries.¹⁴

III. SURVEY OF LAWS IMPACTING VICTIMS OF HUMAN TRAFFICKING

Federal human trafficking legislation

In 2000, Congress passed a federal human trafficking law, the TVPA, which, among other measures, defined the crime of human trafficking, enhanced penalties for existing related crimes, and created a special visa category for foreign victims. The TVPA has subsequently been reauthorized as the Trafficking Victims Protection Reauthorization Act (“TVPRA”) of 2003 (P.L. 108-193), the TVPRA of 2005 (P.L. 109-164), and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457).¹⁵

The TVPA was an important step in combating human trafficking, but it was created with the understanding that state legislatures would follow Congress’s lead by enacting their own human trafficking statutes. Because state and local law enforcement are more likely to encounter trafficking situations than federal-level enforcement agencies, state-level legislation is a vital element to establishing a comprehensive national anti-trafficking policy. It should be noted that, while the TVPA addresses and defines key concepts, it cannot serve as a complete model for state-level human trafficking legislation. Rather than gathering all human trafficking provisions into a comprehensive code, the TVPA amended a number of existing federal statutes; therefore, it is not a unified piece of legislation. For example, under the TVPA the definitions of human trafficking crimes and human trafficking victims are found in different sections of the U.S. Code. Similarly, the TVPA created new criminal provisions for human trafficking, in addition to leaving remnants of Civil War-era anti-slavery statutes in place.

In 2004, the Department of Justice (“DOJ”) created a model state-level human trafficking law. The DOJ’s model law, which focused on providing an organized structure of criminal provisions, was drafted broadly enough to capture a range of coercive tactics used by traffickers. It also criminalized attempted trafficking crimes and proposed mandatory restitution for victims. The DOJ model law was less than ideal in that it offered few substantive proposals for victim protections and services. If enacted as written, the DOJ model law would likely help to eliminate gaps between state and federal criminal laws and to facilitate coordination between states and federal actors, but it would not provide adequate victim services.

From 2004 to 2008, over forty states enacted some type of human trafficking law, many based on the DOJ’s model law. The vast majority of states created new crimes for human trafficking. Several states¹⁶ enacted other reforms such as requiring traffickers to forfeit property used in human trafficking, introducing mandatory restitution for victims, and providing affirmative

¹³ Id.

¹⁴ Id.

¹⁵ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464.

¹⁶ *E.g.*, Illinois, Pennsylvania, and New York.

defenses or prosecutorial immunity for victims accused of crimes. Other states¹⁷ have established innovative government task forces to enhance public awareness about the issue and to create law enforcement training programs that encourage a victim-centered approach to combating human trafficking. Measures to improve victim support are particularly important, as the DOJ has acknowledged that prosecution of human traffickers is “unworkable” without victim protection.¹⁸

Since the enactment of the TVPA in 2000, awareness and understanding of human trafficking among lawmakers and the public has evolved. While human trafficking was initially perceived primarily as a law enforcement issue, many states now incorporate a broader human rights perspective into their anti-trafficking policies in the form of community outreach programs, civil reforms, and increased access to victim services.¹⁹

Michigan’s Human Trafficking Laws

Michigan’s current human trafficking law is codified in Chapter 67A of the Michigan Penal Code (MCL 750.462a - 750.462i). Based largely on the DOJ’s model human trafficking law, Michigan’s anti-trafficking statutes ignore the issue of victim services. Additionally, a number of structural problems limit the law’s effectiveness.

Structural problems

Michigan’s trafficking law currently includes an exclusive list of coercive actions that trigger criminal sanctions for traffickers. However, traffickers rely on myriad ways to manipulate, intimidate, and coerce victims. Therefore, the Clinic recommends expanding the scope of proscribed conduct in order to capture other common trafficking methods. For example, including a “catch-all” provision that prohibits any physical or psychological coercion or pressure that would compel a reasonable person to work without pay would more adequately address the range of tactics used by traffickers. Such a change would also strengthen the “victim-centered” approach adopted under the TVPA and international anti-trafficking treaties.

Moreover, the current Michigan law contains five separate provisions criminalizing forced labor or services, each purporting to prohibit forced labor obtained by a different means: physical harm, physical restraint, abuse of law, etc. A law that describes and distinguishes types of trafficking crimes can help to guide law enforcement in identifying trafficking offenses and making charging decisions. At the same time, establishing a more universal definition of the crime of human trafficking, as the TVPA does, will allow law enforcement to respond to the various coercive schemes used by traffickers to exploit victims.

¹⁷ *E.g.*, Connecticut, Massachusetts, Delaware, New Jersey, Indiana, and Minnesota.

¹⁸ Dep’t of Justice, Civil Rights Division, MODEL STATE ANTI-TRAFFICKING CRIMINAL STATUTE (2004).

¹⁹ *See e.g.*, THE ADVOCATES FOR HUMAN RIGHTS, SEX TRAFFICKING NEEDS ASSESSMENT FOR THE STATE OF MINNESOTA, (2008), available at http://www.theadvocatesforhumanrights.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/REPORT_FINAL.10.13.08.pdf.

Gaps in Michigan's Human Trafficking Law

Michigan's anti-trafficking law fails to address several critical areas. The reforms suggested below would help to fill these gaps.

1. An affirmative defense for human trafficking victims who have been accused of crimes. Trafficking victims are often forced to commit crimes incident to their trafficking. Traffickers are then able to control victims by convincing them that they will be subject to arrest if they seek assistance from law enforcement. Therefore, providing victims with an affirmative defense for any crime that they were forced to commit incident to their trafficking will deprive traffickers of a powerful coercive tool.
2. A provision for the forfeiture of any asset used in furtherance of a trafficking crime. This would help to undermine some of traffickers' financial incentives. Also, forfeited assets can potentially be used to compensate victims.
3. A statement that the William Van Regenmorter Crime Victim's Rights Act applies to victims of trafficking. This would explicitly entitle human trafficking victims to the same rights extended to victims of other crimes.
4. A safe harbor provision. Michigan should follow the lead of New York, Washington, Connecticut, Illinois, and other states which have passed laws prohibiting the prosecution of minor sex trafficking victims for prostitution and related crimes. An effective safe harbor provision would mandate victim rescue training for law enforcement, as well as provide shelters and social services for victims. This would align Michigan with federal law, which extends social services and other benefits to trafficking victims.

Non-criminal state laws affecting victims of human trafficking

Human trafficking victims can also seek redress pursuant to other state laws, such as civil tort remedies. Relying solely on civil litigation is not an ideal means to protect victims, but this approach can provide an alternative avenue for holding traffickers accountable for their illegal acts.

Wage and Labor Laws, and Other Regulations

Factors such as linguistic and social isolation often limit trafficking victims' awareness of wage and labor laws intended to protect workers. Key areas of law affecting trafficked persons are: restaurant regulations, wages for agriculture workers, minimum wage exceptions for seasonal workers, wage laws relating to independent contractors, and local ordinances and regulations governing door-to-door soliciting and street peddling.

IV. HUMAN TRAFFICKING IN MICHIGAN: SURVEY RESULTS

Survey background

Since the passage of the TVPA in 2000, human trafficking investigations and prosecutions in the United States have steadily increased.²⁰ These trends point to a developing national network of law enforcement agents, prosecutors, and judges whose collective knowledge and expertise can help to guide their counterparts in Michigan in the fight against human trafficking. Despite these promising partnerships, Michigan still faces practical obstacles to enforcing anti-trafficking laws.

Student researchers at the Clinic interviewed approximately fifty service providers, law enforcement officials, community advocates, attorneys, media representatives, and legislators about their experience with human trafficking in Michigan. The respondents identified four main areas for reform: (1) coordinating the development of best practices and training programs, (2) increasing access to social services for all trafficking victims, (3) raising public awareness about trafficking in Michigan, and (4) reforming the state's anti-trafficking laws.

Taken together, the respondents' suggestions can be characterized as a call for a more holistic approach to anti-trafficking work and victim support.

1. Best practices and comprehensive victim support training

Survey respondents from all backgrounds were interested in receiving additional victim support training, particularly programs which address best practices for (1) identifying trafficking victims, (2) earning victims' trust, (3) communicating with victims from diverse language and cultural backgrounds, and (4) liaising with other professionals and volunteers in Michigan's anti-trafficking community. Respondents agreed that improved methods for sharing expertise would be of particular value in these areas.

One respondent, a law enforcement agent, described how poor training can undermine efforts to assist trafficking victims: "Attorneys and prosecutors [can] do some damage in terms of victim-blaming if they are not trained." For example, when interviewing sex trafficking victim-witnesses, prosecutors and other attorneys without a background in human trafficking often ask questions such as, "How many men have you had sex with?" The agent explained further, "We have learned from victims that they should not use such words," because framing the case that way "revictimiz[es]" the victim. "It really disappoints us and we want to keep that victim interested in prosecution. Even if it's done without thinking, they're not helping us." This is just the type of problem that could be prevented with adequate training and improved methods for information sharing.

To adequately diagnose knowledge gaps within the anti-trafficking community, one respondent suggested creating and distributing a "training needs assessment" toolkit to professionals and

²⁰ DEP'T OF JUSTICE, ATT'Y GEN. ANN. REP. TO CONGRESS AND ASSESSMENT OF U.S. GOV'T ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 47 (July 2010), *available at* <http://www.justice.gov/ag/annualreports/tr2009/agreporhumantrafficking2009.pdf>.

volunteers who work with trafficking survivors. Moreover, many respondents called on stakeholders to implement a uniform system for sharing and coordinating best practices in order to best deliver high-quality, comprehensive victim support.

One service provider articulated the challenge and necessity of integrating the work of multiple entities:

No one in America is one-stop shopping. There are groups that address each piece of a woman's needs. One woman, I had to take her to a domestic violence shelter, to a doctor, to a lawyer, and to law enforcement . . . We're bringing together resources women need, and so we're searching for resources. The victim is in no state of mind to bring together the resources they need.

An attorney respondent highlighted the potential benefits of improved communication between law enforcement and victim advocates:

I would like to see law enforcement make vocal commitments to their non-criminal justice interests in the immigrant victims. This is necessary in order for immigrants to expose their victimization. Otherwise, immigrants will be fearful to come forward for fear of negative immigration consequences . . . Law enforcement needs to be clear that their priority is protecting victims (assuming that is the case). People are scared to contact law enforcement unless they [law enforcement] are very open about their priorities.

This statement also elucidates an additional problem identified by law enforcement respondents. Several interviewees from that group believed that they were not always promptly notified about potential trafficking victims by service providers and advocates and suggested that this frustrates efforts to investigate and apprehend traffickers. However, law enforcement respondents cited lack of resources as the primary impediment to prosecuting trafficking cases in Michigan. Discussion of funding problems prompted this bleak assessment from one official: "Our number one problem is that we can't keep girls safe at night. We can bring them to a shelter, but the pimp can just go there and pick the girls up."

To improve inter-agency coordination, respondents suggested implementing a formal process for federal and state law enforcement agencies to share their expertise on regional trafficking concerns with local police, and establishing a publicly accessible database of statistics on human trafficking in Michigan. Several interviewees also proposed establishing a pro bono referral service to bring together attorneys experienced in trafficking and immigration issues. One respondent cited the Michigan Human Trafficking Task Force, a coalition of state and federal law enforcement and victim service providers, as a potential forum for developing and expanding institutional relationships.

2. Increasing access to social services for all trafficking victims

Several service providers and attorneys representing trafficking victims in Michigan received federal grants; however, none of the respondents have received any state funds designated for

trafficking victims. In some instances, the use of federal funding was restricted, earmarked exclusively for cases involving domestic violence or sexual assault.

In light of funding shortages for victim services, one advocate urged social service organizations be more transparent and forthcoming about their budget constraints:

We need to be more aware and honest about the sheer number of people that federal, state and local authorities direct towards the issue. The truth is that the current individuals and resources focused on the issue are so few that we can barely make a dent. We need to put this out there in order to have an honest conversation.

Unsurprisingly, many respondents acknowledged the importance of providing low-cost social service options to all trafficking victims, regardless of immigration or citizenship status.

3. Raising public awareness about human trafficking in Michigan

According to many respondents, a distorted public perception of human trafficking in Michigan presents obstacles to identifying and serving victims. The tendency toward sensationalist media reporting about trafficking and the emphasis placed by some anti-trafficking organizations on commercial sexual exploitation obscures the diversity of victims and their experiences. Advocates observed that creating accessible, targeted public relations messages and campaigns can educate the public about the nature and scope of human trafficking in Michigan:

Generally the perceptions are one of two extremes - either the person does not think trafficking exists or they see trafficking in all situations. A more balanced view of trafficking within local communities [includes] both labor and sex trafficking.

One respondent explained how case narratives help to connect audiences to the realities of victims' exploitation: "Case studies . . . really bring a human face to the victim . . . It paints a picture and breaks stereotypes . . . [P]eople should know what happens . . . and how victims are manipulated."

Several respondents agreed that a responsible and informed media can raise public awareness about human trafficking. Encouragingly, one media representative suggested that advocate-led trainings and workshops for the press might facilitate more balanced reporting about human trafficking.

4. Reforming Michigan's anti-trafficking laws

Legislators interviewed for this survey adopted the view that current anti-trafficking laws in Michigan "are not comprehensive and do not go far enough to provide local governments the necessary tools to investigate and prosecute." Respondents proposed reforming legislation to

improve the overall clarity of existing anti-trafficking laws and to define more clearly and comprehensively both labor and sex trafficking.

Respondents also called for more uniform and formal procedures for reporting on crimes and victims:

[W]e need to create a way for the criminal justice system to report. We are not getting data on actual human trafficking. We're getting data on kidnapping, runaways, child prostitution, girls working in strip clubs. There are pieces of human trafficking in all of these things, but we don't translate that into human trafficking. We're getting statistics around the crime. Not all prostitution is human trafficking. Some [of it is]. But without laws on human trafficking, we prosecute people as pimps and not as traffickers. We need to give prosecutors a way not to go after the girls for prostitution who are actually victims of human trafficking. We need to go after the real criminals.

CONCLUSION

Human trafficking exists in Michigan. Moreover, factors such as the state's large agricultural sector and economic insecurity may increase workers' susceptibility to exploitation by traffickers. Michigan's current anti-trafficking statute focuses on penalizing traffickers; it could be substantially improved by amending the law to provide for victim services and protection.

The respondents to the Clinic survey have outlined a roadmap for implementing these and other reforms that will strengthen the response to human trafficking in Michigan. It is our hope this report will help to generate an open dialogue across the state about the best ways to support the adults and children who have been victimized by this horrible crime.