

HUMAN RIGHTS IN THE SUNSHINE STATE: A PROPOSED FLORIDA LAW ON HUMAN TRAFFICKING

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“Liberty is the air America breathes.”—Franklin D. Roosevelt (in-
scribed in a plaque on the Statue of Liberty)

I. INTRODUCTION

The air in twenty-first century America is not quite as pure as Americans might wish. Recent years in Florida have witnessed the reemergence of a specter once thought eradicated from the face of the American South: slave labor and trafficking in human beings.¹ This new slavery thrives not only in Florida but throughout the United States and countless other parts of the world.² Its human cargo consists primarily of immigrants desperate to find a better life—most of them young, and a great many of them female.³ Those profiting from this ubiquitous industry range from criminal syndicates deeply immersed in the varied illegal phases of the transnational enterprise to

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1. The U.S. State Department estimates that 800,000 to 900,000 persons are trafficked across international borders annually and that 18,000 to 20,000 are trafficked into the United States every year for purposes of forced labor and sexual exploitation. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2003) [hereinafter STATE DEP'T REPORT 2003].

2. See generally KEVIN BALES, DISPOSABLE PEOPLE: NEW SLAVERY IN THE GLOBAL ECONOMY (1999) (surveying case studies of modern slavery in Thailand, Mauritania, Brazil, Pakistan, and India).

3. See AMY O'NEILL RICHARD, CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME (2000) (Intelligence Monograph of the DCI Exceptional Intelligence Analyst Program). Richard observes that women are trafficked to the United States primarily for the sex industry, but also for purposes of domestic servitude, sweatshop labor, and agricultural work. *Id.* at 3. She further notes that the average age of a trafficking victim in the United States is only twenty years. *Id.* For an overview of global trafficking in women, see Donna Hughes, *The “Natasha” Trade: The Transnational Shadow Market of Trafficking in Women*, 53 J. INT'L AFF. 625 (2000), and DONNA HUGHES & JANICE RAYMOND, COALITION AGAINST TRAFFICKING IN WOMEN, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS (2001) (analyzing current sex trafficking and sexual exploitation of immigrant and U.S. citizen women in the United States).

legitimate businesses that knowingly or unknowingly reap the rewards of labor provided by victims of human trafficking.⁴

One of the grim realities of the new century is that the globalization of the world economy has become an impetus for this new slave trade.⁵ Increased economic competition—with its constitutive demands for cheap labor and higher profit margins—has created the market for acute labor exploitation.⁶ Ironically, events such as the fall of communism that augured greater freedom and mobility for much of the world also sowed the seeds for human trafficking.⁷ Licitly or otherwise, the world's poor can now cross national boundaries with greater ease than ever before in desperate search of employment opportunities that will sustain them and their families.⁸ In the past decade, a shadowy human trafficking industry has evolved that both facilitates this migration and exploits the desperate people who have recourse to it.⁹ Thousands of persons are believed to be trafficked annually into the United States for purposes of forced labor.¹⁰

Florida has proven to be a mecca for this new industry in the trafficking of human beings.¹¹ A state with a strong immigrant presence whose economy is largely dependent upon agricultural production, Florida represents an environment naturally conducive to labor exploitation.¹² Not surprisingly, some of the highest profile cases to

4. The transnational criminal dimensions of human trafficking make it especially difficult to investigate and prosecute. See STATE DEPT REPORT 2003, *supra* note 1, at 5 (acknowledging that the transnational criminal nature of the human trafficking industry overwhelms many countries' law enforcement capacities). Initial research suggests that most human trafficking operations in the United States are the work of small crime rings and loosely affiliated criminal networks. RICHARD, *supra* note 3, at 3.

5. The International Labour Organization has termed human trafficking "the underside of globalization." STATE DEPT REPORT 2003, *supra* note 1, at 5.

6. *Id.* at 9 (noting how global changes in formal and informal economies, a growing disparity between labor supply and job opportunities, and an increased demand for mobile workers to perform low-skill jobs have led to an increase in human trafficking).

7. While victims of trafficking to the United States traditionally have come from Southeast Asia and Latin America, a trend is discernible whereby victims increasingly arrive from the former Soviet bloc countries—the New Independent States, and Central and Eastern Europe. RICHARD, *supra* note 3, at 3.

8. See STATE DEPT REPORT 2003, *supra* note 1, at 7 ("Traffickers exploit impoverished and vulnerable individuals seeking a better life. In countries with chronic unemployment, widespread poverty or a lack of economic opportunities, traffickers use promises of higher wages and good working conditions in foreign countries to lure individuals into their schemes.")

9. See generally BALES, *supra* note 2; Alexis Aronowitz, *Smuggling and Trafficking in Human Beings: The Phenomenon, the Markets that Drive It and the Organisations that Promote It*, 9 EUR. J. CRIM. POL'Y & RES. 163 (2001).

10. See *supra* note 1.

11. Florida, New York, and California have been identified as states with the highest incidence of human trafficking cases, though the crime has been reported in at least twenty states. RICHARD, *supra* note 3, at 3.

12. Critics have alleged that abuse of migrant workers in Florida is systemic and widespread. See Bill Maxwell, *A Tradition of Abuse in the Fields of Florida*, ST. PETERSBURG TIMES, Mar. 26, 2003, available at <http://www.sptimes.com/>

date of human trafficking in the United States have occurred in the state of Florida.¹³ In response to such cases and as part of the growing awareness of the global dimensions of this problem, Congress in 2000 passed the Victims of Trafficking and Violence Protection Act (VTVPA).¹⁴ The new federal law not only criminalizes human trafficking specifically but also provides protective measures for its victims, including immigration and social service benefits.¹⁵

In 2002, the Florida Department of Children and Families Office of Refugee Resettlement commissioned the Florida State University Center for the Advancement of Human Rights (Center) to assess how the VTVPA could best be implemented in Florida. As part of a year-long grant, the Center established a statewide working group to ex-

2003/03/26/Columns/A_tradition_of_abuse_.shtml; *Growers Share Blame in Farm Slavery Case*, PALM BEACH POST, July 6, 2002, at 10A.

13. In November 2002, a federal judge sentenced three Florida sub-contractors to sentences of ten years or more for conspiring to hold migrant workers in involuntary servitude, for harboring undocumented workers, for interfering with interstate commerce by extortion, and for the use of firearms in the commission of a felony. See Press Release, U.S. Dep't of State (Nov. 21, 2002) (available from Westlaw at 2002 WL 25973396). For journalistic coverage of this case—the *Ramos* case—see John Bowe, *Nobodies: Does Slavery Exist in America?*, THE NEW YORKER, April 21 & 28, 2003, at 106. The nation's highest profile sex trafficking case also occurred in Florida. Between 1996 and 1997, the Cadena Mexican crime family trafficked numerous Mexican women and girls, some as young as age 14, into Florida where they rotated them between family-operated brothels in South Florida and the Carolinas. *Id.* at 124. The Mexican traffickers required the women to perform fifteen to twenty sexual acts daily to pay off the smuggling debts that the women allegedly owed them. *Id.*

14. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended at scattered sections of 8, 20, 22, 27, 28, and 42 U.S.C.). Division A of the VTVPA is further termed the Trafficking Victims Protection Act of 2000. *Id.* See generally Bo Cooper, *A New Approach to Protection and Law Enforcement Under the Victims of Trafficking and Violence Protection Act*, 51 EMORY L.J. 1041 (2002) (noting how the VTVPA involves use of immigration remedies as a tool for achieving broader criminal law enforcement goals); Shelley Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55 (2001) (discussing the debate about redefining human trafficking offenses); Susan Tiefenbrun, *The Saga of Susannah—A U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107 (assessing the VTVPA in a global context); Kelly Hyland, Comment, *Protecting Human Victims of Trafficking: An American Framework*, 16 BERKELEY WOMEN'S L.J. 29 (2001) (recounting U.S. trafficking cases and assessing gaps in the prosecution of pre-VTVPA cases); Kathryn E. Nelson, Comment, *Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches*, 24 HOUS. J. INT'L L. 551 (2002) (comparing VTVPA with international law regarding human trafficking).

15. The new law criminalizes a number of the offenses that comprise human trafficking: Forced labor (18 U.S.C. § 1589); Trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (18 U.S.C. § 1590); Sex trafficking of children or by force, fraud or coercion (18 U.S.C. § 1591); and destruction or alteration of documents in furtherance of trafficking (18 U.S.C. § 1592). The VTVPA also provides for mandatory restitution of trafficking victims for their losses (18 U.S.C. § 1593) and establishes that noncitizens certified by the Department of Health and Human Services as victims of a severe form of trafficking are eligible to receive the same public benefits as refugees. Victims of Trafficking and Violence Protection Act § 107(b)(1)(A).

plore how federal, state, and non-governmental groups might collaborate in combating human trafficking.¹⁶ Florida State University faculty and graduate students analyzed Florida trafficking cases and interviewed victims, law enforcement officials, and social service providers who had been involved in those cases.¹⁷ Research by the Center confirmed that all three types of human trafficking identified by the VTVPA—sex trafficking of women and children, forced labor, and domestic servitude—have occurred in Florida. This yearlong project resulted in the report *Florida Responds to Human Trafficking*.¹⁸

II. WHY A STATE LAW ON HUMAN TRAFFICKING?

A. *The Initial Federal Focus*

The VTVPA is federal law, and the benefits that it provides victims are federal as well. In order to be eligible for immigration relief, an individual must be certified as a victim of a severe form of human trafficking by the Office of Refugee Resettlement—a part of the federal Department of Health and Human Services.¹⁹ Securing immigration relief is furthermore contingent upon victim collaboration with federal law enforcement officials.²⁰ One means of demonstrating eligibility for certification as a victim of trafficking is for an applicant to

16. The Florida State University Human Trafficking Working Group included representatives from Florida Sheriff's Offices, the FBI, State and U.S. Attorney Offices, The Florida Commission on Human Relations, Florida Legal Services, the Florida Immigrant Advocacy Center, the Coalition of Immokolee Workers, the Florida Council Against Sexual Violence, the Florida Coalition Against Domestic Violence, Lutheran Social Services, the International Rescue Committee, the Gulf Coast Center for Survivors of Torture and Refugee Services, the Office of Migration and Refugee Services of the National Catholic Conference of Bishops, and the Salvation Army.

17. The FSU Project Team was an interdisciplinary endeavor involving the collaboration of faculty and students from the FSU College of Criminology and Criminal Justice, the FSU College of Law, the FSU School of Social Work, and the FSU School of Education.

18. FLORIDA STATE UNIVERSITY CENTER FOR THE ADVANCEMENT OF HUMAN RIGHTS, *FLORIDA RESPONDS TO HUMAN TRAFFICKING* (on file with author) (including profiles of victims and perpetrators in Florida trafficking cases (chapter 2), an overview of the rights and remedies that the VTVPA provides victims (chapter 3), recommendations for state action (chapter 9 and appendix A), and a listing of anti-trafficking programs and victim service providers in Florida (appendix B)) [hereinafter *FLORIDA RESPONDS TO HUMAN TRAFFICKING*].

19. See *supra* note 15.

20. To be eligible for certification as a victim of a severe form of trafficking, a noncitizen must be:

[W]illing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and [either (A)] has made a bona fide application for a [T visa] that has not been denied; or [(B)] is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons.

Victims of Trafficking and Violence Protection Act § 107(b)(1)(E)(i).

submit an endorsement from a federal law enforcement agency.²¹ The regulations issued by the Department of Justice regarding the issuance of T visas for trafficking victims spell out yet another integral federal role: victims seeking T visa status must demonstrate that they have contacted a federal law enforcement agency.²²

B. An Emerging Florida Role

Notwithstanding the crucial role of federal law, federal law enforcement agencies, and federal social service providers in responding to human trafficking, a key state role is also evolving. The FSU Trafficking Project discerned a pattern in Florida that appears common throughout the United States: while traffickers are prosecuted under federal law, it is most often local or state law enforcement officials who initially encounter the trafficking operation or its victims.²³ This may occur during the course of vice raids, in crime scene investigations in immigrant communities, and even in domestic violence calls.²⁴ Because Florida has no state law criminalizing human trafficking, maximal prosecution of traffickers currently requires that such cases be passed to federal law enforcement investigators and the U.S. Attorneys Office in whose district the offense has been discovered. In Florida, such cooperation has worked reasonably well and to date has resulted in the investigation and prosecution of a number of high profile cases.²⁵

21. 8 C.F.R. § 214.11(f) (2002). The regulations further explain that a "Law Enforcement Agency (LEA) means any Federal law enforcement agency that has the responsibility and authority for the detection, investigation, or prosecution of severe forms of trafficking in persons." *Id.* § 214.11(a). Such agencies include United States Attorneys Offices, the Civil Rights and Criminal Divisions of the Department of Justice, the Federal Bureau of Investigation, the Immigration and Naturalization Service, the U.S. Marshals Service, and the Diplomatic Security Service of the Department of State. *Id.*

22. *Id.* § 214.11(h)(2) ("An applicant who never has had contact with an LEA regarding the acts of severe forms of trafficking in persons will not be eligible for T-1 nonimmigrant status.").

23. See FLORIDA RESPONDS TO HUMAN TRAFFICKING, *supra* note 18, at 175.

24. See *id.* at 31-53 (detailing particular human trafficking cases in Florida and how Florida law enforcement initially encountered the trafficking victims).

25. The Cadena case was one of the most notorious sex trafficking conspiracies in recent U.S. history. One of Florida's highest profile cases, it garnered extensive media attention. See *supra* note 13; see also Associated Press, *Leader Admits Running Slave-Prostitution Ring*, ORLANDO SENTINEL, Jan. 16, 1999, at D1 (reporting that Rogerio Cadena pleaded guilty to luring young women from Mexico and holding them as sexual slaves); Amy Driscoll, *A Case of Modern-Day Slavery* (Special Report), THE MIAMI HERALD, July 11, 1999, at 1L; Sean Gardiner & Geoffrey Mohan, *Smuggled for Sex*, NEWSDAY, Mar. 12, 2001, at A5; Jeffrey Gettleman, *Sixteen Indicted in Sex Slave Smuggling*, ST. PETERSBURG TIMES, Apr. 24, 1998, at 1A; Scott Hiaasen, *17 Women Hope to Stay in U.S. After Rescue From Sexual Slavery*, PALM BEACH POST, Apr. 9, 1999, at 1B; Scott McCabe, *Man Pleads Guilty to Conspiring to Force Women into Prostitution*, PALM BEACH POST, Sept. 14, 2002, at 7B (reporting on the conviction of Hugo Cadena for sex trafficking). Of similar magnitude in the area of labor trafficking and debt bondage, the 2002 Ramos case involved three labor contractors in Florida's citrus industry who received lengthy prison

There is a strong argument to be made, however, for Florida to enact its own law on human trafficking. To begin with, having such a law would place human trafficking squarely within the radius of state law enforcement. With a few notable exceptions, neither human trafficking nor awareness of the VTVPA have come to the attention of many local police departments or sheriffs' offices in Florida. A primary reason for this, of course, is that human trafficking is an underreported crime, and its victims are intentionally kept away from contact with mainstream America. Were Florida to enact its own anti-trafficking law and to train its law enforcement officials on how to recognize the telltale signs of this crime, it is probable that many more incidents of the offense would be identified (with more traffickers prosecuted, and more victims emancipated). The demographics of Florida and the fact that some of the highest profile cases to date nationally have occurred in Florida suggest that this crime most likely continues to flourish in the state.²⁶

A second reason for Florida to enact its own human trafficking law is the reality that post 9-11 federal resources are necessarily committed to countering terrorism to the detriment of many other law enforcement activities. With the attention of the FBI and other federal investigators focused on domestic terrorism, it is inevitable that investigations of human trafficking situations will be relegated to a lower priority.²⁷ The commitment of state law enforcement resources could do much to bridge this gap.²⁸ The nexus of organized crime to human trafficking operations constitutes an additional com-

sentences for subjecting migrant farmworkers to involuntary servitude. See *supra* note 13; see also Russell Mokhiber, *Servitude in Sunshine*, MULTINATIONAL MONITOR, Dec. 1, 2002, at 29; Candace Rondeaux, *Fear and Knowing in Immokalee*, ST. PETERSBURG TIMES, Dec. 1, 2002, at 1A; Kelly Wolfe, *3 Sentenced for Forcing 700 Into Slavery in Groves*, PALM BEACH POST, Nov. 21, 2002, at 1A.

26. See, e.g., RICHARD, *supra* note 3, at 3 (noting that “[s]ome Florida law enforcement officials . . . claim that the state is being inundated with trafficked women from Russia, Ukraine, and Central Europe”); Mike Hoyem, *‘Black Jack’ Cracks Prostitution Ring*, BONITA NEWS-PRESS, Mar. 22, 2003, at 2B (reporting that federal agents broke up ring in Lee and Collier counties that allegedly involved sex trafficking of Mexican women); Bill Maxwell, *Slavery Alive in Florida Agriculture Industry*, ST. PETERSBURG TIMES, July 3, 2002, at 13A (alleging ongoing slavery violations in Florida’s fields); Mireya Navarro, *Case of Florida Au Pair Reflects Wider Problem*, N.Y. TIMES, Dec. 12, 1996 (recounting extreme physical and psychological abuse of teenage girl from India subjected to domestic servitude in Miami).

27. See RICHARD, *supra* note 3, at 45 (“Currently, the US Attorney’s offices appear to be understaffed and overburdened, making investigations of potential trafficking cases difficult.”).

28. In 2003 testimony in support of a Texas state law on human trafficking, Texas law enforcement officials noted how it took federal investigators three years to act on the reports of local law enforcement agents regarding a human trafficking ring operating in Fort Worth. Karen Brooks, *Captain Seeks Law Against Trafficking*, FORT WORTH STAR TELEGRAM, Mar. 12, 2003, at 4.

elling reason for Florida to both proscribe this crime under state law and to prosecute it in State of Florida courtrooms.²⁹

The final and perhaps most important reason for Florida to criminalize human trafficking is at heart a moral one: the offense constitutes one of the most egregious and systematic human rights violations of the new century, and should be countered at every turn. For most Americans, it is unthinkable that such exploitation could be occurring within our own shores, and indeed, within blocks of where we live and work.³⁰ In order to deter this trafficking in human beings, the practice should be criminalized in every way possible. Two other states that have encountered incidents of human trafficking—Washington and Texas—have recently enacted laws specifically meant to deter this offense.³¹ It is time that the people of Florida and their state prosecutors be given the same opportunity.

29. Numerous analysts and researchers have identified the nexus between human trafficking and organized crime. For its part, the U.S. State Department has noted how human trafficking funds illegal pursuits and can feed organized crime activities:

The profits from human trafficking may strengthen criminal groups by funding other illicit activities while weakening government attempts to establish rule of law. Organized criminal groups, gangs, document forgers, brothel owners, and corrupt police or immigration officials funnel trafficking profits into both legitimate and criminal activities. Human traffickers are often highly successful because of links with other transnational criminal groups, such as arms dealers, drug traffickers, and car theft rings, which provide them with safe and tested routes, access to cash, forged documents, and officials to bribe.

STATE DEPT REPORT 2003, *supra* note 1, at 11. Researchers have further noted how sex traffickers actively participate in welfare fraud, racketeering, tax evasion, drugs, bank fraud, robbery, and domestic violence. HUGHES & RAYMOND, *supra* note 3, at 49; see also RICHARD, *supra* note 3, at 3 (asserting that in the United States, trafficking in women is primarily conducted by crime rings and loosely connected criminal networks). NEW YORKER author John Bowe, writing on the Ramos slavery case, observed that a search of the labor subcontractor's house by federal agents led to the discovery of a large weapons cache, "including a Savage 7-mm. rifle, an AK-47, a semi-automatic rifle, a Browning 9-mm. semi-automatic pistol, and a Remington 700 7-mm. mag. rifle." Bowe, *supra* note 13, at 125. Such an arsenal of weapons, observed Bowe, is "not normally associated with labor management." *Id.*

30. See, e.g., Editorial, *The Horror at Hand*, ST. PETERSBURG TIMES, Apr. 25, 1998, at 14A ("Mention the sex-slave trade, and most people think of far-away places like Bangkok, Burma, or Nepal. But depravity is not limited to the other side of the globe. It grows in our own dirty backyard.")

31. In Texas, State Representative Lon Burnam of Fort Worth introduced House Bill 869, which criminalized trafficking of persons under Texas law. The state amended its Penal Code with the following addition:

Chapter 20A. Trafficking of Persons

Sec. 20A.01. DEFINITIONS. In this chapter:

- (1) "Forced labor or services" means labor or services that are performed or provided by another person and obtained through an actor's:
 - (A) threatening to cause bodily injury to another;
 - (B) restraining another in a manner described by Sec. 20.01(1); or
 - (C) withholding from another the person's:

- (i) government records;
 - (ii) identifying information; or
 - (iii) personal property.
- (2) "Traffic" means to transport another person or to entice, recruit, harbor, provide, or otherwise obtain another person for transport by deception, coercion, or force.

Sec. 20A.02. TRAFFICKING OF PERSONS.

(a) A person commits an offense if the person knowingly traffics another person with the intent that the trafficked person engage in:

- (1) forced labor or services; or
- (2) conduct that constitutes an offense under Chapter 43 [Public Indecency, including prostitution (43.02), promotion of prostitution (43.03), aggravated promotion of prostitution (43.04), compelling prostitution (43.05), sexual performance by a child (43.25), and employment harmful to children (43.251)].

(b) Except as otherwise provided by this subsection, an offense under this section is a felony of the second degree. An offense under this section is a felony of the first degree if:

- (1) the offense is committed under Subsection (a)(2) and the person who is trafficked is younger than 14 years of age at the time of the offense; or
- (2) the commission of the offense results in the death of the person who is trafficked.

H.B. 2096, 2003 Leg., 78th Sess. (Tex. 2003), available at <http://www.bakers-legal-pages.com/leg2003/bills/hb02096f.htm#2>.

The state of Washington passed its own anti-trafficking legislation when the Governor signed Substitute House Bill 1175 into law on May 14, 2003. Entitled *An Act Relating to Trafficking Persons*, the new law amended Washington's Penal Code to criminalize human trafficking:

A new section is added to chapter 9A.40 RCW to read as follows:

(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835; or

(C) Result in death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, provides, or obtains by any means another person knowing that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor or involuntary servitude; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

H.B. 1175, 2003 Leg., 58th Sess. (Wash. 2003), available at http://www.leg.wa.gov/pub/billinfo/2003-04/House/1175-1199/1175-s_sl_05202003.txt.

III. A PROPOSED FLORIDA LAW ON TRAFFICKING IN PERSONS

Florida law currently criminalizes many of the constituent offenses that can occur in human trafficking operations: assault and battery, kidnapping and false imprisonment, sexual battery, prostitution, and abuse of children. However, the elements of these offenses do not completely capture the dynamics of human trafficking (particularly its forced labor dimension), and neither are the Florida penalties for these established offenses commensurate to those under the VTVPA.³² To redress this legal lacuna, the crime of human trafficking should be added to Florida's criminal code. Chapter 788 of the Florida Criminal Code—which follows the chapter on Kidnapping and False Imprisonment—is reserved for the future expansion of Florida statutes. The offense of Trafficking in Persons would logically fit precisely in this niche of Florida law.

To establish the context of human trafficking, Section 788.01 should first lay out certain foundational definitions consistent with federal law. Sections 788.02, 788.03, 788.04, and 788.05 would then enumerate the variations of trafficking in persons to be proscribed and criminalized under Florida law:

Chapter 788 (Proposed) Trafficking in Persons

788.01: Definitions

As used in this chapter:

“Coercion” means violent as well as some forms of non-violent or psychological coercion, including: threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal system.

“Debt Bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as security for a debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Forced Labor or Services” means labor or services that are performed or provided by another person and obtained through an actor's: threatening to cause bodily injury to another; restraining another so that person is not free to leave; or withholding from another that person's government records identification or immigration documents; or personal property.

32. Moreover, prosecuting trafficking using numerous statutes can prove more burdensome for prosecutors given that they must prove each element of multiple offenses. See RICHARD, *supra* note 3, at 35 (noting how a specific trafficking law can streamline the prosecutorial burden).

“Involuntary Servitude” means a condition of dependency in which the labor or services of a person are provided or obtained by means of: force, fraud, or coercion; or any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal system.

“Sex Trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

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

788.02: Forced Labor

A person who knowingly provides or obtains the labor or services of another person by threats of physical harm to, or physical restraint against, that person or another person; by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person would suffer serious harm or physical restraint; or by means of the abuse or threatened abuse of law or the legal process commits a felony of the second degree, punishable as provided in Section 775.082 [with a term of imprisonment not exceeding 15 years], Section 775.083 [with a fine of up to \$10,000] or Section 775.084 [enhanced penalties for habitual felony offenders]. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, sexual battery or the attempt to commit sexual battery, or an attempt to kill, the defendant commits a life felony and shall be fined under this title [up to \$15,000] or imprisoned for any terms of years or life, or both, as provided in Section 775.082(3)(a)3.

788.03: Trafficking for Debt Bondage, Forced Labor, Involuntary Servitude, or Slavery

Whoever knowingly recruits, harbors, transports, provides, or obtains, by any means, any person for labor or services in violation of this chapter commits a felony of the second degree, punishable as provided in Section 775.082 [with a term of imprisonment not exceeding 15 years], Section 775.083 [with a fine of up to \$10,000], or Section 775.084 [enhanced penalties for habitual felony offenders]. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, sexual battery or the attempt to commit sexual battery, or an attempt to kill, the defen-

dant commits a life felony and shall be fined under this title [up to \$15,000] or imprisoned for any term of years or life, or both, as provided in Section 775.082(3)(a)3.

788.04: Sex Trafficking

Whoever knowingly recruits, entices, harbors, transports, provides, or obtains by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in a commercial sex act, commits a felony of the second degree, punishable as provided in Section 775.082 [with a term of imprisonment not exceeding 15 years], Section 775.083 [with a fine of up to \$10,000], or Section 775.084 [enhanced penalties for habitual felony offenders]. If the offense is committed against a person who has not yet attained the age of 14 years or if death results from the violation of this section, the defendant commits a life felony and shall be fined under this title [up to \$15,000] or imprisoned for any term of years or life, or both, as provided in Section 775.082(3)(a)3.

788.05: Financial Gain from Trafficking in Persons

Whoever benefits financially or receives anything of value from participation in a venture involving trafficking in persons, knowing that force, fraud, or coercion will be used to cause another to engage in a commercial sex act, in forced labor, or in involuntary servitude, commits a felony of the second degree, punishable as provided in Section 775.082 [with a term of imprisonment not exceeding 15 years], Section 775.083 [with a fine of up to \$10,000], or Section 775.084 [enhanced penalties for habitual felony offenders].

IV. DISCUSSION

The proposed Florida law on trafficking in persons approximates both the federal law relating to this offense and the recent additions to the state laws of Texas and Washington regarding the same.³³ Most importantly, it enumerates the elements of a crime that has grown at least in part because until very recently this human rights offense was not adequately defined under either international or U.S. law.³⁴ A Florida law, while greatly resembling federal law, would not

33. See generally Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464; H.B. 2096, 2003 Leg., 78th Sess. (Tex. 2003); H.B. 1175, 2003 Leg., 58th Sess. (Wash. 2003). This proposed Florida law also conforms to the Model Law to Combat Trafficking in Persons released by the State Department's Office to Monitor and Combat Trafficking in Persons on March 12, 2003. MODEL LAW TO COMBAT TRAFFICKING IN PERSONS (2003) available at <http://www.state.gov/g/tip/rls/other/19087pf.htm>.

34. In its findings introducing the VTVPA, Congress acknowledged:

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. No comprehensive law ex-

be exactly identical. Sentencing increments vary somewhat between federal and Florida law, as well as from state to state. Under the VTVPA the basic sentence is one of up to 20 years;³⁵ under Florida law, the second degree felony sentence that is commensurate allows a sentence of up to 15 years.³⁶ By way of comparison, the second degree felony law of Texas that applies to human trafficking allows a sentence of up to 20 years,³⁷ while in Washington the class A felony designation allotted to human trafficking can result in a sentence of 10-plus years to life.³⁸ All of these laws provide for more severe penalties when aggravating circumstances are present, and the logical enhancement under Florida law is to upgrade the basic offense from that of a second degree felony (with its 15 year maximum sentence) to that of a life felony (which would allow a sentence of 15-plus years to life) for particularly egregious cases.

None of the state laws on trafficking, including the proposed Florida one, include the reference in federal law to severe forms of human trafficking as stipulated in the VTVPA.³⁹ It remains unclear why Congress felt compelled to include such a qualifier, when arguably every offense involving trafficking in human beings is by definition "severe." Victim advocates have questioned the federal insistence on inclusion of this term, and there appear to be no compelling reasons for Florida or any other state to duplicate the federal approach here. Another distinction from the VTVPA would be the omission in the proposed Florida law of any reference to "peonage."⁴⁰ The T visa regulations define peonage as "a status or condition of involuntary servitude based upon real or alleged indebtedness."⁴¹ Inclusion of the term

ists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment. . . . In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

Victims of Trafficking and Violence Protection Act § 102(b)(14)-(15).

35. *Id.* § 112(a)(1) (raising maximum sentences for peonage, involuntary servitude, and slavery from 10 to 20 years).

36. See FLA. STAT. § 775.082(3)(c) (2002) (defining second degree felonies as punishable by a term of imprisonment not exceeding 15 years).

37. Second degree felony convictions in Texas can result in two to twenty years imprisonment. TEX. CODE ANN. § 12.33 (2002).

38. In the state of Washington, class B felonies can result in a term of imprisonment of up to ten years. WASH. REV. CODE § 9A.20.021(1)(b) (2002). Class A felonies, including human trafficking in the first and second degree, can result in sentences of life imprisonment. *Id.* § 9A.20.021(1)(a).

39. See Victims of Trafficking and Violence Protection Act §§ 103(8) (defining severe forms of trafficking in persons), 107(b)-(c) (enumerating rights and benefits to be accorded victims of severe forms of human trafficking).

40. The VTVPA makes reference to peonage (an offense defined in 18 U.S.C. § 1581(a)) by raising the maximum penalty for this crime to 20 years imprisonment. See *id.* § 112(a)(1).

41. 8 C.F.R. § 214.11(a) (2002).

would seem redundant, given that the definition of involuntary servitude already encompasses such an offense.

One significant budgetary difference also distinguishes the federal response to human trafficking from that of Florida or other individual states. In addition to criminalizing human trafficking, the VTVPA provides a full range of social services and federal benefits for which victims of trafficking may be eligible. Neither the proposed Florida law on trafficking nor the recently enacted criminal laws of Texas or Washington call for the establishment of comparable state benefits for victims of trafficking. While victims have many unmet needs—particularly in the time period after which they are emancipated but before they receive federal certification as victims of a severe form of human trafficking—such needs lie outside the framework of state criminal codes. Currently, the most compelling legislative priority is for Florida and other states to begin combating human trafficking by simply criminalizing the offense under their respective state laws. Such an effort constitutes a critical first step toward the eradication of the human rights violations that continue to flourish in twenty-first century America.

V. CONCLUSION

Human trafficking is a pernicious new variation on the ancient theme of slavery and trading in human flesh. As part of a mounting global response, the VTVPA represents an important contribution by Congress and the federal government to countering this international crime in its multitude of variations. Greater deterrence, however, can be achieved if states such as Florida likewise criminalize and prosecute this human rights violation. An important first step would be for Florida to add this offense to its criminal code along with appropriate penal sanctions.