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The Californians Against Sexual Exploitation (CASE) Act: A Case Study in Policy Advocacy

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The Californians Against Sexual Exploitation (CASE) Act

A Case Study in Policy Advocacy

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PIM 70

Policy Advocacy Course-Linked Capstone
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ABSTRACT

In any given year in the United States of America at least 100,000 domestic youth are sexually exploited through the commercial sex industry. Current national and state laws do not adequately protect these children from being groomed, pimped, and exploited over and over again in their young lives. A majority of these children are trafficked from, into or within the nation's most populated state of California. In 2003 the FBI identified three of the country's 13 high-intensity child sex trafficking cities as being in California. The cycle of violence these children endure is not being brought to justice through the current systems in place. These systems rob youth of their childhoods and futures, increase trauma, criminalize, and throw children into increasingly vulnerable situations often at the mercy of their exploiters. This case study is an analysis of the Californians Against Sexual Exploitation (CASE) Act, the product of advocacy group California Against Slavery. The CASE Act seeks to increase penalties for sex traffickers in an effort to restore justice to the thousands of child victims who are not being protected by the laws currently in place.

I. Introduction

The advocacy that will be described and analyzed in this paper is about protecting real people – vulnerable, often young – from one of the worst forms of exploitation. Jasmine is one such person.

For Jasmine, it started with a rape when she was 11. She was living in her grandparents' north Sacramento home, attending elementary school. Her mother was addicted to drugs, she said. Her father was physically abusive. She said she confided to her mother about the attack, and her mother responded that it was the girl's fault. Jasmine ran, first to the streets, then to a friend's house. There, she met a man who told her all kinds of nice things, compliments she'd rarely heard. He also gave her physical affection. "In other words, sex," she said recently, her big brown eyes unblinking ... Before long, the pimp taught Jasmine to sell her body, sometimes for \$80, sometimes \$300. He kept the profits, buying her cheeseburgers and sexy clothes. From him, and the other five pimps she worked for from 11 to 14, she learned to keep her eyes trained on the ground and to shut off her mind when johns climbed on top of her.

She wrote about her experiences:

"We wanted so desperately to believe that the physical, mental and emotional abuse was over. We trained ourselves to believe the lies because we wanted to believe we had found someone."¹

Jasmine's story illustrates the circumstances that at least 100,000² U.S. American children and youth endure each year. Jasmine was a victim of sex trafficking, a form of human trafficking. Specifically she was a victim of what experts in anti-human trafficking advocacy have termed commercial sexual exploitation of children (CSEC) or, even more specifically, domestic minor sex trafficking (DMST). Human trafficking is an umbrella term for forms of modern-day human slavery. "Trafficking of persons exists in two distinct types: labor trafficking and sexual trafficking. This new distinction avoids the problem of combining into a single category both

¹ Wiener, Jocelyn, "Teen Prostitutes Tell of Hell on Craigslist", 2008, available at <http://www.dailytelegraph.com.au/news/teen-prostitutes-tell-of-hell-on-craigslist/story-e6freuy9-111116465828>

² Linda Smith, Samantha Healy Vardaman, & Melissa Snow, Shared Hope International, *The National Report on Domestic Minor Sex Trafficking: American's Prostituted Youth*, 2004, available at http://www.sharedhope.org/Portals/0/Documents/SHI_National_Report_on_DMST_2009.pdf.

labor violations and violations that are more akin to a forcible sexual assault.”³ The analysis in this paper is specific to sexual trafficking.

My introduction to anti-human trafficking work occurred during my employment at a domestic violence and sexual assault agency in San Diego, California. As a crisis counselor my attention was called toward a pattern among clients who described circumstances that resonated as being both domestic violence *and* sexual assault, with instances of severe drug addiction, child abuse, and immigration issues. It required a lot of independent research in order to make sense of it; even in 2008, in my field of work, in a border city in southern California people were just not openly discussing human trafficking.

Coincidentally, this was all in the shadow of the Hollywood movie *Taken*, a glamorized, Hollywood, stereotypical take on what human trafficking is. This Hollywood portrayal depicts human trafficking as a solely international crime that claims Eastern Europeans and vulnerable American college co-eds as its victims. This portrayal is dangerous because as it is true that human trafficking crimes do include those groups they are by no means the majority. This film encouraged the widely accepted notion that human trafficking is something that “happens over there” and furthermore it presented aspects of victim blaming and proposed that female college students should not travel alone, even to fellow developed countries such as France (the travel destination in the movie). My very own family members have used this film as a point of concern for why I should not travel.

³ <http://www.iast.net/thefacts.htm>

The facts of human trafficking are abominable enough without this Hollywood “intervention.” Human trafficking, in reality, is a pervasive and borderless form of modern day slavery; a criminal activity that does not start and end with privileged teenage tourists in Europe. It is a gender issue, an immigration issue, a race issue, a war issue, an ableism issue, a sexual orientation issue, a homelessness issue, and a socioeconomic issue that does not discriminate. It does not only exist in movies, on TV, or in books; most notably it does not just occur “over there.” It persists on every inhabited continent and country, including the United States of America.

Many of the estimated 300,000 U.S. children who are at-risk for being trafficked⁴ cross through the most populated state of California. As a native Californian I find this disconcerting. This feeling has motivated me to do everything in my power to change the status of CSEC and DMST in this country. This drive has determined my current status as an abolitionist affiliated with the nonprofit group California Against Slavery (CAS).

California Against Slavery is currently managing a campaign for a ballot initiative, the California Against Slavery and Exploitation Act (or the CASE Act as it will be referred to from here forward) that is slated to be voted upon at the November 2012 election. The CASE Act is designed to increase penalties for convicted perpetrators of sex slavery and mandate that they also register as sex offenders under Megan’s Law, a California law that provides the public with detailed

⁴ U.S. Department of Justice Child Exploitation and Obscenity Section. (Nov 2009). Web: <http://www.justice.gov/criminal/ceos/trafficking.html>

information about registered sex offenders.⁵ Prior to my involvement as a campaign volunteer with CAS, which commenced in January 2012, I completed my SIT approved practicum as a paid employee with Shared Hope International (SHI) outside of Washington DC. These combined experiences will be referenced as a source of data throughout this case study as they served as my means for collecting applicable data via key informant interviews, observation of public activities, participant observation, in addition to the review of primary documents.

This case study is about the first phase of the CASE campaign: collecting at least 600,000 signatures of registered voters to qualify as a ballot initiative in the November 2012 elections. That phase ended successfully on March 18, 2012, with over 873,000 signatures. Thus, as this case study is being written, the campaign has entered its second phase: convincing the majority of those who vote in the November election to support the CASE initiative and thus make it California's newest law regarding human trafficking.

This paper follows the SIT policy advocacy course-linked capstone guidelines for campaign case studies. It begins with a brief context that introduces the reader to the issues of sex trafficking specific to the state of California; you will then be introduced to California Against Slavery, the nonprofit group that is managing the base of this campaign; the third and fourth sections introduce you to the current politics and proposed change; the fifth section address the

⁵ "For more than 50 years, California has required sex offenders to register with their local law enforcement agencies. However, information on the whereabouts of these sex offenders was not available to the public until the implementation of the Child Molester Identification Line in July 1995. The information available was further expanded by California's Megan's Law in 1996 (Chapter 908, Stats. of 1996)." Available at: <http://www.meganslaw.ca.gov/homepage.aspx?lang=ENGLISH>

strategies adopted by CAS; the sixth section is my evaluation of the campaign thus far, based on my knowledge of policy advocacy and my experience in this line of work; the final section is a summary of the lessons I have learned through this experience.

II. Context

California is a hot spot for domestic and international human trafficking because of its large population, international borders, extensive ports, metropolitan regions, and status as the largest state economy in the USA and ninth ranking economy in the world.⁶ The Interstate 5 freeway covers the entirety of California from north to south connecting all major metropolitan regions to large cities in other states including Portland, OR and Seattle, WA. This interstate is necessary for importing and exporting goods, farmed food, etc. but also increases the susceptibility of the towns in its path to be trafficking hubs. According to a study by the FBI in 2003, California is home to three of 13 high-intensity child sex trafficking cities in the United States: Los Angeles, San Francisco and San Diego.⁷

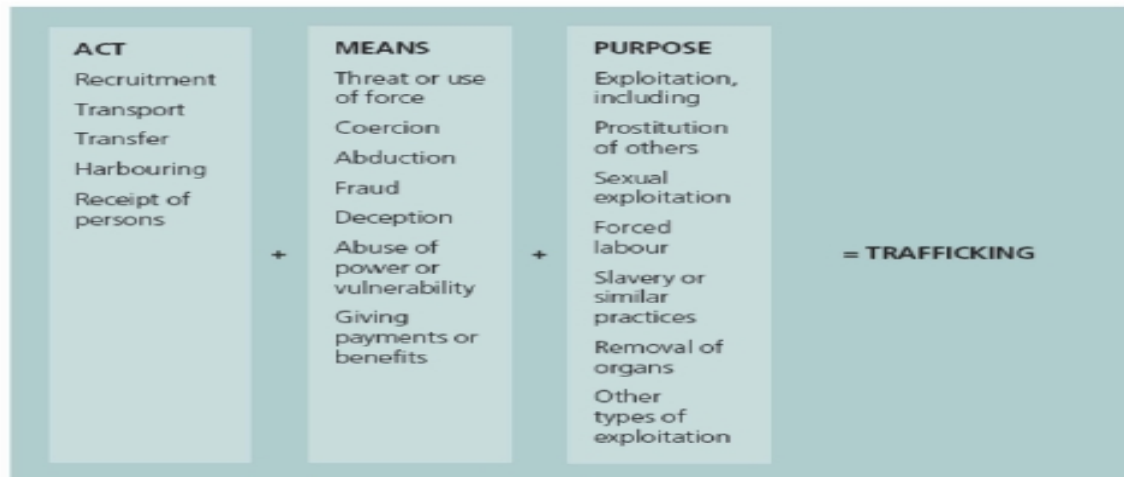
Human Trafficking Defined

According to the United Nations Economic and Social Commission for Asia and the Pacific, UNESCAP, (2012), “(Human trafficking) is the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of

⁶ “2010 California Economy Rankings” from the Center for Continuing Study of the California Economy. “California was the world’s ninth-largest economy in 2010 as Brazil moved past California in the rankings. According to U.S. Department of Commerce estimates, California’s GDP (gross domestic product) was slightly more than \$1.9 trillion. GDP is the value of all goods and services produced in California and is comparable to the national definition.” Available at: <http://www.ccsce.com/PDF/Numbers-Jan-2012-CA-Economy-Rankings-2010.pdf>

⁷ “The Federal Bureau of Investigation’s Efforts to Combat Crimes Against Children,” Audit Report 09-08, January 2009, page 70, Footnote 122.

abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". This chart provides a visual to aid in understanding what acts, means and purposes lead to the crime of human trafficking⁸



Sex trafficking, as introduced previously, is part of the broader umbrella of human trafficking.

The Polaris Project, an internationally recognized advocacy group that oversees the National Human Trafficking Resource Center maintains that sex trafficking occurs when people are forced or coerced into the commercial sex trade against their will. Child sex trafficking includes any child involved in commercial sex. Sex traffickers frequently target vulnerable people with histories of abuse and then use violence, threats, lies, false promises, debt bondage, or other forms of control and manipulation to keep victims involved in the sex industry. Sex trafficking exists within the broader commercial sex trade, often at much larger rates than most people realize or understand. Sex trafficking has been found in a wide variety of venues associated with the sex industry, including residential brothels, hostess clubs, online escort services,

⁸ United Nations Office on Drugs and Crime at: <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

brothels disguised as massage parlors, strip clubs, and street prostitution (Polaris Project, 2010).

Victims

Victims of sex trafficking are both U.S. citizens and foreign nationals. Victims may be anyone from any community, race, and gender. Human trafficking knows no boundaries. However, CSEC/DMST victims generally present themselves as runaway girls between 12 to 14 years old who have previous histories of child abuse. Minors and those who are mentally delayed tend to be easy targets and carry less risk for the traffickers and buyers than adults and foreign nationals (California Against Slavery, 2012). Thus, the common idea of a trafficking victim fitting an international stereotype is a crude, yet rampant, misconception here in the states. Arrests of American children who are victims of sex trafficking in California has increased an average of 6 percent annually since 1995, according to an analysis released by the Institute for Trafficked, Exploited, and Missing Persons.⁹

Traffickers

Traffickers tend to be either from the same community, culture, language, and/or racial background of their victims. Sex traffickers are generally referred to as pimps. A pimp gains a victim's trust by promising her love and a better life in the grooming stage of his game. This mirrors normal circumstances of courting with an emphasis on financial rewards and extravagant gifts. To a vulnerable girl who may want nothing more than a new pair of shoes and

⁹ <http://www.sharedhope.org/Portals/0/Documents/CaliforniaFacts.pdf>

a warm meal this life with her “boyfriend” is at first glamorous. After the grooming process a pimp maintains compliancy through violence, drugs, and threats. On an interpersonal level, the power and control pimps maintain over women in their stable is akin to that used in abusive relationships. Just as pimps resemble batterers in intimate relationships women working in pimp-controlled prostitution seem to be similar to those who are survivors of domestic violence. Victims often express feelings of love and admiration for the pimp, have their freedom and finances controlled, and may feel they somehow deserve the violence they are dealt. However, there are differences in terms of the cycle of violence. Domestic violence survivors will often express that they knew when the violence was about to occur as evidenced by the building up of tension in their mate before an explosive episode. Beatings and other forms of violence occurring among pimp controlled women may not follow a familiar pattern and may instead occur by surprise.¹⁰

Pimps understand the meaning of business over personal ventures, that is, marketing a product and investing in your product first so your product can return profits. As is the case with domestic violence relationships, there is also a honeymoon period or courting time between pimps and prostitutes. This is the time in which the pimp “runs his game.” This may last days or months. According to a survivor account, from the article “Pimp-Controlled Prostitution” in the September 2002 edition of *Violence Against Women*:

“He progressively led up to the fact that that’s what he wanted. You know, he didn’t come out that night when I met him and tell me, “This is what I am. This is what you

¹⁰ Williamson, C., & Cluse-Tolar, T. (2002). Pimp-Controlled Prostitution. *Violence Against Women*, 8(9), 1076-1092, available at: http://searchfortruth.info/sites/default/files/_pimp-controlled-prostitution_0.pdf

need to do” . . . I think they really feel like they have to gain your trust before they can dump something like that on you. We spent a lot of time together. I mean . . . we would go out to eat, go to the movies, and we did, you know, normal couple things. But . . . in my head I’m just thinking it’s just normal couple things, but he’s thinking that he’s winning . . . that he’s gonna win and I’m gonna end up doing what he wanted. And he was right.”

As it is defined in California Law, Cal. Penal Code § 266h(b) (Pimping) states, “Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person’s prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor”

Current California law criminalizes CSEC crimes of pimping and/or pandering of a minor as punishable by possible fines up to \$10,000 and imprisonment for three, six, or eight years (minor is under 16) or three, four, or six years (minor 16–18), and an additional fine up to \$5,000.¹¹

Academic research on the relationships between minor victims of sex trafficking and their pimps is virtually nonexistent. As you can imagine a child’s development makes her more vulnerable in a pimp- prostitute relationship. In my experience working with this population the “boyfriend” and “girlfriend” bond that victims feel with their pimps is even more intense than as it is presented with prostituted adults.

¹¹ <http://www.sharedhope.org/Portals/0/Documents/CaliforniaFacts.pdf>

Facilitators

According to the *Protected Innocence Initiative (PII)* report released by nonprofit group Shared Hope International, “Facilitators are those people or entities that knowingly enable domestic minor sex trafficking or benefit from sex trafficking in any way.”¹² (2011) The acts of assisting, enabling, or financially benefiting from child sex trafficking are included as criminal offenses in the California sex trafficking statute, Cal. Penal Code § 236.1 and are punishable as a felony by imprisonment in a state prison for 3, 4, or 5 years and a possible fine not to exceed \$10,000. If the victim is under the age of 18, however, a conviction is punishable by imprisonment for 4, 6, or 8 years and a possible fine not to exceed \$10,000, but if the victim is under the age of 18 and the trafficking involves a commercial sex act, a conviction is punishable by imprisonment for 4, 6, or 8 years and a mandatory fine not to exceed \$100,000 (See Appendix A).

Promoting and selling child sex tourism is also classified as illegal. Businesses and individuals selling travel based on or containing components of commercial sexual exploitation of children are committing the crime of child sex tourism and driving demand for sex with children.

Buyers/Demand

Buyers of sex are the root cause of the issue of demand. They drive the demand for prostitution. In line with the rule of economics increased demand leads to increased need for supply. Currently, human trafficking laws cannot be used to prosecute demand and no CSEC law

¹² 2011 Shared Hope International

includes the crime of buying sex with a minor. A buyer could be prosecuted under the general disorderly conduct law but this results in a misdemeanor charge with a possible sentence of up to 6 months and a maximum \$1,000 fine (See Appendix B).

III. Advocates

The CASE Act is a joint effort between California Against Slavery and the Safer California Foundation. For the purposes of this case study I concentrate solely on California Against Slavery (CAS). The Safer California Foundation primarily funds this advocacy campaign whereas CAS is the 501(c)4 organization that is on the ground doing the work. The Safer California Foundation will be discussed in the section on allies.

According to its website (www.CaliforniaAgainstSlavery.org), California Against Slavery is “a non-profit, non-partisan human rights organization. We want to make human trafficking the riskiest criminal business in California. Our mission is to defend the freedom of every child, woman and man by empowering the people of California to fulfill our obligation to stop human trafficking”.¹³ In addition to this permanent mission statement CAS organizes its website to highlight its current main campaign. Correspondingly, the group’s specific goals are clearly defined and explicit. During the CASE Act campaign the stated goal, according to its website, is “To pass a ballot initiative in 2012 to enact just and effective state laws to protect victims and prevent and prosecute the crime of human trafficking. In doing so, California will lead our

¹³ <http://californiaagainstsavery.org/about/mission/>

nation in a historic movement to stop modern day slavery.” The long-standing and ever present guiding beliefs set forth by CAS are:

1. Every person has an inherent dignity, which our society and laws must uphold and protect.
2. Human trafficking is a crime against human dignity and a deprivation of basic human and civil rights.
3. Allowing any form of slavery to exist severely impacts our society and communities. It is a problem that concerns us all.¹⁴

In order to understand the background and relationship that CAS has with policy advocacy and its engagement with other levels of interventions it is necessary to introduce the founder and Executive Director of CAS, Daphne Phung. Here is a synopsis of the origins of California Against Slavery as depicted on the CAS website:

Daphne Phung is the Founder of California Against Slavery and volunteers as its Executive Director. She loves children and is angered by injustice. To her, nothing robs a child's innocence and future as violently as the crime of human trafficking.

After watching MSNBC Dateline's "Sex Slaves in America", Daphne was devastated to learn that trafficked victims suffer further injustice through our legal system. After grappling with how a just God and a free nation can allow such injustice, she concluded that we as a nation have not grasped how slavery can still exist today when we outlawed it 150 years ago. She believes that our laws must reflect the atrocity of human trafficking and that it's time for the American public to recognize that slavery still exists in our great nation. . . . We soon learned that California state laws are not effectively holding traffickers accountable, so we started California Against Slavery (in 2009) to strengthen state human trafficking laws.

¹⁴ <http://californiaagainstsavery.org/about/mission/>

*Unlike crimes driven by psychiatric disorders, human trafficking is a criminal business driven by profits. It can be stopped if we cut the profits and increase the risk. Let's make human trafficking the riskiest business in California.*¹⁵

Leadership

The board consists of four professional members, including the founder and Executive Director Daphne Phung, governs CAS. Daphne has a campaign team comprised of four full-time staff members and two interns. In addition to the campaign staff there are support staff members who work as the creative team and technological “backbone” of the organization. There is not a distinct hierarchy within the organization and the impression that one gets from the staff is that teamwork is held in high regard as a catalyst for success. A full description of staff members may be found in Appendix C.

It is important to note that although the volunteer network is not prominent on the CAS website, it is an extremely integral and necessary aspect to the work that CAS does, especially in terms of the grassroots campaigning approach they have adopted. During phase one of the CASE Act campaign CAS had over 800 volunteers statewide. As a volunteer member of CAS, I am very overwhelmed by the outpouring gratitude that I have received from staff members, including those I have yet to meet in person. In the last waking hours before the final results of phase one were broadcasted via webcast the staff was sure to acknowledge all volunteer efforts via email and Facebook. I also received a personal email from Rosario Dowling, Regional Director, a few hours after I had left a church on the last Sunday of signature gathering. This is

¹⁵ <http://californiaagainstsavery.org/about/founder/>

definitely a volunteer driven organization and it is apparent that each and every person is recognized as best as possible.

The initiative is funded through the contributions of citizens throughout California. Major funding is from board member Chris Kelly of the Safer California Foundation. As a 501(c) 4 organization CAS is not tax-deductible and as a result of this the tax and revenue information for this organization is not easily accessible by the public. I was unable to gather the breakdown of such information.

IV. Policy

The CASE Act Initiative was written with support and oversight from members of the California District Attorney Association (CDAA) during the 2006-07 fiscal year (for the full initiative text see Appendix D). This is how the initiative was presented on the petitions that were circulated during phase one (how it will now be presented on the ballot):

(11-0059.) HUMAN TRAFFICKING. PENALTIES. SEX OFFENDER REGISTRATION. INITIATIVE STATUTE. Increases criminal penalties for human trafficking, including prison sentences up to 15-years-to-life and fines up to \$1,500,000. Fines collected to be used for victim services and law enforcement. Requires person convicted of trafficking to register as sex offender. Requires sex offenders to provide information regarding Internet access and identities they use in online activities. Prohibits evidence that victim engaged in sexual conduct from being used against victim in court proceedings. Requires human trafficking training for police officers. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: Potential one-time local government costs of up to a few million dollars on a statewide basis, and lesser additional costs incurred each year, due to the new mandatory training requirements for certain law enforcement officers. Minor increase to state and local governments on the costs of incarcerating and supervising human trafficking offenders. Unknown amount of additional revenue from new criminal fees, likely not to exceed the low millions of dollars annually, which would fund services for human trafficking victims.

If approved by the voters in November, the CASE Act will deter traffickers with higher penalties and fines, use fines to fund victim services (restorative justice), remove barriers to prosecute child sex traffickers, mandate training for law enforcement officers, require convicted sex

traffickers to register as sex offenders, require all sex offenders to disclose Internet accounts, and protect victims in court proceedings. CAS claims that, with successful voter turnout, the CASE Act will be the single largest movement against human trafficking in our country and will be the toughest anti-human trafficking law in the United States. There are 17 million registered voters in California who can use their vote to make a firm statement to traffickers around the world that we take slavery seriously and care about those in bondage (California Against Slavery, 2012).

California's Current Anti-Trafficking Legislation¹⁶

If approved, the CASE Act will augment a number of existing laws related to trafficking. The existing California laws are specified here.

The California Trafficking Victims Protection Act. On September 21, 2005, California enacted The California Trafficking Victims Protection Act (Assembly Bill 22, Lieber) to make human trafficking a felony in California and assist victims in rebuilding their lives. This law, which took effect on January 1, 2006:

1. Establishes human trafficking for forced labor or services as a felony crime punishable by a sentence of 3, 4 or 5 years in state prison and a sentence of 4, 6 or 8 years for trafficking of a minor (California Penal Code § 236.1).
2. Provides for mandatory restitution to the victim (California Penal Code § 1202.4).
3. Allows a trafficking victim to bring a civil action against his or her trafficker (California Civil Code § 52.5).

¹⁶ *Human trafficking in California*, October 2007, p. 24 Available at: http://ag.ca.gov/publications/Human_Trafficking_Final_Report.pdf

4. Creates strict guidelines and timetables for the issuance of Law Enforcement Agency Endorsements (LEAs) for trafficking victims (California Penal Code § 236.2).
5. Directs the Attorney General to give priority to human trafficking, along with other specified crimes (California Penal Code § 14023).
6. Provides for human trafficking victim-caseworker privilege, to protect confidential information (California Evidence Code § 1038).
7. Establishes a statewide task force, the California Alliance to Combat Trafficking and Slavery (CA ACTS), to examine California's response to human trafficking and present a report to the Governor, Attorney General and Legislature (Penal Code § 13990).

The Human trafficking Collaboration and Training Act. Also on September 21, 2005, California passed the Human trafficking Collaboration and Training Act (Senate Bill 180, Kuehl).

1. Requires the Commission on Peace Officer Standards and Training (POST) to establish by January 1, 2007 a course and guidelines for law enforcement in responding to human trafficking. (California Penal Code § 13519.14)
2. Establishes an interagency statewide task force, the California Alliance to Combat Trafficking and Slavery (CA ACTS), a provision superseded by similar language in Assembly Bill 22.

Analysis and Recommendations

CAS relies on the *Protected Innocence Initiative* report by Shared Hope International as a guiding force for campaigning. "Recognizing that most of the gaps in responding to domestic minor sex trafficking must be addressed at the state level, the Protected Innocence Legislative Framework sets out the basic policy principles required to create a safer environment for

children.”¹⁷ Based on the PII methodology Shared Hope International assessed California a “report card” grade of *F* based on its current provisions to serve, bring justice to, and protect child victims of sex trafficking in the United States. On the basis of its analysis of California’s laws Shared Hope International made the following conclusions. These conclusions are supported and utilized by CAS through the CASE Act initiative (See Appendix D):

California’s human trafficking law directly addresses sex trafficking, but requires an offender to have used “fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury” in the commission of the crime. Specifically, Cal. Penal Code § 236.1 (Human trafficking defined; punishment) states, (a) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266 [Procurement], 266h [Pimping], 266i [Pandering], 267matter in production of pornography], or 518 [Definition of extortion],2 or to obtain forced labor or services,3 is guilty of human trafficking.

. . . .

(d) (1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another’s liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

. . . . (f) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.4. . . A conviction under Cal. Penal Code § 236.1 is punishable as a felony5 by imprisonment in a state prison for 3,4, or 5 years6 and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 236.1(b), 17(a), 672. If the victim is under the age of 18, however, a conviction is punishable by imprisonment for 4, 6, or 8 years and a possible fine not to exceed \$10,000, but if the victim is under the age of 18 and the trafficking involves a commercial sex act,7 a conviction is punishable by imprisonment for 4, 6, or 8 years and a mandatory fine not to exceed \$100,000. Cal. Penal Code § 236.1(c), (g)(1).

1.1.1 Recommendation: Amend Cal. Penal Code § 236.1 (Human trafficking defined; punishment) so that “unlawful deprivation or violation of the personal liberty of another” occurs without regard to the use of force, fraud, or threat of unlawful injury to the victim or to another person when the victim is a minor under 18 and to make it a

¹⁷ <http://www.sharedhope.org/Portals/0/Documents/ProtectedInnocenceMethodologyFINAL.pdf>

crime to deprive or violate the personal liberty of another with the intent to purchase a commercial sex act from a minor.

Additionally, in April 2012 Shared Hope International assessed the CASE Act and formally endorsed it based on its provisions to improve upon the following five (out of 40) PII components. This info was relayed to me by Alicia Wilson, former Policy Counsel at SHI:

1. Rape Shield Law

- a. The CASE Act adds a new section to the Evidence Code to protect victims of human trafficking testifying in criminal proceedings. The new section prevents the introduction of evidence that the victim has engaged in a commercial sex act as a result of being a victim of human trafficking to prove the victim's criminal liability for such conduct. Additionally, the CASE Act prevents the introduction of a victim's sexual history or history of commercial sexual acts when used to attack the credibility or character of the victim.
- b. This amendment aligns with Protected Innocence recommendations in section 5.8 and will bolster California's protections for victims.

2. Human Trafficking Statute Amendments

- a. Currently, California's sex trafficking statute requires the proof of force, fraud or coercion, even when a minor is a victim of human trafficking. The CASE Act removes this requirement of force, fraud or coercion and increases penalties when minors are involved. The CASE Act further prevents a defendant in a sex trafficking of a minor case from asserting a mistake of age defense and a consent defense. Additionally, when bodily injury occurs, the CASE Act allows the court to impose additional time imprisonment.
- b. The CASE Act also adds an additional possible fine up to 1 million dollars and directs any money collected into the Victim-Witness Assistance Fund administered by the California Emergency Management Agency and should be specifically used to fund grants for services for human trafficking victims.

3. Sex Offender Registry

- a. The CASE Act makes several amendments to the sex offender registration requirements. Aligning with the Protected Innocence Initiative, the CASE Act amends current law to require those convicted of sex trafficking to register as sex offenders. The Act also requires all registered sex offenders to provide a list

of Internet identifiers and a list of Internet Service Providers. Similarly, if a convicted offender changes or adds an Internet Service Provider or Internet identifier, the offender must notify the sex offender registry.

4. Mandatory Training for Law Enforcement

- a. The CASE Act mandates 2 hours of training on human trafficking for all law enforcement assigned to field or investigative duties. Current law already provides for the development of these materials, but the CASE Act ensures law enforcement receive the training.

5. Changing the Code Section Title to Read “False Imprisonment and Human Trafficking”

- a. California’s sex trafficking statute is located in the chapter currently entitled “False Imprisonment.” The CASE Act amends this chapter to be entitled “False Imprisonment and Human Trafficking.”

This is a breakdown of how CAS proposes to improve upon current laws:

Current Law	Proposed Measure
➤ Maximum of 5 or 8 year prison sentence for human traffickers	➤ Increase prison terms for human traffickers
➤ Fine of up to \$100,000 if commercial sex act with a minor is involved	➤ Increase fines for human traffickers, up to \$1.5M to fund victim services
➤ Requires an offender to have used “fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury” in the commission of the crime	➤ Remove the need to prove force to prosecute sex trafficking of a minor
➤ Law enforcement training is not mandatory	➤ Mandate human trafficking training for law enforcement
➤ Under disorderly conduct charge pimps and buyers are not required to register as sex offenders	➤ Require those convicted of trafficking, pimping, or soliciting be registered as sex offenders
➤ State has no penalties for using the Internet to purchase sex	➤ Require that all sex offenders to disclose Internet accounts
➤ No provisions for use of sexual history in court	➤ Prohibits use of sexual history to impeach or prove criminal liability of trafficked victims

Criticisms of the Proposed Measure

Two primary policy concerns have been raised with regard to the proposed act. The concerns and the advocates' responses are as follows.

Cost:

According to the Legislative Analysis Office, the cost is "minor...of incarcerating and supervising human trafficking offenders." There would be potential one-time local cost if this initiative were to pass. The proposed number would be approximately \$2 million statewide to fund police training. Currently, law enforcement training is not mandated at the state level.

The rebuttal that CAS responds with in regards to this concern is: "How much it would cost California if we don't pass this initiative?" The answer is of course complicated but the official answer, according to the CAS website is, " Victims of such severe abuse and torture often need a lifetime of medical and counseling services. The healthcare cost for one victim is tremendous, according to Dr. Sharon Cooper, Forensic Pediatrician. A trafficker has multiple victims. By putting one trafficker behind bars, we can save and prevent many victims. Also, victims often end up in our prison system for prostitution and other crimes. Their continued victimization has a real cost to us, financially and morally" (2012). Lastly, there is the price of opportunity lost. Instead of becoming a productive member of our society a victim becomes a statistic in a corrupt system. These victims *could* be our future lawyers, businesswomen or men, doctors, etc. The cost of them not reaching their potential is significantly higher than any cost to prevent their abuse.

Prison Overcrowding:

This is a legitimate concern held by many social justice advocates statewide. The CAS stance on this is, “Human trafficking is not a petty crime. It is a brutal human rights abuse. Traffickers, driven by greed, are instigating rape and torture on children and women, and treating people like lifeless and soulless things. The prison was made for people like them. Yes, our prison system must be fixed. But this is a separate issue. Just as we don’t tell our children to stop going to school because our educational system is broken, we cannot tell victims that they can continue to be abused and tortured because our prison is overcrowded. How can we?!”

V. Politics

Targets

The primary targets, the person(s) who can make the policy decision that the advocates are seeking, of this campaign are the voting citizens of California. The secondary targets, or those person(s) and institutions that are likely to influence the voters of California include churches, law enforcement, the state legislature, survivors of human trafficking, parents and the media.

Allies

The Safer California Foundation is the partner agency that works in alliance with CAS primarily as a philanthropic funding source. It is dedicated to supporting efforts to protect Californians from all forms of criminal exploitation. Created by Chris Kelly, former Facebook Chief Privacy Officer and a Silicon Valley attorney and philanthropist, the Safer California Foundation, “looks

forward to the day when every neighborhood in California is as safe as our most secure neighborhoods today”.¹⁸

At the end of Phase one of the CASE Act campaign 34 advocacy groups, 17 law enforcement organizations and five faith based groups statewide that had formally endorsed CAS in support of the CASE Act (see

Appendix E). The endorsement process requires representatives of organizations to submit a form supplied

“For over a decade, I’ve worked to protect and serve the people of San Diego. During this time, I’ve confronted the reality of human trafficking on our streets. From my experience, I see the need for the CASE Act, which will increase prison terms for human traffickers and require convicted sex traffickers to register as sex offenders. This initiative will give law enforcement the tools we need to prevent horrible crimes and save lives.”
~Brian Marvel, President, San Diego Police Officers Association

by CAS via the CASE Act website (see Appendix F). A countless number of other organizations throughout the state of California have supported CAS in less formal ways by donating space for meetings and inviting campaigners to gather signatures at church sites, farmer’s markets, and other events without making a formal and public statement that they support the campaign. In Phase two there is a greater emphasis for increasing the quantity of endorsements, which is to include individual citizen endorsements as well.

¹⁸ <http://www.caseact.org/about/>

Opposition

Illegal Sex Industry

For obvious reasons the illegal sex industry that promotes and exploits the harboring and sale of human beings for profit does not have a public voice in this matter, however some institutions promote its existence. The Internet arguably has many interesting and positive facets to it but it also covers the tracks of those who promote human trafficking. The Internet has been identified as the number one platform that pimps, traffickers and buyers currently use for buying and selling women and children for sex in the United States. Victims trafficked through pimp-controlled sex trafficking, escort services, in-call and out-call services, chat rooms, pornography, and brothels disguised as massage parlors are commonly marketed on websites such as Backpage.com, Eros.com, and others. Individuals advertised online for commercial sex are often made to appear that they are working independently, when in fact they are victims of sex trafficking more often than is recognized or understood.¹⁹

Workers' Rights Groups

California Against Slavery staff reported that they had reasonable suspicion and evidence that labor union organizations may be a tough sell for the CASE Act, if not entirely opposed to it.²⁰ The American Civil Liberties Union (ACLU) has a reputation for formally opposing Human Trafficking, particularly as an immigrant work issue. The ACLU maintains that, “all workers — no matter where they're from — shouldn't be abused or cheated, and should be

¹⁹ <http://www.polarisproject.org/human-trafficking/sex-trafficking-in-the-us/internet-based>

²⁰ CASE Volunteer Appreciation & Phase 2 Roll-Out meeting April 16, 2012

paid the promised wage for their labor.”²¹ However, two of the more prominent key issues that the ACLU advocates for are 1) Prisoners’ Rights and 2) Internet Privacy. The CASE Act provisions to increase prison time and mandate that offenders register as sex offenders, with the additional requirement that said sex offenders register all email accounts, are incompatible with the position of the ACLU. CAS is preparing itself for any and all possible counterattacks that large and influential organizations such as the ACLU may organize in opposition of the CASE Act as the November 2012 election advances.

VI. Strategy

The overarching method fueling the strategy of this campaign, “is to mobilize the 17 million voters in California to form the largest single movement against human trafficking in United States’ history” (California Against Slavery, 2012).

California Against Slavery intends to have the CASE Act become law in California to protect vulnerable populations and uphold the ultimate goal of a slave free state. The objectives of this campaign are in the law changes that are explicitly stated in the initiative (see Appendix D). The advocates’ strategies, or their “theory of change,”²² have been organized into a series of campaign phases. The first phase strategies were focused on getting enough signatures to put the proposed act on the ballot. Those strategies, which are the focus of this section of the paper, got more than enough signatures and made it possible to move to the next phases of the

²¹ (<http://www.aclu.org/blog/hiv-aids-religion-belief-reproductive-freedom-womens-rights/human-trafficking-modern-day>)

²² Weiss (1995) defines a theory of change quite simply and elegantly as a theory of how and why an initiative works. <https://communities.usaidallnet.gov/fa/system/files/Applying+Theory+of+Change+Approach.pdf>

strategy. Phase two, which was unveiled to CAS volunteers the week of April 16, 2012, has an emphasis on two main objectives 1) citizen endorsements and 2) volunteer fundraisers. Phase two is headlined as “One million strong against human trafficking – change happens when we unite.” There is a far greater stress on messaging in phase two than it had been during Phase one. Phase three will be strongly rooted in door-to-door canvassing and making cold calls to registered voters as the election approaches.

Phase One

The early stages of phase one began with Chris Kelly’s initial donation of \$70,000 in October 2011 and came to a close on March 13, 2012, marked by a live webcast of the final signature count. This phase was a celebrated success as the minimum signature count necessary to achieve proposition status on the November 2012 ballot was 600,000 and the final count of signatures was 873,000. This was a huge success especially in light of the fact that in 2008 a similar effort fell very short of the 600,000 goal and the act was never put before the citizens. Lessons from the 2008 campaign ultimately paved the way to the successes of the 2010 campaign

In summary phase one of this campaign was to ensure that the proposed CASE Act would make its way to the November 2012 ballot by utilizing the ballot initiative method of direct democracy. In order to achieve this status 600,000 petition signatures, from registered CA voters, needed to be collected. The methods executed by CAS staff during Phase one were:

1. Mobilize volunteers/staff to get the petition signed

2. Contract out paid canvassers
3. Provide HT face sheets depicting findings of SHI F grade (for volunteers to hand out)
4. Design easy to access CASE Act specific website headed by CAS & SCF
5. Get newsletter list populated

If the outcome of 873,000 signatures is a determinant of success of these methods than the strategy for phase one contributed to the success. Piggybacking on the success of phase one the strategy for phase two is much more direct and focused.

Following is a more in-depth summary of the campaign to date and how the phases differentiate and work upon the other. This data is attributed to a key informant interview with CAS Regional Manager, Rosario Dowling.

2008 Campaign Lessons and Messaging in 2012

In 2008 CAS ventured to have this initiative pass and ultimately fell short of gathering the 600,000 signatures it needed to maintain the campaign. It was a difficult yet tremendous experience and in the four years since, California Against Slavery has worked diligently to make a name for itself and attract a strong volunteer force to carry the campaign. In an interview that took place March 30, 2012, Dowling described phase two as a “three-fold approach”: 1) maintain and mobilize volunteer connections; 2) expand contacts base (voters, legislators, faith-based communities, etc; and 3) educate, increase awareness and build coalitions with other organizations, concentrating on faith-based organizations as that is where phase one was lacking in endorsements.

In her description of the downfalls of the 2008 campaign Dowling reflected upon the organization's "newness," lack of credibility and very limited funds. The campaign she described sounded very disconnected from the campaign I am participating in at present, yet the intention is exactly the same.

When asked what main factors enriched this campaign from the last Dowling was quick to answer with discussion on the framing of the verbal message, "The cause itself will draw people but people (volunteers) stay (with it) for the presentation of the message." Her opinion is that the message attracted a volunteer force that "took the message forward." This forward movement increased recruitment and volunteer loyalty. The staff alone could not have supported this shift, due to numbers and responsibilities alone. Messaging is a critical force in this campaign, and is already recognized as a determinant of success.

The Frameworks Institute claims that choice of messenger is one of the most tactical choices to be made before taking an issue public because messengers are the physical symbol of the issue.²³ The results of Phase one of the CASE campaign in numbers alone, 873,000 voter signatures and more than 800 volunteers, illustrate that the message is being shared effectively. The research regarding this subject stresses that the choice of messengers must be carefully appraised to ensure a proper match between the message and messengers. An example of this, taken from the Frameworks Institute's research on global warming, is that

²³ <http://www.frameworksinstitute.org/assets/files/PDF/FramingPublicIssuesfinal.pdf>

environmentalists were seen as less credible on the issue than those who were perceived as having a vested interest or suspected of being “extreme” on environmental issues. In other words, the status of environmentalists inadvertently invited the public or critics to dismiss their testimony. As a nonprofit, volunteer driven organization the choice to use volunteers may have been less of a conscious choice than it was a default choice for CAS. Yet in comparing the CAS campaign with the example from the Frameworks Institute it is a safe assumption that having volunteers collect signatures carried less of an intimidation factor than having a politician or head of an organization do the equivalent, despite the message and intent being the same. At the end of phase one it was calculated that 800 plus+ volunteers had collected signatures throughout the state of California. In phase two the aim is to maintain this force by personalizing the experience of each volunteer by nurturing every individual’s strengths and interests.

The verbal message of the 2012 campaign is important, especially in staying uniform, but the organization has also framed the message with the use of materials, its websites, and social networks all created and maintained by the CAS staff. One volunteer complimented Dowling and CAS as “providing access to democracy for dummies” and Dowling believes that the ease of the websites and access to materials has greatly contributed to the success of the organization and campaign thus far. This ease of access is also a messaging and framing tactic. The website CASEACT.org (see Appendix G) is essentially a “toolkit” for citizens interested in various capacities whether it be through a donation or volunteering time.

VII. Evaluation

The CASE Act is not the first anti-human trafficking legislation piece of its kind to be proposed, although CAS claims that if passed it will amount to the largest political action of its kind. Polaris Project, named after the North Star that guided slaves towards freedom along the Underground Railroad, has been providing a comprehensive approach to combating human trafficking and modern-day slavery worldwide since 2002. Polaris works from a long list of interventions toward its vision of a world without slavery; one of its strongest interventions is its involvement in Policy Advocacy. “Polaris Project's U.S. Policy Program works to enact legislation at the state level by partnering with local advocacy organizations, state and local task forces and coalitions, and grassroots advocates to support locally-led anti-trafficking legislative campaigns”.²⁴ One way in which Polaris offers guidance and support to local advocacy organizations is by drafting model laws and guidelines. One such law that passed with the guidance of Polaris’ Model Law was Vermont House Bill 153 (VT HB 153) in 2011. In spring 2011 a fellow SIT student and I researched and presented a case study of VT HB 153. Through this process we were introduced to an employee on the legal team at Polaris Project (name will not be disclosed for anonymity). The Polaris representative helped us to comprehend how the democratic process works in Vermont. Through our evaluation of Polaris and HB 153 it was concluded that,

“By winning this very comprehensive piece of legislation in Vermont, Polaris will be in a position to use the Vermont legislation as an example for other states. The technical assistance Polaris Project provided most definitely strengthened this legislation, which ultimately resulted in a successful campaign. In future human trafficking policy advocacy work we have agreed we would definitely seek out Polaris for its expertise, in addition to the notoriety associated with its name.”

²⁴ <http://www.polarisproject.org/what-we-do/policy-advocacy>

Following the aforementioned assignment of analyzing Vermont HB 153 I continued to maintain a professional relationship with some employees at Polaris Project, which was strengthened by my employment at Shared Hope International in Washington DC. My involvement with the CASE Act provided a perfect opportunity to follow through with Libby Bennett's and my consensus to seek Polaris out for its expertise in human trafficking policy. I was even more motivated to do so because Polaris has not publicly endorsed the CASE Act campaign. Polaris Project has in the past, and continues to, work closely with CAS on a variety of matters so I found this intriguing. I referred to my connection at Polaris who was available to articulate upon the matter. He said that, "officially, we (Polaris Project) are supportive of the policy changes the initiative would have of California laws to fight human trafficking." In summary the representative's general criticisms of the CASE Act are specific to the ballot initiative process and language.

Polaris, as an organization, typically works from within the legislature, in favor of representative democracy. The use of the ballot process adopted by CAS is a form of direct democracy; the Polaris representative maintains that ballot initiatives on the whole can be very dangerous tools. California is one of "twenty-four states that allow individuals and groups to propose laws for direct voter consideration and tens of millions of dollars flow into the initiative industrial complex each election cycle".²⁵ Some states use some variation of ballot referendums, which

²⁵ Sabato, L., Larson, B. A., & Ernst, H. R. (2001). *Dangerous Democracy?: The Battle over Ballot Initiatives in America*, p. xxi. Lanham, MD: Rowman & Littlefield Publishers.

are first crafted by the state legislature whereas ballot initiatives are crafted by groups and individuals, decidedly making this the most pure form of direct democracy engagement. The Polaris representative favors the referendum approach because it ensures political backing from the legislature and other executive officials subsequently increasing the chance that a law will be implemented in a way that leads to lasting and effective change. This brings us to his criticism that the CASE Act has an inherent “risk of upsetting legislators or executive officials who have previously weighed these policy decisions and decided against adopting them.” His critique is that in any situation wherein this is the case the advocate of the policy risks a future loss by impeding its ability to successfully work with the legislature in the future. Specific to California, he suggests that the majority of human trafficking legislation in CA will always be done through the legislature. To date no known backlash from the legislature, regarding the CASE Act, has occurred but it is most definitely something to be cognizant of during the campaign and in the event that the law does pass.

Along that same vein, the Polaris representative suggested that his critique of the language is also impart to the fact that the initiative was not drafted within the legislature. It was, however, drafted by prosecutors such as Sharmin Bock out of the Alameda District Attorney’s office, in addition to other members of the California District Attorney Association, and it has received validation by some legislative officials making it more credible than had it been drafted by CAS alone. In Polaris’ involvement with HB 153 in Vermont it advised based on its model law, a set of recommendations and provisions to “assist state legislators and anti-trafficking activists in improving their state’s strategy to fight human trafficking – a modern form of slavery”. (See Appendix H) Continuing with Vermont legislation as an example, HB 153 came from a failed

attempt of Senate Bill 296 (SB 296) that was introduced in the 2010 legislative session.²⁶ Law enforcement and defense attorneys had found SB 296 unclear and difficult to deconstruct; HB 153 was praised as easy to read. Through our analysis of Vermont law we concluded that this is an extremely crucial aspect in the messaging of an initiative, and only more reason why legislator language is critical to the drafting of an initiative. Language issues that are not addressed early on may lead to issues in the efficiency of the law. If law enforcement cannot understand the language, as was the case with VT SB 296, then the law may not be used efficiently in action.

Polaris Project's model provisions comprehensively address the "three Ps" of combating human trafficking: prosecution, prevention and protection of victims. In my evaluation of both HB 153 and the CASE Act it is clear that the CASE Act does not comprehensively address all three issues. There is a high emphasis on prosecution, nearly no mention of prevention and only some attention placed on protection of victims. CAS hopes the law covers prevention as a result of its increased prosecution measures. This begs the question that I have overheard from a handful

²⁶ From *Polaris Project and Vermont House Bill 153: An Act Relating to Human trafficking A Case Study in Policy Advocacy* by Libby Bennett and Bailey Mannisto-Ich  s, 2011, p. 6.

"In last year's legislative session, with Polaris' technical assistance and model law, Senator Sears, who has been a champion for the legislation in Vermont, introduced Senate Bill 296 (S.296). Once introduced, members of the Senate wanted to slow the process down, allowing ample time to examine the issue. The bill died as senators opted to learn more. However once Attorney General William Sorrell got on board, a bill suggesting the formation of a task force (Senate Bill 272 – S.272) was passed and the Vermont Human trafficking Task Force was born. (...)

In September of 2010, the Vermont Attorney General William Sorrell hosted a community meeting on human trafficking. The meeting was intended to give the public a voice as the Task Force prepared its report for the legislature. Fifty people attended the forum, and the Task Force heard testimony from: victim advocates, law enforcement, immigration attorneys, federal authorities, human trafficking experts, prosecutors, and community members. All of those who testified were in support of proposing legislation to combat human trafficking in the state. The Report of the Attorney General Pursuant to S.272, An Act Relating to Human trafficking in the 2009 - 2010 General Assembly was released in January 2011. The Task Force then put out two reports that made several recommendations, most of which were taken into account in the first drafting of the bill. The first draft of H. 153 was based on Polaris' Model Law; the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the US Department of Justice Model Law; and federal anti-trafficking legislation."

The resulting policy, H.153 was co-sponsored by seven members of the Vermont House of Representatives, including the chairs of both committees the bill would have to pass through: the House Committee on Judiciary and the House Committee on Human Services. On January 15, 2011, Representative Maxine Grad (D - Moretown) led the effort as a Polaris champion and introduced H.153: An Act Relating to Human Trafficking. Other co-sponsors were: Representative Bill Lippert (D - Chittenden), Representative Cynthia Martin (D - Windsor), Representative Keshia Ram (D - Chittenden), Representative Mark Larson (D - Chittenden), Representative Ann Pugh (D - Chittenden), and Representative Susan Wizowaty (D - Chittenden).

of concerned volunteers, “ What does a criminal care that he loses in court? Will that truly stop him when he is free?” Shared Hope International via the PII methodology and the Polaris Model Law both pose that prevention be addressed via a mandated and comprehensive task force that meets with constituent agencies to develop and implement a state plan to review existing services that may or may not meet the needs of victims (the CA Human Trafficking Collaboration and Training Act); that data be collected to track the progress on human trafficking in the state annually; that the state provide mandatory law enforcement training that emphasizes the necessity to treat victims as victims and not as criminals (the CASE Act enhances current law); and that the states be involved in increasing public awareness through cooperation with related government and appropriate NGOs. The CASE Act does not comprehensively address prevention in this manner. My evaluation due to the lack of strong support from the legislature and the missing answers for prevention of human trafficking is that the longevity, sustainability and efficiency of the CASE Act are in jeopardy.

Watson (2001), identifies three possible outcomes in her framework; due to the in-progress status of the CASE Act only one of these outcomes is applicable to this case study: changes in the capacity of civil society. CAS did not engage in any formal capacity building techniques with partners in phase one of the campaign rather, it worked internally to carry out activities (training and mentoring) with volunteers/constituents. The effects of this will, and have, spread out in time and space to the greater civil society. In these circumstances it is impossible to measure all of the wider results that have come from the campaign so I will illustrate some specific examples. Since January of 2012 there have been 28 news articles and segments

published specific to the CASE Act in contrast to a total of seven between July 2010 and December 2011; between March 22, 2012 (after the signature results were broadcasted) and April 23, 2012 the CASE Act facebook page nearly tripled in popularity from having only 498 “likes” to 1,457; over the course of a 10 day period, from April 11, 2012 to April 21, 2012 the CASE Act was formally endorsed by six more organizations. These numbers and examples suggest that awareness of the issue is advancing throughout the state. CAS does not belong to any formal coalitions however these examples strongly suggest that its network is expanding. At a volunteer meeting that I attended on April 16, 2012 many volunteers expressed the organization’s need to design a specific “toolkit” for possible partners. I echo this suggestion and believe that it would be in CAS’ best interest to 1) gauge involvement from endorsers in anticipation of future partnerships and 2) seek a specific target for endorsements to ensure quality endorsements over quantity. For example, does an endorsement from a homeless shelter in Galt, CA (with a population of 25,000) carry the same weight and importance as an endorsement from a law enforcement agency in Los Angeles (with a population of close to four million)? With whom and what should volunteers invest the most time in?

VIII. Lessons Learned

This case study could be generalized and utilized in other campaigns for its strengths as well as its weaknesses. Before analyzing the CASE Act I had more academic background in legislative action through representative democracy and had not been exposed to the many nuances that are present in the ballot initiative method. As I was so deeply involved in this process through

volunteering, working with background materials and ultimately analyzing the campaign my perspectives were all over the place.

My analysis was specific to California Against Slavery with particular attention on its responses to research conducted and put forth by Shared Hope International and Polaris Project yet CAS did not participate in any formal coalitions or partnerships. The organization missed a critical opportunity to consult with related outside agencies to empower the campaign early on. After its failure in 2008 it would have been very beneficial for CAS to supplement its general newness and inexperience in the field if it had sought out more experienced individuals and prominent organizations that had experience to contribute to the campaign. Endorsements via the website and actual partnerships are very different. While it will be more evident in the final outcome of the November ballot, the case teaches us that there are significant risks and disadvantages of not working in coalition with other key organizations or with the legislators who are being bypassed in a ballot initiative process. A direct example of this was communicated during a conversation with the director of another California based organization that seeks to end child exploitation. I asked the director what she planned to do if Daphne Phung eventually asks her for a formal endorsement this late in the process; she could not answer because she had yet to be briefed on the campaign, even though she and Phung work closely through similar networks. The director recalled a time in January when she had received a media request to speak about the CASE Act and she had to refuse because she had not even been made aware that the campaign was in progress.

The “prioritization” that CAS has seemingly done in its endorsement outreach reminds me of a lesson in *A New Weave of Power, People and Politics* (VeneKlasen & Miller, 2007):

Different individuals and organizations play different roles and have different responsibilities in advocacy. Some are grassroots organizers, others are lobbyists or policy researchers while some play still different roles. Each of these perspectives makes a vital contribution to advocacy; however, there is often a tendency to value some more than others. It is critical that advocacy leaders not allow these differences to evolve into a hierarchy in which one role is considered more important than another.

This quote corresponds with the criticisms I have of the CASE Act campaign and is extremely applicable to most advocacy work. Many questions still remain as to how much of the methods adopted during this campaign were intentional and how much of them have been the result of an opportunity presenting itself (e.g. having the California District Attorneys Association draft the initiative vs. seeking out other legislative officials to do so). If I am ever in a leadership role within a campaign I will reflect on this case study in order to remember to stay present and attentive to my environment and to not act as an island. For example, I will ask myself: who could be a valuable asset to this work? Even if I don’t need them now, whom will I need on my side for this to truly succeed? There should be answer to why a campaign considers an endorsement from X organization over Y as being more promising or critical. I do not think that at this stage in the campaign CAS had really considered this notion all that consciously.

CAS has been extremely effective in the recruitment and maintenance of its volunteer base. In reflecting on the 2008 campaign once again, Dowling recalled having to pay for all of her own collateral as an unpaid volunteer. In 2012 volunteers were equipped with all necessary supplies and collateral including: a volunteer button, a stack of voter registration forms, and a seemingly

endless supply of petitions. Staff made themselves extremely available to volunteers. In my personal experience Dowling gave me her personal contact information to use in the event that I needed more petitions and assured that I would not need to spend money on postage to send in the petitions myself as she would make herself available to meet me in order to hand deliver them to the campaign headquarters on time. Where the CASE Act lacks in political backing it appeals to average citizens who have carried it this far, the same type of persons who will show up at the voting polls in November.

Overall, I have learned more about the legislative process, the highs and lows of campaigning, and about where I stand on some very critical issues that are often overlooked in this line of work. I will continue to stay in close affiliation with CAS and monitor the campaign as it progresses because I feel invested in multiple ways. There are many gaps in this campaign but in these gaps there are many lessons to be found and worked through in order to replicate the good aspects of this campaign. After closely examining the ballot initiative process, through the lenses of Polaris and Shared Hope International, I believe that it is not the best route to create lasting change. However, I do believe that the initiative process carries the capability of being an extremely effective public education tool as it has been with the CASE campaign specifically. As an advocate who seeks to address the “big picture” of prevention, prosecution and protection I am most apt to back up initiatives that are sustainable by addressing all three of these concerns. From the inception of the CASE Act until now it is clear to me that there are missing pieces to the big picture puzzle. However, to witness the success achieved during phase

one, by an organization that was completely off the map just four short years ago, is encouraging and empowering.

The end of my journey at SIT is hopefully only the beginning of my journey in the policy realm. As my experiences have increased so have my opportunities; I have been extremely grateful for the doors that have opened since leaving campus in May of 2011. It is difficult to resist the urge to walk through all of them but I am guided by my priorities, one of them being my interest in policy advocacy. If Daphne Phung were to seek out my opinions and advice regarding the future of the CASE Act I would be very confident in my recommendations, due to my SIT experience. Best case scenario the CASE Act will pass; the lives of human trafficking victims in California will be better with it than they would be without. Regardless of the outcome, I believe that the need for more capacity building and coalition building will be encouraged in the end. California Against Slavery has a tremendous amount of people power, consisting of ordinary citizens, and while it is imperative for it to increase partnerships and involvement with related agencies it has much to offer in that regard. From my viewpoint I see positive changes to human trafficking advocacy and law in California on the horizon.

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Appendix A: PII California Analysis and Recommendations

http://www.sharedhope.org/Portals/0/Documents/AR-PDF/California_AR_FINAL.pdf



FRAMEWORK ISSUE 1: CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Legal Components:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*
- 1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*
- 1.3 *CSEC or prostitution statutes refer to the sex trafficking statute to identify the commercially sexually exploited minor as a trafficking victim.*

Legal Analysis¹:

- 1.1 *The state human trafficking law addresses sex trafficking and clearly defines a human trafficking victim as any minor under the age of 18 used in a commercial sex act without regard to use of force, fraud, or coercion, aligning to the federal trafficking law.*

California's human trafficking law directly addresses sex trafficking, but requires an offender to have used "fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury" in the commission of the crime. Specifically, Cal. Penal Code § 236.1 (Human trafficking defined; punishment) states,

- (a) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266 [Procurement], 266h [Pimping], 266i [Pandering], 267 [Abduction of minor for prostitution], 311.4 [Employment of minor in sale or distribution of obscene

¹ Unless otherwise specified, all references to California statutes were taken from Deering's California Codes Annotated (LEXIS through Urgency Ch. 312 & Extra Sess. Ch. 11 of the 2011 Sess.) and all federal statutes were taken from United States Code (LEXIS through PL 112-60, approved 11/23/2011).

matter in production of pornography], or 518 [Definition of extortion],² or to obtain forced labor or services,³ is guilty of human trafficking.

....

(d)

(1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

....

(f) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.⁴

....

A conviction under Cal. Penal Code § 236.1 is punishable as a felony⁵ by imprisonment in a state prison for 3, 4, or 5 years⁶ and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 236.1(b), 17(a), 672. If the victim

² Cal. Penal Code § 518 states, "Extortion is the obtaining of property from another, with his consent, or the obtaining of an official act of a public officer, induced by a wrongful use of force or fear, or under color of official right."

³ Cal. Penal Code § 236.1(e) defines "forced labor or services" as "labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person."

⁴ 22 U.S.C. § 7102(8) defines "severe forms of trafficking in persons" as

(A) 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

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

⁵ Cal. Penal Code § 17(a) defines "felony" as

a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

⁶ Cal. Penal Code § 1170(a)(3), (b) (Determinate sentencing; sentence recall; medical release) (Operative until January 1, 2014) explains,

(a)

....

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life. . . .

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. . . .

Note, however, that some of a judge's discretion in selecting among the 3 specified terms of imprisonment will soon be eliminated. As of January 1, 2014, Cal. Penal Code § 1170(b) will state,

When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. . . . In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider

is under the age of 18, however, a conviction is punishable by imprisonment for 4, 6, or 8 years and a possible fine not to exceed \$10,000, but if the victim is under the age of 18 and the trafficking involves a commercial sex act,⁷ a conviction is punishable by imprisonment for 4, 6, or 8 years and a mandatory fine not to exceed \$100,000. Cal. Penal Code § 236.1(c), (g)(1).

- 1.1.1 Recommendation: Amend Cal. Penal Code § 236.1 (Human trafficking defined; punishment) so that “unlawful deprivation or violation of the personal liberty of another” occurs without regard to the use of force, fraud, or threat of unlawful injury to the victim or to another person when the victim is a minor under 18 and to make it a crime to deprive or violate the personal liberty of another with the intent to purchase a commercial sex act from a minor.⁸

1.2 *Commercial sexual exploitation of children (CSEC) is identified as a separate and distinct offense from general sexual offenses, which may also be used to prosecute those who commit commercial sex offenses against minors.*

California has several statutes specifically criminalizing CSEC, including the following:

1. Cal. Penal Code § 266 (Procurement) makes it a crime if a person

inveigles or entices any unmarried female, of previous chaste character,⁹ under the age of 18 years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; [or] . . . aids or assists in such inveiglement or enticement; [or] . . . by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man . . .

A conviction under Cal. Penal Code § 266 is punishable as either a misdemeanor or felony.¹⁰ A misdemeanor conviction is punishable by imprisonment in a county jail up to 1 year, a fine not to exceed

the record in the case, the probation officer’s report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. . . .

⁷ For purposes of Cal. Penal Code § 236.1(g), Cal. Penal Code § 236.1(g)(2) defines “commercial sex act” as “any sexual conduct on account of which anything of value is given or received by any person.”

⁸ Subsequent recommendations in this report referring to Cal. Penal Code § 236.1 (Human trafficking defined; punishment) are predicated upon the recommendations contained in Section 1.1 being previously or simultaneously implemented.

⁹ The California Supreme Court has stated that whether a victim under the age of 18 is of “previous chaste character” is “a question for the jury.” *People v. Elliott*, 51 P. 955 (Cal. 1898).

¹⁰ Under California law, whether a crime is a felony or misdemeanor is determined by the type and place of punishment. Cal. Penal Code § 17(a), (b). A felony is any crime punished by death, imprisonment in a state prison, or imprisonment in a county jail under Cal. Penal Code § 1170(h), while a misdemeanor is any crime punished by a fine, imprisonment in a county jail, or both. Cal. Penal Code § 17(a); see also *infra* note 37 discussing the test concerning when a crime is a felony or misdemeanor. Several California statutes, however, include a choice of punishments that, depending on which punishment is imposed, determine whether a conviction is a misdemeanor or a felony. See, e.g., Cal. Penal Code §§ 266, 261.5(c), (d). These statutes have been termed “wobblers.” E.g., *People v. Masuch*, 77 Cal. Rptr. 3d 751, 754 (Cal. Ct. App. 2008) (stating that Cal. Penal Code § 17(b) “only applies to offenses, known as ‘wobblers’”). Specifically, Cal. Penal Code § 17(b) states,

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail under the provisions of [Cal. Penal Code § 1170(h)], or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

- (1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail under the provisions of subdivision (h) of Section 1170.
- (2) When the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor.
- (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.
- (4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint

\$2,000, or both. Cal. Penal Code §§ 266, 17(b). A felony conviction is punishable by imprisonment in a state prison for 16 months, 2 years, or 3 years¹¹ and a possible fine not to exceed \$2,000. Cal. Penal Code §§ 18(a), 266. First time convictions, for either a misdemeanor or felony, are also subject to an additional mandatory fine of \$300 while subsequent convictions are subject to an additional mandatory fine of \$500, if the offender is able to pay. Cal. Penal Code §§ 290.3(a), 290(c).

2. Cal. Penal Code § 266h(b) (Pimping) states,

Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor

If the victim is a minor 16 years of age or older, a conviction under Cal. Penal Code § 266h(b) is punishable as a felony by imprisonment in a state prison for 3, 4, or 6 years and a possible fine not to exceed \$10,000.¹² Cal. Penal Code §§ 266h(b)(1), 672. If the minor is under 16, however, a conviction under Cal. Penal Code § 266h(b) is punishable as a felony by imprisonment in a state prison for 3, 6, or 8 years and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 266h(b)(2), 672. In either instance, the court may also order an additional fine not to exceed \$5,000. Cal. Penal Code § 266k(a).

3. Cal. Penal Code § 266i(a) (Pandering) makes it a crime if a person

- (1) Procures another person for the purpose of prostitution.
- (2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute.
- (3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.
- (4) By promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.

specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

In addition to interpreting the statutory language, California Judges Benchguide 74 was used for clarifying which statutes fall under the "wobbler" category. JUDICIAL COUNCIL OF CALIFORNIA, CALIFORNIA JUDGES BENCHGUIDE 74, SENTENCING GUIDELINES FOR COMMON MISDEMEANORS AND INFRACTIONS (2011), available at <http://www2.courtinfo.ca.gov/protem/pubs/bg74.pdf> (listing misdemeanor statutes and indicating "wobbler" status with an asterisk).

¹¹ Cal. Penal Code § 18 (Punishment of felony not otherwise prescribed) provides,

(a) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony is punishable by imprisonment for 16 months, or two or three years in the state prison unless the offense is punishable pursuant to subdivision (b) of Section 1170.

(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment or by a fine, but without an alternate sentence to the county jail for a period not exceeding one year, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

¹² Cal. Penal Code § 672 (Conviction of crime for which no fine prescribed) states,

Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars (\$1,000) in cases of misdemeanors or ten thousand dollars (\$10,000) in cases of felonies, in addition to the imprisonment prescribed.



(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.

(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

If the person procured is a minor 16 or older, a conviction under Cal. Penal Code § 266i(a) is punishable as a felony by imprisonment in a state prison for 3, 4, or 6 years and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 266i(b)(1), 672. If the person procured is a minor under 16, however, a conviction is punishable as a felony by imprisonment in a state prison for 3, 6, or 8 years and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 266i(b)(2), 672. In either instance, the court may also order an additional fine not to exceed \$5,000. Cal. Penal Code § 266k(a).

4. Cal. Penal Code § 267 (Abduction of minor for prostitution) makes it a crime when a person “takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution.” A conviction under Cal. Penal Code § 267 is punishable as a felony by imprisonment in a state prison for 16 months, 2 years, or 3 years and a fine not to exceed \$2,000.¹³ Cal. Penal Code §§ 267, 18(a). The court may also order an additional fine not to exceed \$20,000. Cal. Penal Code § 266k(b).
5. Cal. Penal Code § 311.4(b) (Employment of minor in sale or distribution of obscene matter or production of pornography) states that a crime is committed by

[e]very person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes

A conviction under Cal. Penal Code § 311.4(b) is punishable as a felony by imprisonment in a state prison for 3, 6, or 8 years and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 311.4(b), 672.

Several other laws, while not expressly commercial in nature, may also apply in cases involving the commercial sexual exploitation of a child. These include the following:

1. Cal. Penal Code § 266j (Procurement of child) provides,

Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288,¹⁴ or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person

¹³ See *supra* note 11 discussing penalties applicable to a felony under Cal. Penal Code § 18.

¹⁴ Cal. Penal Code § 288(a) states,

A conviction under Cal. Penal Code § 266j is punishable as a felony by imprisonment for 3, 6, or 8 years in a state prison and a fine not to exceed \$15,000. Cal. Penal Code § 266j. The court may also order an additional fine not to exceed \$20,000. Cal. Penal Code § 266k(b).

2. Cal. Penal Code § 261(a)–(c) (Rape; “duress”; “menace”) states,

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

....

(2) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

....

(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, “menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.

A conviction under Cal. Penal Code § 261(a)–(c) generally is punishable as a felony by imprisonment in a state prison for 3, 6, or 8 years and a possible fine not to exceed \$70, if the offender is able to pay. Cal. Penal Code §§ 17(a), 264(a), (b). An additional mandatory fine not to exceed \$5,000 also applies if the rape victim is a minor under 14 years of age. Cal. Penal Code § 294(b) (Restitution fine to be imposed on conviction of violation of specified offenses against children). Convictions under Cal. Penal Code § 261(a)(2), however, result in longer prison terms if the victim is a minor. Specifically, if the victim is younger than 14 years of age, a conviction is punishable by imprisonment in a state prison for 9, 11, or 13 years, but if the victim is a minor 14 years of age or older, a conviction is punishable by imprisonment for 7, 9, or 11 years. Cal. Penal Code § 264(c).

3. Cal. Penal Code § 261.5 (Unlawful sexual intercourse with a minor; misdemeanor or felony violation; civil penalties) states,

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 [Determinate sentencing; sentence recall; medical release].¹⁵

Except as provided in subdivision (f), any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

¹⁵ Cal. Penal Code § 1170(h) (Determinate sentencing; sentence recall; medical release) (Operative until Jan. 1, 2014) states,

(1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

....

A conviction under Cal. Penal Code § 261.5(b) is punishable as a misdemeanor by imprisonment in a county jail up to 6 months, a fine not to exceed \$1,000, or both. Cal. Penal Code §§ 261.5(b), 19. A conviction under Cal. Penal Code § 261.5(c) or (d) is punishable as either a misdemeanor or felony. A misdemeanor conviction is punishable by imprisonment in a county jail up to 1 year and a possible fine not to exceed \$1,000. Cal. Penal Code §§ 261.5(c), (d), 672. A felony conviction under Cal. Penal Code § 261.5(c) is punishable by imprisonment in a county jail for 16 months, 2 years, or 3 years and a possible fine not exceeding \$10,000. Cal. Penal Code §§ 261.5(c), 1170(h)(1), 672. A felony conviction under Cal. Penal Code § 261.5(d) is punishable by imprisonment in a county jail for 2, 3, or 4 years and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 261.5(d), 1170(h)(2), 672. Additionally, for any conviction under this statute, the court may assess an additional fine not to exceed \$70, if the defendant is able to pay. Cal. Penal Code § 261.5(c)(3).

4. Cal. Penal Code § 269(a) (Aggravated sexual assault of child) provides,

Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:

- (1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.
- (2) Rape or sexual penetration, in concert, in violation of Section 264.1.
- (3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.
- (4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.
- (5) Sexual penetration, in violation of subdivision (a) of Section 289.

A conviction under Cal. Penal Code § 269(a) is punishable as a felony by imprisonment of 15 years to life in a state prison and a possible fine not to exceed \$10,000. Cal. Penal Code §§ 269(b), 672. Cal. Penal Code § 269(c) further provides that “[t]he court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6 [Enhancement and fine for prior conviction or prior term for sex offense].”

years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 [Limitation of plea bargaining] [Operative until Jan. 1, 2014] or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5 [Enhancement of prison terms for new offenses], (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 [Pattern of related felony conduct] is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

....

Appendix B: PII California State Facts

<http://www.sharedhope.org/Portals/0/Documents/CaliforniaFacts.pdf>



California State Facts

Criminalization of DMST

1. California's human trafficking law criminalizes sex trafficking of minors, imposing enhanced penalties when the victim is a minor, but requires force, fraud, or coercion to be used in the commission, even for minors used in commercial sex acts.
2. On average 200 girls a year are referred to the Alameda County's Sexually Exploited Minor Network.¹
3. In a study Shared Hope conducted highlighting domestic minor sex trafficking in Las Vegas, of the 226 children accused of prostitution related offenses, nearly one third were from California.²

Criminal Provisions Addressing Demand

4. The human trafficking law cannot be used to prosecute demand and no CSEC law includes the crime of buying sex with a minor.
5. California Attorney General Kamala Harris was one of 51 Attorneys General who signed a letter to Backpage.com calling on the company to disclose its efforts to identify and delete advertisements that facilitate sex trafficking, specifically of minors.³

Criminal Provisions for Traffickers

6. Human trafficking of a minor is punishable by four, six, or eight years imprisonment and a fine up to \$100,000, while CSEC crimes of pimping of a minor and pandering of a minor each are punishable by possible fines up to \$10,000 and imprisonment for three, six, or eight years (minor is under 16) or three, four, or six years (minor 16–18), and an additional fine up to \$5,000.

Criminal Provisions for Facilitators

7. Procurement of a minor applies to facilitators and is punishable by up to one year imprisonment and/or a fine up to \$2,000. Facilitators also may be convicted for pimping of a minor, punishable by a possible fine up to \$10,000 and three, six, or eight years imprisonment (minor under 16) or three, four, or six years imprisonment (minor 16–18).
8. In October 2011, Oakland city attorney Andy Nelson filed suit against the National Lodge motel, arguing that it knowingly facilitates child sex trafficking.

¹ <http://www.nbcbayarea.com/news/local/Alameda-County-Grapples-With-Child-Prostitution-127528803.html>

² Domestic Minor Sex Trafficking Assessment– Las Vegas (Shared Hope International 2008).

³ <http://www.tn.gov/attorneygeneral/cases/backpage/backpageletter.pdf>

Protective Provisions for Child Victims

9. Arrests of American children who are victims of sex trafficking in California has increased an average of 6 percent annually since 1995, according to an analysis released by the Institute for Trafficked, Exploited, and Missing Persons (ITEMP).⁴

⁴ <http://www.itemp.org/>

Appendix C: California Against Slavery Staff

The following descriptions and photos of staff are as they appear on the CAS website:

<http://californiaagainstsavery.org/about/staff/>

Daphne Phung

Founder and Executive Director Daphne was devastated to learn that trafficked victims suffer further injustice through our legal system. She believes that our laws must reflect the atrocity of human trafficking and that it's time for the American public to recognize that slavery still exists in our great nation. She works in finance to pay the bills and volunteers with CAS to fulfill her calling.

Zara Bott-Goins

Los Angeles Campaign Coordinator Zara works to support CAS by coordinating volunteer activities in the Los Angeles area and building partnerships with various community groups and organizations. She has a background in International Relations and has worked for the Peace Corps, AmeriCorps and the American Red Cross. She is working on this campaign because she believes that we have a duty to protect vulnerable populations.

Rosario Dowling

Regional Director, Northern California Missing and abducted children fueled Rosario's involvement with CAS. She coordinates, educates, and recruits volunteers for stronger anti-human trafficking laws. Her personal time is spent volunteering with Juvenile Justice Chaplaincy in Sacramento and growing as a wife and mother.

Kristine Kil

Senior Program Manager Kristine supports CAS' mission to strengthen state law against trafficking because great change to protect individuals can be achieved with strong policy. She has previously volunteered and worked on ballot initiatives for the humane treatment of farm animals, and worked in several nonprofits coordinating volunteers.

Kath Rogers

San Diego Campaign Coordinator Kath is excited to be part of CAS' historic effort to end human trafficking and save lives. She previously helped to found an animal welfare non-profit, and she has worked with students in low income schools as a tutor and teacher. She lives with her dog and cat in the North Park neighborhood of San Diego.

April Schiller

Campaign Intern April graduated from Biola University in 2009 with a BA in Communication studies. Her interest in anti-human trafficking started in college. After a 5 month trip to Argentina, she began volunteering with CAS. She recently completed a part-time internship with World Vision while working at a bridal shop. She now is interning with CAS full time, and is pursuing a career in advocacy and child-protection.

Brittany Taylor

Campaign Intern With a passion to stand up for the vulnerable and oppressed, Brittany joined the CAS team to assist with volunteer coordinating and partnerships in San Diego County. She also helps manage CAS' social networking accounts. Before this campaign Brittany has worked with groups fighting human trafficking and addressing other human rights issues in her community and worldwide through Speak Up Revolution, a group she co-founded.

Rob Jaeger

Filmmaker Rob is the creator of our PSA's, Promos, and House Party videos. Rob was inspired into creative action after learning about California Against Slavery's revolutionary initiative. He is the owner of Reciprocate, a film and video production company.

Adrienne Lam

Creative Marketing Intern Adrienne's first involvement against human trafficking began with Red Light Movement in San Diego, where she volunteered as a graphic designer. As a recent graduate from UCSD, she now volunteers with CAS, advising the directors with conceptualizing ideas, and designing print and web media for our campaigns and fundraisers.

Daniel Tu

Creative Director and Senior Advisor Daniel was instrumental in the development of CAS's strong branding and logo. He and his creative team have generously volunteered their skills to create our print media, CAS logo apparel and merchandise. The CAS logo and other creatives won the 2010 American Graphic Design Award for Nonprofit. Daniel is a multi-award winning design and creative professional and has his own studio, TuDesigns.

Barry Ko

Director of Technology Barry handles all of the technical and design aspects of our website. From webserver duties, content updates, visual assets and everything in between, he volunteers his skills to maintain the website to be an effective way to learn and take action against human trafficking.

Karen Yee

Finance Director Karen handles finance and data management. When she first learned about human trafficking, it didn't sink in that this can be such a huge problem in the free nation that we live in today. She believes that strengthening the state's law will be a huge step forward in the fight against human trafficking. She has an engineering and statistics background and volunteers with CAS to make a difference.

Appendix D: CASE Act Full Initiative

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CALIFORNIANS AGAINST SEXUAL EXPLOITATION ACT ("CASE ACT")

SEC. 1. Title.

This measure shall be known and may be cited as the "Californians Against Sexual Exploitation Act ("CASE Act")."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

1. Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance.
2. Human trafficking is a crime against human dignity and a grievous violation of basic human and civil rights. Human trafficking is modern slavery, manifested through the exploitation of another's vulnerabilities.
3. Upwards of 300,000 American children are at risk of commercial sexual exploitation, according to a United States Department of Justice study. Most are enticed into the sex trade at the age of 12 to 14 years old, but some are trafficked as young as four years old. Because minors are legally incapable of consenting to sexual activity, these minors are victims of human trafficking whether or not force is used.
4. While the rise of the Internet has delivered great benefits to California, the predatory use of this technology by human traffickers and sex offenders has allowed such exploiters a new means to entice and prey on vulnerable individuals in our state.
5. We need stronger laws to combat the threats posed by human traffickers and online predators seeking to exploit women and children for sexual purposes.
6. We need to strengthen sex offender registration requirements to deter predators from using the internet to facilitate human trafficking and sexual exploitation.

SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting the Act to be as follows:

1. To combat the crime of human trafficking and ensure just and effective punishment of people who promote or engage in the crime of human trafficking.
2. To recognize trafficked individuals as victims and not criminals, and to protect the rights of trafficked victims.

SEC. 14. Section 13519.14 of the Penal Code is amended to read:

13519.14. (a) The commission shall implement by January 1, 2007, a course or courses of instruction for the training of law enforcement officers in California in the handling of human trafficking complaints and also shall develop guidelines for law enforcement response to human trafficking. The course or courses of instruction and the guidelines shall stress the dynamics and manifestations of human trafficking, identifying and communicating with victims, providing documentation that satisfy the ~~law enforcement agency~~ Law Enforcement Agency (LEA) endorsement (LEA) required by federal law, collaboration with federal law enforcement officials, therapeutically appropriate investigative techniques, the availability of civil and immigration remedies and community resources, and protection of the victim. Where appropriate, the training presenters shall include human trafficking experts with experience in the delivery of direct services to victims of human trafficking. Completion of the course may be satisfied by telecommunication, video training tape, or other instruction.

(b) As used in this section, "law enforcement officer" means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, as defined by subdivision (a) of Section 830.2.

(c) The course of instruction, the learning and performance objectives, the standards for the training, and the guidelines shall be developed by the commission in consultation with appropriate groups and individuals having an interest and expertise in the field of human trafficking.

(d) The commission, in consultation with these groups and individuals, shall review existing training programs to determine in what ways human trafficking training may be included as a part of ongoing programs.

~~(e) Participation in the course or courses specified in this section by peace officers or the agencies employing them is voluntary.~~ Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in the course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014 or within 6 months of being assigned to that position, whichever is later.

SEC. 15. Amendments.

This act may be amended by a statute in furtherance of its objectives passed in each house of the Legislature by rollcall vote entered in the journal, a majority of the membership of each house concurring.

SEC. 16. Severability.

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

~~(5)~~(8) Copies of adequate proof of residence, which shall be limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the person has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the person shall so advise the registering official and shall sign a statement provided by the registering official stating that fact. Upon presentation of proof of residence to the registering official or a signed statement that the person has no residence, the person shall be allowed to register. If the person claims that he or she has a residence but does not have any proof of residence, he or she shall be allowed to register but shall furnish proof of residence within 30 days of the date he or she is allowed to register.

(b) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(c)(1) If a person fails to register in accordance with subdivision (a) after release, the district attorney in the jurisdiction where the person was to be paroled or to be on probation may request that a warrant be issued for the person's arrest and shall have the authority to prosecute that person pursuant to Section 290.018.

(2) If the person was not on parole or probation at the time of release, the district attorney in the following applicable jurisdiction shall have the authority to prosecute that person pursuant to Section 290.018:

(A) If the person was previously registered, in the jurisdiction in which the person last registered.

(B) If there is no prior registration, but the person indicated on the Department of Justice notice of sex offender registration requirement form where he or she expected to reside, in the jurisdiction where he or she expected to reside.

(C) If neither subparagraph (A) nor (B) applies, in the jurisdiction where the offense subjecting the person to registration pursuant to this Act was committed.

SEC. 13. Section 290.024 is added to the Penal Code, to read:

290.024. For purposes of this chapter, the following terms apply: (a) "Internet service provider" means any business, organization, or other entity providing directly to consumers a computer and communications facility through which a person may obtain access to the Internet. An Internet service provider does not include a business, organization, or other entity that provides only telecommunications services, cable services, or video services, or any system operated or services offered by a library or educational institution.

(b) "Internet identifier" means any electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication.

or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).

SEC. 11. Section 290.014 of the Penal Code is amended to read:

290.014. (a) If any person who is required to register pursuant to the Act changes his or her name, the person shall inform, in person, the law enforcement agency or agencies with which he or she is currently registered within five working days. The law enforcement agency or agencies shall forward a copy of this information to the Department of Justice within three working days of its receipt.

(b) If any person who is required to register pursuant to the Act adds or changes his or her account with an Internet service provider or adds or changes an Internet identifier, the person shall send written notice of the addition or change to the law enforcement agency or agencies with which he or she is currently registered within 24 hours. The law enforcement agency or agencies shall make this information available to the Department of Justice. Each person to whom this subdivision applies at the time this subdivision becomes effective shall immediately provide the information required by this subdivision.

SEC. 12. Section 290.015 of the Penal Code is amended to read:

290.015. (a) A person who is subject to the Act shall register, or reregister if he or she has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period. The registration shall consist of all of the following:

(1) A statement in writing signed by the person, giving information as shall be required by the Department of Justice and giving the name and address of the person's employer, and the address of the person's place of employment if that is different from the employer's main address.

(2) The fingerprints and a current photograph of the person taken by the registering official.

(3) The license plate number of any vehicle owned by, regularly driven by, or registered in the name of the person.

(4) A list of any and all Internet identifiers established or used by the person.

(5) A list of any and all Internet service providers used by the person.

(6) A statement in writing signed by the person acknowledging that the person is required to register and update the information in paragraphs (4) and (5), as required by this chapter.

~~(4)~~(7) Notice to the person that, in addition to the requirements of the Act, he or she may have a duty to register in any other state where he or she may relocate.

California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

SEC. 10. Section 290.012 of the Penal Code is amended to read:

290.012. (a) Beginning on his or her first birthday following registration or change of address, the person shall be required to register annually, within five working days of his or her birthday, to update his or her registration with the entities described in subdivision (b) of Section 290. At the annual update, the person shall provide current information as required on the Department of Justice annual update form, including the information described in paragraphs (1) to ~~(3)~~(5), inclusive of subdivision (a) of Section 290.015. The registering agency shall give the registrant a copy of the registration requirements from the Department of Justice form.

(b) In addition, every person who has ever been adjudicated a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, shall, after his or her release from custody, verify his or her address no less than once every 90 days and place of employment, including the name and address of the employer, in a manner established by the Department of Justice. Every person who, as a sexually violent predator, is required to verify his or her registration every 90 days, shall be notified wherever he or she next registers of his or her increased registration obligations. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notice shall be a defense to the penalties prescribed in subdivision (f) of Section 290.018.

(c) In addition, every person subject to the Act, while living as a transient in California, shall update his or her registration at least every 30 days, in accordance with Section 290.011.

(d) No entity shall require a person to pay a fee to register or update his or her registration pursuant to this section. The registering agency shall submit registrations, including annual updates

- (a) Signs of trauma, fatigue, injury, or other evidence of poor care.
- (b) The person is withdrawn, afraid to talk, or his or her communication is censored by another person.
- (c) The person does not have freedom of movement.
- (d) The person lives and works in one place.
- (e) The person owes a debt to his or her employer.
- (f) Security measures are used to control who has contact with the person.
- (g) The person does not have control over his or her own government-issued identification or over his or her worker immigration documents.

SEC. 8. Section 236.4 is added to the Penal Code, to read:

236.4. (a) Upon the conviction of any person of a violation of Section 236.1, the court may, in addition to any other penalty, fine, or restitution imposed, order the defendant to pay an additional fine not to exceed one million dollars (\$1,000,000). In setting the amount of the fine, the court shall consider any relevant factors including, but not limited to, the seriousness and gravity of the offense and the circumstances and duration of its commission, the amount of economic gain the defendant derived as a result of the crime, and the extent to which the victim suffered losses as a result of the crime.

(b) Any person who inflicts great bodily injury on a victim in the commission or attempted commission of a violation of Section 236.1 shall be punished by an additional and consecutive term of imprisonment in the state prison for five, seven, or ten years.

(c) Any person who has previously been convicted of a violation of any crime specified in Section 236.1 shall receive an additional and consecutive term of imprisonment in the state prison for five years for each additional conviction on charges separately brought and tried.

(d) Every fine imposed and collected pursuant to Section 236.1 and this Section shall be deposited in the Victim-Witness Assistance Fund, to be administered by the California Emergency Management Agency (Cal EMA), to fund grants for services for victims of human trafficking. Seventy percent of the fines collected and deposited shall be granted to public agencies and nonprofit corporations that provide shelter, counseling, and/or other direct services for trafficked victims. Thirty percent of the fines collected and deposited shall be granted to law enforcement and prosecution agencies in the jurisdiction in which the charges were filed to fund human trafficking prevention, witness protection, and rescue operations.

SEC. 9. Section 290 of the Penal Code is amended to read:

290. (a) Sections 290 to ~~290.023~~290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of

(1) "Coercion" includes 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; the abuse or threatened abuse of the legal process; debt bondage; or the provision and facilitation of any controlled substance to a person with the intent to impair said person's judgment.

(2) "Commercial sex act" means any sexual conduct on account of which anything of value is given or received by any person.

(3) "Deprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) "Duress" includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which one would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

(5) "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

(6) "Great bodily injury" means a significant or substantial physical injury.

(7) "Minor" means a person under 18 years of age.

(8) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.

(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this Section.

SEC. 7. Section 236.2 of the Penal Code is amended to read:

236.2. Law enforcement agencies shall use due diligence to identify all victims of human trafficking, regardless of the citizenship of the person. When a peace officer comes into contact with a person who has been deprived of his or her personal liberty, a minor who has engaged in a commercial sex act, a person suspected of violating subdivision (a) or (b) of Section 647, or a victim of a crime of domestic violence or ~~rape~~ sexual assault, the peace officer shall consider whether the following indicators of human trafficking are present:

(b) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for eight, fourteen, or twenty years and a fine of not more than five hundred thousand dollars (\$500,000).

(c) Any person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, eight, or twelve years and a fine of not more than five hundred thousand dollars (\$500,000); or

(2) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$500,000) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.

(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the total circumstances, including the age of the victim and his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.

(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.

(g)(1) In addition to the penalty specified in subdivision (c), any person who commits human trafficking involving a commercial sex act where the victim of the human trafficking was under 18 years of age at the time of the commission of the offense shall be punished by a fine of not more than one hundred thousand dollars (\$100,000).

(2) As used in this subdivision, "commercial sex act" means any sexual conduct on account of which anything of value is given or received by any person.

(h) Every fine imposed and collected pursuant to this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund services for victims of human trafficking. At least 50 percent of the fines collected and deposited pursuant to this section shall be granted to community-based organizations that serve victims of human trafficking.

(i) For purposes of this chapter, the following definitions apply:

3. To strengthen laws regarding sexual exploitation, including sex offender registration requirements to allow law enforcement to track and prevent online sex offenses and human trafficking.

SEC. 4. Section 1161 is added to the Evidence Code, to read:

1161. (a) Evidence that a victim of human trafficking, as defined in Section 236.1 of the Penal Code, has engaged in any commercial sexual act as a result of being a victim of human trafficking is inadmissible to prove the victim's criminal liability for any conduct related to that activity.

(b) Evidence of any sexual history or history of commercial sexual act of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.

SEC. 5. The heading of Chapter 8 (commencing with Section 236) of Title 8 of Part 1 of the Penal Code is amended to read:

Chapter 8. FALSE IMPRISONMENT AND HUMAN TRAFFICKING

SEC. 6. Section 236.1 of the Penal Code is amended to read:

236.1. (a) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for five, eight, or twelve years and a fine of not more than five hundred thousand dollars (\$500,000).

(b) Except as provided in subdivision (c), a violation of this section is punishable by imprisonment in the state prison for three, four, or five years.

(c) A violation of this section where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for four, six, or eight years.

(d)(1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

(e) For purposes of this section, "forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

Appendix E: CASE Act Endorsements

<http://www.caseact.org/case/endorsements/>

1. 34 Advocacy Groups

Soroptimist International of Poway, A Quarter Blue, Alicia Project, Bilateral Safety Corridor Coalition, Breaking Chains, Captive Daughters, Casa De La Familia, Courage to Be You, Crime Survivors, Inc., Crime Victims United of California, FoRe! Beyond the Green International Ministries, Generate Hope, Get Safe, International Justice Mission, Joining Hands, KlaasKids Foundation, Los Angeles Crime Stoppers, MISSEY, Oasis, USA, Orange County Crime Stoppers, Sands of Silence, SCV Youth Project, Shared Hope International, Soroptimist International of La Mesa, Soroptimist International of Moreno Valley, Soroptimist International of the Americas, Sierra Nevada Region, Stop Child Trafficking Now, The A21 Campaign, The Joyful Child Foundation - In Memory of Samantha Runnion, The Ron Goldman Foundation, Traffick Free Pomona, Wind Youth Services, With More than Purpose, Women's Federation of World Peace – SF Bay Chapter, Women's International Center

2. 17 Law Enforcement orgs

Association for Los Angeles Deputy Sheriffs, Association of Orange County Deputy Sheriffs, California Association of Highway Patrolmen, California Coalition of Law Enforcement Association (CCLEA), California Fraternal Order of Police, California Police Chiefs Association Sacramento, Deputy Sheriff's Association of San Diego County, Los Angeles County Professional Peace Officers Association (PPOA), Los Angeles Police Protective League, National Latino Peace Officers Association of San Diego Metro, Peace Officers Research Association of California (PORAC), Riverside Sheriffs Association, Sacramento Deputy Sheriffs Association, Sacramento Police Officers Association, San Bernardino County Safety Employee Benefits Association, San Diego Police Officers Association, San Francisco Police Officers Association, San Jose Police Officers Association, Southern California Alliance of Law Enforcement (SCALE)

3. 5 faith groups

Crossroads Church, Cucamonga Christian Fellowship, FHL Ministries, Fremont Community Church, Regeneration Church

Appendix F: CASE Act Endorsement Form

http://www.caseact.org/wp-content/uploads/2012/01/case_endorsement_form.pdf



☒ We support the Californians Against Sexual Exploitation Act ("CASE Act"). Please add my name/organization to the list of Individuals and organizations in order to make California safer for children and adults by strengthening our laws against human trafficking and sexual exploitation.

Please select a category:

☐ Organization ☐ Company ☐ Individual ☐ Public Agency

Please complete the following information:

Company or Organization Name/Employer

Name Title/Occupation

Street Address

City State Zip County

Phone number E-mail Address

Signature (Required) Date

☐ Please email me updates.
☐ I am including a donation for \$_____. Contributions to California Against Sexual Exploitation are not deductible as charitable contributions for federal income tax purposes. California Against Sexual Exploitation may accept unlimited contributions from individuals, corporations, unions and PACs.

I/We can help in the following ways:

☐ Distribute materials ☐ Write an opinion editorial
☐ Communicate with employees/members ☐ Volunteer/Speak at local events
☐ Write a letter-to-the editor ☐ Place a link on our website

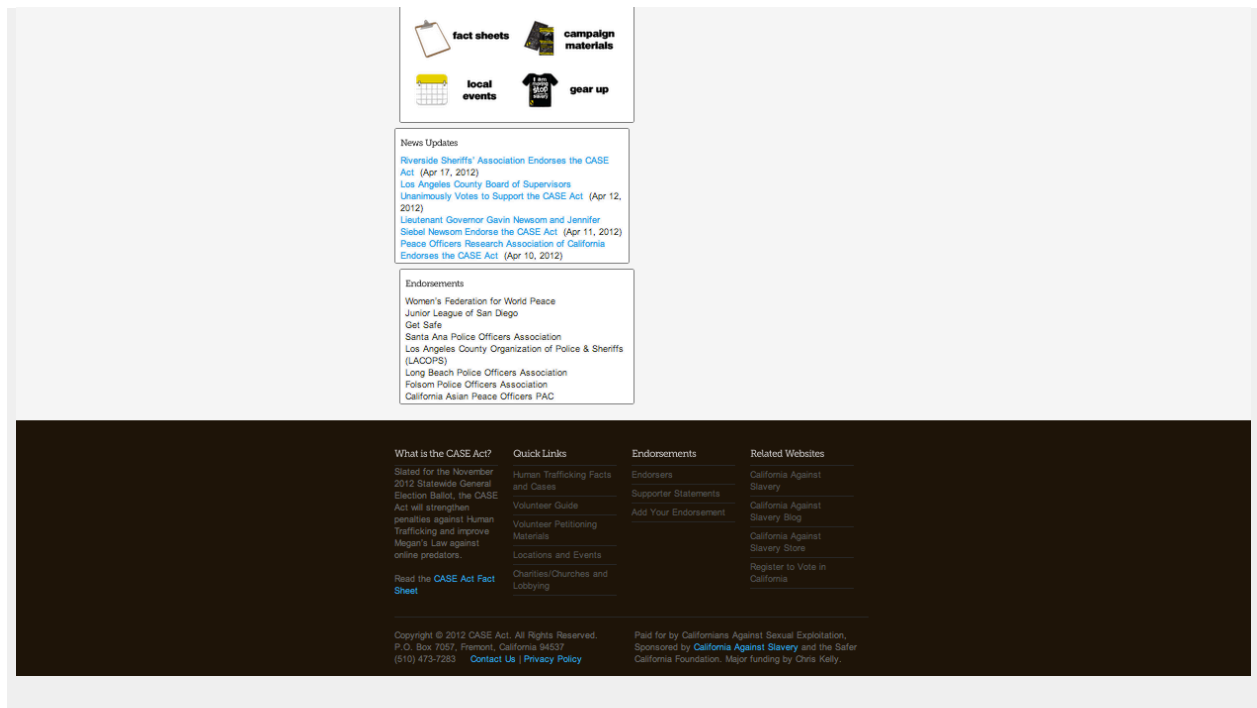
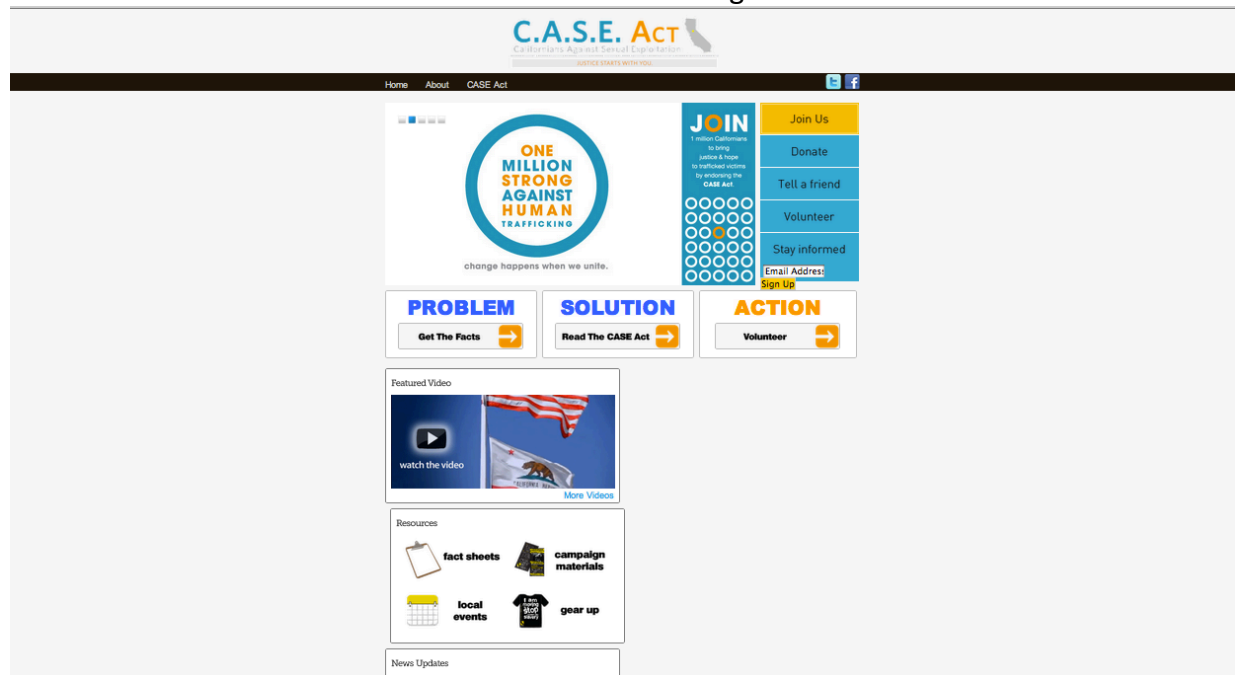
Mail or e-mail this form to: CASE, P.O. Box 7057, Fremont, CA 94537, or: endorse@caseact.org

www.CaseAct.org

Californians Against Sexual Exploitation Act ("CASE Act") is a joint effort of California Against Slavery and the Safer California Foundation.

Appendix G: CASE Act website

www.CASEACT.org



Appendix H: Polaris Project Model Law



MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING

August 2010

Dear Colleagues,

Polaris Project is happy to present a new edition of Model Provisions of Comprehensive State Legislation to Combat Human Trafficking, in order to assist state legislators and anti-trafficking activists in improving their state's strategy to fight human trafficking – a modern form of slavery. Polaris first published model state anti-trafficking legislation in July 2004, and published a second edition in November 2006. This newest version of the model legislation contains revised criminal provisions and new provisions addressing the prevention of human trafficking and protection and services to survivors. We have also adjusted the title and format of the model law provisions to reflect the reality that state legislatures will not pass all provisions as one large, single piece of legislation. Instead, state legislators and anti-trafficking advocates may select and adapt those provisions that are best suited to their states' needs and political realities.

Polaris Project's model provisions comprehensively address the "three Ps" of combating human trafficking: prosecution, prevention and protection of victims. Since the original date of publication, many states have passed legislation that addresses human trafficking. At our last count, 44 states and one territory have some form of human trafficking law. Some of these states have enacted comprehensive laws, while others have begun with changes to the criminal code, leaving open the possibility of further improvements down the line. We hope this model legislation will be useful both to the few states that are crafting their first human trafficking law, as well as to states that are amending their law to add new prevention and protection measures or to improve the criminal provisions.

This third edition of the model provisions draws on the research and support of many Polaris Project fellows, pro bono attorneys at private law firms, volunteer students at universities across the country, and current and former staff. We would like to particularly thank Kaylan Sliney, Kristin Fortin, Karen Stauss, Andrea Lindemann, Joyce Yeager, Esther Goldschlager, Bridgette Carr and students at the University of Michigan Law School Human Trafficking Clinic, students at the University of Virginia School of Law, and attorneys at the law firms of King & Spalding, Jones Day, DLA Piper, Covington & Burling, and Ballard Spahr. Language from numerous sources, including the Trafficking Victims Protection Act (TVPA) of 2000 and its reauthorizations, Pub. L. No. 106-386; Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, Pub. L. No. 108-21; the Department of State's Model Anti-trafficking Law, released March 12, 2003; the Department of Justice's Model State Anti-trafficking Criminal Statute, released July 16, 2004; and many proposed and enacted state laws related to human trafficking.

Polaris Project's U.S. Policy Program is pleased to offer technical assistance to state legislators, their staff, and others working on state legislation to combat human trafficking. Please contact our policy team at (202) 745-1001 ext. 130 or at policy@polarisproject.org with any requests for technical assistance or questions and comments about the revised Model Provisions of Comprehensive State Legislation to Combat Human Trafficking. The development of this model legislation is an on-going project, so please notify us of any corrections or suggested improvements you have.

Sincere Regards,

Bradley Myles
Executive Director and CEO
Polaris Project

**MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION
TO COMBAT HUMAN TRAFFICKING**

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MODEL PROVISIONS OF COMPREHENSIVE STATE LEGISLATION TO COMBAT HUMAN TRAFFICKING

PROSECUTION

DEFINITIONS

- (1) "Commercial sex act" means any sex act on account of which anything of value is given, promised to, or received, directly or indirectly, by any person.
- (2) "Debt coercion" means exploitation of the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his or her control as a security or payment for 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 or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.
- (3) "Extortion" is to be given its ordinary meaning as defined by [state extortion and/or blackmail statute, if any] or defined as the obtaining of property, labor or services, commercial sex acts, or sexually explicit performances from another, or of an official act of a public officer, through a wrongful use of force or fear, or under color of official right.
- (4) "Financial harm" includes credit extortion as defined by [state extortionate credit statute, if any], criminal violation of the usury laws as defined by [state statute defining usury, if any], or employment contracts that violate relevant statutes of frauds as defined by [state statute of frauds, if any].
- (5) "Labor" means work of economic or financial value.
- (6) "Minor" refers to any natural person less than 18 years of age.
- (7) "Person", for purposes of this Act, means any individual, corporation (including a government corporation), partnership, association, trust, firm, joint stock company, state, municipality, commission, political subdivision of a State, interstate body, any other government body, or any other legal entity.
- (8) "Serious harm" means any harm, whether physical or nonphysical, including, but not limited to, psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances as the victim to perform or to continue performing labor or a service, a commercial sex act, or a sexually explicit performance in order to avoid incurring that harm.
- (9) "Services" means any act committed at the behest of, under the supervision of, or for the benefit of another.
- (10) "Sex act" means any touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of any person. It includes touching of the person as well as touching by the person, whether directly or through clothing.
- (11) "Sex trade," for purposes of the Civil Cause of Action for Victims of the Sex Trade provision, means an act which if proven beyond a reasonable doubt could support a conviction for violation or attempted violation of any of the following: [insert existing state statutes that cover solicitation for a prostitute, keeping a place of prostitution, pimping, pandering, obscenity, child pornography, or any other related crimes].
- (12) "Sexually explicit performance" means an act or show, whether public or private, live, photographed, recorded, or videotaped intended (a) to appeal to the prurient interest, (b) to depict, in a patently offensive way, sexual conduct, and (c) to do so in a way that lacks literary, artistic, political, or scientific value. Sexually explicit performance also includes any performance that depicts sexual conduct by a minor or that would create criminal liability under [the state's child pornography statutes].
- (13) "Victim of human trafficking" means any person, whether a U.S. citizen or foreign national, who has been subjected to [state human trafficking offenses].

- (14) "Victim of the sex trade," for purposes of the Civil Cause of Action for Victims of the Sex Trade provision, means any person who has been the object of the solicitation for prostitution, has intended or been compelled to engage in an act of prostitution, or, in the case of obscenity or child pornography, has appeared in or been described or depicted in the offending conduct or material.

HUMAN TRAFFICKING CRIMINAL PROVISIONS

- (1) INVOLUNTARY SERVITUDE. Any person who knowingly subjects, or attempts to subject, another person to:

- (i) commercial sex acts or sexually explicit performance, or
- (ii) labor or services

through use of any of the following means, or any combination of such means:

- (a) causing or threatening to cause serious harm to any person;
- (b) physically restraining or threatening to physically restrain another person;
- (c) kidnapping or attempting to kidnap any person;
- (d) abusing or threatening to abuse the law or legal process;
- (e) taking another's personal property or real property;
- (f) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;
- (g) extortion or blackmail;
- (h) deception or fraud;
- (i) coercion or duress or menace;
- (j) debt coercion;
- (k) causing or threatening to cause financial harm to, or exerting or threatening to exert financial control over, any person;
- (l) facilitating or controlling a victim's access to an addictive controlled substance; or
- (m) using any scheme, plan, or pattern, whether overt or subtle, intended to cause any person to believe that, if the person did not perform such labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint,

commits a [Class A felony or felony in the first degree].

- (2) SEXUAL SERVITUDE OF A MINOR. Any person who knowingly
- (A) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains, or so attempts, any minor for the purposes of commercial sex acts or sexually explicit performance through any means, or

- (B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in paragraph (A),

commits a [Class A felony or felony in the first degree].

For purposes of this section, it is not required that the defendant have knowledge of the victim's age, nor is reasonable mistake of age a defense to liability under this provision.

- (3) HUMAN TRAFFICKING. Any person who knowingly
- (A) recruits, entices, solicits, isolates, harbors, transports, provides, obtains, or maintains, or so attempts, another person knowing that the person will be subjected to involuntary servitude, or
 - (B) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in paragraph (A),

commits a [Class B felony or felony in the second degree].

(4) UNLAWFUL CONDUCT WITH RESPECT TO DOCUMENTS. Any person who knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document of another person

- (A) in the course of a violation of or with intent to violate [state human trafficking offenses], or
- (B) to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the ability of the person to move or travel, in order to maintain the labor or services or commercial sex acts of that person, when the person is or has been a victim of [state human trafficking offenses],

commits a [Class C felony or felony in the third degree].

(5) OBSTRUCTION. Any person who obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of [state human trafficking offenses], shall be fined and/or imprisoned to the same extent as the underlying crime.

PATRONIZING A HUMAN TRAFFICKING VICTIM

(A) Any person who engages in a commercial sex act with another person knowing or in reckless disregard that the person is a victim of human trafficking, as defined by [state human trafficking offenses], commits a [Class B felony].

(B) A conviction under this section shall be in addition to any conviction which might be brought for the crime of patronizing a person who is a prostitute, as set forth in [state prostitution statutes].

JOHN SCHOOLS: PATRONIZING PROSTITUTION

(A) In addition to any other penalties that apply under [state solicitation offenses that apply to purchasers of sex acts], the following penalties shall also apply:

- (1) As part of the penalty, the judge shall order, as one of its conditions, that the defendant shall pay for and satisfactorily attend and complete a court-approved educational course on the effects of prostitution.
- (2) In addition, a person who violates this section shall be assessed a civil penalty if the violation results in any judicial disposition other than acquittal or dismissal. The proceeds from penalties assessed under [state solicitation offenses that apply to purchasers of sex acts] shall be paid to the [District Attorney's office] for the sole purpose of paying the administrative costs of treatment-based prostitution programs.

NON-PAYMENT OF WAGES

(A) Any employer who willfully or with intent to defraud fails or refuses to pay wages is guilty of a felony [or: shall be fined not less than \$2,000 nor more than \$10,000 or imprisoned not less than 2 years nor more than 10 years or both, for each offense].

(B) Any employer who without a good faith [reasonable/legal] basis fails or refuses to pay wages to a worker is guilty of:

- (1) A felony if the amount owed is equal to or greater than \$2,000 or if such failure or refusal constitutes a subsequent violation of this section or if the employer falsely denies the amount or

validity of the debt owed [or: shall be fined not less than \$2,000 nor more than \$5,000 or imprisoned not more than 5 years or both], or

- (2) A misdemeanor if the amount owed is less than \$2,000 [or: shall be fined not more than \$2,500 or imprisoned for not more than 12 months or both].

(C) An employer commits a separate offense under paragraph (B) for each pay period [or: calendar month] during which the worker earned wages that the employer failed to pay.

(D) In addition to any fine, an employer found in violation of paragraphs (A) or (B) must pay mandatory restitution to the worker in the form of all wages owed to that worker.

(E) An individual who is a victim of non-payment of wages may bring a civil action in the appropriate state court to recover all wages owed by the employer.

CRIMINAL LIABILITY OF BUSINESS ENTITIES

(A) Any business entity, including a corporation, partnership, association, government body, municipal corporation or any other legal entity, that aids or participates in any crime in violation of [state human trafficking offenses], shall be criminally liable for such offense.

(B) If a business entity is convicted of violating [state human trafficking offenses], the court shall

- (1) order it to pay a fine of not more than \$1,000,000; or
 - (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency;
- or both; and may, when appropriate:
- (3) order its dissolution or reorganization; or
 - (4) such and further relief as is equitable, including ordering the forfeiture of assets or otherwise making provision for restitution.

RACKETEERING ACTIVITY

The definition of racketeering activity in [state Racketeer Influenced and Corrupt Organizations (RICO) statute] is amended to include [state human trafficking offenses].

GUILTY PLEAS

Any plea of guilty entered under [state human trafficking offenses] by a defendant shall automatically entitle the victim of human trafficking to all benefits, rights, and compensation granted under state law to such victim, notwithstanding any existing law.

NON-DEFENSES TO HUMAN TRAFFICKING

Evidence of the following facts or conditions shall not constitute a defense in a prosecution for violations of [state human trafficking offenses], nor shall such evidence preclude a finding of a violation:

- (a) a victim of human trafficking's sexual history or history of commercial sexual activity;
- (b) a victim of human trafficking's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
- (c) consent of or permission by a victim of human trafficking or anyone else on the victim's behalf to any commercial sex act or sexually explicit performance; or
- (d) age of consent to sex, legal age of marriage, or other discretionary age.

VICTIM IMMUNITY FROM PROSECUTION

- (A) A victim of human trafficking is not criminally liable for any commercial sex act or illegal sexually explicit performance committed as a direct result of, or incident or related to, being subject to [state human trafficking offenses].

"SAFE HARBOR" LAW

Model language is not included for this type of provision, because the language will vary considerably depending on existing state laws. Please see the Commentary for further information.

RESTITUTION

- (A) A person convicted of a violation of [state human trafficking offenses], shall be ordered to pay mandatory restitution to the victim as provided in paragraph (C) of this section.
- (B) For purposes of this section, "victim" shall be defined as [state restitution statute definition of victim] or as a victim of human trafficking. If the victim dies as a result of being trafficked, a surviving spouse of the victim is eligible for restitution. If no surviving spouse exists, restitution shall be paid to the victim's issue or their descendants per stripes. If no surviving spouse, issue, or descendants exist, restitution shall be paid to the victim's estate. Any person named in this provision may not receive any funds from restitution if he or she engaged in violations of [state human trafficking offenses].
- (C) Restitution under this section shall include items covered by [state restitution statute] and [any of the following if not already included in the state restitution statute]:
- (1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;
 - (2) costs of necessary transportation, temporary housing, and child care, at the court's discretion;
 - (3) attorney's fees and other court-related costs such as victim advocate fees;
 - (4) the greater of (i) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or state equivalent; or (ii) the gross income or value to the defendant of the victim's labor or services or of any commercial sex acts engaged in by the victim while in the human trafficking situation.
 - (5) return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;
 - (6) compensation for emotional distress, pain, and suffering;
 - (7) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
 - (8) repatriation of the victim to their home country, if applicable; and
 - (9) any and all other losses suffered by the victim as a result of violations of [state human trafficking offenses].
- (D) Restitution shall be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this section applied first to payment of restitution. The return of the victim to her or his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

- (E) Nonpayment or delay in payment of restitution shall be governed by [state restitution statute governing non-payment or delay in restitution payments].

ASSET FORFEITURE

- (A) Any person who violates [state human trafficking offenses] shall forfeit to the State any profits or proceeds and any interest or property that the sentencing court determines to have been acquired or maintained as a result of committing [state human trafficking offenses].
- (B) The following shall be subject to forfeiture to the State, and no property right shall exist in them:
- (1) All assets, foreign, domestic, and within this State:
 - (a) of an individual, entity, or organization engaged in planning or perpetrating an act in this State which violates [state human trafficking offenses] and all assets, foreign or domestic, affording a person a source of influence over a trafficked individual;
 - (b) acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting, or concealing an act in this State which violates [state human trafficking offenses]; or
 - (c) derived from, involved in, or used or intended to be used to commit an act in this State which violates [state human trafficking offenses].
- (C) The court shall, upon petition by the Attorney General or State's Attorney [or: District Attorney/ County Prosecutor] at any time following sentencing, conduct a hearing to determine whether any property or property interest is subject to forfeiture under this section.
- (D) Upon conviction of a person for [state human trafficking offenses], the court shall direct the Attorney General to seize all property or other interest declared forfeited under this section. All monies forfeited and the proceeds from sale of all property forfeited and seized under this section shall first be used to pay restitution to victims of human trafficking and subsequently to pay any damages awarded to victims in a civil action. Any remaining assets shall go to the state crime victims' fund and toward the reimbursement of any local police department which has used its own funds in the detection, investigation, apprehension, and prosecution of persons for the violation of [state human trafficking offenses].
- (E) Overseas assets of persons convicted of [state human trafficking offenses] shall also be subject to forfeiture to the extent they can be retrieved by the State.

STATUTE OF LIMITATIONS

- (A) An action for [state human trafficking offenses] where the victim is not a minor shall be brought within [see applicable state statute of limitations for sex offenses or kidnapping] years from the date the victim escaped from the human trafficking situation.
- (B) Any statute of limitations that would otherwise preclude prosecution for a violation of [state human trafficking offense] in which the victim is a minor shall be tolled until such time as the victim has reached the age of 18 years old.
- (C) The running of the statute of limitations may be tolled where a person entitled to bring a claim of [state human trafficking offenses] could not have reasonably discovered the crime due to circumstances resulting from the human trafficking situation, such as psychological trauma, social, cultural and linguistic isolation, and the inability to access services.

SENTENCING ENHANCEMENTS

- (A) Sentencing considerations in cases involving rape, extreme violence, or death. If a violation of [state human trafficking offenses] involves kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, or if death results, the defendant commits a [Class A felony or felony in the first degree].
- (B) Additional sentencing considerations.
- (1) Bodily injury. If, pursuant to a violation of [state human trafficking offenses], a victim suffered bodily injury, the sentence may be enhanced as follows: (i) bodily injury, an additional _ years of imprisonment; (ii) serious bodily injury, an additional _ years of imprisonment; (iii) permanent or life-threatening bodily injury, an additional _ years of imprisonment; (iv) if death results, defendant shall be sentenced in accordance with the homicide statute relevant for level of criminal intent.
 - (2) Time in servitude. In determining sentences within statutory maximums, the sentencing court should take into account the time in which the victim was held in servitude, with increased penalties for cases in which the victim was held for between 180 days and one year, and further increased penalties for cases in which the victim was held for more than one year.
 - (3) Number of victims. In determining sentences within statutory maximums, the sentencing court should take into account the number of victims and may provide for substantially increased sentences in cases involving more than two victims.

INFORMATION FOR VICTIMS

- (A) The state shall inform victims of human trafficking, in a language they can understand, of their legal rights and the progress of relevant court and administrative proceedings, as appropriate, including, but not limited to: progress in the prosecution of the defendants; information on the convicted persons' prison release dates; and the procedure for repatriating a victim to his/her country of citizenship or lawful residence. The state shall also provide victims of human trafficking with a directory of local victim service organizations, including legal services organizations that can assist victims in obtaining or maintaining legal immigration status.
- (B) The agency administering the state crime victims' compensation fund created under [relevant state statute] shall inform victims of human trafficking of benefits they may receive under federal and state laws and assist victims in obtaining such benefits.

OPPORTUNITY FOR PRESENTATION OF VICTIM'S VIEWS AND CONCERNS

The state shall provide an opportunity to a victim of human trafficking, if the victim so desires, to present the victim's views and concerns at appropriate stages of criminal proceedings against the human trafficker(s), in a manner not prejudicial to the rights of the defendant(s). An interpreter who speaks a language the victim understands should be made available to the victim during the course of legal proceedings.

PREVENTION OF HUMAN TRAFFICKING

STATE TASK FORCE FOR THE PREVENTION OF HUMAN TRAFFICKING

- (A) The Governor shall establish an inter-agency task force to develop and implement a State Plan for the Prevention of Human Trafficking (the "State Plan"). Such a task force shall meet at least four times annually and shall address all aspects of human trafficking, including sex trafficking and labor trafficking of both U.S. citizens and foreign nationals.
- (B) "Human trafficking" as used in this section refers to [state human trafficking offenses].
- (C) The Governor shall appoint the members of the task force, which shall include, at a minimum, representatives from:
- (1) the office of the Governor;
 - (2) Attorney General's Office;
 - (3) the Department of Labor;
 - (4) the Department of Juvenile Justice;
 - (5) the Department of Health;
 - (6) the Department of Social Services;
 - (7) the Department of Child Protection Services;
 - (8) the Police Chiefs' Association;
 - (9) the State Sheriffs' Association;
 - (10) the State Police;
 - (11) local law enforcement entities;
 - (12) members of the state legislature; and
 - (13) representatives from non-governmental organizations, especially those specializing in human trafficking, those representing diverse communities disproportionately affected by human trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.
- (D) The Governor shall invite representatives of the U.S. Attorneys' offices and of federal law enforcement agencies operating within the state, including the Federal Bureau of Investigation, U.S. Immigration and Customs Enforcement, and the U.S. Department of Labor, to be members of the task force.
- (E) The task force shall carry out the following activities either directly or via one or more of its constituent agencies:
- (1) Develop the State Plan.
 - (2) Coordinate the implementation of the State Plan.
 - (3) Coordinate the collection and sharing of human trafficking data among government agencies, which data collection shall respect the privacy of victims of human trafficking.
 - (4) Coordinate the sharing of information between agencies for the purposes of detecting individuals and groups engaged in human trafficking.
 - (5) Explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations.
 - (6) Establish policies to enable state government to work with non-governmental organizations and other elements of civil society to prevent human trafficking and provide assistance to U.S. citizen and foreign national victims of human trafficking.
 - (7) Review the existing services and facilities to meet the needs of victims of human trafficking and recommend a system that would coordinate such services, including but not limited to: health services, including mental health; housing; education and job training; English as a Second Language classes; interpreting services; legal and immigration services; and victim compensation.

- (8) Evaluate various approaches used by state and local governments to increase public awareness of human trafficking, including trafficking of U.S. citizen and foreign national victims.
- (9) Submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December 31st of each calendar year.

DATA COLLECTION AND DISSEMINATION

- (A) The State shall, in cooperation with other appropriate authorities, collect and periodically publish statistical data on human trafficking.
- (B) The State shall elicit the cooperation and assistance of other government agencies, non-governmental organizations, and other elements of civil society as appropriate to assist in the data collection required under paragraph (A) of this section.
- (C) The appropriate authorities in each agency that play a vital role in addressing human trafficking shall make best efforts to collect information relevant to tracking progress on human trafficking, including but not limited to:
 - (1) numbers of investigations, arrests, prosecutions, and successful convictions of human traffickers and those committing human trafficking-related crimes (pimping, pandering, procuring, maintaining a brothel, child pornography, visa fraud, document fraud, and other crimes related to human trafficking);
 - (2) the estimated number and characteristics of persons engaged in violations of [state human trafficking offenses], as well as persons who purchase or receive commercial sex acts or sexually explicit performances, or labor or services, performed by victims of human trafficking;
 - (3) statistics on the number and characteristics of victims of human trafficking, including nationality, age, method of recruitment, and city, state and country of origin;
 - (4) human trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries, methods of transportation), if any transportation took place; and
 - (5) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that leads to human trafficking.

TRAINING

- (A) The State shall provide mandatory training for law enforcement agencies, prosecutors, public defenders, judges, juvenile detention center staff and others involved in the juvenile justice system and criminal justice system, and other relevant officials in addressing human trafficking.
- (B) Such training shall focus on:
 - (1) [state human trafficking offenses];
 - (2) methods used in identifying U.S. citizen and foreign national victims of human trafficking, including preliminary interview techniques and appropriate questioning methods;
 - (3) methods for prosecuting human traffickers;
 - (4) methods of increasing effective collaboration with non-governmental organizations and other relevant social service organizations in the course of investigating and prosecuting a human trafficking case;
 - (5) methods for protecting the rights of victims of human trafficking, taking into account the need to consider human rights and special needs of women and minors victims;
 - (6) the necessity of treating victims of human trafficking as crime victims rather than criminals; and
 - (7) methods for promoting the safety of victims of human trafficking.

- (C) The State shall seek the input and participation of appropriate non-governmental organizations and other relevant organizations in the preparation and presentation of training called for in this section.

PUBLIC AWARENESS

- (A) The State in cooperation with appropriate non-governmental organizations shall prepare public awareness programs designed to educate potential victims of human trafficking and their families on the risks of victimization. Such public awareness programs shall include, but shall not be limited to:
- (1) information about the risks of becoming a victim of human trafficking, including information about common recruitment techniques, use of debt bondage and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in human trafficking cases;
 - (2) information about the risks of engaging in commercial sex and possible punishment; and
 - (3) information about victims' rights under [State] and U.S. law;
 - (4) methods for reporting suspected recruitment activities, including information on relevant hotlines; and
 - (5) information on the types of services available to victims of human trafficking and how to access such services, including information on relevant hotlines, such as the National Human Trafficking Resource Center hotline.
- (B) The State in cooperation with other appropriate government agencies and appropriate non-governmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of human trafficking of both U.S. citizens and foreign nationals within the United States and to discourage the demand that fosters the exploitation of persons and that leads to human trafficking.
- (C) General public awareness materials may include information on the impact of human trafficking on individual victims, whether U.S. citizens or foreign nationals; aggregate information on human trafficking worldwide and domestically; and warnings of the criminal consequences of engaging in human trafficking. Such materials may include pamphlets, brochures, posters, advertisements in mass media, and any other appropriate media.
- (D) Programs and materials described in this section shall preserve the privacy of the victim and the victim's family.
- (E) All public awareness programs shall be evaluated periodically to ensure their effectiveness.

GRANTS

Subject to the availability of appropriations, the state shall make grants to units of local government, Indian tribes, and non-governmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of human trafficking, whether U.S. citizens or foreign nationals; to ensure the prevention of human trafficking; and to ensure protection for victims of human trafficking.

ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

For each state initiative for the prevention of human trafficking [state task force; data collection and dissemination; training; public awareness], the State shall seek out and enlist the cooperation and assistance of non-governmental organizations, especially those specializing in human trafficking, those representing diverse communities disproportionately affected by human trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.

PROTECTION OF HUMAN TRAFFICKING VICTIMS

CIVIL CAUSE OF ACTION FOR VICTIMS OF HUMAN TRAFFICKING

- (A) An individual who is a victim of human trafficking may bring a civil action in the appropriate state court. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.
- (B) Statute of limitations.
- (1) Any statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers both that the human trafficking incident occurred and that the defendant caused, was responsible for, or profited from the human trafficking incident.
 - (2) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
 - (3) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
 - (4) If the plaintiff's injury is caused by two or more incidents that are part of a human trafficking situation caused by the same defendant, then the limitation period will not commence running until the last human trafficking incident in the continuing series occurs.
 - (5) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time period during which these acts occurred will not be part of the time limited for the commencement of this action.
 - (6) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.
 - (7) In the discretion of the court, two or more persons may join in one action under this section as plaintiffs if their respective actions involve at least one defendant in common. In the discretion of the court, two or more persons may be joined in one action under this section as defendants if those persons may be liable to at least one plaintiff in common.
 - (8) No person may avoid liability under this section by any means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of human trafficking.

CIVIL CAUSE OF ACTION FOR VICTIMS OF THE SEX TRADE

- (A) An individual who is a victim of the sex trade¹ may bring a civil action in the appropriate state court.
- (1) A victim of the sex trade has a cause of action against a person or entity who recruits, profits from, or maintains the victim in any sex trade act; intentionally abuses or causes bodily harm to the victim in any sex trade act; or knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.
 - (2) This section shall not be construed to create liability for any person or entity who provides goods or services to the general public, and who also provides those goods or services to persons who would be liable under paragraph (A)(1) of this section, absent a showing that the person or entity either knowingly markets or provides its goods or services to, knowingly receives a higher level of compensation from, or supervises or exercises control over, persons or entities liable under paragraph (A)(1) of this section.

¹ For purposes of this provision, use the definitions of "sex trade" and "victim of the sex trade" above, under Definitions, paragraphs (11) and (14).

- (B) The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where defendant's acts were willful and malicious.
- (C) It is not a defense to an action brought under this section that:
- (1) the victim of the sex trade and the defendant had a consenting sexual relationship;
 - (2) the defendant is related to the victim of the sex trade by blood or marriage, or has lived with the victim in any formal or informal household arrangement;
 - (3) the victim of the sex trade was paid or otherwise compensated for sex trade activity;
 - (4) the victim of the sex trade engaged in sex trade activity prior to any involvement with the defendant;
 - (5) the victim of the sex trade continues to engage in sex trade activity following any involvement with the defendant;
 - (6) the victim of the sex trade made no attempt to escape, flee, or otherwise terminate the contact with the defendant;
 - (7) the victim of the sex trade consented to engage in sex trade activity;
 - (8) the victim of the sex trade engaged in only a single incident of sex trade activity;
 - (9) there was no physical contact involved in the sex trade activity;
 - (10) as a condition of employment, the defendant required the victim of the sex trade to agree not to engage in prostitution;
 - (11) the defendant's place of business was posted with signs prohibiting prostitution or prostitution-related activities; or
 - (12) the victim of the sex trade has been convicted or charged with prostitution or prostitution-related offenses.
- (D) Statute of limitations.
- (1) Any statute of limitation period imposed for the filing of a civil action under this section will not begin to run until the plaintiff discovers both that the sex trade act occurred and that the defendant caused, was responsible for, or profited from the sex trade act.
 - (2) If the plaintiff is a minor, then the limitation period will not commence running until he or she has reached the age of majority.
 - (3) If the plaintiff is under a disability at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.
 - (4) If the plaintiff's injury is caused by two or more acts that are part of a continuing series of sex trade acts by the same defendant, then the limitation period will not commence running until the last sex trade act in the continuing series occurs.
 - (5) If the plaintiff is subject to threats, intimidation, manipulation, or fraud perpetrated by the defendant or by any person acting in the interest of the defendant, then the time period during which these acts occurred will not be part of the time limited for the commencement of this action.
 - (6) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.
 - (7) In the discretion of the court, two or more persons may join in one action under this section as plaintiffs if their respective actions involve at least one defendant in common. In the discretion of the court, two or more persons may be joined in one action under this section as defendants if those persons may be liable to at least one plaintiff in common.
 - (8) No person may avoid liability under this section by any means of any conveyance of any right, title, or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement that purports to show consent of the victim of the sex trade.

APPLICABILITY OF LABOR STANDARDS

- (A) Standards for working conditions specified in [insert reference to appropriate law] shall apply equally to persons with or without the legal right to work in the United States.
- (B) The state shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

PROTECTION OF VICTIMS

An investigative, prosecutorial or other appropriate law enforcement authority shall interview all persons arrested on charges of prostitution and take all other steps necessary to identify victims of human trafficking, including U.S. citizens and foreign nationals. Once victims of human trafficking are identified, authorities shall provide reasonable protection to these victims to prevent recapture by the human traffickers and their associates; secure the victims and the victims' families from threats, reprisals, or intimidation by the human traffickers and their associates; and ensure that the victims have an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan. Such protection and security shall be subject to consent of the victim and the victim's family.

APPROPRIATE IMPLEMENTATION FOR CHILD VICTIMS

The provision of services to a minor victim of human trafficking by the State, or by any institution or entity established or licensed by the State, shall be carried out in a manner that is in the best interests of the child and appropriate to her or his situation. Special procedures shall be developed to accommodate minor witnesses during the investigation and prosecution of [state human trafficking offenses] including, but not limited to:

- (1) facilities that allow the testimony of a minor to be conducted outside the court setting or by video;
- (2) the presence of the parent, legal guardian or foster parent during all testimony and court proceedings, if it is in the best interests of the minor; and
- (3) reuniting the child with family members, whether within or outside the United States, whenever safe and possible.

WITNESS PROTECTION PROGRAM

Victims of human trafficking and their family members, whether U.S. citizens or foreign nationals, who are witnesses or potential witnesses to [state human trafficking offenses] are eligible for applicable witness relocation and protection programs for victims of organized criminal activity or other serious offenses, if it is determined that an offense involving a crime of violence directed at the witness or potential witness is likely to be committed. The programs may include:

- (1) relocation;
- (2) new identity and documents establishing such identity;
- (3) new residence;
- (4) employment and work authorization; and
- (5) protection of confidentiality of identity and location.

PROTECTION OF THE PRIVACY OF VICTIMS

In a prosecution for violations of [state human trafficking offenses], the identity of the victim and the victim's family shall be kept confidential by ensuring that names and identifying information of the victim and victim's family are not released to the public, including by the defendant.

DEVELOP A STATE PLAN TO PROVIDE SERVICES TO VICTIMS OF HUMAN TRAFFICKING

- (A) The State shall develop a plan, in consultation with non-governmental organizations and other elements of civil society, for the provision of appropriate services by governmental and non-governmental sources to victims of human trafficking, whether U.S. citizens or foreign nationals, and any dependents accompanying the victims, or parents or guardians of minor victims, including, but not limited to:
- (1) appropriate housing, taking into account the victim's status as a victim of crime and including safe conditions for sleeping, food, and personal hygiene;
 - (2) psychological counseling in a language the victim can understand;
 - (3) medical assistance;
 - (4) childcare;
 - (5) other material assistance as appropriate;
 - (6) access to employment, educational, language, and training opportunities; and
 - (7) legal assistance in a language the victim understands.
- (B) The governmental service providers described in the State Plan developed under paragraph (A) shall take into account the age, gender, and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.
- (C) Plans developed in accordance with paragraph (A) shall be submitted for approval to appropriate state authorities, which shall also undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this section and to ensure that all victims are treated with respect for their human rights and dignity.

ACCESS TO THE STATE CRIME VICTIMS' COMPENSATION FUND

Victims of human trafficking are entitled to forms of compensation under [applicable State Crime Victims' Compensation Fund].

REFUGEE BENEFITS

Foreign national victims of human trafficking and their accompanying dependent children shall be entitled to receive benefits in the same manner and to the same extent as refugees.

RIGHTS OF HUMAN TRAFFICKING VICTIMS IN SHELTERS

- (A) Victims of human trafficking shall not be given shelter in prisons or other detention facilities for accused or convicted criminals. Child victims of human trafficking shall not be detained in prisons or other detention facilities for accused or convicted criminals or juvenile delinquents under any circumstances.
- (B) Residence of victims of human trafficking in shelters or other facilities established or licensed by the State shall be voluntary, and victims may decline to stay in shelters or other facilities.
- (C) Victims of human trafficking residing in shelters or other facilities established or licensed by the State shall have the option to communicate with and receive visits from family, friends, attorneys, and advocates.

PROTECTION OF HUMAN TRAFFICKING AND DOMESTIC VIOLENCE SHELTERS

- (A) Any person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of any victim of human trafficking, any human trafficking shelter or domestic violence shelter, or any place designated as a human trafficking shelter or domestic violence shelter, without the

authorization of that victim, human trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor.

- (B) For purposes of this section, “domestic violence shelter” means a confidential location, appropriately licensed by the state, which provides emergency housing for victims of sexual assault, spousal abuse, or both, and their families. For purposes of this section, “human trafficking shelter” means a confidential location, appropriately licensed by the State, which provides emergency housing for victims of human trafficking.

HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE

- (A) A victim of human trafficking, whether or not a party to the action, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:
- (1) the holder of the privilege;
 - (2) a person who is authorized to claim the privilege by the holder of the privilege; or
 - (3) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.
- (B) The human trafficking caseworker who received or made a communication subject to the privilege granted by this section shall claim the privilege whenever he or she is present when the communication is sought to be disclosed and he or she is authorized to claim the privilege under this section.
- (C) A human trafficking caseworker shall inform a victim of human trafficking of any applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.
- (D) As used in this section, “human trafficking caseworker” means a person who is employed by any organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of human trafficking, and who meets one of the following requirements:
- (1) holds a master’s degree or higher in counseling or a related field; or has one year of counseling experience, at least six months of which is in the counseling of victims of human trafficking; or
 - (2) has at least 40 hours of training as specified in this paragraph and is supervised by an individual who qualifies as a counselor under subparagraph (1) or by a psychotherapist. The training, supervised by a person qualified under subparagraph (1), shall include, but need not be limited to, the following areas: history of human trafficking; civil and criminal law as it relates to human trafficking; societal attitudes towards human trafficking; peer counseling techniques; housing, public assistance, and other financial resources available to meet the needs of victims of human trafficking; and referral services available to victims of human trafficking. A portion of this training must include an explanation of privileged communication.
- (E) As used in this section, “confidential communication” means information transmitted between the victim and the human trafficking caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking caseworker is consulted. It includes all information regarding the facts and circumstances involving all incidences of human trafficking.

- (F) As used in this section, "holder of the privilege" means the victim when he or she has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator.

POST THE NATIONAL HUMAN TRAFFICKING HOTLINE

- (A) Every [targeted establishment, including any of the following: massage parlor, spa, or any similar establishment that does or does not require a license; any establishment that receives a liquor license; every strip club and other sexually-oriented business; restaurant; airport; train station; bus station; highway truck stop; highway rest stop; hospital, HMO, and urgent care center; farm (over a certain size); high school; and job recruitment center] shall post in a conspicuous place near the entrance of the business or where such posters and notices are customarily posted, a poster of no smaller than 8½ by 11 inches in size that states the following:

"If you or someone you know is being forced to engage in any activity and cannot leave – whether it is commercial sex, housework, farm work, or any other activity—call the National Human Trafficking Resource Center Hotline at ~~1-888-373-7888~~ to access help and services.

- Victims of human trafficking are protected under U.S. and [State] law.
- The Hotline is:
 - Available 24 hours a day, 7 days a week
 - Toll-free
 - Operated by a non-profit, non-governmental organization
 - Anonymous & Confidential
 - Accessible in 170 languages
 - Able to provide help, referral to services, training, and general information."

- (B) The poster referred to in paragraph (A) shall be printed in English, Spanish, and any other languages mandated by the Voting Rights Act in the county where the poster will be posted.
- (C) The licensing authority shall provide each establishment with notice of this section and with the required poster upon licensing and shall place the poster described in subdivision (A) on its public website for mandated establishments to print as needed.