DID INDIANA DELIVER IN ITS FIGHT AGAINST HUMAN TRAFFICKING?: A COMPARATIVE ANALYSIS BETWEEN INDIANA’S HUMAN TRAFFICKING LAWS AND THE INTERNATIONAL LEGAL FRAMEWORK

May Li*

INTRODUCTION

The victims of modern slavery have many faces. They are men and women, adults and children. Yet, all are denied basic human dignity and freedom . . . We must join together as a Nation and global community to provide that safe haven by protecting victims and prosecuting traffickers. With improved victim identification, medical and social services, training for first responders, and increased public awareness, the men, women, and children who have suffered this scourge can overcome the bonds of modern slavery, receive protection and justice, and successfully reclaim their rightful independence. Fighting modern slavery and human trafficking is a shared responsibility.1

A. Human Trafficking: The Numbers

“Human trafficking, or ‘trafficking in persons,’ is an affront to human dignity that links communities across the world in a web of money, exploitation and victimization.”2 It is a multi-dimensional issue that “violates human rights, endangers economic growth, thrives on corruption, and poses a real threat to the well-being and human development of men, women, and children, be it committed across or within national borders.”3

* J.D. Candidate, 2014, Indiana University Robert H. McKinney School of Law; B.A., 2007, Boston College, Chestnut Hill, Massachusetts. I would like to thank Professor Catherine A. Lemmer, Head of Information Services, Ruth Lilly Law Library, Indiana University Robert H. McKinney School of Law, Ummi Jalilova, and Jennifer Heider, and members of the Indiana International & Comparative Law Review for their assistance with this Note. Additionally, I would like to thank my family and friends for all of their love and support throughout the writing process of this Note.


3. MARIA GRAZIA GIAMMARINARO, ORG. FOR SECURITY AND CO-OPERATION IN EUROPE
The International Labor Organization (ILO) reports that there are approximately 21 million people worldwide who are trapped in forced labor, debt bondage, and forced prostitution. The United States government estimates that approximately 600,000 to 800,000 people are trafficked across international borders each year. Human trafficking is considered to be one of the most profitable and fastest growing criminal enterprises in the world. "Current estimates by the United Nations Office of Drug and Crime place human trafficking as the second most profitable form of transnational crime after the sale of drugs and rank it more profitable than the sale of arms." The United Nations Global Initiative to Fight Human Trafficking (UNGIFT) reported an estimate of $31.6 billion global annual profits made from the exploitation of all trafficked forced labor.

The US Department of State’s 2011 Trafficking in Persons Report documented that the United States is a source, transit, and destination country for human trafficking. Human trafficking occurs in every state in the United States, and persons trafficked include US citizens and noncitizens. In 2005, the US Department of Justice reported that between 14,500 and 17,500 victims are trafficked into the United States each year.


5. ALISON SISKIN & LIANA SUN WYLER, CONG. RESEARCH SERV., RL 34317, TRAFFICKING IN PERSONS: U.S. POLICY AND ISSUES FOR CONGRESS 3 (2010), available at http://www.fas.org/sgp/crs/misc/RL34317.pdf. Due to the hidden nature of human trafficking, gaps in data, and methodological weaknesses, it is difficult to estimate the exact number of trafficked persons across international borders. This estimate is from 2003 and references to this estimate have since been used in subsequent US Department of State’s Trafficking in Persons reports. Id.; SILVA SCARPA, TRAFFICKING IN HUMAN BEINGS: MODERN SLAVERY 8-10 (2008).


10. SISKIN & WYLER, supra note 5, at 20.

11. Id. at 22. As of January 2011, this remains the most recent estimate of trafficked victims into the United States by the US government. Id. Initial estimates cited in the Trafficking Victims Protection Act of 2000 indicated that approximately 50,000 women and children were trafficked into the United States each year. Trafficking Victims Protection Act, 22 U.S.C. § 7101 (2000). However, this estimate was reduced to 18,000 – 20,000 in the US Department of State’s 2003 Trafficking in Persons Report. HEATHER J. CLAWSON ET AL., U.S. DEP’T OF HEALTH & HUMAN SERV., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED
Although no current estimate is available, U.S. citizens also fall victim to human trafficking. In recognition of the growing problem of human trafficking both domestically and internationally, Congress passed the Trafficking Victims Protection Act (TVPA) in 2000. The TVPA was the first federal law to criminalize human trafficking in the United States. It was subsequently reauthorized as the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 2005, and 2008. The TVPRA of 2008 expired on September 30, 2011; the TVPRA of 2011 is currently under consideration in the US Senate and House of Representatives for reauthorization.

B. The Need for State Anti-Trafficking Law

In addition to the federal laws that are currently in place to combat human trafficking, state legislation is also vital to eradicating this form of modern day slavery. State anti-trafficking laws are crucial to combating human trafficking for several reasons: (1) law enforcement is a local issue, and state and local law authorities are generally the first to come in contact with the victim; (2) state laws would supplement federal law and provide for an additional avenue of prosecution; (3) local authorities are more familiar with the local area and can spot smaller trafficking rings such as "mom-and-pop" operations; (4) states can tailor their laws to specifically

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STATES: A REVIEW OF THE LITERATURE (Aug. 2009), http://aspe.hhs.gov/hsp/07/HumanTrafficking/LitRev/. In 2004, the US government reported an estimate of 14,500 to 17,500 victims trafficked annually into the United States. \(^\text{12}\) SISKIN & WYLER, supra note 5, at 22. However, this estimate remains uncertain due to methodological weaknesses. \(^\text{Id.}\)

12. SISKIN & WYLER, supra note 5, at 22 n.54. A possible explanation is that there is a lack of consensus among law enforcement officials and service providers in defining what it means to be a US citizen trafficked within the United States. \(^\text{Id.}\); CLAWSON ET AL., supra note 11, at 6.


15. \(^\text{Id.}\)


address their unique needs;\textsuperscript{21} and most importantly, (5) to ensure that no state is a haven for such activity.\textsuperscript{22} Until 2003, state anti-trafficking laws were non-existent.\textsuperscript{23} In recognition of the need for state legislation, many states passed anti-trafficking laws.\textsuperscript{24} As of this date, West Virginia and Wyoming are the only two states that have not enacted human trafficking laws.\textsuperscript{25}

C. Human Trafficking on the Rise in Indiana?

On January 30, 2012, Indiana passed new human trafficking legislation to amend its existing human trafficking laws in preparation for the NFL's Super Bowl event on February 5, 2012.\textsuperscript{26} Recent history indicates that human trafficking crime follows large sporting events and conventions.\textsuperscript{27} Indiana is notable for its major sporting and convention


23. Vergara, supra note 18, at 998. In 2004, the Department of Justice released the Model State Anti-Trafficking Criminal Statute as a guide for state legislatures to use in constructing their anti-trafficking statute. Tanagho, supra note 21, at 899. In the same year, the US Senate also passed a bi-partisan senate resolution that strongly encouraged the states to adopt anti-trafficking statutes similar to the Model. See S. Res. 414, supra note 17.


25. Id. The other states referenced in this article (Alaska, Arkansas, Colorado, Montana, South Carolina, and South Dakota) have weak human trafficking laws. Id. The article listed Massachusetts as one of the three remaining states that do not have any human trafficking laws. Id. However, this is no longer the case because on November 21, 2011, Massachusetts Governor Deval Patrick signed the state's first anti-human trafficking legislation. Press Release, Governor of Massachusetts, Governor Patricks Signs Anti-Human Trafficking Legislation (Nov. 21, 2011), available at http://www.mass.gov/govemor/pressoffice/pressreleases/2011/111121-antihuman-trafficking-bill.html.


events such as the Brickyard 400, Indianapolis 500, and the National Collegiate Athletic Association (NCAA) Men’s Collegiate Basketball Final Four Tournament.\textsuperscript{28} The Super Bowl is widely known to attract large crowds and generate millions of dollars in revenue, whether from ticket sales or increased revenues for local businesses.\textsuperscript{29} Human traffickers also view the Super Bowl as the perfect event from which to profit given the crowds and the demand that come with it.\textsuperscript{30} In 2011, Texas Attorney General Greg Abbott commented that the Super Bowl “is the biggest human trafficking event in the United States.”\textsuperscript{31} The State of Florida estimated “tens of thousands of people,” mostly young girls, were sold as sex slaves during the Miami Super Bowl in 2010.\textsuperscript{32}

Indiana Attorney General Greg Zoeller acknowledged that “human trafficking is a problem that has been ignored until recently.”\textsuperscript{33} He further stated, “It’s one that is growing . . .”\textsuperscript{34} At a news conference at the Indiana Statehouse, Indiana Governor Mitch Daniels also stated that he had “only recently learned the extent of the human trafficking problem and called it ‘heinous.’”\textsuperscript{35} Unfortunately, this is the grim reality of human trafficking: it is a silent crime that remains underneath the radar until a major event occurs that awakens the need for increased awareness of the issue or until it is considered ripe for attention.

Human trafficking is an issue from which the midwestern United States is not immune.\textsuperscript{36} It is increasingly becoming a problem even in non-border states and in those states that do not have deeply-rooted international communities.\textsuperscript{37} In a two-part news series investigation on human trafficking

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\item \textsuperscript{29} Rick Horrow & Karla Swatek, \textit{The Super Bowl Is a Money Bowl}, \textsc{Businessweek.com} (Feb. 4, 2010), http://www.businessweek.com/lifestyle/content/feb2010/bw2010003_998169.htm.
\item \textsuperscript{31} Kehoe, supra note 27.
\item \textsuperscript{32} Id.
\item \textsuperscript{34} Id.
\item \textsuperscript{36} Ozalp, supra note 20, at 1393.
\item \textsuperscript{37} Id.; Tanagho, supra note 21, at 900. Border states such as California, Texas, New
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in Indiana, law enforcement officials confirmed occurrences of human trafficking in the Midwest and in Indianapolis. The city of Toledo, Ohio was named as one of the nation’s biggest hubs for teen prostitution and human trafficking subsequent to a federal investigation that resulted in a 100-page indictment of thirty-one people involved in a nationwide trafficking ring that bought, sold, and transported women and girls as young as twelve years old around the country. Indianapolis was linked to this federal indictment when women and girls were transported from Toledo to Indianapolis for prostitution purposes. Thus, even Indiana is not impervious to the mobile business of human trafficking.

The Department of Justice has identified Indianapolis as a potential destination for traffickers. Domestic violence victims’ advocates, human rights attorneys, and immigration lawyers report an increasing number of victims each year in Indiana. On May 20, 2008, the Sunshine Spa and the Apple Studio Spa of Richmond, Indiana, were among the nineteen massage parlors in Indiana, Kentucky, and Ohio that were raided by local and federal authorities. The federal government suspected that the parlors illegally transported women from Korea and forced them to be sex slaves in order to “earn their way into the country.”

Furthermore, on May 4, 2011, a human trafficking ring was discovered on the northwest side of Indianapolis. It was a multi-state human trafficking ring in which women were transported from Central

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40. Id.

41. Id.


44. Burcham, supra note 43.

America to work as prostitutes in four midwestern states. Investigators suspect that the ring had existed for as long as ten years. The traffickers used intimidation and beatings to control their victims. There were multiple houses operating in several states each day of the week. On October 3, 2011, the Indianapolis police served search warrants on massage parlors for suspected human trafficking and other criminal activity. The investigation consisted of searches in Marion County and also at an undisclosed business in Fishers, Hamilton County.

On December 1, 2011, Shared Hope International, a non-profit organization seeking to eradicate sex trafficking, released the Protective Innocence Initiative report cards, which assessed each state's child sex trafficking laws. Indiana received a letter "D," and more than half the states received an "F." In response to the potential increase of underage prostitution in connection with the Super Bowl and in recognition of the weaknesses in the state's human trafficking laws, Indiana's new law sought to tighten the prosecution for sex trafficking of minors. However, now that the Super Bowl has ended, the question becomes, "Will Indiana continue to seek ways to improve its human trafficking laws, or will the issue of human trafficking fall behind the scenes and require another event to trigger such attention again?"

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46. Id.
47. Id.
48. Id.
49. Id.
This Note addresses the issue of how Indiana can further strengthen its human trafficking laws by examining the international legal framework regarding human trafficking. Part I of this Note introduces background information about human trafficking. Specifically, it will discuss the definitions of human trafficking, the causes of human trafficking, the different forms of human trafficking, and the consequences of human trafficking. Part II examines the current federal and state laws in place to combat human trafficking. Part III discusses the international legal framework for combating human trafficking. Specifically, Part III explores and compares the conventions and legislation passed by the United Nations, the European Union, and the Council of Europe to combat human trafficking. Part III analyzes each organization's legal documents with respect to their protection and asset forfeiture measures. Finally, Part IV discusses the recommendations of this Note. Specifically, this Note concludes with recommendations as to how Indiana can further strengthen its trafficking laws by creating an asset forfeiture provision in which seized assets would provide for a state human trafficking victims fund. The seized assets could fund legal and social services for victims of human trafficking and also provide training to law enforcement.

I. BACKGROUND ON HUMAN TRAFFICKING

A. Definition of Human Trafficking

The term "human trafficking" was first defined in 2000. The United

55. Anne T. Gallagher, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 12 (Cambridge Univ. Press 2010); Attorney General's 2009 Annual Report, supra note 18, at 2. However, human smuggling should not be confused with human trafficking, although they share common aspects. SCARPA, supra note 5, at 68. Primarily, human smuggling is a crime against the States, while human trafficking is a crime against the individual. Id. "Human smuggling typically involves the provision of a service, generally procurement or transport, to people who knowingly consent to that service in order to gain illegal entry into a foreign country." SISKIN & WYLER, supra note 5, at 2. Thus, human smuggling is always transnational and the smuggled individual consents to being smuggled. U.S. Dep't of Health and Human Serv., Fact Sheet: Human Trafficking, ADMINISTRATION FOR CHILDREN & FAMILIES, http://www.acf.hhs.gov/trafficking/about/fact_humant.html (Aug. 2, 2012). Second, the relationship between the smuggled individual and the smuggler is that of a client and service provider. SCARPA, supra note 5, at 68. The smuggler agrees to illegally transport the smuggled individual in exchange for a fee and, the “contract” terminates upon arrival at the destination. Id. “[H]uman trafficking involves the ongoing exploitation of victims in order to generate illicit profits for the criminals.” Konrad, supra note 6, at 87. Nevertheless, it is important to be aware that while a person may have consented to being smuggled, he or she could become a trafficked person if circumstances give rise to exploitative conditions. SISKIN & WYLER, supra note 5, at 2; SCARPA, supra note 5, at 69.
Nations provided the first internationally recognized definition of human trafficking under Article 3(a) of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (the "UN Protocol"). It states:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 3(b) of the UN Protocol further provides that it is irrelevant whether or not the victim gave consent if any of the means set forth in the Article 3(a) definition are used to exploit the victim. The methods of exploitation provided by the UN definition are not exhaustive. Exploitation may include additional forms, whether known or unknown.

Six weeks prior to the adoption of the UN Protocol, the TVPA was enacted in the United States. The TVPA does not define "human trafficking," but it does define "severe forms of human trafficking" as:

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or which the person induced to perform such act has not attained 18 years of age; or
(b) the recruitment, harboring, transportation, provision, or

57. U.N. Protocol, supra note 56, at 43.
58. SCARPA, supra note 5, at 5. The United Nations has included forced begging, illicit adoptions, and child soldiers as additional forms of exploitation. SISKIN & WYLER, supra note 5, at 1.
59. 2011 Tip REPORT, supra note 9, at 16.
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.60

The term “sex trafficking” is further defined as “the recruitment, harboring, transportation, provision or obtaining of a person for the purpose of a commercial sex act.”61 The UN and US definitions have their commonalities and differences. For example, both definitions recognize that “trafficking,” in relation to child trafficking, applies whether the child was taken forcefully or voluntarily.62 The definitions do not distinguish between domestic trafficking and cross-border trafficking.63 However, the definitions differ in that the US definition does not include organ removal as a form of exploitation.64

Both the UN and US definitions of trafficking can be broken down into three elements: the act, the means, and the purpose.65 All three elements must be established to constitute trafficking in adult persons.66 The three elements as a whole can be viewed as a process67 that begins with the “act” of recruiting, harboring, transporting, or obtaining the victim68 by “means” including but not limited to, threat, use of force or coercion, or fraud69 for the final “purpose” of exploitation, including but not limited to commercial sex acts, labor services, involuntary servitude, or peonage.70

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61. Id. “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person. Id.
62. SISKIN & WYLER, supra note 5, at 2; SCARPA, supra note 5, at 5.
63. SISKIN & WYLER, supra note 5, at 2.
64. Id.
66. SCARPA, supra note 5, at 60; The AMP Model, supra note 65.
67. SCARPA, supra note 5, at 60.
68. Id.; The AMP Model, supra note 65. This element could be established by a variety of activities besides the listed ones. Gallagher, supra note 55, at 29.
69. SCARPA, supra note 5, at 60; Under the TVPA, “coercion” means threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000).
70. See supra notes 66, 68 and accompanying text; 22 U.S.C. § 7102.
B. Causes of Human Trafficking

The causes of human trafficking vary transnationally and domestically. Transnationally, the causes of human trafficking can be explained by examining the relationship between the push and pull factors. The push factors are the factors that push the individuals out of their country of origin, thus producing the supply of potentially trafficked persons. Lack of employment and educational opportunities, poverty, and economic instability are the main push factors in countries of origin. Other factors such as gender and ethnic discrimination, natural disasters, political instability, globalization of the world economy, new communication channels, and improved transportation systems and routes may also account for human trafficking.

The pull factors that draw these individuals from countries of origin into countries of destination are the "demand for [their services], the possibilities of higher standards of living, and the perceptions of many in poor communities that better opportunities exist in larger cities or abroad." Primarily, it is the demand for the goods produced by the trafficked workers and the resulting profitability that permit human trafficking to continue to flourish. Therefore, in order to effectively combat human trafficking, the solution does not necessarily lie in prosecution alone, but should also take into account the demand element.

Domestically, children are the most at risk for domestic sex trafficking. Age, poverty, history of childhood sexual abuse, familial substance or physical abuse, learning disabilities, loss of a parent by abandonment or death, running away, homelessness, lack of a support system, and sexual identity issues have all been identified as factors that place youth at risk for sex trafficking. Therefore, these underlying causes should be considered if we are to effectively fight human trafficking on a domestic level.

C. Different Forms of Human Trafficking

This section will discuss the major forms of exploitation related to

71. SCARPA, supra note 5, at 12.
72. KATHRYN CULLEN-DUPONT, HUMAN TRAFFICKING 23 (2009).
73. SCARPA, supra note 5, at 13.
74. SISKIN & WYLER, supra note 5, at 4.
75. SHELLEY, supra note 7, at 37. The United Nations has indicated that Belgium, Germany, Greece, Israel, Italy, Japan, the Netherlands, Thailand, Turkey and the United States are popular destination countries. CULLEN-DUPONT, supra note 72, at 25.
76. 2011 TIP REPORT, supra note 9, at 19.
77. Id.
78. CLAWSON ET AL., supra note 11, at 8.
human trafficking: sexual exploitation, labor exploitation and organ trafficking.  

1. Sexual Exploitation

The United Nations Office of Drugs and Crime's Global Report on Trafficking in Persons (UNODC's Global Report) identifies sexual exploitation as the most common form of human trafficking (79%).

Victims of sexual exploitation are mainly women and young girls. Profits from sexual exploitation are estimated at $28 billion per year.

A large number of the women trafficked are recruited by means of deception. The traffickers can be relatives, friends, or unknown persons. There is evidence that even women sometimes play the role of trafficker; some of these women are former victims. Traffickers often use the bait and switch method when recruiting women. The women are promised educational or job opportunities as nannies, maids, factory workers, restaurant workers, sales clerk, or as models. Upon their arrival at the work destination, the women are forced into commercial sex industries such as prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism.

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80. SCARPA, supra note 5, at 22. Other forms of human trafficking include illegal adoptions and child soldiers. Id.
84. CULLEN-DUPOINT; supra note 72, at 10; Trafficking Victims Protection Act, 22 U.S.C.S. § 7101(b)(2) (LexisNexis 2012).
85. SCARPA, supra note 5, at 17.
86. See supra notes 81-82.
87. 22 U.S.C.S. § 7101(b)(4) (LexisNexis 2012); CULLEN-DUPOINT, supra note 72, at 10.
Traffickers maintain control over their victims by using multiple methods such as loss of identity, isolation, psychological and physical abuse, and debt bondage.89 "Many of the dehumanizing practices that were used during the Holocaust to produce passive victims are replicated by the traffickers."90 Upon the victim's arrival at the destination, the trafficker will confiscate their identification documents, such as passports, thus rendering them captive and vulnerable.91 Without identification documents, the victim has no identity and no legal status.92 Furthermore, the victim cannot seek protection in his or her country's embassy since he or she lacks proof of citizenship.93

Traffickers will often disorient their victims by moving them away from their families to an unfamiliar location.94 Because the victims are unfamiliar with the language and the culture of such location, the victim is further rendered helpless.95 Traffickers also use physical abuse and psychological threats to induce compliance.96 Individual victims who resist compliance are tortured, raped, and beaten in front of other victims to demonstrate the futility of resistance.97 The trafficker may also threaten the victim with death or serious harm to a family member to gain control.98

Financially, the trafficker could also maintain control over the victim through debt bondage.99 "[W]omen and girls are forced to continue in prostitution through the use of unlawful 'debt' purportedly incurred through their transportation, recruitment, or even their crude 'sale' – which exploiters insist they must pay off before they can be free."100 It is an endless debt in which the victims are repaying the trafficker for the costs incurred from their own 'sale' and the costs incurred subsequent to their sale.101 Rarely is a victim able to pay off the entire debt.102 Initially, a victim

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89. SISKIN & WYLER, supra note 5, at 6.
90. SHELLEY, supra note 7, at 107.
91. CULLEN-DUPONT, supra note 72, at 11.
92. SHELLEY, supra note 7, at 107.
93. Id.
95. Id.
96. 2011 TIP REPORT, supra note 9, at 7.
97. See SHELLEY, supra note 7; See CULLEN-DUPONT, supra note 72.
98. See CULLEN-DUPONT, supra note 72.
99. Id.
100. 2011 TIP REPORT, supra note 9, at 7.
101. See CULLEN-DUPONT, supra note 72. Subsequent costs include food, medicine,
may have hope in paying off the debt and will work based on this hope, but in reality, it is an impossible task that the trafficker knows will seldom be accomplished.

2. Labor exploitation

While sex trafficking is more widely known and publicized, labor trafficking tends to be overlooked and is rarely given the attention that it deserves. UNDOC's Global Report reveals forced labor is the second most reported form of human trafficking (18%).103 Victims of labor trafficking are forced to work in a variety of labor sectors including, but not limited to: domestic services, restaurants, hospitality, janitorial work, sweatshops, agriculture, construction, and forced begging.104 The following sections will shed light on two industries of forced labor that often remain hidden from the public eye: domestic services and agriculture.

Domestic slavery is one of the "most invisible forms of exploitation."105 Domestic workers generally work and live within a private home in which they provide domestic services such as cooking, cleaning, and caring for children or a family.106 Because domestic workers live and work within the privacy of a home, much of their inhumane living and working conditions are shielded from public visibility.107 In many instances, domestic workers work extremely long hours, are deprived of their identification documents, isolated and prohibited from having outside contact, underpaid or not paid, malnourished, and subjected to sexual and psychological abuse.108 Furthermore, a domestic worker is not afforded the basic labor protections provided by the National Labor Relations Act because he or she is not considered an "employee."109

Domestic workers have been found to work in the homes of doctors, lawyers, businessmen, and diplomats.110 In the past and the present, there have been many reported instances in the United States of foreign diplomats

102. Id. at 11.
103. Global Report, supra note 81.
104. CLAWSON ET AL., supra note 11, at 3; OSCE, 2010 Annual Report, supra note 3, at 9. Other forms of labor exploitation include use of child camel jockeys in illegal camel races in the Gulf States and involvement in drug trafficking and petty theft. SCARPA, supra note 5, at 29-30.
107. 2011 TIP REPORT, supra note 9, at 8.
108. OSCE, 2010 Annual Report, supra note 3, at 12; SCARPA, supra note 5, at 31.
109. CULLEN-DUPONT, supra note 72, at 49.
110. Id.
exploiting and abusing domestic workers. Currently, foreign diplomats such as ambassadors or other diplomatic officers are immune from civil and criminal prosecution in the United States. In January 2008, a federal judge awarded more than $1 million in damages to Zipora Mazengo, a domestic worker for the Tanzanian diplomat, Alan Mzengi, Minister of Consular Affairs at the Tanzania embassy in Washington, DC. Mazengo claimed the following mistreatment: she was forced to work 112 hours per week with no pay, her passport was taken from her, the diplomat’s wife beat her, she was denied medical treatment for an infected ingrown toenail for two years, and she could not leave the home to see her dying sister without someone accompanying her. Three months after the judge awarded damages to Mazengo, Mzengi returned to Tanzania and is currently an adviser to the President of Tanzania. To date, Mazengo has only been able to obtain $2,000 through garnishments from Mzengi’s US bank account.

Agriculture is another industry in which a significant level of human trafficking occurs. “Victims of labor trafficking have been found among the nation’s migrant and seasonal farm workers, including men, women, families, or children as young as five or six years old who harvest crops and raise animals in fields, packing plants, orchards, and nurseries.” These victims could be US citizens, legal permanent residents, foreign nationals with H-2A temporary agricultural work visas, or undocumented immigrants. Trafficked farm workers usually work in distant and isolated areas, which hide their poor living and working conditions from the public. Trafficked farm workers typically have language barriers that further prevent them from reporting their mistreatment or seeking assistance. Similar to domestic workers, trafficked farm workers are not afforded the protections provided under the National Labor Relations Act.
thus rendering them even more vulnerable to exploitation.\textsuperscript{122} Even if the worker entered into the United States with a H-2A work visa, the visa is valid only if the worker remains with the employer who sponsored his or her visa.\textsuperscript{123} Therefore, the worker is caught in a no-win situation in which he or she has to choose between continuing with the current employer and enduring the exploitative conditions or having their visa invalidated and becoming an undocumented immigrant.\textsuperscript{124}

On April 20, 2011, the US Equal Employment Opportunity Commission (the EEOC) filed its largest agricultural labor trafficking lawsuit to date in Hawaii and Washington against Global Horizons, Inc.\textsuperscript{125} The EEOC alleges that Global Horizons trafficked over 200 Thai male victims to work on eight farms located in Washington and Hawaii, subjecting them to discriminatory and exploitative conditions.\textsuperscript{126} Similar to other human trafficking cases, these trafficked workers were promised high salaries and temporary work visas.\textsuperscript{127} However, these were empty promises that Global Horizons had no intention of fulfilling. The trafficked workers had their passports taken away and were placed in debt bondage as a result of the exorbitant recruitment fees.\textsuperscript{128} They also lived in rat and insect infested housing conditions and were subjected to retaliatory threats.\textsuperscript{129} Labor trafficking is a reality, and it should not be considered secondary in terms of importance.

3. Trafficking in Human Organs

Organ trafficking is another form of human trafficking that is gaining momentum due to its lucrative nature, especially for kidneys.\textsuperscript{130} To date, there are over 100,000 waiting list candidates in the United States for an organ, of which over 95,000 are waiting for a kidney.\textsuperscript{131} The United Network for Organ Sharing reported that in 2010, approximately 4,540

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  \item \textsuperscript{122} CULLEN-DUPONT, supra note 72, at 50.
  \item \textsuperscript{123} Cavalieri, supra note 117, at 515.
  \item \textsuperscript{124} Id.
  \item \textsuperscript{126} Id.
  \item \textsuperscript{127} Id.
  \item \textsuperscript{128} Id.
  \item \textsuperscript{129} Id.
\end{itemize}
people in the United States died while waiting for a kidney. The shortage of kidneys in relation to the demand has created a black market for kidneys around the world. Current US law prohibits the selling and buying of organs, but has not prevented people from resorting to the black market in desperate times.

On October 24, 2011, the United States had its first organ trafficking case when “kidney broker,” Levy Izhak Rosenbaum, pled guilty to three counts of organ trafficking in federal court in Trenton, New Jersey. The defendant alleged that three people paid him a total of $410,000 to broker the sale of kidneys. The defendant acknowledged that he “woodshed” the donor and the client by fabricating a story that deceived hospital personnel into believing the kidney donation was a voluntary act. Reputable hospitals, including Johns Hopkins Hospital, were identified as sites where black market transplant surgeries were performed. Hospitals have been criticized for lack of procedure to ascertain the source of the donated organs.

There are serious ethical implications involved when “the organ becomes a commodity and financial considerations become the priority for the involved parties instead of the health and well-being of the donors and recipients.” Therefore, before any hospital or transplant center accepts a “donated” organ, it should consider whether the “donated” organ came from a selfless voluntary act of a donor or whether it was offered at the expense of the donor’s well-being by means of threat, fraud, or coercion.

133. National Organ Transplant Act of 1984, 42 U.S.C. § 274(e) (2011). Transplant tourism is when “people from wealthier countries register for transplant surgeries in poorer countries.” CULLEN-DUPONT, supra note 72, at 23. “Nancy Scheper-Hughes, founding director of Organ Watch, estimates that approximately 15,000 kidneys are taken from involuntary donors every year.” Id. However, transplant tourism does not include a recipient and the donor who is a relative traveling across borders because their country lacks the medical services to perform the surgery or if it is through “official regulated bilateral or multilateral organ sharing program.” D.A. Budiani-Saberi & F.L. Delmonico, Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities, 8 AM. J. OF TRANSPLANTATION 925, 926 (2008), available at http://www.cofs.org/Publications/Budiani_and_Delmonico-AJT_April_2008.pdf.
134. Glovin, supra note 130.
135. Id.
136. Id.
137. Id.
138. See Freeman, supra note 132.
139. Budiani-Saberi & Delmonico, supra note 133, at 926.
D. Consequences of Human Trafficking

The ramifications of human trafficking greatly affect society and the individual. On the societal level, human trafficking feeds organized crime which threatens state security, undermines the democratic values of life and liberty, and hinders upward social mobility. On the individual level, trafficked persons suffer physical and psychological effects. Victims of forced labor suffer from "chronic back, hearing, cardiovascular or respiratory problems." Victims of sexual exploitation run a high risk of contracting sexually transmitted diseases, HIV/AIDS, and other reproductive related illnesses, especially when contraceptives are not provided. Those that survive the sexual exploitation often suffer from psychological issues and substance abuse and have difficulty reintegrating back into society. These are scars that do not go away overnight, but instead leave a lasting impression of the trauma suffered and will deeply affect their outlook in life. The remnants of the past will have an impact on their trust in society, especially if a friend or family member committed the trafficking. Therefore, these costs to society and to the individual should be considered when the question of whether to adopt a stronger stance against human trafficking is raised.

II. CURRENT LAWS IN THE UNITED STATES

Recognizing the prevalent nature of human trafficking and the serious human rights violations associated with it, both federal and state antitrafficking laws were enacted. This section explores the current federal and state human trafficking laws in the United States. The TVPA was the first federal law to combat human trafficking and Congress reauthorized it in 2003, 2005, and 2008. Indiana's human trafficking laws are codified at

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140. Shelly, supra note 7, at 60.
142. Id. at 14.
143. Mariconda, supra note 19, at 165-66.
144. Shelly, supra note 7, at 63.
145. Id.; Psychological illnesses include “posttraumatic stress, painful flashbacks, anxiety, fear, incapacitating insomnia, depression, sleep disorders, and panic attacks . . . .” Id. Others may suffer from a “loss of appetite, uncontrolled aggression, self-blame, thoughts of suicide, self-harm, and constant crying . . . .” Id. Social stigmatism of prostitution in some societies further compounds the victim's difficulty in reintegrating. Scarpa, supra note 5, at 21; 2005 Tip Report, supra note 141, at 13.
146. Shelly, supra note 7, at 60.
147. See Polaris Project, supra note 14.
A. The Trafficking Victims Protection Act

The TVPA symbolized the first of many responses by the United States in its fight against human trafficking. "[T]he fundamental international framework used by the United States and the world to combat contemporary forms of slavery" is the "3P" framework – Prevention, Protection, and Prosecution.\(^{149}\) In 2009, Secretary of State Hillary Rodham Clinton added the "fourth P" – Partnership, which is "building new partnerships with governments and [non-government organizations] around the world" to combat human trafficking collectively.\(^{150}\) The following sections will discuss the TVPA and its subsequent reauthorizations.

Prior to the TVPA, the United States prosecuted many human trafficking cases under the Mann Act and other involuntary servitude and labor statutes.\(^{151}\) However, these laws were ineffective in fighting modern day slavery.\(^{152}\) The TVPA established a definition for "severe forms of trafficking in persons."\(^{153}\) It increased the penalties for peonage, forced labor, and sale into involuntary servitude.\(^{154}\) It mandated restitution and forfeiture.\(^{155}\) The TVPRA of 2003 enhanced the prosecution of traffickers by making human trafficking a predicate offense for RICO (Racketeer Influenced Corruption Organization Act) charges.\(^{156}\) It additionally created a federal civil remedy for trafficking victims, which allowed them


\(^{150}\) Id.

\(^{151}\) Attorney General's 2009 Annual Report, supra note 18, at 2. The Mann Act, also known as the White Slave Traffic Act, makes it a federal crime to knowingly transport any person (including persons under the age of eighteen) in interstate or foreign commerce for the purpose of prostitution or to engage in any sexual activity. The Mann Act, 18 U.S.C.S. §§ 2421-28 (LexisNexis 2011). The act also makes it a crime to knowingly persuade, induce, entice, or coerce an individual to travel in interstate or foreign commerce to engage in prostitution or in any sexual activity. Id.

\(^{152}\) See generally Attorney General’s 2009 Annual Report, supra note 18, at 2.


\(^{154}\) SISKIN & WYLER, supra note 5, at 45. Penalties increased from ten to twenty years of imprisonment and potentially life in imprisonment if aggravating factors are found. Id. Aggravating factors include death during the commission of such violations, kidnapping, aggravating sexual abuse, or attempted murder. Id.

\(^{155}\) 18 U.S.C.A. § 1594(d) – (e) (West 2012). Forfeiture includes any property used in the commission of the crime or any property derived from the commission of the crime.

pursuance of a civil action against the trafficker(s) in federal court.\footnote{157} Further, the TVPRA of 2008 expanded the prosecution of human trafficking by creating new criminal offenses,\footnote{158} modifying the standard of proof for sex trafficking,\footnote{159} widening the crime of labor trafficking and sex trafficking of a minor,\footnote{160} imposing criminal liability on those who use fraud to recruit workers abroad for employment in the United States,\footnote{161} and punishing those who benefit financially from their participation in a venture that is engaged in peonage or in the furtherance of human trafficking.\footnote{162}

The TVPA also established preventative measures to combat human trafficking.\footnote{163} For example, it required the President to establish international initiatives to increase economic opportunities for the potential victims and programs to increase public awareness of human trafficking.\footnote{164} The TVPA also authorized the President to provide assistance to foreign countries to combat human trafficking, while sanctioning those that failed to comply adequately.\footnote{165} The TVPRA of 2003 further inhibited human trafficking.

\footnote{157}{Attorney General's 2009 Annual Report, supra note 18, at 2.}
\footnote{158}{Id. at 3. The new offenses included imposing penalties on those who obstruct, attempt to obstruct, or in any way interfere with the investigation and prosecution of trafficking crimes. See 18 U.S.C.A §§ 1583(a)(3), 1584(b), 1590(b), 1591(d), 1592(c) (West 2012).}
\footnote{159}{18 U.S.C.A. § 1594(d) – (e) (West 2012). It lowered the standard of proof for the crime of sex trafficking of children by requiring the government to only show that the defendant acted in reckless disregard of the fact that the means of force, threat of force, fraud, or coercion would be used to cause the person to engage in a commercial sex act (previously, it required the government to show that the defendant knew that force, fraud, or coercion would be used). 18 U.S.C.A. § 1591(a)(2) (West 2012); See William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222, 122 Stat. 5044, 5069 (2008), available at http://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf [hereinafter TVPRA 2008].}
\footnote{160}{Attorney General’s 2009 Annual Report, supra note 18, at 3. For labor trafficking, it “expanded the crime of forced labor by providing that “force” is a means of violating the law.” Id.; See also 18 U.S.C.A. § 1589(a)(1) (West 2012). For sex trafficking of a minor, the government no longer has to demonstrate that the defendant knew that the person engaged in commercial sex was under the age of eighteen. 18 U.S.C.A. § 1591(c) (West 2012). It requires the government to only prove that the defendant had a reasonable opportunity to observe the minor. Id.; See also TVPRA 2008 § 222.}
\footnote{161}{Attorney General’s 2009 Annual Report, supra note 18, at 4; See also 18 U.S.C.A. § 1351 (West 2012).}
\footnote{162}{18 U.S.C.A. § 1593A (West 2012); See also TVPRA 2008 § 222.}
\footnote{163}{Trafficking Victims Protection Act, 22 U.S.C. § 7104 (a) – (c)(2000).
\footnote{164}{See id. § 7104 (a) – (b); Examples of economic initiatives may include microcredit lending programs, skills training, programs to keep children in elementary and secondary schools, educational programs to inform about the danger of trafficking, and grants to nongovernmental organizations to foster and promote the political, economic, social, and educational roles of women in their countries. Id. at § 7104 (a).}
trafficking by requiring federal departments or agencies to terminate contracts with overseas contractors who engaged in sex or labor trafficking. Additionally, the TVPRA of 2005 created "extraterritorial jurisdiction over trafficking offenses committed overseas by persons employed by or accompanying the federal government." Moreover, the TVPRA of 2008 authorized the Secretary of State to implement measures to protect domestic servants from abuse and to suspend the issuance of A-3 and G-5 worker visas for a diplomatic mission or international organization with a history of exploitation and trafficking.

Lastly, the TVPA and its reauthorizations provided protection to victims of human trafficking. Primarily, the TVPA created two special immigrant statuses for international victims (continued presence and T nonimmigrant status, or "T-visa") in order to provide immigration relief and to facilitate the investigation and prosecution of the trafficker. A US Immigration and Customs Enforcement official grants continued presence to "an individual identified as a victim of human trafficking who is a potential witness in the investigation or prosecution of the trafficker." A victim with continued presence is generally permitted to stay in the United States for a discretionary period of time determined by the Department of Homeland Security. However, a T-visa permits the victim temporary residency for up to four years, and the victim can petition for permanent residency afterwards. If the victim is granted continued presence or a T-

countries directly or through nongovernmental organizations for programs or projects that are designed to help them meet the minimum standards for eliminating trafficking (as defined in § 103). See Id. §109. For foreign countries that fail to comply with the minimum standards, sanctions may include withholding non-humanitarian and non-trade assistance. See Id. § 110. For FY 2011, President Obama fully withheld non-humanitarian and non-trade related foreign assistance to Eritrea and North Korea. SISKIN & WYLER, supra note 5, at 15. Partial waivers were granted to Burma, Cuba, Iran, and Zimbabwe. Id. Full waivers were granted to the Democratic Republic of Congo, the Dominican Republic, Kuwait, Mauritania, Papua New Guinea, Saudi Arabia, and Sudan on the basis of national interest reasons. Id.


168. SISKIN & WYLER, supra note 5, at 48-49; see also TVPRA 2008 §§ 202 – 203, 122 Stat. at 5055-59. Measures include requiring employers to provide their employees with pamphlets informing them of their rights and setting interview guidelines for consular offices. See id § 202.

169. CLAWSON ET AL., supra note 11, at 16; SISKIN & WYLER, supra note 5, at 24.


171. CLAWSON ET AL., supra note 11, at 16.

172. SISKIN & WYLER, supra note 5, at 24-25. To be eligible for a T-visa, the following
visa, he or she is eligible for refugee benefits and services that are not available to US citizens and permanent residents.\textsuperscript{173} International victims of trafficking who are under the age of eighteen are eligible for benefits and services upon receipt of an eligibility letter from the Department of Health and Human Services, and can also apply for the Unaccompanied Refugee Minor Program.\textsuperscript{174}

Additionally, the TVPA required that while a victim is held in the criteria must be met: the trafficking victim must (1) be a victim of a severe form of trafficking as defined under the TVPA; (2) be physically present in the United States due to the trafficking; (3) has complied with reasonable requests for assistance in the investigation or prosecution of the trafficking (unless under the age of eighteen); (4) demonstrated extreme hardship involving unusual and severe harm upon removal; and (5) be admissible to the United States or obtain a waiver for inadmissibility. Id. at 25. See also U.S Dep't of Homeland Sec., Instructions for Form I-914, Application for T Nonimmigrant Status, www.uscis.gov/files/form/i-914instr.pdf (last visited Mar. 18, 2012). “A waiver of inadmissibility is available for health related grounds, public charge grounds, or criminal grounds if the activities rendering the alien inadmissible were [due to their] victimization.” Siskin \& Wyler, \textit{supra} note 5, at 25. Under the TVPA, the victim must also obtain certification from a federal law enforcement officer that he or she is a victim of trafficking and has complied with reasonable request to cooperate in the investigation and prosecution of the trafficker. \textit{Id.} at n. 68. The TVPRA of 2003 revised this requirement and authorized the Secretary of Health and Human Services to consider statements from state and local enforcement officers for certification since they are generally the first to come in contact with the victim. \textit{See} Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875, 2877 (2003), available at http://www.gpo.gov:80/fdsys/pkg/PLAW-108publ193/pdf/PLAW-108publ193.pdf. The TVPRA of 2008 additionally modified the T-visa qualifications by “amending the physical presence provision to include presence on account of an investigation or prosecution” and “exempting adults unable to cooperate with reasonable requests for assistance in the investigation or prosecution due to physical or psychological trauma.” \textit{Attorney General's 2009 Annual Report, supra} note 18, at 37. See also TVPRA 2008 § 201.

173. Clawson et al., \textit{supra} note 11, at 16. “Some of the refugee-specific services that victims of trafficking are eligible to receive through HHS and NGOs are Refugee Cash and Medical Assistance, housing or shelter assistance, food assistance, income assistance, employment assistance, English language training, health care assistance, mental health services, and assistance for victims of torture.” \textit{Id.} Other benefit programs that certified victims may apply for are TANF and Medicaid. \textit{Id.}; see also Trafficking Victims Protection Act of 2000, 22.U.S.C.A §7105(b)(1) (West 2012). Certified victims are also eligible for employment assistance from the Department of Labor’s One-Stop Career Center System. Clawson et al., \textit{supra} note 11, at 16. US citizens who are victims of trafficking are eligible for mainstream benefits such as Temporary Assistance for Needy Families (TANF), Medicaid, and the Supplemental Nutrition Assistance Program (also known as the Food Stamp Program). \textit{Id.} “However, anyone applying for mainstream benefits must do so through the State in which they reside and must meet the eligibility requirements for each program. Variations in State application processes, documentation requirements..., and the movement of victims once they are rescued may make it difficult for victims to access these services.” \textit{Id.} (citing from Holcomb, et al., \textit{The Application Process for TANF, Food Stamps, Medicaid and SCHIP: Issues for Agencies and Applicants, Including Immigrants and Limited English Speakers, The Urban Institute} (2003), http://www.urban.org/url.cfm?ID=410640).

174. Clawson et al., \textit{supra} note 11, at 17.
custody of the federal government, he or she cannot be detained in a facility inappropriate to their status as a crime victim.\textsuperscript{175} The victim should receive necessary medical care, information about his or her rights and translations services, and protection if his or her safety is at risk.\textsuperscript{176} The TVPA and TVPRA of 2005 also authorized appropriations for state and local government and nongovernmental organizations to provide victim service programs at the local level.\textsuperscript{177} Finally, the TVPRA of 2008 created and authorized appropriations for new grant programs for US citizen victims.\textsuperscript{178}

\textbf{B. Indiana's Human Trafficking Laws}

Indiana State Representative Terri Austin authored the state's first human trafficking law in 2006 in response to the discovery of two teenagers who were trafficked from Vietnam and Mexico into the city of Anderson, Indiana.\textsuperscript{179} One situation involved a captor promising a family that their thirteen-year-old daughter would have educational opportunities, while the second situation involved an eighteen-year-old who was brought over as a mail-order bride.\textsuperscript{180} For months subsequent to their arrival, both victims suffered physical, mental, and emotional abuse as sex slaves.\textsuperscript{181} The trauma suffered by both victims did not surface until one victim was thrown out into the street when a new girl arrived and neighbors heard the cries of the other victim and called the police.\textsuperscript{182}

Indiana's anti-trafficking law took effect on July 1, 2007 notwithstanding its near defeat in the Indiana legislature. However, since the passage of the statute, there has only been one conviction.\textsuperscript{183} On January

\begin{thebibliography}{99}


\bibitem{Id2005} Id.


\bibitem{Siskin&Wyler} \textit{Siskin \& Wyler, supra note 5, at 50. For a detailed breakdown of the appropriations made for the fiscal years of 2001 till 2011, see id. at 51-53.}


\bibitem{Chapman, supra} Chapman, \textit{Part Two, supra note 179}. 

\bibitem{Id} Id.

\bibitem{Id} Id.


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25, 2011, Indiana secured its first state conviction on human trafficking charges.\textsuperscript{184} The defendant, Chris Smiley, was convicted of human trafficking, promoting prostitution, battery, intimidation, and strangulation.\textsuperscript{185} On February 9, 2011, Smiley was sentenced to ten years on the human trafficking charge.\textsuperscript{186} The Chris Smiley case was the first case in the state and in Marion County to go to trial.\textsuperscript{187} The human trafficking charge is rarely prosecuted due to the difficulty involved in obtaining a conviction.\textsuperscript{188} For example, in prior Marion County cases, there were instances when “the defendant(s) fled the country, or the victim(s) chose not to be witnesses, or the defendant(s) agreed to plea to other charges that carried the same weight as the human trafficking charge.”\textsuperscript{189} These circumstances created either an additional barrier for the prosecution to overcome or rendered the human trafficking charge irrelevant in light of other charges. On January 30, 2012, Indiana’s Governor Mitch Daniels signed the new human trafficking legislation, Senate Enrolled Act 4, which amended Indiana’s existing human trafficking laws.\textsuperscript{190}

Currently, Ind. Code § 35-42-3.5-1 through Ind. Code § 35-42-3.5-4 as well as Ind. Code § 5-2-1-9 are Indiana’s human trafficking laws.\textsuperscript{191} Ind. Code § 35-42-3.5-1(a) – (d) provides the prosecution measures.\textsuperscript{192} Ind. Code § 35-42-3.5-1(a) states that a person commits a Class B felony of promoting human trafficking when he or she, “by force, threat of force, or fraud, knowingly or intentionally recruits, harbors, or transports another person to engage the other person in forced labor or involuntary servitude; or to force the other person into marriage, or prostitution.”\textsuperscript{193} The new

\textsuperscript{184} Id.; Rebecca Berfanger, Prosecution Raises Awareness of Human Trafficking, THE INDIANA LAWYER, Mar. 2, 2011.

\textsuperscript{185} Press Release, Lara Beck, Marion County Prosecutor’s Office, Marion County’s Prosecutor’s Office Secures First Conviction on Human Trafficking Charges (Jan. 25, 2011).

\textsuperscript{186} Berfanger, supra note 184. In addition to the human trafficking sentence, the defendant was sentenced to four years for the battery conviction, four years for the intimidation conviction, and 545 days on a strangulation conviction. Id. These sentences will run concurrently. Id. The defendant will also serve five years for possession of cocaine conviction that will run consecutively. Id.

\textsuperscript{187} Id.

\textsuperscript{188} Kehoe, supra note 27.

\textsuperscript{189} Berfanger, supra note 184.

\textsuperscript{190} See Gov. Daniels Signs Bill to Toughen Human Trafficking Laws Ahead of Super Bowl, supra note 26.

\textsuperscript{191} IND. CODE ANN. § 35-42-3.5-1 - 4 (West 2012); IND. CODE ANN. § 5-2-1-9 (West 2012).


\textsuperscript{193} IND. CODE ANN. § 35-42-3.5-1(a) (West 2012). “A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the
legislation expanded the list of punishable offenses to include forced participation in sexual conduct as defined by Ind. Code § 35-42-4-4.\textsuperscript{194} As a result, Indiana's current statute now criminalizes several forms of human trafficking, including forced labor, involuntary servitude, forced marriage, forced prostitution, and forced participation in sexual conduct.\textsuperscript{195}

The new legislation also strengthened Indiana's existing regulation on the trafficking of a minor.\textsuperscript{196} Primarily, it created a new provision, Ind. Code § 35-42-3.5-1(b), which provides that a person commits a Class B felony of promotion of human trafficking of a minor when he or she "recruits, harbors, or transports a child less than sixteen years of age with the intent of engaging the child in forced labor or involuntary servitude or inducing or causing the child to engage in prostitution or participate in sexual conduct as defined by Ind. Code § 35-42-4-4."\textsuperscript{197} When the case involves the human trafficking of a minor in contrast to an adult, the prosecutor has a lower burden of proof and is not required to prove the element of force, threat of force, or fraud.\textsuperscript{198}

The new law also modified existing legislation on the sex trafficking of a minor. Prior to the enactment of the new law, a parent, guardian, or custodian of a child (under the age of eighteen) commits a Class A felony of sex trafficking of a minor under Ind. Code § 35-42-3.5-1(c) when he or she sells or transfers custody of the child for the purposes of prostitution.\textsuperscript{199}
However, upon a critical review of this section, the law failed to consider individuals other than a parent, guardian or a custodian of a child who could also commit such acts. Recognizing this loophole, Indiana amended the existing statute by replacing “parent, guardian, or a custodian” with “a person who is at least eighteen years of age.” It also lowered the age requirement of a child from under the age of eighteen to under the age of sixteen. Therefore, current Indiana law prohibits any individual from selling or otherwise transferring custody of a minor under the age of sixteen for the purposes of prostitution.

Additionally, a person commits a Class C felony under Ind. Code § 35-42-3.5-1(d) when he or she offers to pay money or other property to another person for an individual that the person knows has been coerced into forced labor, involuntary servitude, or forced prostitution. Thus, Indiana’s human trafficking laws proscribe the promotion of human trafficking, sex trafficking of a minor, and the acceptance of services from a trafficked person.

Ind. Code §35-42-3.5-2 through Ind. Code § 35-42-3.5-4 provides the protective measures for the victim. For example, Ind. Code § 35-42-3.5-2 establishes restitution to the victim. Thus, in addition to the penalties set forth under Ind. Code § 35-42-3.5-1, it requires the court to order the convicted offender to make restitution to the victim pursuant to Ind. Code § 35-50-5-3. Indiana also provides the victim with a civil cause of action against the convicted offender pursuant to Ind. Code § 35-42-3.5-3. Under the aforementioned section, the victim may also recover from such person actual damages, court costs (including fees), punitive damages determined by the court, and reasonable attorney’s fees. The statute of limitations for such claims is two years after conviction of the trafficking offense.

Similar to federal law, Ind. Code §35-42-3.5-4 (a)-(b) delineates the

Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).” IND. CODE ANN. § 35-50-2-4 (West 2012).

202. Id.
203. Id.; “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars ($10,000).” IND. CODE ANN. § 35-50-2-6 (West 2012).
204. IND. CODE ANN. § 35-42-3.5-2-4 (West 2012).
207. IND. CODE ANN. § 35-42-3.5-3 (West 2012).
208. Id.
209. Id.
treatment of a victim of trafficking and the issuance of the Law Enforcement Agency Declaration (the "LEA Declaration"). Specifically, Ind. Code §35-42-3.5-4 (a) provides that a victim of trafficking may not be detained in a facility that is inappropriate to their status as a crime victim. It also prohibits penalizing the victim with jail time and fines. It further requires protection for the victim if their safety is at risk or if there is a danger of being recaptured by the trafficker. This includes taking measures to protect the victim and family members from intimidation and retaliatory threats and ensuring that the victim and family members' names are not disclosed to the public. Additionally, Ind. Code §35-42-3.5-4(b) requires a law enforcement agency to provide the victim with a completed Declaration of Law Enforcement Officer for Victim of Trafficking in Persons (LEA Declaration, Form I-914 Supplement B) pursuant to 8 C.F.R. § 214.11(f)(1) within fifteen days of the agency's first contact with the victim. This declaration serves as the primary evidence that he or she is a victim and has complied with the reasonable request for assistance in the investigation and the prosecution of the trafficker(s), thus satisfying certain eligibility requirements for a T-1 nonimmigrant status visa. If the law enforcement agency denies the victim a LEA Declaration, the agency must provide the victim with an explanation of the reasons for the denial within fifteen days. The alleged victim may provide additional evidence for reconsideration, and the agency has seven days from the receipt of the additional evidence to reconsider the denial. Lastly, Ind. Code § 5-2-1-9(a)(10) establishes the standards for law enforcement training in human and sex trafficking. It outlines the minimum standards for a course of study on human and sex trafficking, which is required for "each person accepted for training at a law enforcement training school or academy and for in-service training program
for law enforcement officers.”

The course of study must cover these topics:

(A) Examination of the human and sexual trafficking laws (IC 35-42-3.5);
(B) Identification of human and sexual trafficking ;
(C) Communicating with the traumatized persons ;
(D) Therapeutically appropriate investigative techniques ;
(E) Collaboration with federal law enforcement officials ;
(F) Rights of and protections afforded to the victim ;
(G) Providing documentation that satisfies the Declaration of the Law Enforcement Officer for Victim for Trafficking In Persons (Form I-914, Supplement B) requirements established under federal law ; and
(H) The availability of community resources to assist the victim.

Thus, Indiana law currently requires training for law enforcement to better understand and recognize the human trafficking crime.

Human trafficking is an issue that still requires Indiana’s attention even though the Super Bowl is a past event. While the new legislation primarily tightened prosecution in regards to sex trafficking of a minor, it temporarily cured only one aspect of the human trafficking problem. Linda Smith, president and founder of Shared Hope International, reported that her organization’s tracking of several US cities’ activity indicates that Indianapolis has an aggressive trafficking market. Therefore, recognizing that human trafficking is an issue that will continue to exist in Indiana, additional countermeasures must be taken to inhibit its growth. The Ohio Trafficking in Persons Study Commission confirms that traffickers are strategic in choosing a place to set up business.

State laws do play a role in the decision making of human trafficking organizations that are sophisticated and networked. Those more sophisticated trafficking rings are aware of the laws and potential risk of doing business in a particular US state. In a quote from Raymond and Hugh’s (2001) report, it is apparent that traffickers look for states with more lenient laws.

221. Id.
222. Id.
223. Id.
224. Berggoetz, supra note 53.
225. Williamson et al., supra note 38. “In the Midwest, women are trafficked around the
If Indiana has a weaker human trafficking statute in comparison to its bordering states, traffickers will potentially choose Indiana to establish their businesses.226 Human trafficking is a problem that could easily fester into a larger problem if left unattended. A larger problem equates to more time and resources needed to untangle and combat the problem. While additional countermeasures are taken to fight human trafficking, we must not neglect care and support for the victim. Such care and support is essential to the victim's recovery and reintegration as a productive member of society.227 Lastly, "[j]ustice . . . is the crowning glory of the virtues . . . ."228 Justice demands Indiana continue to seek ways to protect present and future victims of human trafficking.

III. INTERNATIONAL LEGAL FRAMEWORK

Slavery is no relic of the past, but instead an institution that has been allowed to slip through the cracks of justice to repeat itself in history again.229 The United States and the international community have condemned slavery and involuntary servitude for its encroachment on an individual's unalienable right to life, liberty, and the pursuit of happiness.230
Today, both communities abhor slavery in its modern form as it runs afoul of these well-established principles. 231 However, in order to effectively combat human trafficking, due to its transnational nature, cooperation and partnership among countries is required. 232 Thus, both the United States and the international community respectively enacted anti-trafficking legislation to jointly curb human trafficking. 233 For example, in 2000 the United States passed the TVPA and reauthorized it in subsequent years. 234 Internationally, the United Nations, the European Union, and the Council of Europe also passed measures to combat human trafficking. 235 Other international, regional, and sub-regional organizations have also undertaken initiatives to fight trafficking in persons. 236

231. Id.; For a detailed table of international treaties and instruments from the year of 1814 to 2010, see GALLAGHER, supra note 55, at xxiii – lvi.


234. See supra Part II.A.


The US Department of State acknowledged that while the Trafficking Victims Protection Act "meaningfully affects the Thirteenth Amendment to the US Constitution, [it] also reflects the norms of international anti-slavery law." In the 2009 US Attorney General's Annual Report to Congress and Assessment of US Government Activities to Combat Trafficking in Persons, the US government recommended "increase[d] efforts to exchange best practices, lessons learned, and research with UN agencies and international organizations ... that provide technical assistance to combat human trafficking." Through these exchanges of information and lessons learned, the United States and the international community can discover new and effective methods to fight human trafficking and also learn from each other the pitfalls to avoid. The United States, the United Nations, the European Union, and the Council of Europe have coordinated efforts to effectively combat human trafficking. The following sections of this Note will examine these measures taken by the United Nations, the European Union, and the Council of Europe to inhibit human trafficking.

A. The United Nations, the European Union, and the Council of Europe

1. The United Nations

"The United Nations is an international organization founded in 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights." The UN General Assembly adopted the Protocol to Prevent, of the High Comm'r for Human Rights, Summary of Regional and Sub-Regional Structures and Initiatives to Counter Trafficking in Persons, (Dec. 2010), available at http://www.ohchr.org/Documents/Issues/Trafficking/Dakar_summary_structures_en.pdf [hereinafter OHCHR, Summary of Regional], for a detailed description of each organization and their initiatives. Some of these regional legal instruments including, but not limited to, the Ouagadougou Action Plan, ECOWAS Initial Plan, OSCE Action Plan, ECWAS Declaration, ASEAN Declaration are considered "soft" laws of trafficking. Gallagher, supra note 55, at 141 n.567-570. "Soft" law on trafficking has two meanings: "[it] can refer to principles contained in treaties [that] do not prescribe precise rights or obligations or otherwise provide precise directives as to which behaviors its authors are committed to" or it can "refer to nontreaty instruments that, despite often employing the 'hard' language of obligation, do not, of themselves bind States." id. at 139.

237. 2011 TP REPORT, supra note 9, at 16.
Suppress, and Punish Trafficking in Persons, especially Women and Children (the "UN Protocol"), supplementing the Convention against Transnational Organized Crime (the "UN Convention") on November 15, 2000. To date, 154 countries are party to the UN Protocol and of the 154 countries, 117 have signed it. The UN Protocol is the "first globally legally binding instrument with an agreed definition on trafficking in persons." It requires ratifying States to criminalize the conduct set forth in Article 3 of the UN Protocol and to adopt anti-trafficking measures. To ensure that the ratifying States are complying with the UN Protocol, Article 32(3)(d)-(e) of the UN Convention establishes a Conference of Parties whose duties include a periodical review and examination of the implementation of the UN Convention and the UN Protocol and making recommendations when necessary. Reciprocally, each State is required to provide the Conference of Parties with information on the national measures adopted in implementing the Convention and the UN Protocol. Lastly, and most importantly, the UN Protocol adopts a human rights approach in which "the human rights of trafficked persons shall be at the centre of all efforts to combat trafficking and to protect, assist and provide

Mar. 18, 2013).

241. United Nations, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO (2004), http://www.unodc.org/unodc/en/treaties/CTOC/ [hereinafter U.N. TOC Protocol]. The convention was supplemented with a total of three protocols. The two other protocols were the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms. It is important to note that before a State could become a party to the UN Protocol, the State must ratify the Convention. Gallagher, supra note 55, at 73. "A State Party to the Convention is not bound by a Protocol unless it also becomes party to that Protocol." Id. The Convention and the UN Protocol are interpreted together. Id.; See also U.N. Protocol, supra note 56, at art. 1.

242. UNITED NATIONS TREATY COLLECTION, CHAPTER XVIII PENAL MATTERS: 12. A PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (Nov. 15, 2000) http://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en. The United States signed the UN Protocol on December 13, 2000, and ratified it on December 3, 2005 following the Senate’s advice and consent on October 7, 2005. SISKIN & WYLER, supra note 5, at 17. "Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act." Glossary of Terms Relating to Treaty Actions, UNITED NATIONS, http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#entry (last visited Mar. 18, 2013). Acceptance, approval, and accession have the same legal effect as ratification. Id.


244. Id. See also U.N. Protocol, supra note 56, at art. 3 & 5.


246. U.N. Convention, supra note 245, at art. 32(5).
redress to those affected by trafficking."247

2. The European Union

The European Union is an economic and political partnership of twenty-seven countries.248 "It [delivered] half a century of peace, stability, and prosperity, helped raise living standards, launched a single European currency [Euro]," and is progressively building a single Europe-wide market in which people, goods, services, and capital move among Member States as freely as within one country.249 Although the European Union was primarily formed for an economic purpose, it has evolved into an organization that promotes human rights and democracy as well.250 The three main pillars of the European Union are economic harmonization, a common security and foreign policy, and justice and home affairs.251 On July 19, 2002, the Council of European Union adopted the Council Framework Decision on Combating Trafficking in Human Beings (the "EU Decision"), a legally binding instrument to combat human trafficking.252 It required all the Member States to "harmonize their domestic criminal


249. How the EU Works, supra note 248.

250. Id.

251. OHCHR, supra note 236, at 17.

legislation” with the EU Decision before August 1, 2004. To ensure compliance, it obliged the Council to assess each Member State’s implementation of the EU Decision and to prepare a report detailing the assessment for the Commission. Furthermore, on June 4, 2009, the Council invited all Member States to participate in an informal EU network of National Rapporteurs or equivalent mechanisms, which had “the task of . . . monitoring the implementation of measures envisaged in the Framework Decision.”

Although the EU Decision represented a major step for the European Union in its fight against human trafficking, it has been criticized for primarily being a criminal justice response instead of being victim-centered. Thus, on April 5, 2011, the European Union adopted a new Directive (the “2011 Directive”) on preventing and combating trafficking in human beings and protecting victims, which replaced the 2002 Council Framework Decision. The 2011 Directive “takes a victim centered

253. Connie Rijken & Eefje de Volder, The European Union’s Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law, 25 CONN. J. INT’L L. 49, 55 (2009); See also Council Framework Decision, supra note 252, at art. 10. Member States are also required to provide “the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision” to the General Secretariat of the Council by August 1, 2004. Id.

254. EU, COUNCIL OF FRAMEWORK DECISION, supra note 252, at art. 10.


256. Rijken & de Volder, supra note 253, at 49. Article 7 of the EU Decision only “outline[d] minimum protection measures for trafficking victims, establishing that the investigations and prosecutions of the offences covered by the Framework Decision should not be dependent on their report or accusation of the traffickers.” SCARPA, supra note 5, at 181. Thus, the lack of protection for victims of trafficking became one of the biggest criticisms for the EU Decision and also one of the primary reasons for the passage of the 2011 Directive, which repealed the EU Decision. Gallagher, supra note 55, at 99 & 106.

approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation.”

Member States are required to “transpose [the Directive] into national legislation by April 6, 2013.”

3. The Council of Europe

The Council of Europe is an international organization comprised of forty-seven countries of Europe. “The primary aim of the Council of Europe is to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.” Since the 1980s, the Council has actively fought trafficking in human beings. On May 16, 2005, the Council of Europe adopted the Council of Europe Convention on Action against Trafficking in Human Beings (the “CoE Convention”). The CoE Convention is the “only regional international treaty in this area that primarily focuses on the protection of the rights of the victim.” Article 1


262. OHCHR, supra note 236, at 14.


264. See OHCHR, supra note 236, at 14. The CoE Convention adopted the same definition of “trafficking in persons” and “trafficking in children” as the UN Protocol.
of the CoE Convention provides that the purposes of the CoE Convention are “to prevent and combat trafficking in human beings, while guaranteeing gender equality; to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution . . .”265 To date, thirty-four of the forty-seven Member States have ratified the CoE Convention and an additional nine Member States have signed it.266 It is also open to ratification by the European Union and by States who are not members of the Council of Europe.267

Article 1(2) of the CoE Convention provides that “[i]n order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.”268 Article 36 of the CoE Convention creates a monitoring mechanism composed of two bodies: (1) the Group of Experts on Action against Trafficking in Human Beings (GRETA), which consists of ten to thirty-five highly qualified experts; and (2) the Committees of the Parties, a political body consisting of representatives from all the parties to the CoE Convention.269 Further, Article 38 sets out the rules and procedure for evaluating the

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265. CoE Convention, supra note 263, at art. 1. “Trafficking in human beings can be seen as both a violation of human rights and a form of gender discrimination and violence against women and girls.” UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, supra note 258, at 20.


267. See OHCHR, supra note 236, at 14. To date, neither the European Union nor any non-member State (Belarus, Canada, Holy See, Japan, Mexico, United States of America) has signed the CoE Convention. See also Council of Europe Treaty Office, supra note 266.

268. CoE Convention, supra note 263, at art. 1(2).

269. Id. at art. 36-37. See also SCARPA, supra note 5, at 158.
implementation of the CoE Convention.\textsuperscript{270} Specifically, it requires GRETA to evaluate the Parties’ implementation of the CoE Convention by “conducting . . . an evaluation procedure divided into rounds, so that each round can be dedicated to the in-depth analysis of the implementation by States Parties of some specific provisions of the Convention.”\textsuperscript{271} It further granted GRETA the discretion to determine the length of each round.\textsuperscript{272} For example, in February 2010, GRETA commenced its first evaluation round by sending the first ten countries that became Parties to the CoE Convention a questionnaire for information.\textsuperscript{273} The first round evaluation lasts four years and is currently scheduled to end in 2013.\textsuperscript{274}

B. A Comparative Analysis of the UN Protocol, the 2011 Directive, and The CoE Convention

The following sections will compare and contrast the UN Protocol, the 2011 Directive, and the CoE Convention in two aspects: protection of the victim and prosecution.

1. Protection

“Victims who break free from their traffickers’ control generally find themselves in a position of great insecurity and vulnerability.”\textsuperscript{275} The UN Human Rights - Office of the High Commissioner of Human Rights released a Commentary for theRecommended Principles and Guidelines on Human Rights and Human Trafficking, which provides that the “[s]tates
shall ensure that trafficked persons are protected from further exploitation and harm and to have access to adequate physical and psychological care."276 One author notes that

\[t\]he nature of the obligation on States to provide care and support of victims of trafficking is inextricably tied up with their status as victims of crime and victims of human rights violations – a status that, as noted above, provides such victims with a right to be treated with humanity and with respect for their dignity and human rights, as well as with an entitlement to measures that ensure their well-being and avoid re-victimization.277

The UN Protocol, the 2011 Directive, and the CoE Convention respectively contain provisions that protect and assist victims of trafficking. Examples of these provisions include prohibition against prosecution and detention of the victim,278 better identification of the victim,279 and protecting the privacy and identity of the victim.280 The following sections will focus on the physical and psychological care and access to legal counsel provisions to highlight the victim-centered aspect of the UN Protocol, the 2011 Directive, and the CoE Convention.

First, "[r]ecovery is a crucial form of reparation for trafficked persons, which includes medical and psychological care, as well as legal and social services."281 The UN Protocol, the 2011 Directive, and the CoE Convention each provide for victim care and support. For example, while Article 6 of the UN Protocol does not obligate State Parties to provide any specific care, it does require the State Parties to “consider implementing

277. Gallagher, supra note 55, at 305.
280. U.N. Protocol, supra note 56, at art. 6(1); 2011 EU Directive, supra note 257, at art. 12(3); CoE Convention, supra note 263, at art. 11.
measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society."  

It suggested the following measures be provided while requiring the State Parties to also take into account the age, gender, and special needs of the victim, especially the special needs of children: appropriate housing; legal advice in the victim’s language; medical, psychological and material assistance; and employment, educational, and training opportunities.

Article 11(5) of the 2011 Directive, unlike the UN Protocol, obligates Member States to provide assistance and support services on a consensual and informed basis. A human rights approach, which the 2011 Directive adopted, requires that provision of care and support to the victim be informed and non-coercive. Article 11(5) of the 2011 Directive mandated Member States to ensure that victims of trafficking, “including persons provisionally identified as victims of trafficking or at risk of being trafficked” be provided with the following assistance and support: appropriate and safe accommodation, material assistance such as food and clothing, medical and psychological treatment, counseling and information related to health care and their legal rights, and translation and interpretation services.

Similar to the UN Protocol, the 2011 Directive further requires Member States to attend to victims with special needs under Article 11(7). However, the 2011 Directive provides, more specifically than the UN Protocol, that victims with special needs includes those who are pregnant, disabled, have a mental or psychological disorder, or are suffering from a serious form of psychological, physical or sexual violence. Moreover, Member States are to ensure that the assistance and support for the victim is not made conditional on his or her willingness to cooperate in a criminal investigation or prosecution. However, this is qualified with the additional language “without prejudice to Directive 2004/81/EC or similar national rules.” Therefore, access to support and assistance under

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282. U.N. Protocol, supra note 56, at art. 6(3).
283. Id. at art. 6(4).
286. UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, supra note 258, at 54. See also 2011 EU Directive, supra note 257, at art. 11(5).
288. Id.
289. Id. at art. 11(3).
290. Id. Directive 2004/81/EC provides victims with temporary residence but conditional on their cooperation with the authorities. However, the Joint UN Commentary on the EU Directive has stated that such conditions “not only compromise[s] trafficked persons’ rights,
the 2011 Directive is not entirely unconditional.

Similar to the 2011 Directive, Article 12 of the CoE Convention mandates each Party to provide on a consensual and informed basis the following assistance and support measures for victims of trafficking, including those who have been "provisionally identified as such[, that]... cannot be reserved only for those agreeing to act as witnesses[:]

[A]ppropriate and secure accommodation, psychological and material assistance . . . ; access to emergency medical treatment; translation and interpretation services, when appropriate; counseling and information, in particular as regards to their legal rights and the services available to them, in a language that they can understand; assistance to enable their rights and interest to be presented and considered at appropriate stages of criminal proceedings against offenders; [and] access to education for children.

Requiring State Parties to provide assistance on an unconditional basis is a critical distinction that separates the CoE Convention from the 2011 Directive. Placing conditions on victim assistance runs contrary to a victim-centered or human rights based approach. It "denies the legal nature of both the [victim's] entitlement [to receive assistance as a victim of a human rights violation] and [a reciprocal] obligation [of the State to provide such assistance]."

The Explanatory Report of the CoE Convention (the "Explanatory Report") provides the rationale for the aforementioned assistance measures. For example, it recommends special protected shelters for victims of trafficking when appropriate and secure accommodation.

including to full recovery, but may also be counterproductive from a law enforcement perspective since it is often unclear what 'cooperation' is expected from trafficked persons."

shelters would provide stability and security to the victim, round-the-clock victim reception, immediate response to emergencies, and qualified personnel who can assist the victim.\footnote{298} It also highlights the importance of language assistance for victims who do not speak the language of the destination country in order to minimize the feeling of isolation and to ensure that they are able to understand their legal rights.\footnote{299} Moreover, it acknowledges the significance of providing psychological assistance to help the victim overcome trauma and reintegrate into society.\footnote{300} Therefore, in comparison to the 2011 Directive and the UN Protocol, the CoE Convention is more explicit and substantive in terms of assisting the victim's recovery. Overall, providing comprehensive care and support is essential to an effective recovery for the victim and an obligation to the victim.

Second, access to legal assistance is critical in “ensur[ing] that victims are able to participate in legal proceedings freely, safely, and on the basis of full information.”\footnote{301} Both the 2011 Directive and the CoE Convention contain a provision for free legal counseling and information for victims of human trafficking. For example, Article 12 of the 2011 Directive requires Member States to ensure that victims of trafficking have access without delay to legal counseling regarding legal representation and for claiming compensation.\footnote{302} Having access “without delay” to legal counseling is a key element that distinguishes the 2011 Directive from the UN Protocol and the CoE Convention. It serves as a “safeguard against undue delays” and ensures that “legal aid and legal counseling are to be granted without delay, including before a decision is reached regarding the financial means of the victim.”\footnote{303} The 2011 Directive further obligates free legal counseling and legal representation when the victim does not have sufficient financial resources.\footnote{304} Often, trafficked persons will not be able to afford legal counsel; the 2011 Directive takes this into account.\footnote{305}

\footnotetext[]{298}{COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at ¶ 154.}{299}{Id. at ¶158.}{300}{Id. at ¶156.}{301}{UNODC, JOINT UN COMMENTARY ON THE EU DIRECTIVE, supra note 258, at 66.}{302}{2011 EU Directive, supra note 257, at art. 12.}{303}{See supra note 301.}{304}{2011 EU Directive, supra note 257, at art. 12.}{305}{Report of the Special Rapporteur, supra note 279, ¶ 47. See also supra notes 99-}
Article 15(2) of the CoE Convention, while similar to Article 12 of the 2011 Directive in mandating each Party to provide legal assistance and free legal aid to victims, differs in one aspect.\textsuperscript{306} The Explanatory Report clarifies that Article 15(2) "does not give the victim an automatic right to free legal aid. It is for each Party to decide the requirements for obtaining such aid."\textsuperscript{307} However, it also states that Parties must additionally consider Article 6 of the Council of Europe's European Convention on Human Rights (the "ECHR") when implementing Article 15(2).\textsuperscript{308} Article 6 of the ECHR provides for the right to a fair trial.\textsuperscript{309} The Explanatory Report provides that "[e]ven though Article 6(3)(c) of the ECHR provides for free assistance from an officially appointed lawyer only in criminal proceedings," the European Court of Human Rights case law also recognizes the right to free legal assistance in a civil matter provided by Article 6(1) of ECHR is determined by the Court.\textsuperscript{310} The Court recognizes that "effective access to a court may necessitate free legal assistance."\textsuperscript{311} Therefore, in determining whether to grant free legal assistance, the Court considers the "complexity of the procedure" and the "emotional character of a situation" to discern a person's ability to present their case.\textsuperscript{312} The Explanatory Report concludes that "even in the absence of legislation granting free legal assistance in civil matters, it is for the courts to assess whether, in the interest of justice, an applicant who is without financial means should be granted legal assistance if unable to afford a lawyer."\textsuperscript{313} Thus, while the CoE Convention requires State Parties to provide legal

\textsuperscript{102.} CoE Convention, supra note 263, at art. 15(2).
\textsuperscript{306.} \textit{Id.}
\textsuperscript{307.} \textit{COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at 53.}
\textsuperscript{308.} \textit{Id.} The European Convention on Human Rights was opened for signature in Rome on 4 November 1950; it entered into force on 3 September 1953. The Convention gave effect to certain of the rights stated in the Universal Declaration of Human Rights and established an international judicial organ [European Court of Human Rights] with jurisdiction to find against States that do not fulfill their undertakings. \textit{COUNCIL OF EUROPE, EUROPEAN COURT OF HUMAN RIGHTS, THE ECHR IN 50 QUESTIONS 5 (2012), available at http://www.echr.coe.int/NR/rdonlyres/5C53ADA4-80F8-42CB-B8BD-CBBB781F42C8/0/FAQ_ENG_JANV2012.pdf.} The European Convention on Human Rights is applicable at the national level. It has been incorporated into the legislation of the States Parties, which have undertaken to protect the rights defined in the Convention. Domestic courts therefore have to apply the Convention. Otherwise, the European Court of Human Rights would find against the State in the event of complaints by individuals about failure to protect their rights. \textit{Id.} "States that have ratified the Convention, also known as 'States Parties,' have undertaken to secure and guarantee to everyone within their jurisdiction, not only their nationals, the fundamental civil and political rights defined in the Convention." \textit{Id.}
\textsuperscript{310.} \textit{COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at ¶196.}
\textsuperscript{311.} \textit{Id.}
\textsuperscript{312.} \textit{Id.}
\textsuperscript{313.} \textit{Id.}
assistance and free legal aid to its victims, such access still depends on the conditions set by State Parties and the standards of Article 6 of the ECHR.

Unlike the 2011 Directive and the CoE Convention, the UN Protocol does not specifically contain a provision for free legal assistance to victims of trafficking. The UN Protocol does at least require each State Party to ensure that their domestic legal or administrative system contain measures that provide victims of trafficking with information on relevant court and administrative proceedings and assistance to enable them to testify in criminal proceedings against the trafficker. However, on April 13, 2011, Joy Ngozi Ezeilo, the UN Special Rapporteur on trafficking in persons, especially women and children, submitted a report to the UN Human Rights Council in which she recommended that States Parties provide victims of trafficking with free legal assistance because it is an “essential pre-condition for all trafficked persons to exercise their right to an effective remedy.” Furthermore, she recommended that State Parties ensure that the lawyers who are providing such assistance are adequately trained in the rights of trafficked persons and able to effectively communicate with victims of human rights violations. Overall, legal assistance provided should be timely, free, and effective to ensure that the victim is meaningfully represented.

2. Prosecution

“A criminal justice response to trafficking . . . seeks both to end impunity for traffickers and to secure justice for victims . . . .” To effectively combat human trafficking, criminalization is an essential component to punish the trafficker and secure justice for the victim. However, even if the trafficker is arrested or punished, the illegally procured proceeds of the trafficking crime are often still within the control of the trafficking network, thus sustaining the criminal enterprise’s activities. Part of securing justice for the victim includes seizing the proceeds of the trafficking crime in order to ensure that the trafficker is not rewarded for his or her unjust activities.

[Assets and proceeds of trafficking could include property and monies such as: profits from the services and exploitation of the victim; costs paid by victims (including

314. U.N. Convention, supra note 245, at art. 25(1)-(3).
316. Id.
318. Id. at 371.
319. Id. at 400
320. Id.
for passports, visas, or transport), for example where the victim has paid for illegally facilitated migration and subsequently became a victim of trafficking; vehicles used to transport victims; factories, brothels, boats and farms where the exploitation took place; profits from the sale or resale of a person from one trafficker to another; and the value of unpaid services and salaries that would otherwise have been paid to the persons exploited.321

Thus, the following sections will focus on the asset confiscation aspect of the UN Protocol, the 2011 Directive, and the CoE Convention. State Parties that ratified both the UN Convention and the UN Protocol are required, under Article 12 of the UN Convention, to adopt measures in their respective legal systems for the confiscation of proceeds derived from the trafficking crime and the instrumentalities that were used in the commission of such crime.322 The UN Convention also establishes "a number of mechanisms to enhance international cooperation with respect to confiscation in order to eliminate advantages to criminals presented by national borders and differences in legal systems."323 These mechanisms ensure that traffickers do not have a safe haven to hide their illegal gains.324 While the UN Convention does not specifically mandate how State Parties are to deal with the confiscated proceeds or property, it does provide that they are to "give priority consideration to returning the confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime..."325 The UN Recommended Principles and Guidelines on Human Rights and Human Trafficking (the "UN Recommended Principles and Guidelines") further supports this principle by encouraging State Parties to make legislative provisions that specifically provide for the confiscated proceeds to be used to benefit the victim.326 More importantly, it recommends the use of confiscated assets to finance a victim compensation fund.327 The compensation fund would make

321. Id. at 400-401.
322. U.N. Convention, supra note 245, at art. 12. "A State that is a party to the Convention and not the [UN] Protocol would be required to establish that trafficking, is under its law, a 'serious crime' as defined in the Convention for the provisions to apply to trafficking offences." OHCHR, RECOMMENDED PRINCIPLES AND GUIDELINES, supra note 276, at 221.
323. OHCHR, RECOMMENDED PRINCIPLES AND GUIDELINES, supra note 276, at 221. These mechanisms "enable countries to give effect to foreign freezing and confiscation orders and [allow] countries [to] work together in recovering criminal assets . . . ." Gallagher, supra note 55, at 400. See U.N. Convention, supra note 245, at art. 13.
324. Gallagher, supra note 55, at 400.
325. U.N. Convention, supra note 245, at art. 14(2).
326. U.N. Economic and Social Council, Recommended Principles, supra note 293, at 8.
327. Id.
the trafficker pay for the crime and provide reparations to the victim.

Similarly, Article 7 of the 2011 Directive also mandates its Member States to take necessary measures to ensure their local authorities are equipped to seize and confiscate the instrumentalities and proceeds from the trafficking offenses. The Preamble of the 2011 Directive also emphasizes that the Member States should make full use of existing international legal instruments on asset confiscation in combating human trafficking. Thus, it can be inferred that the 2011 Directive endorses the use of supplementary legislative tools to fortify the Member States’ ability to confiscate the proceeds from traffickers. More importantly, the 2011 Directive takes a step further than the UN Recommended Principles and Guidelines and encourages Member States to use the confiscated instrumentalities and proceeds from the offenses under this Directive to “support victims’ assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities . . . ” Therefore, in addition to providing compensation for the victim, the confiscated proceeds and instrumentalities can also fund other victim assistance and law enforcement programs.

Article 23(3) of the CoE Convention also requires State Parties to adopt legislative or other measures to allow confiscation of instrumentalities and proceeds derived from the trafficking offenses. The

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331. CoE Convention, supra note 263 at art. 23(3). The Explanatory Report provides that this provision correlates with the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141] in that “confiscating the proceeds of crime is an effective anti-crime weapon.” COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 263, at 61. Article 1 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime provides the definitions for the following terms: proceeds, property, instrumentalities, and confiscation. Convention on Laundering, supra note 329, at art. 1(a)-(d).
CoE Convention recognizes that trafficking in human beings is primarily for financial profit. Therefore, measures depriving the traffickers of such assets are necessary to successfully combat human trafficking.\textsuperscript{332} Similar to the 2011 Directive and the UN Recommended Principles and Guidelines, the CoE Convention suggests that the confiscated assets could be used to establish a “fund for victim compensation . . . ”\textsuperscript{333} The Explanatory Report explains that even though a court may order a trafficker to compensate the victim, victims are rarely compensated because the trafficker has disappeared or has declared bankruptcy.\textsuperscript{334} Thus, Article 15 the CoE Convention requires State Parties to guarantee compensation for the victim, and proposes the compensation fund as a possible means to facilitate that guarantee.\textsuperscript{335}

Furthermore, similar to the 2011 Directive, the CoE Convention also suggests that the confiscated assets could finance “measures or programmes for social assistance to and social integration of victims.”\textsuperscript{336} However, upon a closer examination, the CoE Convention in contrast to the 2011 Directive, does not suggest that the confiscated assets be used for law enforcement counter-trafficking activities.\textsuperscript{337} Therefore, it can be inferred that the 2011 Directive takes a broader approach to include funding for law enforcement activities from the confiscated assets, while the CoE Convention focuses more on victim compensation and recovery. Overall, asset confiscation can potentially serve as an effective method in disabling the trafficker's criminal enterprise, and provide funding for victim and law enforcement assistance.

IV. RECOMMENDATIONS

While Indiana toughened its stance against sex trafficking of a minor with increased penalties and jail time, the question remains, “What happens to the instrumentalities and profits derived from the trafficking crime?” This Note recommends that Indiana create an asset forfeiture provison in its human trafficking laws which would permit the forfeiture of instrumentalities and proceeds derived from the trafficking crime. Such deprivation decreases the profits that sustain the trafficker's criminal activity and provides the state with revenue to finance a human trafficking victims' fund. Assets from the trafficking victims fund can finance victim services and law enforcement activities. The following sections discuss in

\textsuperscript{332} COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at 61.  
\textsuperscript{333} CoE Convention, supra note 263, at art. 15(4).  
\textsuperscript{334} COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at 53.  
\textsuperscript{335} CoE Convention, supra note 263, at art. 15(4); See also COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at 53.  
\textsuperscript{336} COUNCIL OF EUROPE, EXPLANATORY REPORT, supra note 264, at 53.  
\textsuperscript{337} Id.
greater detail why Indiana should adopt an asset forfeiture provision into their human trafficking law.

A. Cutting the Lifeblood of the Trafficker

Indiana should adopt an asset forfeiture provision into their human trafficking laws as a way to undermine the human trafficking enterprises. By confiscating the illicit profits and removing the instrumentalities of the crime from circulation, asset forfeiture "strikes at the very core of criminal organizations." For example, asset forfeiture has been instrumental in the fight against drug trafficking. Profits are the driving force behind drug trafficking and racketeering. International drug trafficking syndicates generate millions of US dollars from the smuggling and selling of illegal drugs in the United States. These illicit profits fuel and sustain the drug trafficking enterprise. Asset forfeiture allows law enforcement to remove the profits of the crime and "to ensure that 'crime does not pay.'"

Similarly, asset forfeiture is integral to the fight against human trafficking. Primarily, human trafficking is a profit-driven, low-risk crime. In 2005, the ILO estimated that trafficked persons forced into or subject to economic exploitation generated $4 billion in annual profits. It also estimated $28 billion in annual profits from forced commercial sexual exploitation, with $13.3 billion generated within industrialized countries.

When individuals are willing to buy commercial sex, they create a market and make it profitable for traffickers to sexually exploit children and adults. When consumers are willing to buy goods and services from industries that rely on forced labor, they create a profit incentive for labor traffickers to maximize revenue with minimal production

339. Id. at 1.
340. Id.
341. Id. at 39.
342. Id. at 35.
343. Id.
344. Gallagher, supra note 55, at 400.
345. Id.
346. FATF, supra note 83, at 16.
347. Id.
In addition, unlike drug trafficking where the trafficker has to "constantly restock their product as their commodity may be sold only once," the human trafficker can repeatedly exploit the trafficked person. In other words, the human trafficker can sell and resell the trafficked person, while a drug trafficker has to expend time and resources in manufacturing the illegal drug again and run the risk of law enforcement discovering their illicit activities. Therefore, while drug trafficking may be very profitable, there are substantial risks. Alternatively, human trafficking is a low-risk crime. Factors such as lack of public awareness of the issue, law enforcement not adequately trained to respond, ineffective laws, lack of prosecution or investigation of the crime, and victims fearing reprisal against themselves and their families distinguish human trafficking as a low-risk crime. Therefore, the combination of substantial profits and low risks makes human trafficking an appealing crime to a trafficker. Asset forfeiture raises the risks and lowers the profits and incentive for a criminal to either get involved with or continue the trafficking activity.

Moreover, the illicit profits derived from the sale and resale of a person not only sustains the trafficking enterprise, but it also fuels other related crimes.

Criminal groups develop "horizontal interdependencies"... "which refers to the connections established among different activities by the same criminal organization and indicates a pattern of diversification. Criminal enterprises make use of the skills, routes, existing contacts and corrupt networks developed in certain markets in specific countries and expand into other illicit markets."

The criminal enterprises involved in human trafficking are often linked to migrant smuggling, extortion, document fraud and forgery, money laundering, auto theft and drug trafficking. Traffickers have also been
known to force their victims to commit illegal activities such as stealing and drug trafficking.\textsuperscript{357} Therefore, criminal fines and imprisonment are inadequate to fight human trafficking unless the proceeds of the trafficking crime are removed and the trafficking enterprise is disabled.\textsuperscript{358} Asset forfeiture ensures that the proceeds from the trafficking offense are not used to perpetuate related criminal activities in addition to the trafficking offense.

Additionally, asset forfeiture could take the instrumentalities of crime out of circulation.\textsuperscript{359} For example, if a drug dealer uses a house to sell drugs to children as they pass by on the way to school, the removal of the residence as a drug source deters the crime and helps ensure the safety of the community.\textsuperscript{360} Similarly, the forfeiture of real property prevents the trafficker's enterprise from continuing with illegal activities such as prostitution.\textsuperscript{361} Furthermore, forfeiture of a vehicle, aircraft, or vessel denies the trafficker the ability to transport victims to different locations for the purposes of exploitation.\textsuperscript{362} Therefore, asset forfeiture removes the instrumentalities of crime and impedes the trafficker from expanding criminal activities.

The removal of financial assets is also important in the fight against human trafficking. Financial assets are the lifeblood of the human trafficking enterprise and could serve as alternative evidence of criminal activity.\textsuperscript{363} For example, the financial assets can "substantiate or corroborate a case of human trafficking . . . by demonstrating to the court that the income of an individual or of a legal person far exceeds that which can be explained by legitimate sources."\textsuperscript{364} Therefore, asset forfeiture not only ensures that the trafficker is not benefiting from their illegal gain, but also serves as evidence to support the criminal conviction of the trafficker.\textsuperscript{365}

Lastly, asset forfeiture has proven an effective tool in confiscating the proceeds and instrumentalities of the trafficking enterprise in the United States and internationally.\textsuperscript{366} For example, in United States v. Maksimenko, Michail Aronov forfeited $641,500 and paid over $1 million in restitution after a jury convicted him for operating a human trafficking ring in which he forced Eastern European women to work as exotic dancers in Detroit-

\begin{footnotes}
\footnote{357. OSCE, ANALYSING THE BUSINESS MODEL, \textit{supra} note 355, at 27.}
\footnote{358. Gallagher, \textit{supra} note 55, at 400. See also 2005 TIP REPORT, \textit{supra} note 141, at 13-14.}
\footnote{359. \textit{Oversight of Federal Asset Forfeiture, supra} note 338, at 18.}
\footnote{360. \textit{Id.}}
\footnote{361. \textit{See supra} notes 46-49.}
\footnote{362. \textit{See supra} note 39.}
\footnote{363. Konrad, \textit{supra} note 6, at 84.}
\footnote{364. Gallagher, \textit{supra} note 55, at 400.}
\footnote{365. \textit{Id.}}
\footnote{366. See \textit{infra} notes 367-79. See also Dep't of Homeland Security, \textit{Asset Forfeiture Branch, http://www.ice.gov/asset-forfeiture/} (last visited Mar. 18, 2013).}
\end{footnotes}
The court also ordered another defendant, Aleksandr Maksimenko, to forfeit $957,050 in cash. In *United States v. Zavala and Ibanez*, Defendants Mariluz Zavala and Jorge Ibanez forfeited a residence valued at $175,000 and bank accounts containing $30,000 generated from their criminal activities after pleading guilty to conspiracy to commit forced labor, document servitude, engaging in extortionate credit transactions and transferring false alien registration cards.

Internationally, asset forfeiture has also been a successful measure in confiscating the proceeds and instrumentalities of the trafficking enterprise. For example, Romania, in accordance with the UN Protocol and the EU Decision, criminalized all forms of human trafficking through Law No. 678/2001 on Preventing and Combating Trafficking in Human Beings. Article 19 of Law No. 678/2001 "regulates the seizure of assets used for committing trafficking in human beings and the proceeds from such crime." In 2007, the officers from the Organized Crime Squad of Pitesti, Romania, investigated and discovered that the Oancea Clan, a well-known clan in the criminal community, operated a sex trafficking ring from 2003 to 2007 in Romania, Spain, and Italy. As a result of an indictment, seventeen defendants appeared before the court in criminal proceedings. In addition, the prosecutor of Pitesti, Romania, ordered the seizure of six apartments and lands in Pitesti, two villas in communes, and gold and money, which in total had a total value of 1,350,000 Euros (≈ $1,766,829.74 USD).

Furthermore, in evaluating each country's implementation of the CoE Convention, on December 20, 2011 GRETA released a report that acknowledged Denmark's compliance with the asset confiscation provision of the CoE Convention. Article 75 and 76 of the Danish Criminal Code

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368. Id. at 7-8.


371. Id.


373. Id.


375. See GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS
“provide for the confiscation of proceeds from criminal activities. Confiscation may concern any person to whom the proceeds of a criminal act have passed directly as well as those on whose behalf such a person has acted.” The report provides three instances of asset confiscation: (1) December 2008, the City Court of Copenhagen convicted two persons of trafficking in human beings and confiscated 20,000 DKK (Danish Krone) (≈ $3,538.42 USD); (2) March 2010, the City Court of Copenhagen convicted two persons for trafficking in human beings and confiscated 130,000 DKK (≈ $22,999.95 USD) from each defendant; and (3) January 2011, the Court of Frederiksberg convicted three persons of trafficking in human beings and confiscated 50,000 DKK (≈ $8,845.62 USD) from two defendants and 497,500 DKK (≈ $88,009.18 USD) from a third defendant.

The continued success of asset forfeiture in the fight against human trafficking on the domestic and international levels provides a compelling basis for Indiana to adopt an asset forfeiture provision. Indiana should adopt an asset forfeiture provision that provides for the removal of proceeds and instrumentalities of crime from the hands of the trafficking organization. Asset forfeiture provisions deprive the trafficking enterprise of the financial means to continue their trafficking and other illicit activities. Further, the confiscated assets can potentially serve as alternative evidence to support a criminal conviction of the trafficker in a human trafficking case.

B. Make the Trafficker Pay: Creation of a Human Trafficking Victims Fund

In addition to an asset forfeiture provision, Indiana should take one additional step and create a human trafficking victims fund from the forfeited assets. This Note proposes that Indiana appropriate the forfeited assets to fund law enforcement anti-trafficking programs and victim services similar to the 2011 Directive’s recommendations. The following sections will discuss the importance of using the forfeited assets to finance a human trafficking fund.
Asset forfeiture is a powerful tool because it removes the proceeds and instrumentalities of crime from the criminal organization, but more importantly, it provides funding for community and law enforcement programs. For example, the US federal government promotes asset forfeiture as an "invaluable tool for law enforcement to implement productive drug interdiction programs and purchase equipment for anti-drug programs." The Comprehensive Crime Control Act of 1984 created the Department of Justice Assets Forfeiture Fund and the Treasury Department Appropriations Act, P.L. 192-393 established the Treasury Forfeiture Fund. Both of these Funds receive proceeds from forfeiture and have allocated some of the forfeited assets to state and local agencies to provide for community programs, victim restitution and law enforcement programs combating drug trafficking. Furthermore, forfeited real property from the Department of Justice Asset Forfeiture Fund has been transferred to community action groups to be used as community centers. Therefore, asset forfeiture ensures that the forfeited proceeds of the crime are not channeled back into criminal organizations, but instead are used for the betterment of society.

Similar to drug trafficking, the forfeited proceeds of the human trafficking crime could provide funding for victim services and law enforcement programs designed to educate law enforcement personnel in recognizing human trafficking and assessing the needs of the trafficked victims. For example, on November 21, 2011, Governor Deval Patrick of Massachusetts signed into law a bill against human trafficking (the "MA Bill"). The MA Bill created a Victims of Human Trafficking Fund (the "Fund"), which consists of assets forfeited and seized and fines from the crimes established under the MA Bill. The MA bill designates the state treasurer as the custodian of the Fund, and directs the state treasurer to transfer funds from the Fund to the victim and witness assistance board pursuant to section 4 of Chapter 258B of the Massachusetts General Laws. The board administers Fund grants to public, private non-profit, or community-based programs to provide services to victims of human trafficking.

380. Oversight of Federal Asset Forfeiture, supra note 338, at 41.
381. Id. at 76.
383. Oversight of Federal Asset Forfeiture, supra note 338, at 32-33. For example, forfeiture monies were used to build a new forensic laboratory for the New York State Police, educational programs for children to resist drugs and gangs, and law enforcement training. Id.
384. Id. at 43.
386. Id. See also MASS. GEN. LAWS ANN. ch. 10, § 66A (2012).
The creation of a fund from the forfeited proceeds, to provide for victim services and law enforcement programs, has also been implemented at the international level. For example, in compliance with the asset confiscation provision of the CoE Convention, GRETA reports that Albania passed Law No. 10/192 on the Prevention of and Fight against Organised Crime and Trafficking through Preventive Measures against Assets on December 3, 2009, which replaced the 2004 law that covered only confiscated proceeds from organized crime. The law entered into force in January 2010, but "the new mechanism for administering confiscated assets was not introduced until July 2010." This law "sets up . . . a ‘Special State Fund for Preventing Criminality,’ which is sourced from property and assets sequestered and confiscated by decision of the First Instance Court for Serious Crimes . . ." During the 2009-2010 fiscal year, 50% of the confiscated proceeds were allocated to this fund. The purpose of the fund is to "finance projects aimed at improving the exercise of justice, but must also serve social purposes, such as the rehabilitation and reintegration of victims of trafficking." Article 37(3)(b) of Law No. 10/192 provides that non-profiting organizations, including shelters for victims of trafficking and rehabilitative centers, are some of the beneficiaries of the fund. GRETA reported that the first set of confiscated properties is currently being sold and all the proceeds could go towards the fund.

Similar to its domestic and international counterparts, Indiana should create a human trafficking victims fund from the forfeited proceeds of the crime. To effectively combat human trafficking, it is simply not enough to

388. Id.
390. Id. at 39.
391. Id. at 33.
392. Id.
393. Id.
395. See GRETA, ALBANIA, supra note 389, at 33. Law No.10/192 replaced Albania's 2004 law by extending the seizure and confiscation of assets to the human trafficking crime. It also "gives greater powers to the agency tasked with administering confiscated assets with a view to [ensure] that these yield income . . . can be divided between victims to compensate them and [the Special State Fund]." Id. Further, Law No. 10/192 "provides for a reversal of the burden of proof, i.e. it is for the person whose assets are sequestered or confiscated to prove that they are not the proceeds of crime." Id.
criminalize the behavior by increasing the criminal sanctions of fines and imprisonment.\textsuperscript{396} It requires a multi-disciplinary approach. The "more comprehensive a state's legislation, the more likely that state will be successful in the fight against human trafficking..."\textsuperscript{397} Thus, the forfeited proceeds of the crime would provide Indiana the financial means to adopt a multi-disciplinary approach in combating human trafficking.

The forfeited proceeds could be used to provide law enforcement with the necessary training to identify victims of human trafficking.\textsuperscript{398} Often, law enforcement officials are the first to encounter victims of human trafficking.\textsuperscript{399} However, factors such as the hidden nature of the crime, the trafficker's constant guard of the victim, lack of immigration documentation, and the invisibleness of trafficked domestic servants make it difficult to identify the victim.\textsuperscript{400} Additionally, there have been instances where law enforcement officials have treated victims of sex trafficking as criminals and arrested them for prostitution.\textsuperscript{401} Other instances also involve law enforcement arresting and deporting undocumented immigrants even though the undocumented immigrants may have been victims of human trafficking.\textsuperscript{402} Furthermore, there is a risk that domestic, child victims of sex trafficking "will be perceived as runaways, throwaways, and delinquents rather than as victims of trafficking."\textsuperscript{403} Therefore, it is crucial for law enforcement to "have the proper training and tools... to be able to correctly apply the trafficking law, make the proper distinctions, and refer trafficking victims for health and human services."\textsuperscript{404}

Law enforcement should also receive training in communicating with international victims of human trafficking who fear law enforcement.\textsuperscript{405} In many instances, international victims fear law enforcement due to personal experiences with corrupt government officials, or because the trafficker has told the victims that if they are caught by law enforcement, they will be arrested and deported.\textsuperscript{406} Thus, the forfeited proceeds can be used to provide law enforcement with the necessary training in victim identification and

\textsuperscript{396} See Konrad, supra note 6, at 85.
\textsuperscript{397} Vanessa Bouche & Dana Wittmer, Human Trafficking Legislation Across the States: The Determinants of Comprehensiveness, U. OF NEB.-LINCOLN (Oct. 1, 2009), available at http://digitalcommons.unl.edu/humtraffconf/6/; See also Konrad, supra note 6, at 85.
\textsuperscript{398} Clawson et al., supra note 11, at 15.
\textsuperscript{399} Ozalp, supra note 20, at 1401.
\textsuperscript{400} Clawson et al., supra note 11, at 6.
\textsuperscript{401} Id. at 15.
\textsuperscript{402} Id.
\textsuperscript{403} Id.
\textsuperscript{404} See supra note 398.
\textsuperscript{406} Id.
assistance to ensure more victims are rescued and provided with the necessary care and support.

The forfeited proceeds can also be used for victim services. After the victim has been identified and rescued, it is essential to rehabilitate and reintegrate the victim as a productive member of society. "Recovery is a crucial form of reparation for trafficked persons, which includes medical and psychological care, as well as legal and social services." However, to provide effective recovery, it is important to recognize that the needs of international victims may differ from the needs of domestic victims of human trafficking. Both international and domestic victims of human trafficking generally require safety, housing, food, clothing, and medical and psychological care. Law enforcement and service providers both reported that housing for victims of trafficking is limited. Forfeited assets can be used to build shelters exclusively for victims of trafficking, thus providing them with the safety and care that they need. Alternatively, forfeited property can be renovated and used as shelters for human trafficking victims or as victim assistance centers.

Unlike domestic victims, international victims often require legal assistance and language assistance in addition to housing, food, and medical care. International victims have an "immediate need for legal assistance/representation to handle issues related to immigrant status, provide legal representation that may be required in an ongoing investigation and prosecution of the trafficking case, or provide counsel in a civil lawsuit against the trafficker or in a potential custody case." Frequently, victims of trafficking do not have the financial means to afford legal counsel. Thus, the forfeited assets can be used to provide victims of trafficking with free legal assistance to ensure that they are advised of their rights and adequately represented.

International victims also often need language assistance, such as an interpreter or a translator, to facilitate communication between the victim and those who are providing assistance. However, while language assistance may aid in the communication process, the victim may not talk

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407. See SISKIN & WYLER, supra note 5, at 10.
410. Id.
412. CLAWSON ET AL., supra note 11, at 11-12.
413. Id. at 11, 34.
415. CLAWSON ET AL., supra note 11, at 12.
about their trafficking experience.\textsuperscript{416} Victims of sex trafficking may not be comfortable discussing their experiences with someone of the same culture because of the associated shame and stigma.\textsuperscript{417} A person’s cultural background is more than just the language itself; it also embodies customs, values, and traditions. Forfeited assets can be used for language skills training and cultural awareness programs.

Lastly, Indiana should create a human trafficking fund using forfeited assets of the crime to increase funding for victim services.\textsuperscript{418} As the public becomes more aware of human trafficking, and more victims are identified, additional funding will be required to provide services to trafficking victims.\textsuperscript{419} Initially, the US Department of Health and Human Services and the Office of Refugee Resettlement handled all victim assistance by providing grants to non-governmental organizations (NGOs).\textsuperscript{420} Once the victim received certification (or was granted a T-visa or continued presence), he or she was eligible for services and refugee benefits.\textsuperscript{421} However, pre-certified victims or victims waiting for certification were not eligible for these benefits.\textsuperscript{422} As a result, the US Department of Justice’s Office of Victims of Crime (the “OVC”) created funding to provide additional support to NGOs providing assistance to trafficking victims prior to certification.\textsuperscript{423} For example, in the 2010 fiscal year, the OVC granted the City of Indianapolis/Julian Center $60,000 to “provide comprehensive services to pre-certified foreign national victims of human trafficking as well as case management support and legal assistance to certified victims.”\textsuperscript{424} However, absent these federal grants, “NGOs lack funding . . .

\begin{thebibliography}{99}
\bibitem{416} Clawson & Dutch, supra note 411, at 7.
\bibitem{417} Id.
\bibitem{419} Id.
\bibitem{420} Dina Francesca Haynes, Good Intentions Are Not Enough: Four Recommendations for Implementing the Trafficking Victims Protection Act, 6 U. ST. THOMAS L.J. 77, 88 (2008).
\bibitem{421} See supra notes 171-72.
\bibitem{423} Haynes, supra note 420. See also Aron, supra note 422.
\bibitem{424} 2010 ATT’Y GEN. ANN. REP. 129 (Dec. 2011), available at http://www.justice.gov/ag/annualreports/tr2010/agreporthumantrafficking2010.pdf. This funding is also to: [c]ontinue to build effective community service networks to respond to victims’ need; and provide training to increase awareness among criminal justice entities, social service providers, and the public of the rights and needs of trafficking victims until the end of the current grant period. Grantee may use up to 5% of the total grant award to support “prevention” in the area of
\end{thebibliography}
for work that is costly: providing shelter and legal, medical, language, and job training services to victims. If there is a lack of funding, victims of human trafficking will not have access to these services. Therefore, the forfeited assets should supplement existing funding to provide a greater provision of care and support to victims of human trafficking.

Overall, by adopting an asset forfeiture provision, the forfeited proceeds will provide Indiana with the financial means to support greater law enforcement anti-trafficking training and comprehensive victim services. More importantly, such a provision secures justice for victims of human trafficking.

V. CONCLUSION

Indiana’s new human trafficking legislation is insufficient to combat human trafficking.

While the new legislation strengthened Indiana’s existing human trafficking laws and tightened the prosecution for the sex trafficking of a minor, it does not effectively impede the human trafficking activity. Human trafficking continues to thrive because of the substantial profits that result from the repeated exploitation of human beings. These illicit profits are the financial underpinnings of the trafficker’s enterprise. Recognizing that fines and imprisonment are inadequate to fight human trafficking, the United Nations, the European Union, and the Council of Europe mandated their respective members to enact asset forfeiture provisions to “cut[] to the heart and motivation behind [human trafficking].” Furthermore, they also advocated for the creation of a fund from the forfeited assets to provide funding for victim services and law enforcement programs. Similar to the

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awareness-raising and 5% of the total grant award to conduct a program evaluation. Id.

During the fiscal year of 2010, the TVPA provided the City of Indianapolis with a $100,000 grant for:

Continued enhancement and operation of a multi-disciplinary and multi-jurisdictional victim-centered task force with the primary goal being the identification and rescue of foreign victims of trafficking in persons through pro-active investigation; and the secondary goal being the successful prosecution of traffickers. Continued coordination with the Office of Victims of Crime (OVC) -funded victim services provider and the local Office of the U.S. Attorney to identify and rescue victims of all forms of human trafficking and to work with the OVC-funded victim service provider to assist the provider in securing requests for continued presence of T visas for foreign victims. In coordination with victim service providers and task force partners, train law enforcement line officers and persons likely to come into contact with victims of trafficking to be able to recognize the signs of trafficking and its victims.

Id. at 146.

425. Haynes, supra note 420, at 89.

international community, Indiana should take a stronger stance against human trafficking by establishing an asset forfeiture provision within its existing human trafficking laws. More importantly, it should create a trafficking victims fund from the forfeited assets to provide funding for victim services that will rehabilitate and reintegrate the victim and provide funding for law enforcement programs to better identify victims of trafficking because one victim of trafficking is one too many.