Human Trafficking in Massachusetts

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

August 2019
The United States Commission on Civil Rights

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Letter of Transmittal

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The Massachusetts Advisory Committee, as part of its responsibility to advise the Commission on civil rights issues within the state, submits this report, “Human Trafficking in Massachusetts.” The report was unanimously adopted by the Advisory Committee.

Sincerely,

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Acknowledgments

The Massachusetts Advisory Committee thanks all of the participants in the April briefing for sharing their expertise and, in some cases, deeply personal stories on this most important issue. This report was done under the direction of designated federal official Barbara de La Viez. The Committee thanks Evelyn Bohor for her support of the Committee. The Committee extends special appreciation to member Wendy Kaminer and Georgetown Law Student/Eastern Regional Office intern Patrick Williamson for their contribution to drafting of the report.
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Executive Summary

In 2011 Massachusetts became the 48th state to enact a statute targeting human trafficking. An Act Relative to the Commercial Exploitation of People criminalized sex trafficking and forced labor, defining the latter as “services performed or provided by way of causing or threatening to cause serious harm, physical restraint, abusing or threatening to abuse the legal process, knowingly destroying, concealing, removing, confiscating or possessing any identity documents, engaging in extortion, or causing financial harm to any person.” The law established a civil cause of action for labor trafficking victims and provided for victim ordered restitution from assets forfeited by offenders.

The Massachusetts forced services statute is broader than the federal anti-labor trafficking law; it does not require a finding of fraud, force, or coercion. But it has proved difficult to enforce. In the seven years since the law’s effective date in February 2012, the Attorney General’s office has charged only four defendants with labor trafficking, to date. So far, there have been no convictions. Funding provided for victims under the statute is “abysmal” and funds expected from asset forfeitures haven’t “materialized.” Law enforcement agencies accustomed to targeting sex trafficking and prostitution have little if any experience regulating workplaces and little if any training in identifying and investigating labor trafficking. Aggressive federal efforts to deport undocumented people encourage many trafficked workers to remain in the shadows and embolden their employers.

Workplace servitude is a significant problem in Massachusetts, but its dimensions are unknown largely because law enforcement has limited experience in this area and also because they have limited intelligence in private workplaces. Data are inadequate and awareness of labor

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2 Id. at § 23; Beth Keeley, Assistant Attorney General, Chief of AG’s Human Trafficking Division Criminal Bureau, testimony, Briefing Before the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, Boston, MA, Apr. 26, 2019, transcript, p. 68 (hereafter cited as Boston Briefing).
3 MASS GEN. LAWS ch. 265, § 51.
4 MASS GEN. LAWS ch. 265, § 55
5 Keeley Testimony, Boston Briefing, p. 88.
6 Charges against 1 defendant have been dismissed; charges against 3 were pending as of June, 2019. Heather Rowe Testimony, Chief of Investigations for Office of AG’s Fair Labor Division, Boston Briefing, p. 68; Beth Keeley, Written Statement for the Labor Trafficking in Massachusetts Briefing before the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights, June 14, 2019 (hereinafter Keeley Supplemental Email).
7 Julie Dahlstrom Testimony, Director, Boston University Law Immigrants Rights and Human Trafficking Clinic, Boston Briefing, p. 118.
8 Ally Blanck Testimony, Representative for Senator Mark Montigny, Boston Briefing, p. 10.
9 Amy Farrell Testimony, Associate Director, Northeastern School of Criminology & Criminal Justice, Boston Briefing, p. 43.
10 Dahlstrom Testimony, Boston Briefing, p.114.
11 Farrell, Testimony, Boston Briefing, p. 44.
trafficking is low, among law enforcement officials as well as members of the public. Recommendations for combatting trafficking issued in 2014 by the Labor Sub-Committee of an inter-agency task force are still cited by the Attorney General’s office today and have yet to be implemented. Thus, the Commonwealth has made little progress in quantifying or effectively addressing the incidence of labor trafficking or the number of victims it claims.

The 2014 Labor Sub-Committee report offered specific recommendations for action in 5 areas: victim services; demand reduction; data collection and information sharing; education and training; and public awareness. Since then the Attorney General’s office has taken some preliminary steps in response: It has created a web page on labor trafficking and is developing a labor trafficking app; it offered two training webinars for municipal workers (and plans on offering more). In addition to other training sessions, it has sought out partnerships with local governments and circulated sample policies to municipalities, addressing employee conduct and contract requirements for suppliers.

But the promises of the 2014 task force report remain mostly unfulfilled. State officials don’t seem to have advanced much beyond analyzing the problem of labor trafficking and outlining proposals for combatting it. What these proposals would cost, how they would be funded, and whether they require legislative or regulatory action remain open questions. Discussions initiated five years ago have not yet reached the “implementation stage.”

We strongly recommend that the Attorney General’s office and other state officials, including legislators, start implementing the good ideas outlined by the 2014 Labor Sub-Committee. Public health professionals should be enlisted in the efforts to identify and treat victims. Providing victim services, including shelters and legal assistance, and facilitating access to T and U visas are priorities. But while assisting individual victims is essential, it’s essentially reactive and limited in scope. And, we should not expect many abused workers to come forward, especially when mistrust of law enforcement and fears of deportation are high. State and municipal inspectors across the Commonwealth should be trained to identify and focus on the conditions of servitude. Uncovering and reducing labor trafficking requires more aggressive, informed monitoring of abusive workplaces, and the employment agencies that help staff them.

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15 Keeley Testimony, *Boston Briefing*, pp. 70-71
16 Rowe Testimony, *Boston Briefing*, pp. 97-98
I. Introduction

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

Congress first addressed human trafficking in 2000 through the Victims of Trafficking and Violence Protection Act of 2000, a comprehensive piece of legislation meant to combat trafficking in persons. The Victims of Trafficking and Violence Protection Act emphasized that the crime of human trafficking threatens many societal interests, including public health, effective immigration policies, and human rights. It found that current laws and services available to victims were inadequate and needed more severe punishments for perpetrators. The legislation also highlighted the extensive international scope of the commercial sex and forced labor markets, which are largely maintained by a sophisticated and expanding criminal network.

17 See Maine State Advisory Committee to the United States Comm’n on Civil Rights, Human Trafficking in Maine, 5, Feb. 2017, https://www.usccr.gov/pubs/docs/Human-Trafficking-in-Maine.pdf. (It notes that in “the past 15 years, ‘trafficking in persons’ or ‘human trafficking’ have been used as umbrella terms for activities involved when one person obtains or holds another person in compelled service.”). See also Trafficking Victims Protection Act, 22 U.S.C §§ 7101-7112.
21 Ibid.
25 Id.
26 Id.
27 Id.
characterized human trafficking as a grave violation of human rights that disparately impacts women and children and requires an international, national, and state-wide response.\textsuperscript{28}

\textbf{Defining Human Trafficking}

Under the Victims of Trafficking and Violence Protection Act, “severe forms of trafficking in persons” include both sex trafficking and labor trafficking.\textsuperscript{29}

- \textbf{Sex Trafficking} is the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.\textsuperscript{30}

- \textbf{Labor Trafficking} is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.\textsuperscript{31}

“Human trafficking” is often confused with the crime of “human smuggling” but there are important distinctions between the two. Smuggling is a crime against the state and requires transportation across borders.\textsuperscript{32} Human trafficking, on the other hand, is a crime against the person and requires exploitation.\textsuperscript{33} Although transportation can be part of human trafficking, neither sex nor labor trafficking requires any movement of persons across or within borders. The United Nations definition of trafficking in persons, for example, has no transportation element and includes “the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”\textsuperscript{34} The crime of smuggling also has a clear moment of completion once the smuggler has reached his destination and received payment. Human trafficking, on the other hand, can be an ongoing crime. A smuggled person may become a trafficked person if the smuggling leads to exploitation for commercial sex or forced labor purposes.\textsuperscript{35}

\textsuperscript{28} \textit{Id.}
\textsuperscript{29} 22 U.S.C. § 7102(11).
\textsuperscript{30} 22 U.S.C. § 7102(11)(A); 8 C.F.R. §214.11(a).
\textsuperscript{31} 22 U.S.C. § 7102(11)(B).
\textsuperscript{33} See generally Polaris Project, “Human Trafficking”, [Link](https://polarisproject.org/human-trafficking) (last accessed July 18, 2019).
A person can be trafficked through an act of “force, fraud, or coercion.” Force is defined as physical restraint or threats of serious harm. Fraud may include false employment offers, lying about working conditions, or withholding wages among other methods. Coercion is satisfied by a broad range of behavior, from direct threats of physical violence to more subtle forms of intimidation such as demanding the repayment of debts — a situation known as “debt bondage.” These coercive methods create a “climate of fear” that prevents victims from attempting to flee.

Perpetrators frequently prey on the trust and vulnerability of their victims, taking advantage of the victim’s drug or alcohol addictions, dire economic situations, or struggling personal relationships. In some cases the victim and perpetrator are family members. In these instances, the relationship may make it harder to prove that force, fraud, or coercion has been employed because it appears that the victim is “willing.” Consent of the victim on occasions preceding an exploitative act, however, is not a sufficient defense to force, fraud, or coercion. Courts have been able to discern which acts are exploitive even when there is a prior history of consent between the parties.

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

Global Scope

Limited data and inconsistent international reporting standards make defining the global scope of human trafficking very difficult. Recent estimates, however, indicate that human trafficking is an immense international operation that affects almost all countries. The U.S. Department of Health

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38 See generally United States v. Sabhnani, 599 F.3d 215 (2d Cir. 2010) (finding defendants trafficked a maid by lying about salary payments and subjecting her to extreme physical and psychological abuse).
40 See, e.g., United States v. Warren, 772 F.2d 827, 834 (11th Cir. 1985).
41 See generally Polaris Project, “Human Trafficking.”
42 Ibid.
44 “Human Trafficking vs. Human Smuggling,” Human Smuggling and Trafficking Center.
45 United States v. Marcus, 487 F. Supp. 2d 289, 309 (E.D.N.Y. 2007) (holding that a prior consensual relationship between defendant and victim that included infliction of punishment did not negate the possibility that the victim had been forced or coerced against her will), vacated on other grounds and remanded by United States v. Marcus, 628 F.3d 36 (2d Cir. 2010).
and Human Services reports that human trafficking is tied with illegal arms trading as the second largest international criminal enterprise.\textsuperscript{48} Human trafficking is estimated to be a 32 billion dollar industry.\textsuperscript{49} In 2009, the International Labor Organization estimated that about 12.3 million children and adults are in forced labor, bonded labor, and commercial sexual servitude.\textsuperscript{50} The 2013 Trafficking in Persons Report issued by the U.S. Department of State indicated that globally as many as 27 million people are human trafficking victims.\textsuperscript{51} In 2012, however, only 40,000 victims were actually identified and reported by governments to the international community.\textsuperscript{52} This means the vast majority of trafficked victims remain unrecognized.\textsuperscript{53}

Labor trafficking is estimated to be far larger than sex trafficking on a global scale. Of the 12.3 million people estimated to be victims of human trafficking by the International Labor Organization in 2009, only 1.39 million, or slightly over 11 percent, were estimated to be victims of sex trafficking.\textsuperscript{54} Women and girls are more likely to be victims for both sex and labor trafficking.\textsuperscript{55} Nonetheless, a substantial number of men and boys are also victims of both sex and labor trafficking.\textsuperscript{56}

**Domestic Scope**

The United States is one of the top three destination points for trafficked victims.\textsuperscript{57} The Central Intelligence Agency estimates that up to 17,500 men, women, and children from other countries are trafficked into the U.S. each year.\textsuperscript{58} These individuals predominantly come from Mexico, Thailand, the Philippines, Honduras, Indonesia, and Guatemala.\textsuperscript{59} They live throughout the United States and work in both legal and illegal industries including, among others, brothels, massage parlors, janitorial services, and agricultural and manufacturing positions.\textsuperscript{60}

It is important to dispel the myth that only foreign nationals or immigrants are trafficked persons in the United States. Many trafficked victims are U.S. citizens. According to one study, 41 percent of sex trafficking cases and 20 percent of labor trafficking cases in this country involve U.S.


\textsuperscript{49} “A Global Alliance Against Forced Labor,” p. 55.

\textsuperscript{50} TIP Report 2013.

\textsuperscript{51} Ibid.

\textsuperscript{52} Ibid., p. 7.

\textsuperscript{53} Ibid., Introductory Letter from Louis CdeBaca.

\textsuperscript{54} Ibid.

\textsuperscript{55} Ibid.

\textsuperscript{56} Ibid., p. 8.


\textsuperscript{58} Ibid.

\textsuperscript{59} TIP Report 2013, p. 381.

\textsuperscript{60} Ibid.
citizens, whereas foreign nationals were estimated to comprise 66 percent of labor trafficking cases and 27 percent of sex trafficking cases. Some non-governmental organizations have reported that Native American girls are being trafficked for prostitution, pornography, and strip clubs in the U.S. and Mexico.

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

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

II. Background

Federal

In 1983, two intellectually disabled men worked as laborers on a Michigan farm owned by Ike and Margarethe Kozminski. The men were in poor health, lived in squalid conditions, and were isolated from the community. The Kozminskis were charged with conspiring to prevent the men from exercising their Thirteenth Amendment right to be free from involuntary servitude. They were also charged with knowingly holding the men in involuntary servitude. The Kozminskis were convicted by a federal jury; however, in 1988 the Supreme Court reversed the conviction on appeal, holding the Thirteenth Amendment only applied to African Americans. The court also

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62 In the remaining cases, the citizenship of the victim was unreported. Ibid., 9.
63 TIP Report 2013 p. 381.
65 NHTRC, supra n. 29 at p.9.
66 Ibid.
67 Ibid.
69 Id.
70 Id.
71 Id.
72 Id. at 921-932
The Court interpreted “knowing” to require the use or threatened use of physical or legal coercion. The Court invited Congress to craft statutes to address the issue.

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

The Trafficking Victims Protection Act has four core purposes:

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

Three federal agencies carry out the mission of the Trafficking Victims Protection Act: The Department of Justice, the Department of Homeland Security, and the State Department. Department of Justice is the primary prosecutorial agency. It investigates and prosecutes suspected traffickers and reserves funds for victim assistance and witness protection. Federal human trafficking cases are prosecuted by the Department’s 93 U.S. Attorney’s Offices and two specialized headquarter units – the Civil Rights Division’s Human Trafficking Prosecutions Unit and the Criminal Division’s Child Exploitation and Obscenity Section. In fiscal year (FY) 2012, the Department of Justice convicted 138 traffickers. Of these convictions, 105 were for sex trafficking and 33 were for labor trafficking.

The Department of Homeland Security investigates human trafficking cases, arrests traffickers, and protects survivors. In FY 2012, the Immigrations and Customs Enforcement Division investigated 894 human trafficking cases. The Department of Homeland Security also processes immigration relief for survivors of human trafficking and other crimes. This process includes issuing “T” and “U” visas, which were created pursuant to the Trafficking Victims Protection Act.

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73 Id.
74 Id.
75 TVPA (2000).
76 TVPA (2000), §102(b)(13)-(14).
78 TIP Report 2013, p.382.
79 Ibid.
80 Ibid.
82 TIP Report 2013, p. 382.
grant nonimmigrant status. These visas provide important incentives for trafficked victims who otherwise might not seek help from law enforcement for fear of being deported and help federal prosecutors gather evidence for trafficking cases.

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

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

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85 Ibid.
86 Ibid.
87 Ibid.
88 Ibid.
89 Ibid.
91 Ibid.
Finally, the Trafficking Victims Protection Act created the Presidential Interagency Task Force to Monitor and Combat Trafficking. This cabinet-level entity coordinates federal efforts to combat human trafficking.93

The Trafficking Victims Protection Act has been criticized for struggling to effectively protect victims of human trafficking in the field. Critics contend that the implementation of the law is “top heavy.”94 This means that higher ranking federal officials tend to focus on the law’s meaning and purpose, while those who actually come in contact with trafficked victims, such as Department of Homeland Security personnel and Assistant United States Attorneys, fail to use the law to identify and protect these individuals.95 The Presidential Interagency Task Force to Monitor and Combat Trafficking is an important tool to ensure that agencies are fulfilling their responsibilities under the Trafficking Victims Protection Act.96 Presidential Interagency Task Force to Monitor and Combat Trafficking offers a platform for other federal agencies to share information and support the federal effort to combat human trafficking.97

The Trafficking Victims Protection Act has been reauthorized multiple times, most recently in 2013 as part of the Violence Against Women Reauthorization Act.98 The latest reauthorization contains certain notable improvements to the law. First, it penalizes the confiscation, destruction, or possession of immigration documents.99 Traffickers frequently confiscate immigrant victims’ documents to prevent them from escaping.100 The Act also prohibits the allocation of peacekeeping operation funds to countries that use child soldiers, but does allow allocation of funds for programs that seek to demobilize and reintegrate child soldiers.101 Finally, it adds expanded reporting requirements to ensure better interagency coordination.102

States

All states and all but one territory have enacted modern anti-trafficking criminal statutes in recent years, but these statutes are not uniform.103

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95 Ibid.
99 Id.
100 Id. at title B, Part I, Section 1211; See United States v. Calimlim, 538 F.3d 706 (7th Cir. 2008).
101 Pub. L. No. 113-14, subtitle A, Section 1208.
102 Id. at Part III.
Although all 50 states prohibit the prostitution of children, only 14 states have “safe harbor” laws that guarantee children are not prosecuted.\(^{104}\) A complete safe harbor law has two functions: it protects child victims from prosecution and provides victims access to specialized services.\(^{105}\) A full safe harbor law reflects the societal belief that trafficked minors should be immune from prosecution and diverted away from the juvenile justice system. Additionally, they should be guaranteed access to safe housing, health care, and education to help prevent them from becoming repeat victims. The latest Trafficking Victims Protection Act reauthorization includes model state criminal provisions to protect minors who have been arrested for engaging in commercial sex acts.\(^{106}\)

States that lack safe harbor laws permit the prosecution of those children as criminal offenders. One Texas state court, however, has found that a minor cannot be charged with prostitution even if no safe harbor law exists because a minor cannot legally consent to sex.\(^{107}\) But this decision does not substitute for a safe harbor law that provides important services in addition to immunity.

Similarly, states may implement statutes vacating the criminal convictions of human trafficking victims. Vacatur statutes allow victims to rejoin society without a record of criminal conviction – enabling them to secure loans, apply for jobs, and obtain proper housing. In New York, for example, a victim can have his or her convictions vacated at any point after conviction.\(^{108}\) These statutes can remove a major obstacle to successfully prosecuting the perpetrators of human trafficking: obtaining cooperative witnesses. Victims often make strong witnesses in criminal trials against their attackers. Vacatur statutes incentivize victims to come forward and help convict their traffickers.

Several states implement special task forces to coordinate their efforts statewide because the solution to human trafficking requires extensive cooperation between government agencies and non-governmental organizations. These task forces help facilitate this cooperation. Currently, only 20 states have statutorily mandated human trafficking task forces,\(^{109}\) while other states have task forces that are not mandated by law.

\(^{104}\) Ibid.


\(^{106}\) Pub.L. No. 113-14, Part IV, § 1243.

\(^{107}\) In re: B.W., 313 S.W.3d 818 (Texas 2010).

\(^{108}\) Motion to Vacate Criminal Judgment, N.Y. CRIM. PROC. LAW § 440.10.

Massachusetts

Nearly a decade ago, Massachusetts was one of only three states lacking legislation that allowed for the prosecution of human trafficking as a crime.\(^{110}\) In 2011, that changed when Governor Deval Patrick signed the Act Relative to the Commercial Exploitation of People in to law.\(^{111}\) After the act’s passage, Massachusetts human trafficking legislation ranked among the top tier of states nationwide.\(^{112}\) Despite this step forward, the Commonwealth experienced a five year high of ninety-nine reported cases of human trafficking in 2017.\(^{113}\) Of these ninety-nine reports, seventy were cases involving sex-trafficking, sixteen involved labor trafficking, four were a combination of the two, and nine were not specified.\(^{114}\) These occurrences overwhelmingly involved women, who made up seventy-eight of the reported cases.\(^{115}\)

Massachusetts General Laws chapter 265 § 51 allows for criminal prosecution of persons who provide or obtain another person to engage in forced services. Specifically, the law states:

> Whoever knowingly: (i) subjects, or attempts to subject, another person to forced services, or recruits, entices, harbors, transports, provides or obtains by any means or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person, intending or knowing that such person will be subjected to forced services; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of trafficking of persons for forced services and shall be punished by imprisonment…for not less than 5 years but not more than 20 years and by a find of not more than $25,000.\(^{116}\)

Under § 51, a person found guilty of trafficking a person under the age of eighteen may be sentenced to life in prison.\(^{117}\) Further, Massachusetts law provides that any business entity found guilty of trafficking persons for forced services can be fined up to $1,000,000.\(^{118}\) Although perpetrators of labor trafficking are typically criminally prosecuted, § 51 also provides the victim a cause of action in tort for human trafficking against the tortfeasor.\(^{119}\)

The 2011 bill also sought to provide aid to victims of human trafficking by establishing the Victims of Human Trafficking

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\(^{114}\) Ibid.

\(^{115}\) Ibid.

\(^{116}\) MASS. GEN. LAWS ch. 265 § 51.

\(^{117}\) Id.

\(^{118}\) Id.

\(^{119}\) Id.
Trust Fund. This fund is made up of assets seized and forfeited pursuant to sections 50 and 51, the labor and sex trafficking statutes, and is managed by the state treasurer.

Finally, the Act Relative to the Commercial Exploitation of People established an interagency task force to further address issues of human trafficking in the Commonwealth. Made up of nineteen members, this interagency body is tasked with coordinating the collection and sharing of human trafficking data, reviewing and recommending policies to prevent human trafficking and provide assistance to victims, and offering recommendations on increasing public awareness.

Interagency Human Trafficking Policy Task Force Recommendations

The Labor Trafficking Sub-Committee of the Interagency Human Trafficking Policy Task Force (Sub-Committee) issued findings and recommendations regarding labor trafficking on October 24, 2014 based on five subject areas: (1) victim services, (2) demand reductions, (3) data collection and information sharing, (4) education and training, and (5) public awareness.

(1) Victim Services

Building upon previous sex trafficking recommendations made by the Task Force, such as providing increased therapy services and greater access to financial resources, the Sub-Committee recommended victim services to address labor trafficking specifically. Many of the recommendations hinged on the importance of victim education of their rights and resources. They included facilitating access to federally-funded and state benefits, greater access to legal services, increased education and awareness of available services, and employment and training resources. The sub-committee recommended these as “tools…that will enable survivors to stabilize, then lead healthy, productive lives.”

(2) Demand Reduction

The sub-committee focused on demand reduction as a primary means of combatting labor trafficking. They noted that a lack of legislation in place to ensure transparency in the supply chains of corporations and businesses in Massachusetts gives rise to greater

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121 Id.
122 Id. at § 31(a).
123 MA Labor Trafficking 2014 Report, at 3, 4-6.
124 See MA Labor Trafficking Report, at 4-5.
125 Ibid., 4.
126 Ibid.
demand for cheap, unpaid labor. They proposed that the state legislature require state vendors to have a supply chain audit process, enact legislation to mandate accountability in outsourcing portions of their supply chain, and require employers that house employees to register with the state.

(3) Data Collection

According to many scholars, human trafficking, as a general matter, is notoriously underreported according to many scholars. Labor trafficking specifically, according to the Sub-Committee, is not discussed or studied as much as sex trafficking, which exacerbates the insufficiency of data and reporting about it. The sub-committee’s recommendations highlighted the importance of systems and protocols for data collection, victim identification, and tracking referrals. These recommendations are an integral part of the committee’s proposed approach to combating human trafficking because they are means of informing the other recommendations in their agenda.

(4) Education and Training

An inconsistent view of what “labor trafficking” means and what its symptoms are inhibits uniquely situated actors from identifying, reporting, and stopping human trafficking. For these reasons, the Sub-Committee recommended the Commonwealth develop a consistent message be developed by the Commonwealth and distribute it to tailored to the needs of the Commonwealth.

(5) Public Awareness

“A common misconception is that labor trafficking exists outside of one’s own city or town, while in reality it is more common than one may assume.” The Sub-Committee, in addition to education and training on labor trafficking, recommended the implementation of a general awareness campaign to alert residents of Massachusetts to the prevalence of human trafficking within their own communities. The task force urged the state government to follow the lead of several other states by mandating that notice be posted about forced labor and/or how to report it in some places of public

127 Ibid., 5.
128 Ibid.
130 See MA Labor Trafficking Report, at 18.
131 Ibid., 5.
132 Ibid., 5-6.
133 Ibid., 20.
134 Ibid., 23.
135 Ibid.
Proposed Legislation Regarding Human Trafficking

One of the most comprehensive efforts by the legislature of Massachusetts to adopt many of these recommendations was discussed in a joint hearing before the Judiciary Committee on April 30th, 2019. This legislation, as proposed, would adopt measures that align with the recommendations of the Interagency Sub-Committee in the areas of demand reduction, education and training, and public awareness.

Bill S.992, An Act to Strengthen Laws Combatting Human Trafficking and Protecting Survivors of Modern-Day Slavery, seeks to promote transparency in business operations in Massachusetts by establishing a human trafficking business partnership. Members of this partnership must adopt a zero tolerance policy toward human trafficking and ensure compliance, participate in public awareness campaigns, and exchange best practices in combatting human trafficking with other business entities. Further, the bill mandates human trafficking prevention and identification training for law enforcement, educators, hospital employees, and innkeepers.

The proposed legislation would also make several changes to the current human trafficking legal structure by requiring more public awareness outreach, data collection procedures, and changes to the Victims of Human Trafficking Fund. First, this bill would bring Massachusetts in line with several other states requiring notice of human trafficking to be posted in rest stops, welcome centers, and transportation stations. Further, the bill creates procedures for the collection of human trafficking data and for it to be disseminated to both state and federal government agencies. Finally, the bill establishes a provision whereby persons filing a tax return may elect to contribute a portion of their return or donate a specified amount to the Victims of Human Trafficking Trust Fund.

136 Ibid., 24.
137 Ibid.
139 Id.
140 Id.
141 Id.
142 Id.
143 Id.
144 Id.
145 Id.
146 Id.
III. Findings of the Massachusetts Advisory Committee

The identification and prosecution of labor trafficking is complicated by its relative invisibility, a disproportionate focus on sex trafficking, and confusion between human trafficking and human smuggling, as well as by victims’ fears of coming forward and lack of knowledge about their rights. Workplace abuses can be hidden from consumers and other members of the public for whom the difference between an employee and a victim of forced servitude is often not apparent. Trafficking can also occur covertly in un-policed, multi-tiered supply chains. Immigrants are primary, although hardly exclusive targets of traffickers, and many fear law enforcement, especially if they’re undocumented. Workers are often systematically isolated -- domestic work, in particular, is inherently isolating -- and victims sometimes blame themselves for being trapped by an employer’s cruelties. The psychology of servitude is complex.

There are many strong disincentives for workers to report abuses, ranging from language and cultural barriers, fears of deportation, loss of ability to work, poverty, lack of access to counsel and other victim services, including shelters, and the difficulties of obtaining immigration relief through U and T visas. A bill is pending in the state legislature aimed at streamlining the visa application process within the state and making sure that localities are applying consistent standards in assisting victims seeking visas.

Workers are also victimized by temporary employment agencies, especially if they’re undocumented. Massachusetts has enacted a Temp Worker Right to Know Bill, which took effect in January 2013; however it is not being effectively enforced. In one case, a private advocacy group initiated and settled a class action lawsuit against a temporary employment agency for non-payment of overtime. But state action is needed. Exploitation is ongoing, as temp agencies and the companies they staff wait to take advantage of a reported influx of undocumented immigrants.

Federal immigration crackdowns have empowered abusive employers and increased the vulnerability of workers. Employers are increasingly inclined to threaten trafficked workers with

147 Macais-Konstantopoulos Testimony, Boston Briefing, p. 16.
148 Ibid., 19.
149 Rowe Testimony, Boston Briefing, p. 73.
150 Keeley Testimony, Boston Briefing, p. 66
151 Farrell Testimony, Boston Briefing, p. 33.
152 Macais-Konstantopoulos Testimony, Boston Briefing, pp. 61-62.
153 Natalacia Tracy Testimony, Executive Director, Brazilian Worker Center, Boston Briefing, p. 105.
154 Farrell Testimony, Boston Briefing, pp. 40-41; Dahlstrom Testimony, Boston Briefing, pp. 114-115
155 Blanck Testimony, Boston Briefing, p. 9.
156 Tom Smith Testimony, Executive Director, Justice at Work, Boston Briefing, p. 137.
157 MASS. GEN.LAW Ch. 149, § 159c.
158 Smith Testimony, Boston Briefing, p. 154
159 Ibid., 138.
160 Adrian Ventura Testimony, Executive Director, Community Worker Center, New Bedford, MA, Boston Briefing, p. 141
deportation.\textsuperscript{161} Victims are increasingly disinclined to report abuses, even if they entered the country legally.\textsuperscript{162} Researchers investigating T Visa applications by trafficking victims found that over 70% of them entered the country with lawful visas, which sometimes became instruments of coercion for employers who told workers that if they sought help, tried to leave their jobs, or failed to comply with orders, their visas would be forfeited.\textsuperscript{163} Workers whose visas were tied to their employers could be subject to deportation for leaving their jobs because of abusive conditions.\textsuperscript{164}

How many workers are trafficked in Massachusetts by how many employers? We simply don’t know. Five years ago the Labor Sub-committee report stressed the dearth of data on labor trafficking, but we still lack reliable estimates of the number of trafficked victims or trafficking operations in Massachusetts.\textsuperscript{165} Much of the available data tracks reports of trafficking, not its actual incidence. According to the Polaris Project, there were 2,671 human trafficking related calls connected to Massachusetts received by the National Human Trafficking Resource Center between 2007 and December 2018.\textsuperscript{166} A majority – 68 percent – of reported cases in the first 6 months of 2018 was for sex trafficking, 11 percent involved labor, and 20 percent involved unspecified activities or a mix of labor and sex trafficking.\textsuperscript{167}

Research into T Visa applications can provide additional indications of labor trafficking levels.\textsuperscript{168} So can qualitative research into vulnerable communities.\textsuperscript{169} Many workers can’t define or recognize labor trafficking, so victims of it will often say they have not been trafficked.\textsuperscript{170} Researchers have, however, have found significant levels of labor trafficking involving migrant laborers and U.S. citizens simply by asking people to describe their working conditions.\textsuperscript{171}

Emergency room physicians and other health care professionals are also uniquely positioned to identify trafficking victims, who sometimes seek medical attention when injured on the job.\textsuperscript{172} Health care workers may be particularly helpful in finding victims and offenders in small workplaces, (like mom and pop operations as well as private homes) which are not subject to workplace inspections.\textsuperscript{173} Injuries range as widely as the industries in which people are trafficked. They include head traumas, broken bones, burns, amputations, falls, lung damage

\begin{footnotesize}
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\item \textsuperscript{161} Dahlstrom Testimony, \textit{Boston Briefing}, p. 114
\item \textsuperscript{162} Ibid.
\item \textsuperscript{163} Farrell Testimony, \textit{Boston Briefing}, p. 37.
\item \textsuperscript{164} Ibid., 37-38
\item \textsuperscript{165} MA Labor Trafficking Report, at 7.
\item \textsuperscript{166} “Massachusetts.” \url{https://humantraffickinghotline.org/state/massachusetts}.
\item \textsuperscript{167} Keeley Testimony, \textit{Boston Briefing}, p. 67.
\item \textsuperscript{168} Farrell Testimony, \textit{Boston Briefing}, p. 31.
\item \textsuperscript{169} Ibid., 40.
\item \textsuperscript{170} Ibid., 45-46.
\item \textsuperscript{171} Farrell Testimony, \textit{Boston Briefing}, pp. 32-33.
\item \textsuperscript{172} Macais-Konstantopoulos Testimony, \textit{Boston Briefing}, p. 15
\item \textsuperscript{173} Ibid., 60-61
\end{itemize}
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from fumes, and musculoskeletal strains.\textsuperscript{174} Victims suffer post-traumatic stress, depression, anxiety, and addiction, among other disorders in response to their job related physical ailments and injuries. Health care professionals need training to recognize the indices of trafficking and advocate for its victims.\textsuperscript{175}

Trafficking occurs across a broad range of industries, in urban, suburban, and rural areas, from large construction and agricultural operations, to restaurants and mom and pop businesses.\textsuperscript{176} In Massachusetts, trafficking seems to be concentrated in domestic work, restaurant and food service work, health and beauty services, and the body works industry.\textsuperscript{177} (The latter currently enjoys an exemption from regulation, which state senator Mark Montigny is seeking to repeal.)\textsuperscript{178}

Massachusetts also hosts relatively large populations of vulnerable foreign national workers.\textsuperscript{179} While it lacks the agricultural industries often associated with trafficking, it is home to many seasonal hospitality and landscaping businesses, especially on Cape Cod.\textsuperscript{180} Consequently, the Commonwealth is the 7\textsuperscript{th} largest H-2B visa holder state.\textsuperscript{181}

Seasonal visa holders are unlikely to report abusive working conditions, or to recognize their illegality.\textsuperscript{182} Local police officers are generally not trained to identify trafficking if they come across it.\textsuperscript{183} Inspections by civil agencies focus on discrete areas, like fire or health code violations, not signs of labor trafficking.\textsuperscript{184}

What diverse employers engaged in trafficking share is malice, greed, and a pool of vulnerable people to exploit. What victims share are their vulnerabilities, whether immigration status, poverty, disability, age, addiction, criminal records, and lack of employment opportunities.\textsuperscript{185}

IV. Recommendations of the Massachusetts Advisory Committee

Six years ago, in August, 2013, the Massachusetts Inter-Agency Human Trafficking Policy Task Force, chaired by then Attorney General Martha Coakley, laid out a “road map for Massachusetts to address human trafficking.”\textsuperscript{186} Today that road remains less traveled. Most recommendations

\begin{itemize}
\item \textsuperscript{174} Ibid., 14.
\item \textsuperscript{175} Ibid., 14-15
\item Farrell Testimony, \textit{Boston Briefing}, p. 34.
\item Macais-Konstantopoulos Testimony, \textit{Boston Briefing}, p. 22.
\item Blanck Testimony, \textit{Boston Briefing}, pp. 8-9.
\item Farrell Testimony, \textit{Boston Briefing}, p. 39.
\item Katie Parache Testimony, Officer, Barnstable Police Department, \textit{Boston Briefing}, pp. 80-81.
\item Farrell Testimony, \textit{Boston Briefing}, p. 39.
\item Parache Testimony, \textit{Boston Briefing}, pp. 82-83.
\item Macais-Konstantopoulos Testimony, \textit{Boston Briefing}, p. 42.
\item Rowe Testimony, \textit{Boston Briefing}, p. 84.
\item Farrell Testimony, \textit{Boston Briefing}, pp. 33-34.
\item MA Labor Trafficking Report, at 3.
\end{itemize}
outlined in a subsequent 2014 report by the Task Force’s Labor Trafficking Sub-Committee are still aspirational.

We appreciate the challenges of identifying and prosecuting trafficking and are grateful for the hard work, compassion, and commitment of the officials and advocates who testified before us. We advise the U.S. Commission on Civil Rights to encourage state officials to prioritize the fight against labor trafficking with renewed resources and resolve.

We endorse the 2014 Labor Sub-Committee’s recommendations, many of which were echoed by advocates and researchers who testified at our April 2019 hearing. The Sub-Committee report and witnesses at our hearing noted the need for action and improvement in five areas: victim services, demand reduction, data collection and information sharing, education and training, and public awareness. We summarize and stress some of the recommendations for the U.S. Commission on Civil Rights to consider here:

**Victim services:** Trafficking victims have comprehensive needs, which remain largely unmet, including basic needs for food, shelter, and clothing, medical and mental health services, and legal services. The legislature anticipated providing funds for victims through asset forfeitures, but perhaps because the forced services law has not been effectively enforced, it has not generated funding. The need for new sources of victim service funds is obvious, however, we cannot say if additional legislation is needed to establish new sources. The Labor Sub-Committee also proposed funding worker-led programs, strengthening relationships between law enforcement and community groups, and granting rights to immigration status, among other proposed initiatives.

We recommend that the Commonwealth act on those initiatives.

**Demand Reduction:** Trafficking will persist as long as it is a low risk endeavor for unscrupulous employers seeking cheap or unpaid labor. Enforcing the Commonwealth’s labor trafficking law, and publicizing its enforcement, can help change perceptions of risk. Reducing demand also requires new legislation mandating “transparency in outsourcing and sub-contracting” for larger businesses and in industries known to engage in trafficking. State vendors should be required to adopt a supply chain audit process, which should be promoted for all businesses.

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188 Ibid., 5.
190 Blanck Testimony, *Boston Briefing*, p. 10.
192 Ibid., 16.
193 Keeley Testimony, *Boston Briefing*, p. 75
Sub-Committee elaborated on these and other proposals.\textsuperscript{195} We recommend that the Commonwealth act on them.

**Data Collection:** Labor trafficking is not being systematically identified.\textsuperscript{196} Trafficking data are collected erratically without reference to a unified definition of trafficking by the various actors and agencies that encounter it.\textsuperscript{197} Collection is “uncoordinated” and information sharing is haphazard, along with identifications of trafficking victims and offenders.\textsuperscript{198} The problems are evident. Proposed solutions were outlined at the Committee’s April 2019 hearing and in the 2014 sub-committee report.\textsuperscript{199} We recommend that the Commonwealth act on them.

**Education and Training:** At the state and local level, inspectors who regularly monitor workplaces for compliance with a range of health and labor laws are obviously positioned to ferret out trafficking, if they’re trained to do so.\textsuperscript{200} Training should be mandatory. Inspectors should be trained not simply to recognize trafficking but to look for it, expanding their focus from their own discrete compliance areas. Witnesses at our April, 2019 hearing stressed the need for standardized education and training statewide, and the 2014 Labor Sub-Committee report elaborated on training proposals for a wide range of health care professionals, social service workers, and law enforcement officials.\textsuperscript{201} We recommend that the Commonwealth act on them.

**Public Awareness:** The public doesn’t generally perceive labor trafficking as a problem in Massachusetts.\textsuperscript{202} Significantly improving data collection could help change this perception.\textsuperscript{203} So would well publicized efforts to enforce the Commonwealth’s forced services law.\textsuperscript{204} So might a proposed a public awareness campaign, including passage of legislation mandating posting information about trafficking in some businesses and public areas and requiring employment agencies to alert domestic and farm workers (and others in at-risk industries) to the signs of trafficking and to tell them where they can turn for assistance.\textsuperscript{205} The Labor Trafficking Sub-Committee proposed these and other measures to raise public awareness of trafficking.\textsuperscript{206} We recommend that the Commonwealth act on them.

\textsuperscript{195} MA Labor Trafficking Report, at 16-17.
\textsuperscript{196} Macais-Konstantopoulos Testimony, *Boston Briefing*, p. 22.
\textsuperscript{197} MA Labor Trafficking Report, at 8.
\textsuperscript{198} Ibid., 18.
\textsuperscript{199} Ibid., 17-20; Keeley Testimony, *Boston Briefing*, p. 75.
\textsuperscript{200} Rowe Testimony, *Boston Briefing*, pp. 84-85.
\textsuperscript{202} Blanck Testimony, *Boston Briefing*, pp. 7-8.
\textsuperscript{203} Macais-Konstantopoulos Testimony, *Boston Briefing*, p. 22.
\textsuperscript{204} Rowe Testimony, *Boston Briefing*, pp. 72-74.
\textsuperscript{205} Ibid., 76.
\textsuperscript{206} MA Labor Trafficking Report, at 24-25.