

**A REPORT TO THE
123rd LEGISLATURE
FIRST REGULAR SESSION**

**Final Report
of the
HUMAN TRAFFICKING TASK FORCE**

December 2006

Members:

**Sen. Bill Diamond, Chair
Rep. Marilyn E. Canavan, Chair
Noel Bonam
Laurent Gilbert, Sr.
J. Elizabeth Mitchell
Juan Perez-Febles
Vanessa Santarelli
Elizabeth Ward Saxl
Deborah Shepherd
Catherine J. Stakeman
William R. Stokes
Lt. Jackie Theriault**

**Staff:
Jane Orbeton, Senior Analyst
Office of Policy & Legal Analysis
Maine Legislature
(207) 287-1670**

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Executive Summary

Resolve 2005, Chapter 200 established the Human Trafficking Task Force. The Task Force of 12 members met on October 31 and on November 9, 16 and 29, 2006. Task Force members reviewed information from international and national organizations working to combat human trafficking, studied federal and state laws and legislative proposals, discussed the range of social, economic and educational programs serving victims of human trafficking and ideas for improving coordination of services, reviewed information designed to increase public awareness and considered legislation to more closely regulate travel agencies that advertise or arrange for travel for commercial sexual purposes and international matchmaking organizations. Resolve 2005, Chapter 200, requires the Task Force to submit a report, with findings and recommendations and suggested legislation, to the 123rd Legislature.

The Task Force recommends that legislation be passed to prohibit human trafficking under Maine law, to provide certain protections for victims of human trafficking, to prohibit travel agencies from advertising or arranging for travel for commercial sexual purposes, requiring international matchmaking and marriage organizations to provide information about access to the client's and customer's criminal, marital and other official records, and directing the Attorney General to work with a broad group of interested parties to develop training for law enforcement and community organizations, develop outreach and public awareness campaigns, and work on data collection, victim/witness laws, coordination of services, and federal victim services programs. The working group must include representatives of the Department of Health and Human Services, the Department of Labor, the Department of Public Safety and other groups and agencies interested in human trafficking. The recommendation includes a directive to the Attorney General to report to the Legislature by January 15, 2008. A more complete outline of the recommendations of the Task Force follows. The text of recommended legislation from the Task Force is included in Appendix E.

A. Criminalize human trafficking

The Task Force recommends enacting a law criminalizing human trafficking in Title 17-A, chapter 9-A. This will require legislation to:

- Define human trafficking to include using force, fraud or coercion for the purposes of sexual and labor exploitation (coercion is implied and need not be proven if the victim is a minor involved in the commercial sex trade).
- Include document violations/manipulation (including purported documents) as forms of coercion.
- Make human trafficking crimes Class B (10 years/\$20,000), with enhancement to Class A (30years/\$50,000) if victim is a minor forced through bodily injury or psychological coercion or threats to engage in a commercial sex act or if victim dies in the course of human trafficking.
- Authorize the court to order forfeiture of monetary, personal property and real estate assets acquired as a result of human trafficking, enacting Title 15, section 5821, subsection 9.

- Give the human trafficking victim rights, restitution, damages and compensation through criminal restitution law and the victims' compensation fund.
 - **Restitution.** Under Title 17-A, section 1322 amend the definition of "financial or economic loss" to include pay or wages unfairly or illegally withheld from the victim by the offender.
 - **Victims' Compensation Fund.** Amend the Victims' Compensation Fund law, Title 5, section 3360, subsection 6, definition of "personal injury" to include psychological injury to a victim of human trafficking without the need for proof of threat of bodily injury.

B. Prohibit commercial sex travel business

The Task Force recommends prohibiting travel agencies operating within Maine from advertising or arranging for travel for commercial sexual purposes. This will require amending Title 10 chapter 202-B to broaden it to "prohibited practices," retaining credit card practices and adding the prohibition on advertising or arranging for travel for commercial sexual purposes.

C. Provide notice of access to information in commercial international matchmaking

The Task Force recommends requiring commercial international matchmaking or marriage organizations operating within Maine to inform clients overseas who may be matched with a customer in the US and customers in the US of the right to information on the customer's and client's criminal, marital, protection from abuse and other official records. This will require enacting Title 10, chapter 202-E to define international matchmaking or marriage organizations and require them to provide written notice to all customers and clients in their native languages of the availability of information on marital and criminal records, and protection from abuse/harassment orders and other judicial proceedings regarding the person with whom they may be matched. This will require designating a violation a civil violation, enforceable by the Attorney General, with a penalty of up to \$1000 per violation and injunctive relief.

D. Working group on human trafficking, reporting January 15, 2008

The Task Force recommends directing the Attorney General to convene a working group, consisting of representatives of the Department of Health and Human Services, the Department of Labor and the Department of Public Safety and law enforcement, the Maine Institute for Public Safety Innovation, interested parties, other state agencies and service providers including health care, domestic violence and sexual assault advocates and other social service providers to:

- Develop training for law enforcement and community organizations,
- Develop outreach and public awareness campaigns, including victims' services and special visa status for victims who are undocumented immigrants,
- Work on options and initiatives for data collection, the need for victim/witness laws, coordination of services, and coordination of state and federal victim service programs for benefits, programs and licenses, and
- Report to the Legislature 1/15/08.

I. INTRODUCTION

Legislative History

An Act to Provide for Victims of Trafficking, LD 1296, was submitted to the 122nd Legislature by Representative Lisa Marrache´. The bill, which was printed as a concept draft, proposed to amend the criminal laws to prohibit trafficking from other countries, to provide protections for the children, women and men who are victims of trafficking, to prohibit using a victim’s alleged consent as a defense and to hold responsible a landowner or employer who knows or should have known that trafficking was occurring on the premises. The bill proposed to establish a task force to determine the nature and extent of trafficking in Maine and to make recommendations for legislative, policy and programmatic initiatives. LD 1296 was heard and worked in the Joint Standing Committee on the Judiciary and passed as Resolve 2005, Chapter 200.

Resolve 2005, Chapter 200

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II. BACKGROUND INFORMATION

What is human trafficking?

Human trafficking is modern day slavery in which the victims, men, women and children, are subjected to labor or sexual exploitation through force, fraud or coercion. The United States Department of State defines human trafficking as “all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons; within national or across international borders; through force, coercion, fraud or deception; to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.” The impact of human trafficking is enormous. It deprives people of human rights and freedoms, subjecting them to physical and emotional abuse, threats, rape and death. It creates global health risks and contributes to the growth of organized crime.¹

¹ “Human Trafficking Into and Within the United States,” by Dr. Heather Clawson, July 24, 2006, pg. 1.

Elements of the Federal Crime of Human Trafficking²

Action of trafficker regarding the victim	Means - by force, fraud, coercion or deception	Purpose
Recruit	Cause or threaten serious harm	Commercial sex act
Harbor	Physically restrain	Labor or services
Transport	Hold in debt bondage	Debt bondage
Provide	Threaten deportation, arrest or abuse of legal system	Peonage
Obtain	Withhold legal documents	Slavery
Attempt or conspire to do any of the above actions	Provision or withholding of drugs or alcohol for an addicted person	Involuntary servitude

The federal Trafficking Victims Protection Act of 2000, PL 106-386, (TVPA) and Trafficking Victims Protection Reauthorization Act of 2005, PL 109-164, (TVPRA) define severe forms of trafficking, separating labor trafficking and sexual trafficking. Together they are referred to as the TVPA. These laws provide a comprehensive federal approach to address the challenge of human trafficking by punishing offenders and increasing the protections and services provided for victims.³

- The TVPA prohibits forced labor and labor trafficking, which is defined as the recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.⁴
- The TVPA prohibits and defines sexual trafficking as the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person who performs the sex act is under the age of 18 years.⁵
- The TVPA criminalizes the destruction, concealment, and possession of another person’s actual or purported passport and other travel documents for the purposes of coercion into or holding the person in human trafficking.⁶
- The TVPA designates certain offenses as violations of the Racketeering Influenced and Corrupt Organization statute (RICO).
- The TVPA provides for mandatory restitution to the human trafficking victim from the offender. This restitution is in the full amount of the victim’s losses, which are defined to include medical and psychological care, physical and occupational therapy and rehabilitation, child care, transportation, temporary housing, attorney’s fees and costs,

² Derived in part from “Human Trafficking and Modern Day Slavery in Ohio,” by Kathleen YS Davis, Polaris Project Coordinator, pg 12, February 2006.

³ “Distinctions Between Human Smuggling and Human Trafficking,” United States Department of State, Human Smuggling and Trafficking Center, January 1, 2005.

⁴ 18 United States Code section 1589 and 1590.

⁵ 18 United States Code section 1591.

⁶ 18 United States Code section 1592.

other economic losses suffered by the victim and lost income, calculated according to federal Fair Labor Standards Act or by reference to gross income to the offender or value to the offender of the victim's services or labor.⁷

- The TVPA provides stiff penalties, adding life imprisonment for violations that result in death to the victim and those that involve kidnapping or sexual abuse of the victim.
- The TVPA authorizes the victim to sue the offender in federal courts, allows temporary visa status to victims who are not legal residents of the United States and their families, and authorizes the federal Department of Health and Human Services to certify victims' and their families for services.
- The TVPA provides funding for law enforcement training and community education initiatives.



Hari – Hari answered an ad in his home country of India for welders for jobs in the United States that paid \$10 per hour. He paid the \$2500 application fee. Enroute to the US he was given a contract to work for six months at \$3 per hour and told to sign or he would be sent home. Hari signed the contract and when he arrived in the US his passport and travel documents were taken by the employer. He was paid \$3 per hour, housed in a group apartment and denied outside contacts. *Hari is a human trafficking victim. Hari's case involves fraud, coercion, isolation and labor exploitation. Depending on the details of his travel documents and his arrival in the US, Hari may have been smuggled.*

Several states have enacted comprehensive laws prohibiting human trafficking and providing protections for victims.⁸ They have included in their comprehensive human trafficking legislation prohibitions on involuntary servitude, prohibiting travel agencies' arranging for travel for sexual purposes and regulation of for-profit international matchmaking organizations. They have done this in order to prevent victimization in situations that are virtual first cousins to human trafficking.⁹

- The victim of involuntary servitude may be identical to a human trafficking victim, the forced labor of services situation may be identical. What's missing is the element of recruiting, enticing, or transporting the victim. The defendant may be only part of a long chain of in the crime of human trafficking. Criminalizing involuntary servitude helps to break the human trafficking chain and stop victimization.
- Travel agencies that facilitate sex tourism contribute to the victimization of men and women, adults and children. States laws have prohibited travel agencies in their jurisdictions from advertising or furnishing travel, transportation or vacation services for commercial sexual purposes.

⁷ 18 United States Code section 1593.

⁸ "Fact Sheet on State Anti-Trafficking Laws from National Institute on State Policy on Trafficking of Women and Girls, A Program of the Center for Women Policy Studies," August, 2006, and "State Laws Regarding Human Trafficking," Jane Orbeton, September 21, 2006, Appendix D.

⁹ "Resource Guide for State Legislators; Model Provisions for State Anti-Trafficking Laws," National Institute for State Policy on Trafficking of Women and Girls, The Center for Women and Policy Studies, pgs 13-16, July, 2005.

- Servile marriages, particularly those arranged by for-profit international matchmaking organizations, provide opportunities for victimization of unwary women, sometimes resulting in domestic violence and even murder. Recruits (brides) may be recruited under false pretenses and may be subjected to physical, psychological, sexual and economic abuse by the clients (grooms) who have brought them to the US. The recruits may be kept isolated, threatened with deportation and have their travel documents wrongfully withheld from them. States laws have required international matchmaking organizations to provide information to the foreign recruit in the recruit's native language. This information could be about how to access public information or it could be about the actual criminal records, martial history and protection from abuse and harassment court orders regarding the US resident client. In addition, some states have required that the international matchmaking organization provide information to the foreign recruit regarding human rights, immigration, emergency assistance and resources and immigration procedures for victims of domestic violence.

How does human trafficking work?

Human trafficking victims may be from another country, often from situations of extreme poverty, economic hardship and political instability or they may be from the United States. They may be forced or coerced into their work by persons who hold power over them or who hold them as captives. They may intend to enter the particular occupation but be misled about working conditions or pay. They may work in agricultural, construction and factory settings, in landscaping businesses, hotels, restaurants, or as housekeepers, prostitutes or in the sex industry or pornography trade. They may be employed as street beggars. They may enter the country legally or illegally and they may work in legal or illegal trades and occupations. They may be US citizens, longtime state residents, new residents or migrant workers with or without proper documentation.¹⁰

Common Work Sites of Trafficked Workers¹¹

- Commercial sex trade, pornography, exotic dancing
- Hotel housekeeping and restaurant work
- Construction work
- Domestic work and child care
- Landscaping and agricultural work
- Factory work

¹⁰ Freedom Network USA, <http://www.freedomnetwork.usa.org>, July 27, 2006.

¹¹ "Human Trafficking and Modern Day Slavery in Ohio," above, pg. 10.



Sonia – Sonia was invited by family friends to work as a housekeeper in the United States for \$100/week. Her employer obtained fraudulent travel documents for her and she entered the US. Upon arriving at the home Sonia worked as a housekeeper without pay, was kept in isolation, not allowed to speak to anyone, was told that if she did she would be turned over to Immigration and deported, and was made to sleep in the windowless basement. *Sonia was smuggled into the US and is a human trafficking victim. Sonia's case involves fraud, coercion, isolation and labor exploitation.*

The victims of human trafficking have a lot in common – they are tricked, forced, or coerced (except that a minor in the commercial sex trade need not have been tricked, forced or coerced), they are being exploited through their work. They may work for very low wages or to pay off a “debt” to the employer that never decreases in amount. Often they are deprived of basic human liberties and they are kept isolated, deprived of outside contacts, and threatened by the human trafficker with deportation or jail if they have any outside contacts, speak to the police or try to contact their families. These techniques are used to coerce a victim with limited English language abilities, no social friends and no legal travel documents in his or her possession feels trapped. And that is just what the human trafficker is counting on to keep the victim in the working for the trafficker.

How big a problem is human trafficking?

The United States Department of State report entitled “Trafficking in Persons Report, June 2006” cites United Nations International Trade Organization estimates that at any one time across the world 12.3 million people are working in forced labor, bonded labor, forced child labor and sexual servitude and that other estimates run from 4 million to 27 million.¹² Federal estimates place the number of victims trafficked in the United States at 17,500 to 18,500 annually.¹³

The Center for Women Policy Studies estimates that between 600,000 and 800,000 persons are trafficked internationally each year, 80% of the victims being women and children.¹⁴ Leslie Wolfe, President of the Center for Women Policy Studies, noted in a speech the lack of good data on the number of trafficking victims and cited the number of women trafficked into the US each year as possibly between 15,000 and 100,000.¹⁵

The “Trafficking in Persons Report, June, 2006” details the progress of the federal government in investigating and prosecuting human trafficking cases and protecting victims of human trafficking.¹⁶

- One hundred sixteen individuals were charged federally with human trafficking offenses during 2005, almost double the number in 2004.

¹² “Trafficking in Persons Report, June 2006” United States Department of State, page 6.

¹³ See note 3 above.

¹⁴ “Spotlight,” Center for Women Policy Studies, <http://www.centerwomenpolicy.org>, November 27, 2006.

¹⁵ “Fighting the War on Trafficking of Women and Girls: The Role of State Legislatures,” Testimony of Leslie R. Wolfe, President of the Center for Women Policy Studies,

¹⁶ “Trafficking in Persons Report, June 2006,” above, page 53.

- One thousand victims of human trafficking were certified by the federal Department of Health and Human Services as of May 2006, enabling them to access a broad range of services and benefits designed to address recovery from abuse and trauma and integration into society.
- Six hundred sixteen T-visas were issued by the Department of Homeland Security in federal fiscal year 2005 to enable human trafficking victims to temporarily remain in the United States and pursue visa status for longer residency. Another five hundred seventy-three T-visas were issued to members of the families of victims of human trafficking.

Who are the victims of human trafficking?

The State Department estimates that women and children are more than half of all human trafficking victims and that many victims are emotionally and physically abused and very poor. The Center for Women Policy Studies estimates that 80% of the victims are women and children.¹⁷

- The victim may have been kidnapped and placed into labor or sexual exploitation.
- The victim may have been defrauded, forced by threats or violence or coerced.
- The victim may have entered into the employment relationship willingly, only later to learn that the work or pay was not what he or she bargained for.
- The victim's job as a nanny or model may have been replaced by work as a prostitute, or work in the commercial sex trade may have deteriorated to slavery-like conditions with beatings and rapes.¹⁸
- The victim's pay may have been diverted to pay off a debt to the employer.
- The victim may lack the means and confidence to break free from the trafficker. This may be done through intimidation, isolation, confiscation or destruction of passports or travel documents and threats of reporting to the police or immigration authorities for deportation.



Bea – Bea, who ran away from home at age 14, is now 15. Friends on the street introduced her to Mike, who offered friendship and a place to stay. Mike beat Bea and forced her into sex with his friends, then forced her into prostitution on the street. Mike does not allow Bea to have friends or speak with neighbors or her family. *Bea is a victim of human trafficking. Bea's case involves beatings and force and, more importantly, Bea is a minor working in the commercial sex trade.*

How does human trafficking differ from smuggling?

Smuggling always involves facilitating the illegal entry of a person from one country into another country in violation of the laws of one or both countries. The person smuggled may know of his or her illegal entry status or may not. The person smuggled may be transported clandestinely or may travel openly but with false documents. Once in the destination country the person smuggled is free to move about and work as he or she wishes, although sometimes the payment over time of a fee to the smuggler may lengthen the business relationship between the 2 persons.

¹⁷ See note 15 above.

¹⁸ See note 3 above.

There are two keys to distinguishing smuggling from human trafficking. (1) Human trafficking requires the use of force, fraud, coercion or deception to steer the adult victim into labor or sexual exploitation. An exception to this occurs with a child victim who works in the commercial sex trade, when the elements of force, fraud, coercion or deception are implied and need not be present. (2) Human trafficking does not require illegal entry into the country or even movement of the victim between cities.

Is it Human Trafficking or Smuggling?¹⁹

Human trafficking	Smuggling
Trafficking may be international, interstate or local. Movement of the victim is not required.	Smuggling is international. It occurs at borders, with illegal entry or the smuggled person is living in the country.
The person trafficked is considered a victim, is exploited in labor or sexual exploitation.	The person smuggled is free of smuggler, with the exception of payment of a debt to pay the smuggler's fee.
The victim is subject to force, fraud, coercion or deception (this is implied if the victim is a minor employed in commercial sex trade).	The person smuggled has arranged or paid to be smuggled into country. No force, fraud, coercion or deception used against the smuggled person.

III. HUMAN TRAFFICKING IN MAINE

Prevalence of human trafficking in Maine

Federal and state prosecutors, law enforcement, community service providers and state agencies are all at a loss to quantify the problem of human trafficking in Maine. All have experience working with victims of crimes who perhaps could have qualified as victims of human trafficking, but no prosecutions had taken place in Maine prior to the meetings of the Task Force. The Immigrant Legal Advocacy Project presented to the Task Force information that could lead to a finding that human trafficking is occurring in Maine. Clients of the project have included persons forced into domestic servitude under coercion, being held in isolation, and working with no or low pay, by the persons who brought them to Maine.

The facts of two border violation cases, particularly when reviewed in the 20-20 vision of hindsight, hint at but do not clearly indicate human trafficking. Without more detailed information about the relationships between the smugglers and the persons smuggled and the reasons the persons were being smuggled into the US it is not possible to judge whether human trafficking was taking place. The Task Force emphasizes that it does not have evidence that these illustrative cases were human trafficking cases. Rather the cases are offered because their facts raise questions of smuggling and human trafficking, the relationships between the 2 crimes and their prevalence in Maine.

¹⁹ See note 3 above.

- A man from Hartland was convicted of smuggling three illegal aliens into the state via boat on East Grand Lake and was sentenced to six months in prison, with two years probation and a \$1000 fine. At the time of apprehension, the man told border patrol agents that he had agreed to bring three people across the border from Canada. Of the three illegal aliens, one was a Canadian man and two were Malaysian women, ages 17 and 19. The minor woman was turned over to the custody of the Department of Homeland Security US Immigration and Customs Enforcement (ICE). The two adults plead guilty to concealment of facts about re-entry, were sentenced to 15 days in jail or time served and were turned over to ICE officials. One of the adults told border patrol agents that she and the minor woman had contacted the Canadian man who had agreed to help them find work in the US and they had met the man in Miramichi, New Brunswick and boarded the boat there for the US.
- A woman from St. Stephen, New Brunswick, was arrested in August 2005 for attempted smuggling of three illegal aliens and still awaits trial. The one minor illegal alien was turned over to the custody of ICE officials. The two adult illegal aliens each pleaded guilty to attempting to enter the country by making false statements to border patrol agents. They were ordered to spend four days in county jail, given credit for time served and turned over to ICE for deportation.

IV. RECOMMENDATIONS

The Task Force recommends that legislation be passed to prohibit human trafficking under Maine law, to provide certain protections for victims of human trafficking, to prohibit travel agencies from advertising or arranging for travel for commercial sexual purposes, requiring international matchmaking and marriage organizations to provide information about access to the client's and customer's criminal, marital and other official records, and directing the Attorney General to work with a broad group of interested parties to develop training for law enforcement and community organizations, to develop outreach and public awareness campaigns, and to work on data collection, victim/witness laws, coordination of services, and federal victim services programs. The working group must include representatives of the Department of Health and Human Services, the Department of Labor, the Department of Public Safety and other groups and agencies interested in human trafficking. The recommendation includes a directive to the Attorney General to report to the Legislature by January 15, 2008. A more complete outline of the recommendations of the Task Force follows. The text of recommended legislation from the Task Force is included in Appendix E.

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