

**REPORT OF THE ATTORNEY GENERAL'S WORKING GROUP
ON HUMAN TRAFFICKING TO THE SECOND REGULAR
SESSION OF THE 124th LEGISLATURE PURSUANT TO
CHAPTER 684, PART F OF THE PUBLIC LAWS OF 2007.**

JANUARY 15, 2010

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EXECUTIVE SUMMARY

Chapter 684, Part F of the Public Laws of 2007 directed the Attorney General to convene a Working Group on Human Trafficking to address six (6) specific issues. The members of the Working Group met on December 17, 2008, January 21, 2009, March 31, 2009, April 27, 2009, June 2, 2009, August 14, 2009, September 1, 2009 and November 3, 2009. The six areas the Working Group was charged with addressing and the recommendations of the Working Group are summarized below:

1. Develop training for law enforcement and community organizations.
Working with the Maine Institute for Public Safety Innovation, the Maine Criminal Justice Academy and Justice Planning Management Associates, a training curriculum has been developed and will be a mandatory training course in 2010.
2. Develop outreach and public awareness campaigns. Members of the Working Group, including the Zonta Club of Bangor, the Statewide Social Workers Conference, Catholic Charities Maine – Refugee and Immigration Services Program and MECASA, significant outreach and training efforts are underway and will continue.
3. Work on options and initiatives for data collection. Statistical data pertaining to Human Trafficking will be collected as part of the coordinated system of service providers that will be available in a Human Trafficking case.
4. Determine the need for victim and witness laws, victims' services and obtaining special visa status for victims who are undocumented immigrants,

the coordination of services and the coordination of state and federal victim services programs for benefits, programs and licenses. The Working Group has developed a coordinated plan for the delivery of services to potential trafficking victims and witnesses, with Catholic Charities Maine , through its Refugee and Immigrant Services Program, being the central point of contact.

5. Monitor the actions of international matchmaking organizations to determine if state intervention or regulation is necessary. The Working Group does not recommend enactment of any state legislation on this issue because there is an existing federal law that addresses international matchmaking organizations.
6. Determine whether a special tolling statute based on cultural and linguistic isolation would be appropriate for pursuing civil remedies under the Maine Revised Statutes, Title 5, chapter 337-C. The Working Group does not recommend the creation of such a tolling provision.

The Working Group further recommends that it continue to exist and meet on a regular but occasional basis to monitor training and outreach efforts in the area of Human Trafficking.

The Working also recommends that training and public awareness of Human Trafficking be expanded to include prosecutors, judges and defense attorneys as well as civic organization and members of the medical profession.

INTRODUCTION AND BACKGROUND

By virtue of Chapter 200 of the Resolves of 2005, the Human Trafficking Task Force was established. Consisting of twelve members, the Task Force met in October and November, 2006. The Task Force submitted its report with findings and recommendations, together with suggested legislation, to the 123rd Legislature in December, 2006.

In its report, the Task Force recommended the enactment of a law, to be codified in the Maine Criminal Code (Title 17-A), criminalizing the offense of human trafficking. In addition, the Task Force recommended that the Attorney General convene a working group to continue studying various issues and aspects related to human trafficking.

Chapter 684 of the Public Laws of 2007, being “An Act to Implement the Recommendations of the Human Trafficking Task Force,” was enacted by the 123rd Legislature and signed by the Governor. The law amended the definition of the crimes of kidnapping and criminal restraint in such a way that it now encompasses conduct that constitutes human trafficking. The law also created civil remedies for human trafficking and provided for the forfeiture of assets in human trafficking offenses. Finally, the law directed the Attorney General to convene “a working group on human trafficking consisting of representatives of the following: the Department of Health & Human Services, the Department of Labor, the Department of Public Safety, the Maine Institute for Public Safety Innovation, law enforcement, Immigrant Legal Services, interested parties, other state agencies and service providers including, but not limited to, healthcare, domestic violence and sexual assault victim advocates and other social service providers.”

The Working Group was directed to address six specific areas, as follows:

1. Develop training for law enforcement and community organizations;
2. Develop outreach and public awareness campaigns;
3. Work on options and initiatives for data collection;
4. Determine the need for victim and witness laws, victims' services and obtaining special visa status for victims who are undocumented immigrants, the coordination of services and the coordination of state and federal victim services programs for benefits, programs and licenses;
5. Monitor the actions of international matchmaking organizations to determine if state intervention or regulation is necessary; and
6. Determine whether a special tolling statute based on cultural and linguistic isolation would be appropriate for pursuing civil remedies under the Maine Revised Statutes, Title 5, chapter 337-C.

The Working Group is required to submit a report to the Second Regular Session of the 124th Legislature by January 15, 2010. A copy of Chapter 684 of the Public Laws of 2007 is included as part of the report and appears in APPENDIX D.

In November, 2008, the Chief of the Attorney General's Criminal Division began the process of organizing the Working Group by contacting agencies and individuals who were specifically identified in the law as well as those who had expressed an interest in the subject of human trafficking. *See* APPENDIX A, for a list of all agencies and individuals who participated in the Working Group.

The first meeting of the Working Group was held on December 17, 2008. Subsequent meetings were held on January 21, 2009, March 31, 2009, April 27, 2009,

June 2, 2009, August 14, 2009, September 1, 2009 and November 3, 2009. The Working Group received helpful information and presentations from the following individuals and organizations: Cynthia Kennedy, Coordinator, New England Coalition Against Trafficking (NECAT), Project Reach, a program of the Trauma Center at Justice Resource Institute; Heather Putnam, Victim Advocate, United States Attorney's Office; Anthony Risk, United States Immigration and Custom Service, Victim Coordinator; Gary Cote, ICE, Portland, Maine; Matt Gallagher, Department of Justice, Civil Rights Division.

The Working Group focused its attention on the six areas identified in the law and its actions and recommendations are reported below.

1. DEVELOP TRAINING FOR LAW ENFORCEMENT AND COMMUNITY ORGANIZATIONS.

One of the first orders of business for the Working Group was to determine whether an appropriate training program in human trafficking could be made available to members of the law enforcement community. One of the major problems with the subject of human trafficking in Maine is the lack of awareness, even within law enforcement, of the potential for human trafficking cases to exist in Maine. Through the Maine Institute for Public Safety Innovation, funded by the Bureau of Justice Assistance, and in collaboration with Justice Planning Management Associates (JPMA) a training curriculum has been developed. The Maine Criminal Justice Academy has agreed that this curriculum will be a mandatory training course for all law enforcement officers. The training will be available beginning in 2010. This same training, which is accessible on-line, will also be suitable for community organizations and will be adapted to include an

additional module relevant to Maine, including Maine law, contact information for Maine nonprofits that provide services to victims, as well as placing more emphasis on what is happening in Maine, namely, labor trafficking being more prevalent than sex trafficking and a focus on contacting nongovernmental organizations who can provide direct assistance and services to victims of human trafficking. With the input of several members of the Working Group, development of the local module is well underway. It is anticipated that development of the local module will be completed by February, 2010.

2. DEVELOP OUTREACH AND PUBLIC AWARENESS CAMPAIGNS.

In addressing this issue, the Working Group was cognizant of the fact that it had no funds to underwrite a public awareness campaign, and that other agencies, including the federal government, had already developed a public awareness campaign on the subject of human trafficking. Moreover, the Working Group was also aware that national efforts were underway to involve regional and local nongovernmental organizations in outreach programs and public awareness campaigns on the subject of human trafficking. In 2009, as the Working Group was meeting, Catholic Charities Maine - Refugee and Immigration Services (RIS) Program - and MECASA obtained grant funding to conduct outreach and training efforts. RIS additionally obtained funding to take a leadership role in coordinating services to victims in human trafficking cases, working with several other organizations Statewide, many of which were on the Working Group, as described in more detail below.

The Zonta Club of Bangor will be sponsoring a one-day workshop during the last week of April, 2010 on human trafficking and the subject of human trafficking will also be discussed at the Statewide Social Workers Conference scheduled for April, 2010.

Finally, through the work of the Human Trafficking Task Force and the Attorney General's Working Group on Human Trafficking, numerous service agencies, as well as governmental agencies, are now much more aware of the potential issues involved in human trafficking and we expect that this will continue as all law enforcement officers in the State of Maine receive the mandatory training beginning in 2010.

3. OPTIONS AND INITIATIVES FOR DATA COLLECTION.

The issue of data collection has proved to be a difficult one for several reasons. First, cases that may have aspects of human trafficking to them may have been treated and prosecuted as something else, such as prostitution, terrorizing, criminal restraint/kidnapping or assault.

Second, victims of human trafficking, because of various cultural attitudes toward law enforcement as well as fear of reprisal back in their home country, may not be forthcoming with information about the scope of human trafficking.

Third, it is unclear what type of data should be collected or asked for and by whom.

Finally, while the Working Group is confident that cases of human trafficking have occurred in the State of Maine, the number of such cases is relatively few. Accordingly, the amount of data to be collected at this point in time is not substantial.

In the final analysis, the Working Group and a subcommittee of members spent considerable time developing a plan to coordinate the provision of services to potential victims of human trafficking. This issue is discussed in greater detail in item 4 below. It is felt that once this plan of coordination is established and implemented, data will naturally be collected as part of that process.

4. THE NEED FOR VICTIM AND WITNESS LAWS, VICTIMS' SERVICES IN OBTAINING SPECIAL VISA STATUS FOR VICTIMS WHO ARE UNDOCUMENTED IMMIGRANTS, THE COORDINATION OF SERVICES AND THE COORDINATION OF STATE AND FEDERAL SERVICES PROGRAMS FOR BENEFITS, PROGRAMS AND LICENSES.

Chapter 684 of the Public Laws of 2007 has criminalized conduct that may involve human trafficking. Accordingly, since there is now a state crime addressing human trafficking in some of its forms, special types of immigration visas to obtain legal immigration status for crime victims may now be available to victims of such conduct, who are typically undocumented, and who would be helpful as witnesses to the investigation or prosecution of the offenses. Similarly, the legislation that implemented the recommendations of the Human Trafficking Task Force created a civil remedy for the victims of human trafficking and made financial assets in human trafficking offenses forfeitable. Moreover, a victim of a human trafficking offense may receive restitution for “work loss” which includes pay or benefits unfairly or illegally withheld by the offender or any unfair labor agreement. Finally, the offense of human trafficking is now a crime that allows its victims to be eligible for compensation pursuant to the Victims’ Compensation Fund.

The efforts of the Working Group on this subject were to put in place a plan for the delivery of services to trafficking victims. Because we are just now beginning to understand the nature of human trafficking in Maine, it is inevitable that the delivery system will not be highly structured and will evolve as experience is gained.

Catholic Charities Maine, through its Refugee and Immigration Services Program (RIS), was recommended to be the first place to call when a suspected case of human trafficking is involved. Service providers participating on the Working Group have developed a service delivery response “tree,” that can be triggered by a call to the National Domestic Violence Hotline’s toll free number, which will then contact Catholic Charities Maine – RIS. RIS will then call point people in various “immediate need” areas who will help coordinate services in those areas, namely, housing, medical, immigration legal aid, counseling, victim advocacy, food and financial assistance, and education.

In those cases where a person who is the victim of human trafficking needs to be rescued, law enforcement must be involved. It is important to understand that when immigration and/or law enforcement is contacted, the trafficking victim should be treated as a victim, not an illegal alien. In all cases, including when law enforcement officials may be the first to encounter human trafficking victims, service providers with expertise in providing psychological and emotional support, housing and basic needs, and immigration law should be called in at the earliest opportunity to help support the victim.

As part of the process of coordinating services, it is anticipated that various service providers will need to be trained and made aware of how to handle a human trafficking case. This includes what constitutes human trafficking, understanding how to

contact the necessary service providers, and the reality that a single human trafficking case could involve numerous victims.

It is hoped that by having a central point of contact, through Catholic Charities Maine – RIS, much delay will be avoided in identifying the needs of the human trafficking victim, and mobilizing appropriate services for the human trafficking victim.

The Working Group is encouraged by the National Hotline on Human Trafficking, which has been found to be effective and responsive and allows for contact with a central contact point, which can then direct victims/witnesses or other callers to the appropriate contact point in a particular state.

There is a concern that if the Working Group does not continue to exist at least as an informal body, there may be a tendency to revert to the perception that human trafficking does not exist in our state, or that there will not be a coordinated body through which to review, assess, and appropriately adjust and amend, if needed, outreach efforts, response to victims, data collection, and the effectiveness of the new statute. It is therefore recommended that a working group on human trafficking continue to monitor ongoing law enforcement training and ongoing coordination of services in human trafficking situations. It is not necessary that the working group meet frequently, but it is important that the working group meet on a regular basis, perhaps bi-annually, to monitor developments in the area of human trafficking.

5. MONITOR THE ACTIONS OF INTERNATIONAL MATCHMAKING ORGANIZATIONS TO DETERMINE IF STATE INTERVENTION OR REGULATION IS NECESSARY.

The Working Group did discuss this issue at some length, and is aware that an international matchmaking organization does exist in Maine and operates out of Bangor.

The Task Force on Human Trafficking recommended to the Legislature in its December, 2006 report that legislation be enacted requiring commercial international matchmaking or marriage organizations operating within Maine to inform clients overseas who may be matched with a customer in the United States, and customers in the United States, of the right to information of the customer's and client's criminal, marital, protection from abuse and other official records. A proposed statute which would have created Title 10, M.R.S. § 1151, was included as part of the Task Force's recommendation.¹ This legislation was not enacted by the 123rd Legislature. Rather, the issue of international matchmaking and whether the state should regulate or intervene in it in some way was referred to the Working Group for consideration.

The Working Group does not recommend enactment of this proposed legislation. It should be noted that a federal law already exists that deals substantially with the same issues that would have been addressed by the proposed state legislation. The International Marriage Broker Regulation Act (IMBRA, 8 USC § 1375(a)(d)(2))² requires each international marriage broker to search the National Sex Offender Public Registry or State Sex Offender Public Registry and to collect background information about a United States client, which information is to include any temporary or permanent civil protection order or restraining order issued against the United States client, any

¹ A copy of the legislation as proposed by the Human Trafficking Task Force is included in Appendix B of this report.

² A copy of IMBRA is included in Appendix C to this report.

federal, state or local arrest or conviction of the United States client for various crimes, the marital history of the United States client, the ages of any of the United States client's children who are under the age of eighteen, and information concerning the countries and states in which the United States client has resided since the client was eighteen years of age.

The federal law also imposes certain obligations on international marriage brokers with respect to informed consent by requiring the background information referred to above to be provided in the foreign national's primary language. Given the existence of this federal legislation, which essentially covers the area that was of concern to the Human Trafficking Task Force, the Working Group does not feel that further state legislation is needed.

6. DETERMINE WHETHER A SPECIAL TOLLING STATUTE BASED ON CULTURAL AND LINGUISTIC ISOLATION WOULD BE APPROPRIATE FOR PURSUING CIVIL REMEDIES UNDER THE MAINE REVISED STATUTES, TITLE 5, CHAPTER 337-C.

The Working Group does not recommend a special tolling statute based on cultural and linguistic isolation for the civil remedies provided in 5 M.R.S. § 4701. As it is presently written, the civil remedies statute provides for a ten-year statute of limitations and already tolls the running of that statute of limitations for any time period during which the plaintiff was either incompetent or a minor or for any time period due to conduct by the defendant of inducing the plaintiff to delay the filing of an action or preventing the plaintiff from filing an action or threats made by the defendant that caused duress to the plaintiff. The civil statute of limitations is also tolled during the time period that any criminal proceeding is pending.

In the view of the Working Group, the ten-year statute of limitations is sufficiently generous and the provisions allowing for tolling address those situations that can be demonstrated and are subject to proof. Linguistic and cultural isolation is a vague phrase. It would be difficult to know when it began and when it ended.

For these reasons, therefore, the Working Group does not recommend that an additional tolling statute be created based on cultural and linguistic isolation.

7. RECOMMENDATIONS

The legislation enacted as a result of the recommendations of the Human Trafficking Task Force did not produce a true human trafficking criminal statute, such as those that exist at the federal level and in other states. Rather, what Maine has is a modification of the kidnapping and criminal restraint statutes to deal with certain types of conduct that constitutes human trafficking.

The Working Group sees no urgent need at this time to create a stand-alone human trafficking law. Rather, the Working Group believes that over time the culture, both in law enforcement and in the service provider community, will change and there will be a greater recognition and awareness of the potential that certain conduct will constitute a human trafficking offense.

Maine's law on human trafficking does not deal specifically with juvenile victims, as do other states' statutes and the federal law on human trafficking. As our experience with human trafficking continues to grow and as law enforcement becomes more sensitive to the potential for seeing cases as human trafficking in nature, it may become necessary to specifically address the human trafficking of minors/juveniles.

The Working Group is also concerned that once the Working Group submits its report, there will be no established entity focused on issues concerning human trafficking. It is for that reason that the Working Group recommends that some type of organized, albeit informal, group continues to meet at regular intervals to monitor law enforcement training, the coordination of services to human trafficking victims and to continue focusing attention on other issues of relevance on the subject of human trafficking. It is anticipated that the Attorney General's Office will continue to be responsible for convening members of the Working Group, and other interested participants, for this purpose. It is recommended those members of the 2009 Working Group be invited to continue their participation in the Working Group so as to ensure continuity, preserve institutional memory and avoid duplication of effort. Among the issues that could be addressed by the Working Group is to extend its outreach efforts to those in the community who are most likely to encounter indications that human trafficking is occurring, such as post delivery persons, real estate agents, landlords and others.

The Working Group further recommends that training and public awareness on the issue of human trafficking be expanded beyond law enforcement and community service providers and include prosecutors, judges and defense attorneys as well as civic organizations and those in the medical profession such as doctors, nurses and ambulance personnel.

APPENDIX A

PARTICIPANTS IN THE ATTORNEY GENERAL'S WORKING GROUP ON HUMAN TRAFFICKING

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