

**Ohio Trafficking In Persons Study Commission
2010 Year End Report**

December 15, 2010



RICHARD CORDRAY
OHIO ATTORNEY GENERAL

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Dear Colleagues,

As we take this opportunity to reflect on the work of the Ohio Trafficking in Persons Study Commission over the past year, I want to thank everyone who has dedicated themselves to this effort. Together as a Commission we have significantly advanced the fight to end human trafficking in Ohio.

Because of our work this year, human trafficking is now understood to be a statewide problem that victimizes native Ohioans as well as those from other countries. We know that law enforcement alone cannot solve this problem and there is a need for strong community coalitions to help raise awareness and connect the survivors with the services they need. Training for law enforcement can now be accessed for free on-line and, most significantly, Ohio is no longer one of the few states without a specific law against human trafficking.

We have now succeeded in accomplishing the initial goals that were identified by the legislature for the Trafficking In Persons Study Commission. In achieving this milestone, we have developed an understanding of what is needed to comprehensively address this issue. Looking ahead, the Commission has the opportunity to lead the work that will be necessary to see that all of the recommendations offered are adopted. By doing so, Ohio will become a clear national leader in the fight against human trafficking.

Sincerely,

Richard Cordray
Ohio Attorney General

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Overview of Progress Made and Next Steps:

The Ohio Trafficking In Persons Study Commission was created at the suggestion of the Ohio General Assembly when language was included in House Bill 280 (127th GA) calling for the Attorney General to establish a commission that would:

- 1) Study and review the problem of trafficking in persons, particularly as it affects this state or occurs in this state
- 2) Study and review the criminal law of this state to determine the manner and extent to which it currently applies to conduct that involves or is related to trafficking in persons including the criminal offenses of this state that currently apply to such conduct and the penalties for those offenses
- 3) Develop recommendations to address the problem of trafficking in persons and to improve and expand as necessary the criminal law of this state to better address conduct that involves or is related to trafficking in persons

The Commission, which is made up of elected officials, law enforcement, prosecutors, survivors, advocates, and service providers has made significant progress since its first meeting in July 2009. As a result of the work of the Commission, public awareness has increased, greater numbers of law enforcement officers have been trained and, most notably, Ohio's criminal codes have been updated to allow for aggressive prosecution of human traffickers.

This year the Commission's six sub-committees each developed and presented a comprehensive report. These reports, and the resulting media coverage of them, have increased the public's understanding of the scope of the problem, the changes that were needed in Ohio law, what is necessary to close the service gaps to best assist survivors and identified the groups that must receive training. The reports and recommendations they offered are briefly summarized in the following section. These documents can be viewed on-line at www.ohioattorneygeneral.gov/humantrafficking.

The Ohio Trafficking In Persons Study Commission is now at a transition point. The initial research that was necessary to build a shared understanding of the problem of human trafficking in Ohio has largely been completed. While the state took a huge step forward with the adoption new criminal law language, the reports and recommendations produced by the Commission have clearly illustrated that more is needed to address this issue in a comprehensive manner.

Looking ahead, the Commission is uniquely placed to build on the momentum that now exists around the need to abolish modern day slavery and advocate for the implementation of the other mostly non-legislative recommendations. The group is also well positioned to evaluate if the steps that are being taken now to pursue traffickers and assist survivors are producing the intended results. The members of the Commission may want to consider if the existing sub-committee structure should be modified to most effectively facilitate the next phase of the ongoing effort to attack and minimize this reprehensible activity in our state.

Summary of Sub-Committee Findings and Recommendations:

Research and Analysis

The Research and Analysis Sub-Committee utilized existing research and developed new models that made clear human trafficking is an unfortunate reality today in Ohio.

By analyzing databases, documents, governmental and nongovernmental reports and studies, the sub-committee developed a new model designed to provide estimates of those foreign born populations that are at-risk for human trafficking and those that are trafficked to Ohio. The model identified and quantified “pull” factors that draw traffickers and victims to our state. These factors include the presence of existing markets for human trafficking, demand for sexual and labor services in Ohio and nearby states, and the presence of sizable populations of foreign born persons. With the new model, it was possible for the first time to estimate that there are nearly 3,500 foreign born persons who may be at-risk for both labor and or sex trafficking, nearly 800 of which are estimated to currently be trafficked in the state.

To identify the number of American born youth, ages 12 to 17, which are at-risk for sex trafficking and have become victims of the sex trade, the sub-committee identified high risk groups such as runaways, and homeless youth and applied existing models. It was through this thoughtful process that the sub-committee estimated that nearly 3,000 American born youth are at-risk for sex trafficking, and just over another thousand have been trafficked into the sex trade over the course of a year.

These estimates were noted to be conservative as it was not possible to determine the number of adult women who are being trafficked in the sex trade or the number of American born persons who may be trafficked for labor purposes due to limitations in the available data.

The sub-committee recommended the need for better data collection. This included seeking to have appropriate questions inserted in the Coalition on Homeless and Housing in Ohio’s survey of homeless youth and the Ohio Department of Health’s Youth Behavior Surveillance Survey, implementing a standard method for law enforcement and service providers to capture and store human trafficking case data, and advocating for the state to be included in the national Human Trafficking Reporting System’s database.

Legal and Legislative

The Legal and Legislative sub-committee provided recommendations to strengthen Ohio’s criminal laws to better address human trafficking. They recognized that improvements were needed as the research report illustrated Ohio is both a source and destination state for victims of human trafficking and that existing laws were found to be weak when compared to other states.

The recommendations were crafted with the goal of ensuring that within Ohio's criminal laws all trafficking activity would be covered, the penalties would be appropriate and the law would be clear. This represented the first time a consensus could be achieved among county prosecutors, advocates and legislators, something that had not been done previously and which hampered other bills. It was recommended to amend the Ohio Revised Code to:

- 1) Create an offense of Trafficking in Persons,
- 2) Amend the existing compelling prostitution statute to better fight those who seek to exploit our children,
- 3) Ensure labor trafficking is covered under the law,
- 4) Strengthen existing laws regarding kidnapping and abduction, and
- 5) Create a new offense to punish those who confiscate identification documents to further human trafficking.

Senate Bill 235, which was introduced by Senators Teresa Fedor and Timothy Grendell, incorporated all of these ideas and passed both the Ohio House and Senate with unanimous votes.

Since issuing their initial report, the Legal and Legislative Sub-Committee has begun analysis of what has been done in other states to refocus how minor victims of sex trafficking are treated by the criminal justice system. Research memos on developments in Minnesota, New York and Texas are included in Appendix A. Additional time should be invested by the Commission and sub-committee to fully explore these ideas with all stakeholders. The sub-committee has also started initial discussions on how to revise the model ordinance that is made available by the Attorney General's Office to assist with regulation of adult oriented in order to better address human trafficking.

Victim Services and Safe Locations

In the report of the Victims Services and Safe Locations sub-committee it was clearly identified that there are significant gaps in the services that are available for trafficking victims in Ohio. In a survey of over 200 social service organizations, only five reported providing any human trafficking specific assistance.

The sub-committee recommended a number of ways to fill the service gaps including:

- Establishing human trafficking community coalitions to raise awareness and coordinate emergency response when a victim is identified.
- Training for all major service networks.

- Building the network of trained case managers so their services would be available across Ohio.
- Developing residential programs. Existing non-trafficking specific residential care programs could help if staff were properly trained to meet the unique needs of trafficking victims.
- Increasing the number of trauma trained therapists and attorneys available to assist victims.

The members of the sub-committee also developed and included in their report tools that communities can utilize to guide the creation of their own local coalitions.

The Service Matrix and Standards provides an idea of the different agencies that should be at the table as part of a well designed coalition. Best practices are also offered to help in identifying those agencies that are best positioned to provide trafficking survivors the most appropriate service.

The Emergency Response Protocol Template illustrates the path that should be taken to help a victim and the agencies that need to be involved.

Training and Law Enforcement

The report of the Training and Law Enforcement sub-committee found that well-trained law enforcement officers are critical for combating human trafficking in Ohio. The nature of human trafficking creates situations where victims will not easily disclose to law enforcement, thus placing the burden on the investigating officer to recognize red flags and look more closely.

It was recognized by the sub-committee that significant strides have been made in the area of training for law enforcement regarding human trafficking in the past year. Training has been developed and is now being offered at the Ohio Peace Officer Training Academy (OPOTA). Two on-line eOPOTA courses have been produced and are available. These are in addition to training provided by the Ohio State Highway Patrol and other organizations such as the Ohio Prosecuting Attorneys Association and Buckeye State Sheriffs Association.

It was recommended that the efforts at OPOTA continue to be developed. In particular the creation and distribution of a roll call video was seen as a low cost tool to reach larger numbers of police officers and sheriff's deputies with the basics regarding human trafficking.

The need for better communication among law enforcement was also cited. Ohio is a home rule state with a strong tradition of local self-governance. As a result there are nearly 900 police departments and sheriffs' offices, and no single agency with original jurisdiction over human trafficking on a statewide basis. This can pose a challenge for

law enforcement as human traffickers often transport and/or exploit their victims in multiple jurisdictions.

In particular it was recommended that regional law enforcement working groups should be formed. These organizations would be valuable in their ability to gather multiple jurisdictions together to discuss individual cases or trends that are being seen. These groups could be developed in conjunction with a community anti-trafficking coalition. The Attorney General's office was asked to facilitate communication among investigators across the state through the addition of a dedicated staff person and utilization of the Ohio Law Enforcement Gateway's Connects module.

Prevention, Education and Outreach

The report of the Prevention Education and Outreach sub-committee provided direction on the steps that need to be taken in order raise public awareness of human trafficking in Ohio. It was found that awareness among the general public and key professionals that could help prevent, recognize, ensure services for victims and combat both sex and labor trafficking needed improvement.

The report identified a number of low-cost ways to increase awareness of human trafficking by:

- Working through statewide organizations, such as the Governor's Office on Faith-Based Initiatives and the Ohio Council of Churches, to reach groups that may already be interested in human trafficking.
- Integrating human trafficking information and training into existing professional training opportunities for those who might encounter victims of trafficking, such as health care professionals and social workers.
- Bringing together experts in human trafficking with educators to develop appropriate materials that could be integrated into classroom instruction.
- Expanding use of social media and the Attorney General's website to disseminate information on anti-trafficking resources including the speakers bureau that was developed as part of the sub-committee's report.

Demand Reduction

The Demand Reduction sub-committee issued their initial report focused on recommendations that will lead to the elimination of demand for forced labor and compelled commercial sexual activity. Their report offered short-term recommendations and outlined suggestions for long term solutions.

Recommendations were offered for the Ohio Attorney General's Office, city prosecutors' offices, law enforcement and communities. Short term recommendations to help with prevention focused on education for youth, while over the long term child sexual abuse prevention and increasing economic opportunities for women were suggested.

Intervention strategies in the short term included the use of Johns Schools to encourage behavior change and greater enforcement of labor laws to ensure that workers were being paid appropriately. A long term intervention strategy could be the refocusing of penalties to focus more harshly on the customers of prostitution.

The sub-committee also indentified the need to continue their meetings in order to more fully address a variety of outstanding research questions. Items still on the table for discussion include what can be done to reduce the vulnerability of women and how to evaluate the effectiveness of current prevention and intervention strategies.

Appendix A: Legal and Legislative Sub-Committee Memos

Minnesota

ANALYSIS OF
Minnesota Statutes Annotated § 609.325
Affirmative defenses to prostitution-related charges

BY TABITHA M. WOODRUFF

Subdivision 1.

TEXT:

No defense; solicited; not engaged. It shall be no defense to a prosecution under section 609.322 that an individual solicited or induced to practice prostitution or whose prostitution was promoted, did not actually engage in prostitution.

ANALYSIS:

M.S.A. § 609.322 is a first and/or second degree felony offense (depending upon the age or number of the victims) entitled “solicitation, inducement, and promotion of prostitution; sex trafficking.”

M.S.A. §609.325(1) prevents sex traffickers (persons charged under M.S.A. §609.322) from escaping conviction by arguing that he or she was unsuccessful in actually selling the victim(s) for sexual services despite his or her attempts to induce or promote the prostitution of the victim(s). This encourages law enforcement to step in and rescue sex trafficking victims before items of value are actually exchanged for sexual services or before the sexual services are actually performed without fear that this haste will prevent the sex trafficker from being convicted.

Subdivision 2.

TEXT:

Consent no defense. Consent or mistake as to age shall be no defense to prosecutions under section 609.322 or 609.324.

ANALYSIS:

M.S.A. §609.322 is a first and/or second degree felony offense (depending upon the age or number of the victims) entitled “solicitation, inducement, and promotion of prostitution; sex trafficking.” M.S.A §609.324(1)-(4) applies to prostitutes and patrons of prostitution (johns), who are punished with anywhere from 20 years imprisonment and \$40,000 fine to no imprisonment and \$1,500 fine

or community service depending on the age of those involved in the act of prostitution. M.S.A. §609.324(1a) applies to anyone who houses a minor prostitute not related by blood, adoption, or marriage to the minor. It applies to individuals who do not have the parents' or guardians' consent to house the minor, and who know or have reason to know the minor is engaged in prostitution.. M.S.A. §609.324(5)(a) instructs the court to forward a john or sex trafficker's conviction to the commissioner of public safety if this is not his or her first conviction under §609.324 or §609.322 and if he or she used a car while committing the offense. The commissioner will then record these convictions on the john's driving record. M.S.A. §609.324(5)(b) makes a conviction under §609.324 or §609.322 public data if it is not the john or sex trafficker's first conviction under either statute.

M.S.A. §609.325(2) prevents johns and sex traffickers from escaping conviction by arguing that the victim at any point consented to prostitution or that the john or sex trafficker thought the victim was a different age than he or she was. This supports the heightened penalties for persons who purchase or sell minor prostitutes.

Subdivision 3.

TEXT:

No defense; prior prostitution. It shall be no defense to actions under section 609.322 that the individual solicited or induced to practice prostitution, or whose prostitution was promoted, had engaged in prostitution prior to that solicitation, inducement, or promotion.

ANALYSIS:

M.S.A. §609.322 is a first and/or second degree felony offense (depending upon the age or number of the victims) entitled "solicitation, inducement, and promotion of prostitution; sex trafficking."

M.S.A. §609.325(3) prevents sex traffickers from escaping conviction by arguing that the victim(s) had willingly engaged in prostitution before the sex trafficker him or herself solicited, induced, or promoted the victim's/victims' involvement in prostitution. This prevents courts from offering a lower level of protection from sex trafficking to persons who had previously been consenting sex workers and statutorily encourages that no person deserves to be trafficked. This counters the common public sentiment that prostitutes put themselves in a dangerous position to be trafficked and thus deserved their exploitation.

Subdivision 4.

TEXT:

Affirmative defense. It is an affirmative defense to a charge under section 609.324 if the defendant proves by a preponderance of the evidence that the defendant is a labor trafficking victim, as defined in section 609.281, or a sex trafficking victim, as defined in section 609.321, and that the defendant committed the act only under compulsion by another who by explicit or implicit threats created a reasonable apprehension in the mind of the defendant that if the defendant did not commit the act, the person would inflict bodily harm upon the defendant.

ANALYSIS:

M.S.A. §609.324 is the statute under which both prostitutes and patrons of prostitution (johns) are convicted for engaging in prostitution.

M.S.A. §609.325(4) allows a human trafficking victim to escape conviction for prostitution charges if he or she can prove, by a preponderance of the evidence, that he or she was forced to commit the offense by a trafficker. This allows trafficking victims to escape criminalization for their exploitation even if the state was unable to arrest and convict the trafficker that exploited them. To convict a trafficker, a prosecutor must prove beyond a reasonable doubt that the trafficker committed the offense. In cases where a prosecutor was unable to carry this heavy burden of proof, the victims may still be able to escape criminalization because they will only have to prove by a preponderance of the evidence that they were trafficked.

New York

MEMORANDUM

TO: Robin Hurst & Jacquelin Lewis
FROM: Matthew Oyster
DATE: October 14, 2010
SUBJECT: Human Trafficking Analysis – New York Safe Harbor for Exploited Children Act

INTRODUCTION TO THE SAFE HARBOR FOR EXPLOITED CHILDREN ACT

Official Title: An act to amend the social services law and the family court act, in relation to services for exploited children.

Overview of the Act: The New York Safe Harbor for Exploited Youth Act reflects a presumption that a person under 18 years of age who is charged as a juvenile delinquent for a prostitution offense meets the criteria for certification as a victim of a “severe form of trafficking,” as defined by the Federal Trafficking Victims Protection Act of 2000 (FTVPA). This presumption permits an eligible youth to avoid criminal charges of prostitution and instead be considered a “person in need of supervision” (PINS). The statute also enhances New York Social Services Laws by requiring every local social services district to address the child welfare services needs of sexually exploited children and, to the extent that funds are available, ensure that preventative services (including safe houses, crisis intervention, and community-based programs) are available. Finally, the Act authorizes training to law enforcement officers on identifying and assisting sexually exploited youth.

Date Passed: June 23, 2008

Current Status: Signed into law September 25, 2008; Amended July 2, 2010

Effective Date: April 1, 2010

SERVICES FOR MINOR VICTIMS OF SEX TRAFFICKING

Safe Houses

- The Office of Children and Family Services is required to contract with an appropriate not-for-profit agency with experience working with sexually exploited youth to provide at least one safe house for longer-term care, in a geographic area that would meet the needs of sexually exploited youth and that cannot be readily accessed by perpetrators of sexual exploitation.

- Safe houses or short-term safe houses can be residential facilities or part of an existing approved runaway and homeless youth program as long as the facilities' staffs have received appropriate training regarding sexually exploited children.
- Safe houses must directly or through other agencies provide necessary services for sexually exploited children including housing, assessment, case management, medical care, legal, mental health, and substance and alcohol abuse.
- Safe houses may also provide counseling and therapeutic services and educational services, including life skills services and planning services aimed at successfully transitioning exploited children back into the community.

Planning

Every local social services district is required to:

- Determine the needs of sexually exploited children in their respective districts;
- Include the determination of the need in the integrated county plan;
- Provide crisis intervention and community-based programs to meet the determined need; and
- Recognize and plan for the separate and distinct needs of girls, boys, and transgendered youth who have been sexually exploited.

REMOVING CERTAIN MINOR VICTIMS OF SEX TRAFFICKING FROM THE JUVENILE OFFENDER SYSTEM

- The Act reflects the presumption that a person under 18 years of age who is charged as a juvenile delinquent for a prostitution offense meets the criteria for certification as a victim of a "severe form of trafficking," as defined by FTVPA.
- The presumption requires the court to proceed with a PINS petition rather than a Juvenile Delinquent (JD) petition.
- However, this presumption can be negated in two different ways:
 - The juvenile arrested for prostitution may make a motion to substitute a PINS petition for a JD petition (the court must ordinarily grant such a motion); or
 - The court can decide to continue with a JD petition if it finds that the minor:
 - Is not a severely trafficked person according to the federal definition;

- Has previously committed a prostitution offense;
 - Was previously placed with a local commissioner of social services as a PINS; or
 - Is unwilling to participate in services ordered by the court.
- If the court decides to continue with the JD proceeding instead of the PINS proceeding, it must make written findings of fact to support that decision and make them part of the court record.
 - The court also has the ability to convert a PINS petition to a JD petition if the youth is out of compliance with the court's orders.

LAW ENFORCEMENT TRAINING

- Each social service district, in conjunction with local law enforcement, may, to the extent that funds are available, contract with an experienced not-for-profit agency to provide training to law enforcement officials who are likely to encounter sexually exploited youth. The training would cover the identification of these youth and the social services available to assist them.

DEFINITION OF KEY TERMS USED WITHIN THE ACT

Community-Based Program

- A program operated by a not-for-profit organization that provides outreach services, drop-in services, peer and individual counseling, family therapy, and referrals to other services, such as educational, vocational training, and health care.
- In order to determine the extent of community-based programs needed to serve sexually exploited children, the local commissioner must annually consult with law enforcement, runaway and homeless youth program providers, probation departments, public defenders and district attorneys' offices and child advocates who work with sexually exploited youth and include this information in an integrated county plan.

Persons in Need of Supervision

- A person less than 18 years of age who:
 - Does not attend school in accordance with New York's education law;

- Is incorrigible, ungovernable or habitually disobedient and beyond the lawful control of a parent or other person legally responsible for such child's care; or
- Is arrested for crimes involving prostitution.

Sexually Exploited Child

- Someone under the age of 18 who may be subject to sexual exploitation because (s)he:
 - Is the victim of the crime of sex trafficking or compelled prostitution;
 - Engaged, agreed, or offered to engage in sexual conduct in return for a fee, food, clothing, drugs, or a place to stay;
 - Has stripped or been filmed or photographed doing sexual acts; or
 - Loitered for the purpose of engaging in a prostitution offense.

Texas

MEMORANDUM

TO: Robin Hurst & Jacquelin Lewis
FROM: Matthew Oyster
DATE: October 14, 2010
SUBJECT: Human Trafficking Analysis – *In re B.W.* Case Brief

In re B.W. (Tx. 2010), 313 S.W.3d 818

Facts: B.W., a thirteen-year-old child, waved over and agreed to perform oral sex on an undercover officer for twenty dollars. Based on this conduct, the officer arrested her for prostitution. Initially, the State charged B.W. in criminal court; but when a background check revealed her age, the case was dismissed and refiled in juvenile court.

Procedural

History: Pursuant to an agreed recommendation, B.W. pled true to the allegation that she knowingly agreed to engage in sexual conduct for a fee. Ultimately, the juvenile court found that B.W. engaged in delinquent conduct constituting a misdemeanor and placed her on probation. B.W. moved for a new trial, but the court denied her motion. She appealed, but the court of appeals affirmed. B.W. then appealed to the Supreme Court of Texas.

Issue: Whether a thirteen-year-old child can be prosecuted for prostitution when children under fourteen cannot legally consent to sex.

Rule: Absent a clear legislative intent to the contrary, children younger than fourteen cannot be prosecuted for prostitution because they lack the legal capacity to consent to sex.

Analysis: Under Texas law, a person commits the offense of prostitution by knowingly offering to engage, agreeing to engage, or engaging in sexual conduct for a fee. To act knowingly, or with knowledge, with respect to the nature of one's conduct, a person must be aware of the nature of the conduct. One, however, must not confuse the ability to factually agree to sex, which can have legal relevance in the treatment of the offender, with the legal capacity to consent, which is necessary to find that a person committed the crime of prostitution. The Legislature determined that children under fourteen cannot legally consent to sex; thus, such children cannot be tried for prostitution.

Conclusion: Because a thirteen-year-old child cannot consent to sex as a matter of Texas law and the Legislature did not intend to transform a child victim of

adult sexual exploitation into a juvenile offender, B.W. cannot be prosecuted for the crime of prostitution.

Disposition: Judgment reversed; matter remanded to trial court.