

National Conference on Human Trafficking 2006

Human Trafficking State Policy Training

October 3-5, 2006

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For additional information, please visit:
www.PolarisProject.org

The Need for State Anti-Trafficking Legislation

- Federal resources alone cannot keep up with volume of cases; the prevalence of the problem warrants anti-trafficking legislation at the State level.
- Gives local and Federal prosecutors additional tools to use either State or Federal codes, respectively.
- Supplements existing State statutes for related crimes with the victim-centered trafficking paradigm.
- Incentivizes local law enforcement to investigate these types of cases as first responders and provides local jurisdiction.

The Need for State Anti-Trafficking Legislation (Contd)

- Catalyzes increased awareness and training, which often leads to increased victim identification, investigations, and prosecutions.
- Modern-day slavery deserves a place in State criminal codes.
- Comprehensive State legislation can include provisions for funding victims services, law enforcement training, and investigations.
- Provides a centralized “one-stop” statute that most accurately reflects the actual criminal behavior of traffickers; avoids piecemeal prosecutions.

Typical Arguments Against State Anti-Trafficking Legislation

- New laws against human trafficking are not needed since existing criminal codes can be used to prosecute traffickers for related crimes.
- The prevalence of trafficking is not a large enough problem to warrant a new law or financial appropriations.
- State laws should not be enacted until the Federal legislation is better understood or the scope of the problem is better ascertained (“Movement isn’t ready”; “Not the right time yet.”).
- State anti-trafficking legislation might hurt or adversely affect immigrants.

Arguments Against State Anti-Trafficking Legislation (Contd)

- False claims of trafficking may arise from immigrants without status who claim they were “enslaved/trafficked” in order to obtain T-Visas and derivative visas.
- Elements of anti-trafficking legislation are too difficult for prosecutors to prove and prosecutions should focus on other related crimes.
- There is no such thing as modern-day slavery or human trafficking.

Widely Used State Policy Resources

- Department of Justice (DOJ) Model Law (based on criminal sections of the TVPA 2000)
- Polaris Project Comprehensive Model Law (available at www.PolarisProject.org)
- Freedom Network Model Law (Comprehensive)
- Center for Women Policy Studies (CWPS) Guideline (available at www.centerwomenpolicy.org)
- U.S. Policy Alert (monthly email, www.PolarisProject.org)

Frequent Stakeholders Involved in the Passage of a State Bill

- Federal resources
- State and local law enforcement resources
- Specialized local non-governmental organizations (NGOs) and victim service providers
- Survivors
- Community members and students
- Media
- Lobbyists and local advocacy groups

The “local champion” for the legislation can be any of the above

General Phases of Policy Advocacy for a State Bill

1. Researching existing statutes and gaps in State codes
2. Identifying the right legislator(s) to introduce a bill
(Interest, Experience, Influence)
3. Writing bill content and form-fitting into existing State law
4. Building early consensus and gaining allies (Co-sponsors)
5. Learning about any other competing State bills on the same topic and reconciling differences or overlaps

General Phases of Policy Advocacy for a State Bill (Contd)

6. Obtaining support of advocacy groups, lobbyists, and citizens
7. Making the case - fact sheets, press conferences, bill summaries, testimonies
8. Timing the introduction of the bill
9. Supporting the bill through committee readings and votes
10. Handling revisions and frequent changes to the language of the bill
11. Fielding questions about the bill's intent, scope, and impact
12. Final compromises

Common Challenges to Passing a State Bill

- Lack of consensus on appropriate content (NY)
- Competing legislative priorities of the current legislature (AK)
- Hard-line influential legislators who block the bill (MD)
- Too many state bills on the same topic creates hesitancy (VA)
- Partisan politics (e.g. not calling a bill to be heard on the floor)

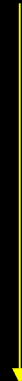
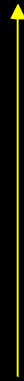
Common Challenges to Passing a State Bill (Contd)

- Lack of statistical data to document the scope of the problem
- Lack of knowledge and misunderstandings about human trafficking among critical players
- State legislative session lengths and constraints (NM)
- Sponsor's fatigue and sponsor's lack of advocacy

A Cyclical Dilemma –

“Which came first – the chicken or the egg?”

Hard to justify legislation without knowing the
scope of the local problem in a given State



Hard to know the scope of the local problem in a given State
without legislation to mobilize local law enforcement

Documenting the Scope of Trafficking in a Given State

- The “scope of trafficking” in a State is a central discussion in the passage of many State bills.
- Effective policy advocacy is able to shed light on the prevalence of trafficking in an area to make the case for legislation.
- Documenting the local prevalence may take on both direct and indirect forms:
 - News articles
 - Recent confirmed cases
 - Informal tallies of victims’ served by local NGOs
 - Extrapolated estimates based on other relevant indicators
 - Describing contributing factors to trafficking in a given area

Delaying legislation until the long-term implementation of a formally-commissioned research study on scope of the problem is not always necessary or preferable.

Some Common Problem Areas with Previous State Bills

- Deviations from the Federal framework and Incomplete Definitions of Trafficking
 - Defining trafficking as only involving foreign nationals
 - Requiring “Force, fraud, or coercion” for minors involved in commercial sex acts
 - Limiting definition of force to require “bodily harm”
 - Defining transportation as a required element
 - Requiring transportation across State lines
 - Low penalties not commensurate with the severity of the crime
- Non-comprehensive State bills that enact only criminal code revisions without victim protections

Nuances and Innovative Approaches

Examples of Exceptions and Interesting Developments in Various States:

- New provisions and cutting edge thinking:
 - Trafficking caseworker privilege (CA)
 - Access to State Victims Compensation (CA)
 - Corporate liability (MN)
 - Patronizing a trafficking victim (IA, MA attempted)
 - Affirmative defenses (NJ)
 - Parent or guardian transferring legal custody of a minor for prostitution (IN)
 - Creating State RICO Offense (FL)
 - Outlining law enforcement training rollout for the new bill (FL)
 - 2nd bills for services for victims of trafficking (WA, SB5127, CA, SB1569)
- Weaving trafficking legislation into broader immigration bills when a trafficking bill may not move forward on its own (e.g. AZ, GA, CO, IA)

State Bill Options

- 1. Task Force/ Research Commission** (8 states)
 - Study trafficking within the state and disseminate data
 - Develop state plan to combat trafficking
 - Oftentimes a first step to enacting criminal penalties (ex. CT)
- 2. Criminal Code Revision Only** (Majority of states)
 - Revise existing state criminal code to add human trafficking
- 3. Comprehensive Legislation** (ex. CA) – the “Three P’s”
 - Prosecution - Criminal code revisions
 - Prevention - Task force/research commission
 - Protection – Services and other protections for victims
- 4. “A Second Bite At the Apple”** (WA, FL, CA passed) (NJ, CO pending)
 - Revising a previously-passed law with additional legislation to fill gaps or add provisions

“The Buffet” - Provisions Contained in Comprehensive Legislation*

Prosecution-Criminal Provisions:

- Trafficking in persons
- Sexual Servitude of a minor
- Involuntary servitude
- Accomplice liability
- Victim immunity
- Non-defenses to trafficking
- Criminal Liability of business entities
- Restitution
- Civil liability
- Forfeiture
- Statute of limitations
- Applicability of labor standards
- Sentencing enhancements
- State RICO Statutes

Prevention of Trafficking:

- State task force
- Data collection and dissemination
- Training Requirements
- Public awareness
- Grants
- Role of non-governmental organizations (NGOs)

Protection of Victims:

- Protection for the safety of victims
- Witness protection
- Access to state victims compensation fund
- Protection for the privacy of victims
- Information for victims
- Opportunity for presentations of victims views and concerns
- Support for victims
- Appropriate implementation for child victims
- Human trafficking caseworker victim privilege
- Protection of domestic violence and trafficking shelters

* Based on Polaris Project's Comprehensive Model State Law

State-level Anti-Trafficking Laws - Snapshot

- *As of September of 2006*
 - 24 States have passed criminal statutes against trafficking (AK, AR, AZ, CA, CO, CT, FL, GA, IA, ID, IL, IN, KS, LA, MI, MN, MO, MS, NH, NJ, NV, SC, TX, WA)
 - 8 States have passed legislation to create task forces or research commissions on trafficking (CA, CO, CT, HI, ID, ME, MN, WA)
 - 3 States have pending anti-trafficking criminal bills (OH, NJ, PA)
 - 1 State has pending legislation for a task force or research commission (OH)
 - 3 States have “taken a second bite at the apple” through passage of additional legislation (WA, FL, and CA)
 - 9 States have the Sexual Servitude of a Minor Clause (GA, ID, IL, IN, IA, KS, MI, MS, MO)

Observations and Reflections

- Based on these new laws, a future trend in the anti-trafficking movement will be a rise in State-level prosecutions of traffickers.
- Some states have recently introduced legislation to strengthen or compliment existing anti-trafficking legislation (ex. FL, CO, NJ, WA). It is anticipated that more States will do the same.
- States will explore the enactment of legislation on other related topics such as sex tourism and marriage brokers.
- States will explore other enforcement strategies against traffickers that may be more efficient and less resource intensive than anti-trafficking prosecutions, including existing State per se crimes, pandering statutes, and regulatory codes.
- Possible states that might introduce legislation in the near future: DC, HI, KY, MA, MD, NH, NM, NY, RI, VA, WI

To Do List: Taking the Next Steps to Move Forward

- Pass State anti-trafficking laws in remaining States
- Address and increase low levels of State prosecutions nationwide
- Advocate for the enforcement and implementation side of enacted anti-trafficking laws
- Strengthen existing State codes for related crimes as an alternative for prosecutors (e.g., tax laws, pandering statutes)
- Increase training for law enforcement and local prosecutors on scope, extent, and methods used by traffickers
- Increase training for law enforcement and local prosecutors on other enforcement options for prosecuting traffickers
- Build stronger linkages between local law enforcement and NGOs/service providers (the Task Force model)
- Address and combat the demand for trafficking (corporate liability, demand reduction strategies for johns)

Public Policy Catalyzes an Energized Movement

- The passage of laws alone is not an end in itself.
- Laws that are never implemented fall short of their goal.
- Rather, the passage of laws, coupled with effective enforcement and implementation, is the means towards the end of combating human trafficking, prosecuting traffickers, and protecting victims.
- The passage of public policy is also a means towards the end of creating an energized movement on a particular issue.
- The importance of laws should be viewed, not only for the ability to create legal tools, but also in the larger context of the energy they bring to the movement.

Goal: A Comprehensive Policy Approach

- Passing State-level anti-trafficking legislation is only one component of a comprehensive policy approach to combating human trafficking
- A Comprehensive State Bill does **NOT** equal a comprehensive policy approach
- A Comprehensive Policy Approach includes:
 - Optimizing the use of other existing statutes (e.g., local regulatory codes; tax and financial statutes; demand reduction strategies; RICO statutes; pandering statutes; per se crimes)
 - Minimizing or eliminating counter-productive statutes that contradict the victim-centered paradigm (e.g., decriminalization of children who are prostituted)
 - Implementation and enforcement of laws



Polaris Project is named after the North Star, which helped guide slaves to the relative freedom of the North during the centuries of slavery in the US.

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