

Sex Trafficking Needs Assessment for the State of Minnesota

**The Advocates for Human Rights
Minneapolis**

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I. PREFACE

The Advocates for Human Rights (“The Advocates”) prepared this needs assessment report at the request of the State of Minnesota Human Trafficking Task Force¹ (“Task Force”) pursuant to its mandate from the Commissioner of Public Safety to conduct a human trafficking needs assessment and to develop a plan to prevent human trafficking.² This report focuses solely on trafficking of persons for commercial sexual exploitation or prostitution as defined in federal law and Minnesota law.³

The Advocates is releasing this report in conjunction with the anti-trafficking conference of the Sergeant Gerald Vick Task Force. This occasion affords the opportunity to reflect on recent successes in combating sex trafficking and formulate ways to improve responses to this complex problem.

The findings of this report are based on interviews with 175 participants throughout the State of Minnesota. Interviewees included judges, prosecutors, public defenders, immigration attorneys, family law attorneys, probation officers, law enforcement officers, immigration officials, healthcare providers, service providers, social services and other stakeholders regarding their knowledge of and experiences with trafficked persons.

Sex trafficking violates numerous human rights. Federal, state, and international laws compel an effective response from the government to address these violations. This report describes the legal

framework and the various institutional and collaborative responses necessary to address these violations, including services to protect the fundamental human rights of trafficked persons and law enforcement actions to hold traffickers accountable for the crimes they have committed. Despite the increased attention to this problem in recent years, The Advocates has found that often the response of law enforcement is ineffective and the needs of trafficked persons remain unmet. This report includes recommendations to address the barriers to an effective, coordinated response to sex trafficking and to better meet the needs of trafficked women and children.

¹ The Task Force reports to the Commissioner of Public Safety and was created to advise the commissioner on his duties regarding human trafficking and to serve as a liaison between the commissioner and agencies and non-profit organizations that provide services to trafficking victims. MINN. STAT. § 299A.7955 (2007).

² *Id.* § 299A.78.

³ While this report is limited to trafficking for commercial sexual exploitation or prostitution, trafficking for forced labor, domestic servitude, forced conscription, organ extraction and other forms of exploitation also involves serious human rights violations meriting immediate attention from law enforcement, policy makers and service providers in Minnesota.

II. EXECUTIVE SUMMARY

Sex trafficking is a form of slavery and involuntary servitude resulting in grave human rights violations. Sex trafficking involves individuals profiting from the sexual exploitation of others and often results in brutal sexual assaults and devastating physical and psychological injuries.⁴ It is not new to Minnesota nor is it confined to the Twin Cities metropolitan area; it affects communities throughout the state. Misunderstanding of the dynamics of sex trafficking and of the law and its implementation results in underfunding for education, prevention, assistance and prosecution.

Minnesota was a place of origin, transit, and destination for sex trafficking operations even before federal or state law defined the crime of “sex trafficking.” In an infamous example from the 1980s and 1990s, the Minneapolis-based Evans family prostituted women and girls around the country.⁵ They employed tactics including gang rapes, physical beatings, threats of violence, and access to drugs to persuade, induce, entice, and coerce their victims into performing prostitution, as well as forced sex acts on members of their own family.⁶ In today’s terms, these crimes constitute sex trafficking.

Although legal definitions vary, international, federal and state law all reflect the idea that human trafficking involves the recruiting, harboring, receipt

or transportation of persons for some exploitative purpose.⁷ These laws do not, as is commonly believed, require that people be moved from one point to another for an act to be considered human trafficking. Some provisions of international and federal law also specify that traffickers use means such as force, fraud, coercion,⁸ or the abuse of power⁹ to place or maintain someone in an exploitative situation.¹⁰ Minnesota law does not require proof of force, fraud, coercion, or any other means for an act to constitute sex trafficking.

Exploitation includes practices ranging from prostitution and other forms of sexual exploitation, forced labor or services, domestic servitude, slavery or practices similar to slavery, or the removal of organs.¹¹ Generally, laws and intervention strategies view these forms of exploitation in two broad categories: labor trafficking and sex trafficking.¹² This report focuses on sex trafficking.

⁴ In passing the Trafficking Victims’ Protection Act of 2000, the U.S. Congress found that “trafficking in persons involves grave violations of human rights and is a matter of pressing international concern. The international community has repeatedly condemned slavery and involuntary servitude, violence against women, and other elements of trafficking, through declarations, treaties, and United Nations resolutions and reports [...]” Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1468 (2000) (codified at 22 U.S.C.

§ 7101(23) (2007)).

⁵ The federal district court convicted the five defendants for transporting individuals in interstate commerce for the purpose of prostitution in violation of the Mann Act, 18 U.S.C. §§ 2421-2423, money laundering, *id.* § 1956, and conspiracy to commit those offenses. See *United States v. Evans*, 272 F.3d 1069, 1077 (8th Cir. 2001) (upholding convictions of all five defendants, but remanding two for resentencing on several counts under earlier version of statute).

⁶ See *Evans*, 272 F.3d at 1087, 1089, 1091, 1092, 1095, 1097.

⁷ See 18 U.S.C. § 1591(a); MINN. STAT. § 609.321, subd. 7a; United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25, Annex II, at art. 3(a), U.N. Doc. A/RES/55/25 (Jan. 8, 2001) [hereinafter U.N. Trafficking Protocol]; see also 18 U.S.C. §§ 1589-1590 (forced labor).

⁸ See 18 U.S.C. § 1591(a). In this report, references to the federal law on “sex trafficking” refer specifically to 18 U.S. Code section 1591, not other sections of the U.S. Code.

⁹ The U.N. Trafficking Protocol lists the following means in its definition of trafficking in persons: “by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” U.N. Trafficking Protocol, *supra* note 7, art. 3(a).

¹⁰ See discussion in the section “Defining Sex Trafficking” *infra* p. 9. See MINN. STAT. § 609.321, subd. 7a (defining sex trafficking as the “receiving, recruiting, enticing, harboring, providing, or obtaining *by any means* an individual to aid in the prostitution of the individual” (emphasis added)); *id.* § 609.281, subd. 5 (labor trafficking).

¹¹ U.N. Trafficking Protocol, *supra* note 7, art. 3(a).

¹² However, some advocates and organizations reject this division and consider trafficking for sexual exploitation as a form of forced labor. See, e.g., INT’L LABOUR OFFICE, A GLOBAL ALLIANCE AGAINST FORCED LABOUR: GLOBAL REPORT UNDER THE FOLLOW-UP TO THE ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK 6, 7 (2005), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1015&context=forcedlabor>; Jo Dozema, *Loose Women or Lost Women? The Re-emergence of the Myth of ‘White Slavery’ in Contemporary Discourses of Trafficking in Women*, 18 GENDER ISSUES 23 (2000).

People from various backgrounds are trafficked for sexual exploitation in Minnesota, although it primarily affects women and girls.¹³ Traffickers seek out persons perceived to be vulnerable for various reasons, including age, poverty, chemical dependency, history of abuse, lack of resources or support systems, or lack of immigration status. Traffickers then use various tactics to control these persons that may include inflicting sexual, emotional or mental abuse; confiscating documents; inducing or enabling chemical addiction; withholding money or identification documents; and violent physical assaults or threats of assaults.

No reliable data exist on the extent of human trafficking in Minnesota or elsewhere. The clandestine nature of the crime, varied definitions of human trafficking, and flawed methodologies complicate efforts to obtain reliable data.¹⁴ Various sources estimate from 600,000 to four million people are trafficked globally each year.¹⁵ In its 2004 Trafficking in Persons (“TIP”) Report, the U.S. State Department estimated that between 14,500 and

17,500 people were trafficked into the United States annually.¹⁶ The 2006 Attorney General’s Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons for Fiscal Year 2005, however, characterized this estimate as unreliable.¹⁷

The 2007 report *Human Trafficking in Minnesota* found that service providers in Minnesota had served 154 labor trafficking victims and 637 sex trafficking victims over a three-year period.¹⁸ These data represent a limited picture of trafficking because it only captures information about persons who contact service providers.¹⁹ Research has shown that not all trafficked persons interact with government or non-government agencies²⁰ and that trafficked persons are reluctant to report their situations, particularly to law enforcement or immigration officials.²¹

Both interviews and research demonstrate that persons trafficked for sexual exploitation often suffer immediate and long-term harm as a result.²² For

¹³ See discussion *infra* p. 21. The 2007 Report on Human Trafficking in Minnesota reported only thirteen sex trafficking cases involving adult male victims from 106 service providers. The data do not specify the sex of trafficked children served. MINN. OFFICE OF JUSTICE PROGRAMS & MINN. STATISTICAL ANALYSIS CTR., HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE STATE LEGISLATURE 1, 2 (2007), http://www.ojp.state.mn.us/cj/publications/Reports/2007_Human_Trafficking.pdf [hereinafter 2007 REPORT]. Accordingly, this report will primarily refer to trafficked persons as women and girls, while acknowledging that the sex trafficking of boys, men and transgendered persons also involves human rights violations and merits additional study, public and private response and appropriate assistance.

¹⁴ See HEATHER J. CLAWSON, MARY LAYNE & KEVONNE SMALL, ESTIMATING HUMAN TRAFFICKING: THE DEVELOPMENT OF A METHODOLOGY (2006), <http://www.ncjrs.gov/pdffiles1/nij/grants/215475.pdf>; U.S. GOV’T ACCOUNTABILITY OFFICE, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD (2006), <http://www.gao.gov/new.items/d06825.pdf>.

¹⁵ The U.S. government estimates 600,000 to 800,000 people per year are trafficked across international borders for exploitative labor or commercial sexual exploitation. This estimate does not include trafficking within a nation’s borders. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 14, at 2. The International Labor Organization of the United Nations estimates that at any time 2.45 million people are in various forms of forced labor, including sexual exploitation, as a result of trafficking. INT’L LABOUR OFFICE, *supra* note 12, at 14.

¹⁶ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), <http://www.state.gov/documents/organization/33614.pdf>.

¹⁷ U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 14, at 17. The annual TIP report has since ceased estimating the number of trafficked persons.

¹⁸ 2007 REPORT, *supra* note 13, at 1-2.

¹⁹ Available trafficking data are often limited by this institutional bias. See Guri Tyldum & Annette Brunkovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 INT’L MIGRATION 17, 25-26 (2005), <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.0020-7985.2005.00310.x>.

²⁰ A 2007 study of thirty-nine trafficking victims and thirteen individuals in street prostitution in Serbia, Albania and Moldova found that “[i]n many cases, women came across the information [about assistance] by chance. This may indicate that there are many more trafficked persons who *do not* come across such information and never know about options for assistance.” The study reported that most trafficking victims with alternatives to assistance would “generally decline trafficking specific assistance and seek help in other places.” For example, trafficking victims with supportive families are more likely to return home than to seek assistance. ANETTE BRUNOVSKIS & REBECCA SURTEES, LEAVING THE PAST BEHIND? WHEN VICTIMS OF TRAFFICKING DECLINE ASSISTANCE 7, 10, 34-35 (2007), http://www.childtrafficking.com/Docs/afao_past_victims_tra_ass_0408.pdf.

²¹ See KEVIN BALES & STEPHEN LIZE, TRAFFICKING IN PERSONS IN THE UNITED STATES 45 (2005), <http://www.ncjrs.gov/pdffiles1/nij/grants/211980.pdf>; BRUNOVSKIS & SURTEES, *supra* note 20, at 34.

²² The Advocates recognizes that the experiences of trafficked persons can vary. Moreover, reports on the experiences of

example, a 2001 U.S. study based in part on interviews with fifteen foreign nationals and twenty-five U.S. citizens who had been trafficked found high rates of injuries and emotional and psychological distress among women due to their experiences in the sex industry, with almost half of U.S. women reporting head injuries.²³ These findings are consistent with a 2007 European study of 207 trafficked women from fourteen countries that found that nearly all the women (95%) reported physical or sexual violence while in the trafficking situation.²⁴ The psychological aspects of the trafficking experience can last long after the physical scars have healed. A European study found that 56% of trafficked women reported symptoms such as recurrent nightmares, reliving traumatic events, difficulty sleeping, and the inability to feel emotion that suggest post-traumatic stress disorder (“PTSD”).²⁵ Although women reported fewer symptoms ninety days after leaving the trafficking situation, they remained at risk for recurring PTSD when re-integrating into society or facing stressful events in the future.²⁶

trafficked persons can vary widely due to varying methodologies and aims. For example, a study of fifty-five mostly Eastern European women in prostitution in Israel, some of whom could meet the U.N. Protocol's definition of “trafficked,” found that “stereotypes of sex workers as either always having histories of childhood abuse or as being always ‘happy hookers’ were incorrect.” Fifteen of the women in this study did not report histories of sexual abuse or rape as a child or while in prostitution in Israel. Bella Chudakov et al., *The Motivation and Mental Health of Sex Workers*, 28 J. OF SEX AND MARITAL THERAPY 305, 308-309 (2002). In contrast, a European study of twenty-eight trafficked women found that all of the women reported sexual abuse during the trafficking situation with lasting health effects. CATHY ZIMMERMAN, THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY 16 (2003),

<http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>.

²³ JANICE C. RAYMOND, DONNA M. HUGHES & CAROL GOMEZ, SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS, 8, 12 (2001),

http://www.uri.edu/artsci/wms/hughes/sex_traff_us.pdf.

²⁴ CATHY ZIMMERMAN ET AL., STOLEN SMILES: A SUMMARY REPORT ON THE PHYSICAL AND PSYCHOLOGICAL HEALTH CONSEQUENCES OF WOMEN AND ADOLESCENTS TRAFFICKED IN EUROPE 10 (2007),

<http://www.lshtm.ac.uk/hpu/docs/StolenSmiles.pdf>.

²⁵ *Id.* at 20.

²⁶ *Id.*

Sex trafficking violates basic human rights, including the right to be free from slavery and slavery-like practices; the right to equal protection under the law; the right to be free from discrimination based on race, nationality, and gender; and the rights to life, security of person and freedom from torture. Governments violate trafficked persons' rights when they fail to prevent sex trafficking, prosecute perpetrators or provide trafficked persons with effective remedies for these violations, such as access to courts and legal immigration status.

This report examines the human rights implications of governmental and non-governmental responses to sex trafficking in Minnesota. Although this report focuses on the problem as it affects Minnesota, it is important to note that sex trafficking cases may not remain exclusively within the state's borders.

As discussed throughout this report, sex trafficking affects women and girls from a variety of backgrounds. Based on a mandate from the Minnesota Office of Justice Programs, this report highlights, to the extent possible, the needs of trafficked American Indian and Alaska Natives in Minnesota (“American Indians”).²⁷ The mandate reflects service providers' concerns about the systematic lack of information and general invisibility of American Indian women and youth in discussions about sex trafficking in Minnesota.²⁸ Information

²⁷ The Advocates recognizes the importance of language and has sought to use language that acknowledges the diversity of opinions and experiences of American Indians and Alaska Natives in Minnesota. As noted by Amnesty International in its 2007 report MAZE OF INJUSTICE, “no single term is universally accepted by all Indigenous peoples in the USA.” Accordingly, this report will employ a variety of terms when discussing American Indians and Alaska Natives in Minnesota. Based on recommendations from service providers active in the local American Indian community, this report will refer to identified members of this group primarily as “American Indians,” whether they are officially recognized as tribal members or not. This report, however, will also employ other commonly used terms, such as tribe and tribal authorities, as well as legal terms, such as Indian and Indian Country. For an in-depth discussion about issues surrounding terminology, see AMNESTY INT'L, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA, at iii-iv (2007), <http://www.amnestyusa.org/women/maze/report.pdf>.

²⁸ In the Minnesota Office of Justice Programs' 2007 report HUMAN TRAFFICKING IN MINNESOTA, seven respondents reported

about this population is extremely limited and difficult to obtain. The majority of the findings come from interviews conducted with government and non-government actors working with American Indians in metropolitan, rural and tribal areas, only a few of whom had direct experience working with trafficked American Indians. Despite the unique factors impacting trafficked American Indian women and youth, interviews revealed they face barriers similar to other populations of trafficked persons, although often to a greater extent. As a result, these issues are integrated and discussed throughout the entire report.

Minnesota has a unique history of confronting various forms of commercial sexual exploitation, including sex trafficking, through grassroots activism and innovative legal reform.²⁹ The passage of state

working with 342 Native American trafficked women. This finding represents one of the first efforts in the United States to assess the extent of human trafficking among American Indian women and youth. 2007 REPORT, *supra* note 13, at 2, 19-20.

²⁹ Much of this history pre-dates the advent of the term “sex trafficking” in state and federal law. Thus, the word “prostitution” is used in this footnote for historical accuracy with the understanding that these actions today might be thought of as combating sex trafficking, at least in part. The following list is representative of major events in this history, but certainly not exhaustive. In 1978, the PRIDE (From Prostitution to Independence, Dignity and Equality) program was founded by a survivor of prostitution and her therapist to provide specialized services for individuals in prostitution. It continues to serve women and girls today. Lola Greene Baldwin Foundation, Timeline of Sex Industry in the United States, http://www.prostitutionrecovery.org/prostitution_timeline.html (last visited Aug. 17, 2008). Although Mayor Don Fraser subsequently vetoed the amendment, in 1983 the Minneapolis City Council amended the municipal civil rights code to “prevent and prohibit all discriminatory practices of sexual subordination or inequality through pornography.” Minneapolis, Minn., Proposed Ordinance to Amend Title 7, Chapter 139 and 141 of Minneapolis Code of Ordinances (1983), <http://www.nostatusquo.com/ACLU/dworkin/other/ordinance/newday/AppA.htm> (last visited Aug. 17, 2008); see CATHERINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 262, n.1 (Harvard University Press 1994) (1987). In 1984, the first national conference for advocates of individuals in prostitution was held in Minneapolis. Lola Greene Baldwin Foundation, *supra*. In the 1980s, the prostitution advocacy organization WHISPER (“Women Hurt in Systems of Prostitution Engaged in Revolt”) opened an office in Minneapolis to provide drop-in services and advocacy for individuals in prostitution. E-mail from advocate (Aug. 17, 2008) (on file with author). In 1991, the statewide Minnesota Coalition for Battered Women (“MCBW”) passed a resolution declaring prostitution a form of violence against women and extending the services of its members to women in prostitution. Freedom and Justice Ctr. for Prostitution

anti-trafficking legislation coupled with growing partnerships across disciplines to address sex trafficking in Minnesota continues this tradition. The needs documented in this assessment, however, demonstrate the importance of implementing responses that prioritize the safety and autonomy of trafficked persons while continuing to hold traffickers and patrons accountable.

Resources, State Coalition Defines Prostitution as a Form of Violence Against Women, <http://www.angelfire.com/mn/fjc/mcbw.html> (last visited Aug. 17, 2008). In 1994, the state legislature passed a bill establishing a civil cause of action against anyone who coerces an individual into prostitution or hires an individual for use in prostitution if they knew or had reason to know that the individual was being coerced. MINN. STAT. §§ 611A.80-88 (2007). In 1996, the organization Breaking Free was established in St. Paul to assist “women and girls involved in systems of prostitution/sex trafficking and other battered women who have been involved in the criminal justice system.” Breaking Free, <http://www.breakingfree.net/> (last visited Aug. 17, 2008). In 1999, pursuant to a legislative mandate, the Hofstede Committee released a report discussing the nature and extent of commercial sexual exploitation of juveniles in Minnesota and recommended more severe penalties for perpetrators. THE HOFSTEDE COMMITTEE REPORT: JUVENILE PROSTITUTION IN MINNESOTA (1999), <http://www.heart-intl.net/HEART/080105/JuvenileProstitutionMinn.pdf>; see S.F. 3345, 80th Leg. Sess., Reg. Sess. (Minn. 1998). Also in 1999, the Minnesota legislature appropriated funds for a chemical dependency treatment center primarily targeting women exiting prostitution, which became the Women’s Recovery Center in North Oaks. S.F. 2221, 81st Leg. Sess. Reg. Sess. (Minn. 1999); see also William F. Nelson, *Prostitution: A Community Solution Alternative*, CORRECTIONS TODAY, Oct. 2004, http://www.angelfire.com/mn/fjc/Corrections_Today.pdf.

A. PROJECT GOALS AND METHODOLOGY

This needs assessment evaluates the government response to sex trafficking in Minnesota at the local, state, tribal and federal levels; identifies facilities and services currently available to trafficking victims in Minnesota; assesses their effectiveness; and makes recommendations for coordinating services to better meet the needs of sex trafficking victims statewide.

The Advocates conducted qualitative rather than quantitative research for this report,³⁰ employing the documentation and fact-finding techniques the organization has used in eighteen reports about violence against women in the Twin Cities and in countries around the world.³¹ These qualitative methods can capture details of the trafficked person's experience and barriers to an effective government response that statistics may not reveal. The methodology used the following research techniques:

- Review of local, national and international research on sex trafficking;
- Review of relevant laws, policies, regulations, and legal precedent;
- Review of media accounts of sex trafficking;
- Review of training and outreach materials;
- Discussions with thirty-two focus group participants consisting of legal, healthcare and service providers who work with trafficked persons;³²

³⁰ The annual report Human Trafficking in Minnesota published by the Minnesota Office of Justice Programs seeks to capture quantitative information about human trafficking in Minnesota. See 2007 REPORT, *supra* note 13; MINN. OFFICE OF JUSTICE PROGRAMS & MINN. STATISTICAL ANALYSIS CTR., HUMAN TRAFFICKING IN MINNESOTA: A REPORT TO THE STATE LEGISLATURE (2006), http://www.ojp.state.mn.us/cj/publications/Reports/2006_Human_Trafficking.pdf [hereinafter 2006 REPORT].

³¹ See the methodology used for this report in Appendix B *infra* p. 157.

³² Statements from focus groups are cited throughout the report. The body of the text refers to both focus group participants and interview subjects as interviewees, but the citation will clarify the nature of the source.

- Interviews with judges, prosecutors, attorneys, service providers, immigration officials, social service providers, healthcare providers, mental healthcare providers, chemical dependency providers, and other stakeholders; and
- Interviews with survivors of sex trafficking interested in telling their story, as referred by service providers.

The Advocates conducted interviews with 175 individuals throughout Minnesota.³³ These interviews form the primary body of evidence upon which this report is based. Interviewees included thirty-nine current and former law enforcement officers, ten prosecutors, six judges, four immigration officials and ten other government officials, including probation officers, victim-witness advocates and Child Protection Services employees. In addition, The Advocates interviewed sixty-eight current and former advocates from various fields, ten healthcare providers, and twenty-five attorneys, including attorneys specializing in immigration law and criminal defense. Three trafficking survivors were also interviewed, including two who currently work as advocates. Another forty individuals were contacted for an interview, but they declined to participate.

Interviewees in the Minneapolis/St. Paul metropolitan area (“Minneapolis/St. Paul” or “metro area”) reported a higher volume of known sex trafficking and public and private responses to this problem. Some service providers and law enforcement officers in Greater Minnesota, however, also reported experience with sex trafficking cases.

In an attempt to gain the most complete picture possible of the needs relating to sex trafficking in Minnesota, The Advocates asked about trafficked persons without regard to their nationality, immigration status, age, gender or level of education. Interviewees were also told that sex

³³ Four interviewees spoke off the record and are not cited in this report.

trafficking can occur without the transportation of people from point A to B or even when trafficked persons initially “consent” to the arrangement. Additionally, The Advocates told interviewees that when answering questions about sex trafficking, they should “cast the net broadly” to include a wide range of cases, including cases that may not clearly correspond with legal definitions of sex trafficking. The purpose of this approach was to obtain as much information as possible without being limited by misperceptions or confusion about the legal definitions of sex trafficking.

In this report, interview subjects are identified only by general job titles such as “law enforcement officer” or “advocate.” In cases where interviewees could be classified in different categories, The Advocates conferred with individual interviewees on the appropriate title. Anonymity allows interviewees to speak candidly about their experiences and knowledge without fear of retaliation in their professional life or from perpetrators. This protection is especially critical for interviewees who are themselves survivors of trafficking and may fear retribution from their traffickers.

Many of the needs identified in this report apply to trafficked women and girls throughout the state. Given the variety of sex trafficking situations and jurisdictional issues unique to some areas of Minnesota, however, some of the findings of this report may only apply to specific areas. Effective responses to sex trafficking must be tailored to meet the needs of specific communities, particularly given contrasts between the metropolitan area and Greater Minnesota. Moreover, responses must address the specific needs of individual victims.

This report identifies issues that require additional research and attention, including the sex trafficking of American Indian women and children; the sex trafficking of boys; the extent of trafficking among

gay, lesbian, bisexual, transgendered and queer youth; any connections between the juvenile justice system and trafficking; any connections between the child protection system and trafficking; and the connections between labor trafficking and sex trafficking.

B. DEFINING SEX TRAFFICKING

Despite the increased international focus on human trafficking since the 1990s,³⁴ no consensus exists regarding the definition of “sex trafficking.” This lack of consensus reflects a much deeper controversy about prostitution, women and consent, including questions about whether women ever “voluntarily” engage in prostitution and the level of exploitation involved in prostitution. The laws that address sex trafficking all reflect some underlying policy position regarding this controversy.

Minnesota law defines sex trafficking as a type of promotion of prostitution.³⁵ This reflects an understanding of sex trafficking as a crime closely linked to prostitution. It is important to note, however, that prostitution and sex trafficking are not synonymous under state law. Individuals can be in prostitution without a pimp or trafficker figure.

Federal law defines sex trafficking differently. Both federal and state definitions criminalize the recruiting, enticing, harboring, providing, or obtaining of a person for the purpose of a “commercial sex act” (federal law) or for “prostitution” (state law).³⁶ They differ significantly, however, in that federal law requires that traffickers use the means of “force, fraud or

coercion”³⁷ to recruit or maintain an adult in sex trafficking while Minnesota law does not.³⁸

Minnesota law recognizes that a person can never consent to being sexually exploited and considers individuals who have been prostituted by others as trafficking victims.³⁹ Federal law requires an assessment of the level of “consent” of the prostituted person in determining whether the crime of trafficking has occurred.

Commentators have noted that when the law requires an assessment of consent, the focus essentially shifts to an analysis of the “guilt” or “innocence” of a trafficked person. Prosecution for sex trafficking may then depend on a moral judgment about the victim rather than the conduct of the trafficker in furthering a criminal enterprise, regardless of the deplorable conditions or exploitative practices employed by the trafficker.⁴⁰ These judgments about the perceived culpability of the victim may impact the level of law enforcement intervention and the potential prosecution of traffickers. They may also determine the level of services a trafficked person may access.

Variances in the definition of sex trafficking can impact the protections available to trafficked persons. Because Minnesota law does not require showing that “force, fraud or coercion” was used in the sex trafficking incident, it does not consider the consent or perceived consent of the prostituted person. Therefore, courts can make a determination of culpability based on the

³⁴ The toppling of Communist regimes in Central and Eastern Europe caused a “wave of trafficking in women” to Western Europe that sparked the contemporary anti-trafficking movement. See BIRGIT LOCHER, *TRAFFICKING IN WOMEN IN THE EUROPEAN UNION* 158-161 (2007); GURI TYLDUM, MARIANNE TVEIT & ANETTE BRUNOVSKIS, *TAKING STOCK: A REVIEW OF THE EXISTING RESEARCH ON TRAFFICKING FOR SEXUAL EXPLOITATION* 9 (2005), <http://www.fafo.no/pub/rapp/493/493.pdf>. However, “[i]nternational awareness of and debates on human trafficking can be traced back to the end of the 19th century, when involuntary prostitution was put forth on the international agenda under the term ‘white slavery.’” *Id.*

³⁵ MINN. STAT. § 609.321, subd. 7a (2007). The penalties for sex trafficking are listed in Minnesota Statute section 609.322.

³⁶ Federal law also penalizes the transportation of an individual for the purpose of a commercial sex act. Minnesota law does not include this specific language. Additionally, Minnesota law prohibits the receipt of a person for the purpose of prostitution. Federal law does not contain any language about receiving for the purpose of commercial sexual exploitation. See 18 U.S.C. § 1591(a) (2007); MINN. STAT. § 609.321, subd. 7a.

³⁷ 18 U.S.C. § 1591(a). Prosecutors must prove these elements for judges to impose the longer sentences associated with the crime of sex trafficking. In cases of trafficked children, prosecutors need not prove the use of force, fraud or coercion to secure a conviction. *Id.* Similarly, trafficked children who are foreign nationals need not prove that force, fraud or coercion was used to be eligible for public benefits or immigration relief through a T visa, as discussed in the section entitled “Immigration Relief” in this report. Immigration and Nationality Act [hereinafter INA] § 101(a)(15)(T)(i)(1), 8 U.S.C. § 1101 (a)(15)(T)(i)(1) (2007) (cross-referencing 22 U.S.C. § 7102(8)(A)); see *infra* p. 79.

³⁸ Minnesota law punishes the use of “any means” in an act of sex trafficking. MINN. STAT. § 609.321, subd. 7a.

³⁹ See MINN. STAT. §§ 609.321, subds. 7a, 7b & 609.325, subd. 2.

⁴⁰ See TYLDUM, TVEIT & BRUNOVSKIS, *supra* note 34, at 14-15.

conduct of the trafficker and not on the state of mind of the woman being prostituted.⁴¹

In Minnesota, however, services and protection are often linked to the federal definition. For example, in the case of a foreign national lacking proper documentation to be in the United States, federal law provides for a specially designated category of visa for trafficking victims, called a T visa, that allows them to stay in the United States.⁴² The T visa requires applicants to demonstrate that they are a victim of a “severe form of trafficking,” which requires showing that “force, fraud or coercion” was used in the trafficking incident.

In addition, federal law provides funding to organizations providing services to victims of “severe forms of trafficking.” Service providers working pursuant to a federal grant must determine if the prostituted person fits the federal definition of trafficking to be eligible for those services. In other words, the service provider must determine whether force, fraud or coercion was used to prostitute the woman in order to provide her services.

Even if services are not restricted to persons who qualify under the federal definition, trafficked persons in Minnesota may never get referrals or information about the services available to them because of the lack of proper training for law enforcement personnel, who may be the trafficked person’s only connection to these services. Healthcare providers and organizations that do not specialize in serving victims of commercial sexual exploitation may also fail to identify trafficked women and girls, resulting in the failure to provide the specialized services these groups need.

⁴¹ There have been no cases prosecuted under the sex trafficking provision of Minnesota law since its passage in 2005. See discussion in the section “Prosecutors and Judges” *infra* p. 117.

⁴² INA § 101(a)(15)(T), 8 U.S.C § 1101 (a)(15)(T). See discussion in the section “Immigration Relief” *infra* p. 79.

In Minnesota, interviews revealed that a lack of awareness and understanding of the law is impeding the development of an effective statewide response to this problem, potentially resulting in traffickers not being prosecuted and trafficked persons not being provided remedies or offered assistance.⁴³ For example, a local law enforcement officer described recent cases involving two women he arrested for prostitution after answering their advertisements on the website Craigslist.com.⁴⁴ In both cases, women had traffickers who took some of their money, drove them to the hotel, and waited for them in the car while the women met the officer.⁴⁵ When asked whether these were sex trafficking cases, the officer said the women did not mention “any coercion or force.”⁴⁶ This is an improper standard because Minnesota law does not require those elements for the crime of sex trafficking.⁴⁷ These women were prosecuted as criminals due to a law enforcement officer’s determination that they were not victims.⁴⁸

⁴³ The inconsistent and ineffective application of the current legal definitions of sex trafficking to specific cases within the state is discussed in the section entitled “Sex Trafficking in Minnesota.” See discussions in sections “Summary of Federal and State Law and Policy” and “Misconceptions about Sex Trafficking May Exclude Trafficked Persons from Receiving Assistance and Impede Prosecution of Traffickers” *infra* pp. 28, 33.

⁴⁴ Interview with law enforcement officer (Nov. 8, 2007).

⁴⁵ One trafficker also ran a sex-related website. *Id.*

⁴⁶ *Id.*

⁴⁷ See MINN. STAT. § 609.321, subd. 7a (2007).

⁴⁸ Both women were also investigated for welfare fraud. Interview with law enforcement officer (Nov. 8, 2007). Author Maria Cianciarulo cites a case from Texas that evoked a similar response from federal law enforcement officials. After securing a ten-year sentence and \$460,000 fine against brothel owner Mi Na Malcom, Immigration and Customs Enforcement (“ICE”) officials found that only five of the forty-two women found in the brothels were eligible for immigration benefits based on their status as sex trafficking victims. The ICE Special Agent in Charge stated that, “[t]he women arrested for prostitution at the spas were not teenagers – most were mature women in their 30s. A clear majority were professional prostitutes who knew exactly what they were doing....” However, as Cianciarulo explains, the women’s situation may not have been what it seemed:

The circumstances in which the women were found and their subsequent treatment indicate that perhaps their situation was not quite as clear cut as the Immigration and Customs Enforcement agents propound. The women reported that they serviced dozens of customers a day; that they would work even “when sick, sore and bleeding”; and that the brothel owners routinely refused permission to seek medical treatment. They spoke little English, and had been trained, under threat of harm to family members back home, to

If law enforcement officials find a group of adult women in a brothel, disagreements may ensue about whether they are “trafficked persons” or women who consented to being prostituted.⁴⁹ Different actors might view the same set of facts

provide vague answers to law enforcement officials and victims’ advocates. When legal counsel from Catholic Charities arrived to interview the women, they found that the “women were treated as criminals in an environment hostile to building trust or learning their histories.” After permitting limited interviews with the Catholic Charities representatives, Immigration and Customs Enforcement transferred the women to a detention center.

Marisa Silenzi Cianciarulo, *The Trafficking and Exploitation Victims’ Assistance Program: A Proposed Early Response Plan for Victims of International Human Trafficking in the United States*, N.M. L. REV. (forthcoming 2008) (manuscript at 2-5) (citations omitted), http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=marisa_cianciarulo.

⁴⁹ The law often punishes the sex trafficking or prostitution of juveniles more severely than the sex trafficking or prostitution of adults. The law reflects the generally accepted notion that children under eighteen can never consent to prostitution or other forms of commercial sexual exploitation. For example, federal law does not require proof of force, fraud or coercion in criminal cases involving trafficking of juveniles. See 18 U.S.C. § 1591(a) (2007). Both federal and state law provide for higher penalties for the sex trafficking of juveniles. Compare *id.* § 1591(b)(1) (providing for a fine and imprisonment for not less than 15 years or for life for trafficking juveniles under fourteen), and *id.* § 1591(b)(2) (providing for a fine and imprisonment for not less than 10 years or for life for trafficking juveniles between fourteen and eighteen), and *id.* § 2422(b) (providing for a fine and between five to thirty years imprisonment for using means of interstate commerce to entice or persuade a minor to engage in prostitution), and 18 U.S.C. § 2423 (2007) (providing for a fine and imprisonment for not less than 10 years or for life for transporting a minor to engage in prostitution), with *id.* § 2421 (providing for a fine and/or up to ten years imprisonment for transporting any individual to engage in prostitution). But see *id.* § 1591(b)(1) (providing for a fine and imprisonment for not less than 15 years or for life for trafficking adults by using force, fraud or coercion). Compare MINN. STAT. § 609.322, subd. 1 (providing for up to twenty years imprisonment and/or payment of up to \$40,000 fine for sex trafficking of a minor), with *id.* § 609.322, subd. 1a (providing for up to fifteen years imprisonment and/or payment of up to \$30,000 fine for sex trafficking of an adult). Compare *id.* § 609.324, subd. 1 (providing maximum sentences of five, ten or twenty years imprisonment and/or payment between \$10,000 to \$40,000 for soliciting a minor for prostitution depending on the child’s age), with *id.* § 609.324, subd. 3 (providing up to ninety days imprisonment and/or payment of fine not more than \$1,000 for soliciting an adult for prostitution). Similarly, federal law makes it easier for trafficked foreign nationals who are juveniles to access federal benefits and receive immigration status. Juveniles trafficked to the United States are not required to cooperate with law enforcement or prove they experienced force, fraud or coercion while trafficked to receive a T visa. See INA § 101(a)(15)(T)(i)(III)(bb), 8 U.S.C. § 1101(a)(15)(T)(i)(III)(bb) (2007).

differently depending on their level of training, profession, or political agenda.⁵⁰ A recent report on law enforcement responses to human trafficking found that “in virtually all trafficking cases there is some disagreement or confusion about whether or not the individuals are victims, offenders, or occupy multiple statuses at different times.”⁵¹

In recognition of these definitional problems, it is important to clarify the meaning of terminology used in this report. As noted in the previous section on methodology, The Advocates posed open-ended questions to interviewees to obtain information about their understanding of federal and state definitions of sex trafficking. This approach also facilitated discussion of the ambiguities in the law referred to earlier in this section.

In addition, this report does not use the terms “prostitution” or “individuals in prostitution” synonymously with sex trafficking.⁵² Their use reflects the understanding that trafficked persons constitute a subpopulation of the group of individuals in prostitution, since some individuals in prostitution operate independently without a pimp or trafficker

⁵⁰ TYLDUM, TVEIT & BRUNKOVSKIS, *supra* note 34, at 9, 18. See discussion of the impact of definitional issues on coordinated responses in the section “Multi-Agency and Multi-Disciplinary Collaboration” *infra* p. 44.

⁵¹ AMY FARRELL, JACK MCDEVITT & STEPHANIE FAHY, NORTHEASTERN UNIV. INST. ON RACE AND JUSTICE, UNDERSTANDING AND IMPROVING LAW ENFORCEMENT RESPONSES TO HUMAN TRAFFICKING, INSTITUTE ON RACE AND JUSTICE 104 (2008), http://www.humantrafficking.neu.edu/news_reports/reports/documents/Understanding%20and%20Responding_Full%20Report.pdf.

⁵² The extent to which pimps or traffickers control prostitution is difficult to assess and varies. Studies have found that up to 80% of prostitution is controlled by pimps, although those studies may define prostitution differently or focus on specific prostitution venues. MICHAEL SHIVELY ET AL., FINAL REPORT ON THE EVALUATION OF THE FIRST OFFENDER PROSTITUTION PROGRAM 6 (2008) (citations omitted), <http://www.ncjrs.gov/pdffiles1/nij/grants/222451.pdf>; see also JODY RAPHAEL & DEBORAH L. SHAPIRO, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 20-21 (2002), http://www.issuelab.org/click/download2/sisters_speak_out_the_lives_and_needs_of_prostituted_women_in_chicago_a_research_study/5194sisterspeakout.pdf (finding between 23.8% and 50% of women in prostitution in various venues responding gave money to someone else and between 42.9% and 83.3% of those women risked harm if they refused to pay the money).

figure.⁵³ Accordingly, interviewees' comments and reports on prostitution may provide some insight into the situation of trafficked persons.

Key Terms in Report

Off-Street Prostitution: Forms of prostitution that occur in different venues besides the street, including saunas, massage parlors, brothels, hotels, bars, and residences. This category can also include prostitution occurring in adult-oriented businesses, such as strip clubs, peep shows, and pornography and live sex shows. Whether advertised in weekly newspapers or online ads, escort services also satisfy this definition. Because off-street prostitution often requires a degree of organization, traffickers are typically involved. It is important to note, however, that persons can be exploited simultaneously in multiple venues, both in the street and off-street. Moreover, individuals in off-street prostitution venues may or may not have a pimp or trafficker.

Patron: Minnesota law defines a patron as “an individual who hires or offers or agrees to hire another individual to engage in sexual penetration or sexual contact.”⁵⁴

Pimp or Trafficker: An individual who recruits, entices, harbors, transports, provides, receives, or obtains a person for a commercial sex act or prostitution, as defined respectively in federal and Minnesota law.⁵⁵ These terms are used synonymously in this report.

Prostitution: State law defines this term as “engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact.”⁵⁶

Sex Trafficking: This term references the federal and state legal definitions.

Federal law defines sex trafficking as using force, fraud or coercion to recruit, entice, harbor, transport, provide, or obtain a person for the purpose of a commercial sex act.⁵⁷ Force, fraud and coercion are not required in cases of trafficked juveniles. In this report, references to the federal law on “sex trafficking” refer specifically to 18 U.S. Code section 1591, not other sections of the U.S. Code.

⁵³ It is difficult to collect data on human trafficking victims, so studying data from groups which may contain a subpopulation of human trafficking victims may provide some insight into experiences of human trafficking victims. See Tyldum & Brunkovskis, *supra* note 19, at 26.

⁵⁴ MINN. STAT. § 609.321, subd. 4 (2007). This report uses this term in its legal sense. Its use is in no way intended to condone or minimize patrons' actions.

⁵⁵ See 18 U.S.C. § 1591(c)(1) (2007); MINN. STAT. § 609.321, subd. 7 (subdivision 7a defines sex trafficking). The Advocates uses these terms in their legal sense. In other words, once an individual performs these acts, they have committed the crime of sex trafficking. Trafficked persons, however, may not consider the pimp or trafficker as fulfilling that role. For example, a woman may consider her pimp as her boyfriend or she may even be married to him. These emotional ties may influence a trafficked person's perception of her situation and can pose a challenge to the prosecution of her traffickers or to service providers assisting trafficked persons. See Interview with advocate (Oct. 3, 2007); Interview with prosecutor (Dec. 10, 2007); Interview with advocate (Feb. 14, 2008); Interview with law enforcement officer (Jan. 3, 2008).

⁵⁶ MINN. STAT. § 609.321, subd. 9.

⁵⁷ 18 U.S.C. § 1591(a).

Minnesota law defines sex trafficking as “receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual.”⁵⁸ This crime is punished under Minnesota Statute section 609.322.

Sex Trafficking Victim: State law defines this term as anyone who has been received, recruited, enticed, harbored, provided, or obtained by any means for the purpose of prostitution.⁵⁹

Sexual Contact: State law defines this term to include any of the following acts, “if the acts can reasonably be construed as being for the purpose of satisfying the actor’s sexual impulses:”

- (i) the intentional touching by an individual of a prostitute’s intimate parts; or
- (ii) the intentional touching by a prostitute of another individual’s intimate parts.⁶⁰

Sexual Exploitation: Includes the trading of sex for money, clothing, food, drugs, shelter or favors. Prostitution “is an industry of exploitation that can include strip clubs, massage parlors, saunas, pornography, street walking, live sex shows, phone sex, prostitution rings, international and domestic trafficking, internet pornography, escort services, peep shows, ritual abuse, and mail-order bride services.”⁶¹ This report uses this term more broadly than the terms “prostitution” or “commercial sex act” as they are defined in state and federal law, respectively.

Sexual Penetration: State law defines this term to include any of the following acts, if for the purpose of satisfying sexual impulses: “sexual

intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion however slight into the genital or anal openings of an individual’s body by any part of another individual’s body or any object used for the purpose of satisfying sexual impulses. Emission of semen is not necessary.”⁶²

Street Prostitution: Solicitation and engagement in prostitution that is based in the street, as opposed to indoors. This category may include individuals involved in prostitution for drugs from drug dealers, as well. Persons in street prostitution may or may not have a pimp or trafficker.

Survival Sex: Sex acts exchanged for clothes, food, drugs, a place to stay or other items. Typically, there is no trafficker involved in these situations. While these acts constitute sexual exploitation, they may not necessarily constitute sex trafficking.⁶³

Trafficked Persons or Trafficked Women and Girls:

Persons who have been transported, received, recruited, enticed, harbored, provided, or obtained by another to perform commercial sex acts or acts of prostitution. This definition is not a legal one and is more general than the definition of “sex trafficking victim” under state law or “victim of a severe form of trafficking” under federal law.

Victim of a Severe Form of Trafficking: Federal law defines this as a victim of “[s]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.”⁶⁴ Trafficking victims must meet this standard to receive immigration benefits, public assistance and services from federally-funded non-profit organizations.

⁵⁸ MINN. STAT. § 609.321, subd. 7a.

⁵⁹ *Id.* § 609.321, subd. 7b.

⁶⁰ *Id.* § 609.321, subd. 10.

⁶¹ Christine Stark & Carol Hodges, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in PROSTITUTION, TRAFFICKING, AND TRAUMATIC STRESS 17, 19 (Melissa Farley ed., 2003).

⁶² MINN. STAT. § 609.321, subd. 11.

⁶³ See TRUDEE ABLE-PETERSON & RICHARD A. HOOKS WYMAN, BEST PRACTICES AND STANDARDS IN OUTREACH METHODOLOGY TO HOMELESS YOUTH, STREETWORKS 107-08 (2006) (discussion of working with young people engaging in survival sex).

⁶⁴ 22 U.S.C. § 7102(8)(a), (13) (2007).

C. KEY FINDINGS AND RECOMMENDATIONS

This report's key findings and recommendations fall into seven broad categories: (1) priority findings and recommendations; (2) protecting trafficked persons; (3) holding traffickers and patrons accountable; (4) improving the coordinated community response; (5) changing laws, regulations and rules; (6) increasing training; and (7) increasing funding for anti-trafficking efforts. Findings and recommendations are presented in numbered pairs below. Recommendations that offer further detail are also embedded in the text of the report.

The section immediately below entitled "Priority Findings and Recommendations" is a summary of the most urgent needs identified by the authors.

1. PRIORITY FINDINGS AND RECOMMENDATIONS

Finding 1.1: Federal laws on sex trafficking are ineffective due to the difficulty in proving "force, fraud or coercion." Traffickers are often not prosecuted for the trafficking offense and trafficked persons are denied access to victim assistance, including immigration relief, public benefits, and services from non-profit organizations.

Recommendation 1.1: Congress should amend the federal definition of sex trafficking to eliminate the requirement to show "force, fraud or coercion" in order to prosecute traffickers and qualify for victim assistance, including immigration relief, public benefits and federally-funded services from non-profit organizations.

Finding 1.2: Unlike the federal sex trafficking law, Minnesota law recognizes that a person can never consent to being sexually exploited and considers individuals who have been prostituted "by any means" as trafficking victims. Minnesota law, however, excludes some victims of commercial

sexual exploitation, such as those exploited in stripping, by limiting the definition of sex trafficking to include only sexual contact or sexual penetration.

Recommendation 1.2: The Minnesota State Legislature ("Legislature") should expand the definition of sex trafficking⁶⁵ to include all victims of commercial sexual exploitation and punish all traffickers.⁶⁶

Finding 1.3: With some notable exceptions, law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and the general public lack awareness about sex trafficking and fail to properly identify trafficked persons. As a result, trafficking victims are sometimes prosecuted for crimes related to the trafficking scheme and do not receive assistance.

Recommendation 1.3: Law enforcement officers, prosecutors, judges, immigration officials, social service workers, healthcare providers, non-profit organizations, and others responding to trafficking cases should receive training relevant to their profession on properly identifying and assisting trafficked persons as defined by federal and state law. The Legislature should consider amending relevant statutes on continuing professional education to require education about sex trafficking and the unique needs of trafficked persons. The Legislature should appropriate funds for a public

⁶⁵ MINN. STAT. § 609.321, subd. 7a (2007).

⁶⁶ Although a bill was introduced in the Minnesota legislature in 2008 to expand the definitions of both labor and sex trafficking to include "forced sexual performance" and "forced performance involving nudity" as forms of trafficking, it did not pass. H.F. 3059, 85th Leg. Sess., Reg. Sess. §§ 4-6, 9 (Minn. 2008), <https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=H3059.0.html&session=ls85> (companion bill S.F. 2618); Minn. State Legislature, SF 2618 Status in Senate for Legislative Session 85, https://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=Senate&f=SF2618&ssn=0&y=2007 (last visited Aug. 17, 2008); Minn. State Legislature, HF 3059 Status in House for Legislative Session 85, https://www.revisor.leg.state.mn.us/revisor/pages/search_status/status_detail.php?b=House&f=HF3059&ssn=0&y=2007 (last visited Aug. 17, 2008).

awareness campaign about sex trafficking in Minnesota.

Finding 1.4: Services and public benefits for trafficked persons in Minnesota are inadequate because of insufficient or narrowly-restricted funding.

Recommendation 1.4: The Legislature should appropriate funding for services and public assistance for trafficked persons based on the definitions of “sex trafficking” and “sex trafficking victim” outlined in Minnesota law, not federal law. It should also ensure that receipt of those services and public assistance is not conditioned on victims’ nationality, immigration status or participation in the investigation or prosecution of sex traffickers. Congress should amend relevant federal laws to reflect these principles.

Finding 1.5: With notable exceptions,⁶⁷ law enforcement, prosecutors, and judges frequently do not hold sex traffickers and patrons accountable for sex trafficking and prostitution crimes in Minnesota.

Recommendation 1.5: Federal, state, tribal, and local law enforcement officials and prosecutors should prioritize enforcement of sex trafficking and prostitution laws against sex traffickers and patrons. Prosecutors should seek and judges should impose the appropriate sentences for sex traffickers and patrons. The Legislature should consider amending Minnesota Statutes sections 609.322 and 609.324 to reflect mandatory minimum sentences and increased penalties for these crimes.

Finding 1.6: Arresting and prosecuting trafficked persons for crimes that occur as a result of being trafficked further harms trafficked persons.

Recommendation 1.6: Federal, state, tribal, and local law enforcement agencies and prosecutors should prioritize the protection of trafficked persons over their arrest and prosecution for prostitution and other offenses related to the trafficking situation. These authorities should recognize that other offenses may be a consequence of having been trafficked.

2. PROTECTING TRAFFICKED PERSONS

Finding 2.1: Trafficked persons need greater access to services tailored to meet their specific needs, including case management, counseling, housing, healthcare, language interpretation and legal representation.

Recommendation 2.1: The Legislature should appropriate funding for these services. Community leaders should work together to ensure there are adequate services for trafficked persons that are tailored to meet their specific needs. These services should include case management, housing, healthcare, language interpretation, and legal services. Housing resources should include emergency, transitional, and permanent housing facilities. Healthcare services should address the trafficked persons’ pre-existing health issues and the immediate and long-term consequences of the trafficking experience, including substance abuse and chemical dependency treatment. Trafficked persons should be provided legal services, including both immigration and criminal defense attorneys, to protect their rights and ensure their access to immigration remedies. Law enforcement and prosecutors should ensure that legal and other types of assistance are provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers.⁶⁸ These services

⁶⁷ See discussion of measures to hold patrons accountable in St. Paul in the section “Law Enforcement Agencies” *infra* p. 94.

⁶⁸ U.N. Econ. & Soc. Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations Commissioner for Human Rights to the Economic and Social Council*, princ. 9, U.N. Doc. E/2002/68/Add. 1 (May 20, 2002).

should be provided equally and confidentially to U.S. citizens and foreign nationals and be sensitive to age, culture, language, sexual orientation and gender identity.

Finding 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack screening protocols to identify trafficked persons and to screen individuals, especially juveniles, for the risk factors that may create vulnerability to sex trafficking.

Recommendation 2.2: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop screening protocols based on model practices to identify trafficked persons and to screen for risk factors for sex trafficking. Training should be provided on how to effectively administer the screening protocols.

Finding 2.3: Many law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases lack protocols for effectively responding to trafficked persons and sex trafficking cases.

Recommendation 2.3: Law enforcement agencies, healthcare providers, service providers, and other first responders to sex trafficking cases should develop response protocols based on model practices, so they can effectively serve and assist trafficked persons and hold traffickers accountable without further harming trafficked persons.⁶⁹ Training should be provided on how to effectively administer the response protocols.

Finding 2.4: Trafficked persons fear the criminal and immigration consequences of being trafficked for commercial sexual exploitation, particularly arrest, detention, and deportation.

Recommendation 2.4: Federal law enforcement agencies, prosecutors, and immigration officials should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, prosecuted, or removed from the country for the illegality of their entry into or residence in the United States. Federal, state, tribal, and local law enforcement agencies and prosecutors should institute policies and procedures that ensure that trafficked persons, including those defined as victims under Minnesota law, are not detained, charged, or prosecuted for their involvement in unlawful activities to the extent that such involvement is a consequence of having been trafficked.

Finding 2.5: Trafficked persons may be involved in criminal proceedings against sex traffickers. These criminal proceedings may cause further harm to trafficked persons.

Recommendation 2.5: Prosecutors and judges should institute policies and procedures that ensure that any legal proceedings involving trafficked persons as victims or witnesses are not prejudicial to their rights and their physical or psychological well-being. Judges should ensure fair and impartial proceedings, including fair determinations about the admissibility and prejudicial nature of evidence in sex trafficking cases.

Finding 2.6: Interviews revealed that there are cases in which police officers harass and abuse women in prostitution, some of whom may be trafficking victims under federal or state law.

Recommendation 2.6: Federal, state, tribal and local authorities should investigate and punish such violations to the fullest extent of the law. The Minneapolis and St. Paul Police Departments should conduct an internal investigation into allegations of police misconduct and ensure that policies for filing complaints for police misconduct are accessible and effective.

⁶⁹ The Sergeant Gerald D. Vick Human Trafficking Task Force has created response protocols for use by its members. See *infra* p. 44.

3. HOLDING TRAFFICKERS AND PATRONS ACCOUNTABLE

Finding 3.1: With some exceptions, the government response to sex trafficking in Minnesota currently focuses on the arrest, prosecution, and punishment of prostituted women rather than sex traffickers. This misplaced focus leads to harmful criminal and/or immigration consequences for trafficked persons.

Recommendation 3.1: Federal, state, tribal, and local law enforcement agencies and prosecutors should focus their efforts on holding sex traffickers or pimps accountable. Federal and state prosecutors should aggressively prosecute sex traffickers for trafficking, its component acts and related conduct. They should seek sentences that reflect the severity of the offense. They should also dedicate resources to keep crime victims and witnesses, especially children, safe during investigations and criminal proceedings.

Finding 3.2: The government response to sex trafficking in Minnesota, with limited exceptions, effectively tolerates patrons buying sex from both trafficked persons and prostituted persons. This approach indirectly fuels the demand for women, girls, and other vulnerable populations as commodities in violation of their fundamental human rights.

Recommendation 3.2: Federal, state, tribal, and local law enforcement agencies and prosecutors should increase their enforcement efforts against individuals who buy sex. Prosecutors should prosecute patrons for soliciting or engaging in prostitution and other crimes committed against trafficked persons.

4. IMPROVING THE COORDINATED COMMUNITY RESPONSE

Finding 4.1: Most communities throughout the State of Minnesota have not developed an interagency, interdisciplinary task force or collaborative group to work together to respond to sex trafficking cases, assist trafficked persons, and hold sex traffickers accountable.⁷⁰ As a result, the professionals most often involved in sex trafficking cases do not engage in regular communication, data sharing, common prosecution methodologies, and joint investigations. In addition, professionals in different jurisdictions do not always cooperate to respond to sex trafficking cases across jurisdictions.

Recommendation 4.1: The Legislature should appropriate funding for coordinated community response teams aimed at addressing human sex trafficking in Minnesota. Government and community leaders should expand the use of task forces such as the Sergeant Gerald D. Vick Human Trafficking Task Force to include other communities in Minnesota, or similarly organized, regionally-based task forces should be created. The goal should be to create a network of professionals able to respond immediately to sex trafficking cases; communicate regularly about cases, good practices, and obstacles to communication; develop systems for data collection and sharing; and develop common prosecution methodologies, policies, and procedures for joint or multi-jurisdictional investigations among federal, state, tribal, and local agencies.

5. AMENDING LAWS, REGULATIONS AND RULES

Finding 5.1: Immigration relief in the form of a T visa does not meet the needs of trafficked persons

⁷⁰ The exceptions here are the Sergeant Gerald D. Vick Human Trafficking Task Force and Ramsey County Safe Harbors Youth Intervention Project. See discussion in the section "Multi-Agency and Multi-Disciplinary Collaboration" *infra* p. 44.

because its restrictive eligibility requirements limit the number of trafficked persons who qualify. Specifically, the T visa is overly burdensome in its requirements to: 1) show traffickers' use of "force, fraud, or coercion" in the trafficking scheme; 2) demonstrate that the applicant was trafficked to the United States; 3) show "extreme hardship involving unusual and severe harm" if the applicant were removed from the United States; and 4) assist law enforcement in the investigation or prosecution of the trafficker.

Recommendation 5.1: Congress should amend federal law to eliminate the requirement to demonstrate "force, fraud, or coercion" to receive a T visa. The law should be amended to allow foreign nationals to apply for a T visa regardless of whether they were trafficked to or within the United States. Congress should amend the law to allow applicants to demonstrate "extreme hardship" upon their removal from the United States, instead of the higher standard of "extreme hardship involving unusual and severe harm." Congress should also amend the law to allow applicants to qualify for a T visa if they either cooperate with law enforcement or demonstrate "extreme hardship." Both of these elements should not be required.⁷¹

Finding 5.2: Many trafficked persons applying for the U visa or T visa also need to apply for a waiver to remedy the negative immigration consequences of past immigration violations or criminal histories due to having been trafficked. Without this waiver, applicants cannot receive a U visa or T visa. However, the waiver has a mandatory \$545 fee that applicants must pay, making it cost-prohibitive for many trafficked persons.

Recommendation 5.2: Citizenship and Immigration Services should amend the regulations to allow for

qualified T and U visa applicants to waive the fee for this application.

Finding 5.3: Evidence of law enforcement certifications for U visas and T visas is sometimes used to diminish an applicant's credibility in criminal proceedings against their traffickers. This evidence also compromises the confidentiality of the U visa or T visa application. Evidence of previous sexual conduct may also be used against trafficked persons to diminish their credibility as witnesses. The rules of evidence do not contain procedural safeguards limiting the introduction of such evidence, as they do for criminal sexual conduct cases. Both types of evidence may deter trafficked persons from seeking immigration relief and deny them the protection they are entitled to as crime victims.

Recommendation 5.3: Congress, the Legislature and the federal and state judiciary should amend the federal and state rules of evidence to exclude evidence of the details contained in a law enforcement certification for a T visa or U visa application. They should also amend the rules to enact procedural safeguards limiting the introduction of evidence of trafficking victims' previous sexual conduct.

Finding 5.4: At the state level, sex traffickers and pimps receive sentences that are disproportionately low compared to other felony crimes and which cannot be enhanced based on prior convictions.

Recommendation 5.4: The Legislature should amend state law to ensure that sentences for sex trafficking are proportionate to other felony offenses for crimes against persons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for sex trafficking offenses. The Department of Public Safety should publish these data in its annual report on human trafficking.

⁷¹ WOMEN'S COMM'N FOR REFUGEE WOMEN & CHILDREN, THE U.S. RESPONSE TO HUMAN TRAFFICKING: AN UNBALANCED APPROACH 4 (2007), http://www.womenscommission.org/pdf/us_trfkg.pdf.

Finding 5.5: At the federal level, prosecutors must prove that traffickers used “force, fraud, or coercion” against adult victims to secure the high sentences provided by federal law. Prosecutors often have difficulties proving these elements due to insufficient evidence, which leads to traffickers receiving lower sentences for non-trafficking charges.

Recommendation 5.5: Congress should review and amend federal law to establish an appropriately high minimum sentence for all sex traffickers, regardless of whether there is a showing of “force, fraud, or coercion.”

Finding 5.6: At the state level, patrons are often not held accountable for soliciting or engaging in prostitution with trafficked or prostituted persons.

Recommendation 5.6: The Legislature should amend Minnesota law to increase penalties against patrons. The law should also be amended to allow for sentence enhancements. The Minnesota Judicial Branch should collect data on the number of sentences pronounced for soliciting or engaging in prostitution. The Department of Public Safety should publish these data in its annual report on human trafficking.

6. INCREASING TRAINING

Finding 6.1: Widespread misunderstanding of the definition of sex trafficking results in harm to trafficked persons and allows traffickers and patrons to escape accountability.

Recommendation 6.1: The Legislature should appropriate funding for training on sex trafficking for both governmental and non-governmental agencies throughout the State of Minnesota. This training should address common misconceptions about the definition of sex trafficking, including the fact that sex trafficking may or may not involve 1) foreign nationals; 2) transportation or movement across

borders; or 3) “force, fraud, or coercion.” Training should also explain that in some cases sex trafficking overlaps with prostitution and that many prostituted women and girls qualify as victims of sex trafficking under federal or state law. Training should educate participants on the state and federal anti-trafficking laws. Advanced training should be available to governmental and non-governmental actors specializing in sex trafficking cases.

Finding 6.2: A lack of awareness about the unique physical and psychological health needs of trafficked persons, which stem from pre-existing issues, the trafficking experience and the post-trafficking experience, results in the failure to meet the trafficked persons’ needs.

Recommendation 6.2: The Legislature should appropriate funding for training on the unique health issues of trafficked persons for both governmental and non-governmental agencies throughout the State of Minnesota. Healthcare providers should provide opportunities for such training to their employees.

Finding 6.3: Prejudicial attitudes about prostitution compromise the effectiveness of efforts to protect and assist trafficked persons.

Recommendation 6.3: The Legislature should appropriate funding for awareness-raising campaigns on sex trafficking that target the general public. These programs should be offered by non-profit organizations and others with experience assisting trafficked persons. These programs should promote tolerance and respect for the fundamental human rights and dignity of trafficked persons and all individuals in prostitution. The campaigns should include information about the harm women experience in prostitution and raise awareness about the role of patrons in fueling the demand for trafficked women.

7. INCREASING FUNDING FOR ANTI-TRAFFICKING EFFORTS

Finding 7.1: Funding for anti-trafficking efforts in Minnesota does not currently meet the needs of trafficked persons or those assisting them.

Recommendation 7.1: The Legislature should designate long-term funding for anti-trafficking measures. This funding should not adversely impact funding for other crime victims, including victims of domestic violence or sexual assault. The Legislature should also allocate funding for sex trafficking to governmental and non-profit agencies working on related issues to ensure they have adequate funding to address sex trafficking cases. Congress should support such funding at the federal level. Federal and state government should allocate funding to assist trafficking victims regardless of their nationality or immigration status, including funding for educational, employment, healthcare, housing, legal services, interpretation, and social services. Wherever possible, funding should be available and directed to non-profit organizations that specialize in providing direct services to trafficked and prostituted persons.

Finding 7.2: At the state level, funding for anti-trafficking efforts in Minnesota does not currently meet the needs of local law enforcement agencies or state prosecutors.

Recommendation 7.2: The Legislature should appropriate significant funds for investigation and prosecution of sex traffickers and patrons, including funds dedicated to keeping victims and witnesses safe during investigations and criminal proceedings, and for programs aimed at stopping the demand. Allocation of these funds, however, should not compromise the amount of funding allocated to assisting trafficked persons or other crime victims.