

# The Judicial Red Light in the Fight Against Human Trafficking: What Texas Can Learn from New York's Prostitution Courts

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## Part I: Introduction

On October 28, 2000, the U.S. Legislature enacted the Trafficking Victims Protection Act ("TVPA"), forever changing how the law treats victims of commercial sex and labor trafficking.<sup>1</sup> In the thirteen years since the enactment and subsequent reauthorizations of the TVPA, states have taken action to amend their own laws and practices; specifically, state courts have concentrated on commercial sex trafficking, which accounts for over 90% of all trafficking prosecution.<sup>2</sup> Courts have shifted their focus, treating individuals charged with prostitution as potential victims of trafficking rather than wrongdoers.

This paper will focus on commercial sex trafficking adjudication in Houston, Texas and New York State. It will look at the law, dedicated courts, and services the courts provide. Through an examination of each, there are lessons to be learned from New York's model.

## Part II: The GIRLS Court of Harris County, Texas

### A. Law Against Traffickers

In 2003, the Texas Legislature passed a law that today makes: "traffic[ing] of another person and, through force, fraud, or coercion, caus[ing] the person to engage in" commercial sexual acts, a crime.<sup>3</sup> Texas became the second state in the country to formally address human trafficking through legislative change.<sup>4</sup> At the Department of Justice's suggestion, in 2008 the Office of the Attorney General put together a report of suggestions to combat trafficking at the state level; one such suggestion was the creation of a human trafficking task force comprised of public and private-sector experts.<sup>5</sup> The Texas Human Trafficking Prevention Task Force was formally created and codified in 2009 under Section 402.035 of the Texas Government Code.<sup>6</sup> The 83<sup>rd</sup> Legislature recently passed a bill to extend the Task Force until 2015.<sup>7</sup> The Task Force is required, by request

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<sup>1</sup> 22 U.S.C.A. § 7101 (West 2000).

<sup>2</sup> John A. Martin et al, *Trends in State Courts*, 2013 Nat'l Ctr. For St. Cts.18.

<sup>3</sup> Tex. Penal Code Ann. § 20A.02 (West 2011).

<sup>4</sup> Dawn Lew, Presentation on Children at Risk's Human Trafficking Initiative at University of Houston Law Center (Dec. 5, 2013).

<sup>5</sup> Derek Pennartz, *The Irony of the Land of the Free: How Texas is Cleaning Up its Human Trafficking Problem*, 12 Tex. Tech Admin. L.J. 367, 374 (2011).

<sup>6</sup> *Id.*, at 375; Tex. Gov't Code Ann. § 402.035 (West, WestLaw through 2013 Sess.).

<sup>7</sup> Gov't § 402.035.

of a county or district attorney or judge, to “assist and train the judge or the judge's staff or the attorney or the attorney's staff in the recognition and prevention of human trafficking.”<sup>8</sup>

In addition to the Task Force, the legislature passed a bill this past session creating a joint interim committee to study human trafficking in Texas and report its findings to the 84<sup>th</sup> Legislature.<sup>9</sup> The authors recognized Texas as a state at a higher risk of trafficking, due to its proximity to the Mexican border, size, and demographics.<sup>10</sup> In the U.S., there are approximately 200,000 American children at high risk for sex trafficking, and with Texas as a high-risk trafficking state, a large number of these children are likely living within its borders.<sup>11</sup>

According to a 2013 report by the Polaris Project, Texas is considered a “Tier 1” state, with only five states receiving a higher grade.<sup>12</sup> The rankings were based on the states’ enactment of laws in ten categories: (1) sex trafficking, (2) labor trafficking, (3) asset forfeiture for human trafficking and/or investigative tools for law enforcement, (4) training on human trafficking for law enforcement and/or human trafficking commission or task force, (5) posting a human trafficking hotline, (6) safe harbor laws protecting sexually exploited minors, (7) a lower burden of proof for sex trafficking of minors, (8) victim assistance, (9) access to civil damages, and (10) vacating convictions for sex trafficking victims.<sup>13</sup> Texas met the requirements in all categories, except for (6) safe harbor laws, only partially meeting requirements, and (10) vacating convictions for sex trafficking victims.<sup>14</sup>

In 2010, the Texas Supreme Court reinterpreted the law on juvenile prostitution with its groundbreaking decision, *In re B.W.* The Court held that, since a child under fourteen cannot legally consent to sex, a child under fourteen cannot be adjudicated for prostitution.<sup>15</sup> For the first time, the court recognized that B.W.’s *criminal delinquency* did not prove her capacity to commit the crime; rather, the years of *victimization* she suffered, at home and on the streets, caused this behavior.<sup>16</sup> The court stated, “[c]hildren are the victims, not the perpetrators, of child prostitution.”<sup>17</sup> Ann Johnson represented the petitioner, B.W., and later went on to become a human trafficking special prosecutor for the Harris County District Attorney.

While Texas’ safe harbor laws do not meet the Polaris standard, newly enacted legislation has given the judiciary discretion to decriminalize juvenile prostitution with origins in commercial sex trafficking. Under Section 54.0326 of the Texas Family Code, when a juvenile is prosecuted and

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<sup>8</sup> Gov’t § 402.035(d)(7).

<sup>9</sup> H. Con. Res. 57, 2013 Leg., 83rd Sess. (Tex. 2013).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *2013 State Ratings*, Polaris Project Pamphlet (Polaris Project, Wash., D.C.), 2013, at 1, 2.

<sup>13</sup> Polaris Project Pamphlet, at 3.

<sup>14</sup> *Id.*

<sup>15</sup> *In re B.W.*, 313 S.W.3d 818, 824 (Tex. 2010).

<sup>16</sup> *Id.*, at 825-26.

<sup>17</sup> *Id.*, at 826.

might be a victim of trafficking under Section 20A.02 of the Penal Code, the juvenile court can elect to defer adjudication until the juvenile turns eighteen at the juvenile's request, so long as the juvenile participates in an approved rehabilitation program.<sup>18</sup> In addition, the court must dismiss the case and seal the record upon completion.<sup>19</sup>

In 2004, the US Attorney's Office in the Southern District of Texas formed the Human Trafficking Rescue Alliance ("HTRA") to strengthen the relationship between Non-Governmental Organizations ("NGOs") and Law Enforcement Agencies ("LEAs"); by pooling resources, every organization in the Houston area can contribute to the efforts against human trafficking without overlap.<sup>20</sup> The HTRA is comprised of three sections: law enforcement, victim services, and core training. By 2011, 189 individuals had been identified as potential trafficking victims, and 33 individuals had been charged with federal trafficking offenses.<sup>21</sup>

## **B. Law Against the Victim**

While ideally the law would have strict exceptions for victims of trafficking, it took the Texas Legislature and the country years to recognize the difference between a victim and an offender. Traditionally, victims of human trafficking were prosecuted under Section 43.02 of the Texas Penal Code. The crime of prostitution is defined as "knowingly: (1) offer[ing] to engage, agrees to engage, or engag[ing] in sexual conduct for a fee; or (2) solicit[ing] another in a public place to engage with the person in sexual conduct for hire;" the statute now references Section 20A.02 as a defense to the crime.<sup>22</sup>

Texas defines the acts of those prosecuted by the Juvenile Justice System as either delinquent conduct or conduct indicating need for supervision ("CINS"). Delinquent conduct, in reference to sex trafficking victims, is "conduct...that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail," and CINS conduct "violates the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or the penal ordinances of any political subdivision of this state."<sup>23</sup>

These statutes make it possible for law enforcement to initially arrest juvenile victims of sex trafficking. In the past, Harris County viewed arrest as the key to helping victims.<sup>24</sup> As soon as the children were in the system, they were off the streets and away from their pimps. However, the victims traditionally would serve time in a juvenile detention center and subsequently end up back

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<sup>18</sup> Tex. Fam. Code Ann. § 54.0326 (West, WestLaw through 2013 Sess.); Penal § 20A.02 (West, WestLaw through 2013 Sess.).

<sup>19</sup> Fam. § 54.0326(c); Fam. § 58.003(c-7).

<sup>20</sup> Panel Presentation, Human Trafficking Rescue Alliance: Houston's Success at the Tex. Abolitionist Workshop (Sept. 24, 2011) (slides available at <http://www.houstonrr.org/wp-content/uploads/2011/11/HTRA-Task-Force.pdf>).

<sup>21</sup> *Id.*

<sup>22</sup> Penal § 43.02.

<sup>23</sup> Fam. § 51.03(a), (b)(1).

<sup>24</sup> Ann Johnson, Presentation on State Statutes and Legislative Efforts to Combat Trafficking at University of Houston Law Center (Sept. 26, 2013).

on the streets or under the care of their trafficker parents.<sup>25</sup> In response, the 82<sup>nd</sup> Legislature enacted two laws: giving law enforcement (1) the discretion to bring a child to CPS or into detention, avoiding criminal charges, if they suspect the child is a victim of trafficking, and (2) the ability to take children into custody if their parents are their traffickers.<sup>26</sup>

The high risk of child sex trafficking, emphasis on human trafficking prevention, broad discretion given to the judiciary of juvenile courts, and need for services makes Texas a great fit for juvenile sex trafficking-dedicated courts. Even before the recent safe harbor laws took effect, giving broad discretion to any juvenile adjudication stemming from human trafficking, one Harris County Court decided to change the status quo in Texas.

### C. The “GIRLS” Court of Harris County, Texas

In 2010, Judge Mike Schneider of the 315<sup>th</sup> Juvenile Court, began a special docket called “Sobriety Over Addiction and Relapse (SOAR)” to promote rehabilitation for juveniles with serious addiction problems.<sup>27</sup> He, along with Associate Judge Angela Ellis, was confronted by many girls whose drug issues overlapped with participation in prostitution.<sup>28</sup> Often, these girls were victims of “trauma and sexual abuse” and turned to prostitution to escape, to fund a drug addiction, or to support their families.<sup>29</sup>

Around this same time, the *In re B.W.* opinion came out, shifting the perception of juveniles involved with prostitution from actors to victims. Assistant Deputy Director of the Health Services Division of the Harris County Juvenile Probation Department, Rebecca de Camara, recalled that “she (and others) were frustrated and concerned that they were sending girls away from their court with global issues who needed far more help than what their court provided.”<sup>30</sup> That’s when Judge Ellis came up with a solution to this increasingly relevant problem.

In 2011, after securing funding, Judge Ellis created the Growing Independence and Restoring Lives, a.k.a. “GIRLS,” Court.<sup>31</sup> Judge Ellis noted the program was started to “let these girls know there are people in the world who don’t have inappropriate expectations of them, who care about them and are committed to them, and to decriminalize juvenile prostitution.”<sup>32</sup> The Court was built upon a model emphasizing supervision and therapeutic services from clinical partners around

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<sup>25</sup> *Id.*

<sup>26</sup> Fam. § 262.104(a)(1),(3); Fam. § 161.001(1)(l)(xv-xvi).

<sup>27</sup> *Juvenile Drug Court “SOARS”*, Harris Cnty. JDAI Newsl. (Harris Cnty. Juvenile Det. Alts. Initiative, Houston, Tex.), July 2011, at 2.

<sup>28</sup> *ALF Forged Connections to Help Create the Harris County GIRL Court and Decriminalize Girls Who are Victims of Child Sexual Abuse*, Am. Leadership F. Hous., at 1 (last visited Nov. 12, 2013), <http://www.alfhouston.com/clientuploads/Collaborations/GIRLS%20Court.pdf>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Telephone Interview with Constance Rossiter, Soc. Responsibility Dir., Trafficked Pers. Alliance Program of YMCA Int’l Servs. (Nov. 20, 2013).

<sup>32</sup> Am. Leadership F. Hous., at 1.

Harris County.<sup>33</sup> If the court could not provide the resources these girls needed, they would likely go back to their pimps or troubled homes; instead, they are given the opportunity to complete the program and seal their records, giving them the necessary skills to live a productive life.<sup>34</sup>

While the GIRLS Court was supported by many public officials, like Ms. Johnson and Ms. de Camara, there was also a need for private community organizations to contribute. While the court could help the girls avoid time at a detention facility and convictions on their records, it needed partners to help the girls physically and mentally get to a place of stability. Often, the girls would enter the program unaware they had been victimized at all, and since they had been severely traumatized, would instead resist treatment.<sup>35</sup> Judge Ellis found the court constantly evolving and struggled to balance the child's welfare with the juvenile justice system.<sup>36</sup> Ultimately, the GIRLS Court looked to community partners, like the YMCA International and Freedom Place, to do for the girls what the court could not.

#### **D. Private Community Organizations**

The YMCA International Services' Trafficked Persons Assistance Program was established in 2003.<sup>37</sup> The program was developed to identify and assist human trafficking victims, through client services and community outreach, regardless of the victim's origin.<sup>38</sup> They provide a host of services, including: "Emergency housing, safety planning, food, clothing; [l]egal/ immigration assistance; [m]edical care; [a]lcohol and substance abuse counseling; [m]ental health services/ trauma recovery; [l]ife-skills/ education training; [j]ob training/ employment; [f]amily reunification; [e]motional support; [c]onfidentiality; [c]riminal justice system advocacy; [and] [s]ocial services advocacy."<sup>39</sup>

Constance Rossiter, Social Responsibility Director of the Trafficked Persons Alliance Program ("TPAP") at YMCA International, explained her organization's involvement with the GIRLS court; Ms. Rossiter also serves on the HTRA as part of both the victim services and core training sections.<sup>40</sup> In 2011, the GIRLS court and YMCA International both received funding to work with domestic victims.<sup>41</sup> Prior to that, TPAP had primarily worked with foreign trafficking victims, so the court and TPAP worked together to figure out how to best serve these girls. TPAP provides two different services to the GIRLS Court. First, each victim in the court is appointed a case manager, but the court is often overfilled; this is when TPAP will step in and provide a case

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<sup>33</sup> Am. Leadership F. Hous., at 1.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, at 2-3.

<sup>36</sup> *Id.*, at 3.

<sup>37</sup> *The Trafficked Persons Assistance Program*, YMCA Int'l Servs., at 1 (last visited Nov. 26, 2013), <http://www.ymcahouston.org/links/internationaltraffickedpersons.pdf>.

<sup>38</sup> YMCA Int'l Servs., *supra* note 37.

<sup>39</sup> *Id.*

<sup>40</sup> Telephone Interview with Constance Rossiter, *supra* note 31.

<sup>41</sup> *Id.*

manager from the community, a service the Y is able to provide but the court cannot. In addition, sometimes a victim will come to the court, and later it is discovered the girl is undocumented; the victim is then sent to the Immigration Department, where she is not provided the same resources an American citizen is. TPAP will obtain the outside funding needed to help the girl secure a T-Visa and get benefits. Second, once a victim in the GIRLS court finishes her probation period, she requires help reintegrating into the community, so TPAP provides resources to fill that need.<sup>42</sup>

Ms. Rossiter also explained the difficulties TPAP runs into as a NGO. TPAP's funding almost exclusively comes from the Federal Government. In fact, in 2010, the YMCA and the Harris County Sheriff's Office *together* applied for a grant from the US Attorney's Office.<sup>43</sup> With these grants comes certain requirements of how the money is used, and sometimes she is unable to provide a specific service because of the guidelines. While Ms. Rossiter feels fortunate to have been able to successfully secure the grants she needs, she explained that YMCA International serves a case management function, providing all physical, social, and psychological assistance from the outside community; with this role in mind, she knows that if the federal funding is one day unavailable, the community can sustain the support for her clients on its own.<sup>44</sup>

Another major difficulty she is constantly confronted with is, under Texas law, a shelter cannot house a child for more than 48 hours. Therefore, she can sometimes call in a favor to a local women's shelter, but without juvenile-specific shelters that know how to cater to the physical and emotional needs of a sex trafficking victim, she is left scrambling for options.<sup>45</sup>

Finally, in order for TPAP to provide services, the child must prove she is a victim under 18 engaged in the commercial sex industry. Many of the victims do not have access to proof of identification, as it is either in the home they ran away from or with their pimp. Therefore, Ms. Rossiter must take extensive measures to confirm the victim's identity so that she can provide services.<sup>46</sup>

Ms. Rossiter is constantly working with other NGOs to create a sustainable system of resources for her victims. The partnership she has strengthened through the HTRA continue to provide the legal services, shelters, and counseling her victims require, and she considers the GIRLS Court her biggest partner of all.<sup>47</sup>

While Ms. Rossiter did not name any of the shelters she sends her victims (for confidentiality reasons), recently the first shelter catering specifically to domestic child trafficking victims opened in Texas, Freedom Place. The safe house's location is undisclosed, so pimps cannot come to

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<sup>42</sup> Telephone Interview with Constance Rossiter, *supra* note 31.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Telephone Interview with Constance Rossiter, *supra* note 31.

<sup>47</sup> *Id.*

‘check’ on “their” girls. For further security, recent legislation has given safe houses like Freedom Place the discretion to keep victim location and personal information confidential.<sup>48</sup> Freedom Place can house up to thirty girls, ages ten to eighteen, and provides the therapy and intense supervision necessary to get the victims back on their feet in a six month to year and a half stay.<sup>49</sup>

The GIRLS Court referred three victims to the safe house, one of which was the first arrival, within its first week of operation; prior to its opening, the girls were placed in a juvenile detention facility, treatment facilities that did not cater to the needs of juveniles, or even placed back in the homes they had originally run away from.<sup>50</sup> Judge Ellis noted, “telling [the girls] they are a victim and then being able to do nothing but place them in a lock-down facility is not something we wanted,” and often the girls would end up back with their pimps without the necessary services.<sup>51</sup> While Freedom Place is a step in the right direction, there are only 30 available spots, and the number of victims is exponentially greater than this one facility can cater to. In addition, each victim requires \$5,000-7,000 per month, and since bills with fiscal attachments are almost never passed by our legislature, funding for safe houses remains a grave issue.<sup>52</sup>

## E. The Future

While Houston is a leader in the fight against human trafficking, there is still much to be done. First, the GIRLS court is a single docket in Harris County that caters exclusively to domestic child sex trafficking victims. This model can be expanded across Texas to include all trafficking victims: labor and sex, domestic and international, and juvenile and adult

In addition, our laws create certain obstacles. *In re B.W.* was a step in the right direction for child sex trafficking victims, but there is still no special treatment for juveniles ages fourteen to seventeen charged with prostitution. While a child seventeen and under can no longer be charged with prostitution *if* they are proven trafficking victims, children seventeen and under are still subject to prostitution charges.<sup>53</sup> Most juveniles are victims, but without proof, the charges remain intact. In addition, under Federal Law, a child under eighteen cannot be prosecuted for prostitution, so hopefully the Texas Legislature will pass a law tracking the Federal Law.

Finally, housing for these young victims remains an issue, and victims often end up in a juvenile detention facility. A 2013 report by the Office of Juvenile Justice and Delinquency Prevention studied pre-incarceration trauma and subsequent Post Traumatic Stress Disorder (“PTSD”).<sup>54</sup> 84%

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<sup>48</sup> Gov’t § 552.138.

<sup>49</sup> Anita Hassan, *Girls Victimized by Sex Trafficking Find Healing at Freedom Place*, Hous. Chron., June 1, 2012, <http://www.chron.com/news/houston-texas/article/Hope-for-teens-victimized-by-sex-trafficking-3603604.php>.

<sup>50</sup> *Id.*

<sup>51</sup> Hous. Chron., *supra* note 49.

<sup>52</sup> Dawn Lew Presentation, *supra* note 4.

<sup>53</sup> Penal Code §43.05(2).

<sup>54</sup> See Karen M. Abram et al, *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth*, Juv. Just. Bull. (Office of Juvenile Justice and Delinquency Prevention Wash., D.C.), June 2013.

of females in a juvenile detention facility reported at least one trauma, with a 14.2 mean number of traumas; 29.6% of females reported forced sexual activity.<sup>55</sup> In turn, 14.7% of females studied developed PTSD within thirteen months of their initial trauma interview.<sup>56</sup>

The study used this information to suggest implications for the juvenile justice system; collaborations between detention facilities and mental health services are a necessity, with specific programs tailored to the needs of each youth.<sup>57</sup> Since confinement can aggravate mental disorders, it is the duty of law enforcement at the detention centers to monitor their juveniles' mental health to avoid trauma to them or others while detained.<sup>58</sup>

This study did not target sex trafficking victims specifically, but it speaks volumes about life in a juvenile detention facility. While these facilities may be better than the streets, there is the risk of improper mental health care and the possibility of continued instances of trauma, either self-inflicted or by another juvenile. Child sex trafficking victims have severe and long-lasting mental damage from the series of traumas they have experienced, and that is why organizations have come to fruition to specifically target this population's needs. The risks associated with placement in a juvenile detention facility, as Judge Ellis pointed out in her discussion of Freedom Place, can lead these girls right back down the path they came from. Perhaps the state can develop safe harbors for victims or specialized detention facilities to cater to their needs, but this, of course, costs money. Children at Risk, a non-profit data-driven organization focused on combating trafficking through legislation, has come out with a comprehensive set of requirements for safe houses in Texas.<sup>59</sup> While the document provides significant guidance, there is still the issue of funding. The only solution is to continue to raise awareness about the prevalence of human trafficking in our state, and hopefully the public at large will begin to firmly support and demand government spending on trafficking efforts and/or support NGOs monetarily.

## **Part II: The New York State Human Trafficking Intervention Courts**

### **A. Law Against Traffickers**

New York was later to the game than Texas in regards to enacting human trafficking laws. In 2007, the legislature passed the first law making human trafficking a criminal activity. The New York Human Trafficking Laws were considered "groundbreaking" and a model off which the rest of the country should shape their laws.<sup>60</sup> The Act amended several existing laws and created some

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<sup>55</sup> *Id.*, at 5.

<sup>56</sup> *Id.*, at 4, 6.

<sup>57</sup> *Id.*, at 9.

<sup>58</sup> *Id.*

<sup>59</sup> See Children at Risk, *The Texas Safe House Movement: An Examination of Restorative Shelter Core Components and Recommendations* (Robert Sanborn et al. eds., 2011).

<sup>60</sup> Toko Sertia, *In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking*, 36 N.Y.U. Rev. L. & Soc. Change 635, 646 (2012), citing Kevin Bales & Ron Soodalter, *The Slave Next Door: Human Trafficking and Slavery in America Today* 114, n. 6 (2009).



new ones; for example, Sections 230.34 and 230.36 of the Penal Laws were added to criminalize sex trafficking and decriminalize the accomplice of a sex trafficker, and Sections 135.35 and 135.36 were added to criminalize labor trafficking and decriminalize the accomplice of a labor trafficker.<sup>61</sup> The requirements for conviction under section 230.04, Patronizing a Prostitute, were relaxed and broadened.<sup>62</sup> Finally, the Act added article 10-D to the Social Services Laws to provide extensive services to domestic and international victims of human trafficking and the means to do so.<sup>63</sup> The laws, like the *B.W.* opinion, were meant to shift the focus from treating the victims as criminals to treating them as victims and criminalizing the traffickers.<sup>64</sup>

In 2008, the New York Legislature passed the Safe Harbor Act to provide services to victims of human trafficking under eighteen.<sup>65</sup> The Act added Section 447 to the Social Services Laws and amended Section 311.4(3) of the Family Court Act to define any child arrested for prostitution as a “sexually exploited child,” implying the child is a victim.<sup>66</sup> In addition, the Act addresses the services each social service district should work to have available to “sexually exploited children.”<sup>67</sup>

According to the Polaris Project, New York, like Texas, is considered a Tier 1 state; however, there are 20 states ranked higher than New York.<sup>68</sup> New York does not have laws in three categories: (5) posting a human trafficking hotline, (7) a lower burden of proof for sex trafficking of minors, and (9) access to civil damages; it also does not have laws in (3) asset forfeiture for human trafficking but does in investigative tools for law enforcement.<sup>69</sup>

The most recent success in trafficking law came in a bill passed by the New York Senate this past session. Sections 230.30 and 230.33, Promoting Prostitution and Compelling Prostitution, of the Penal Code have been amended so that trafficking a person under eighteen, rather than sixteen, into prostitution is a criminal activity.<sup>70</sup> Therefore, youth seventeen and under will be covered by the Safe Harbor Act.

## **B. Law Against the Victim**

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<sup>61</sup> Anti-Human Trafficking Act of 2006, 2007 N.Y. Sess. Laws 597, §§ 2, 3 (McKinney) (codified at NY Penal Law §§ 230.34, 230.36, 135.35, 135.36 (McKinney 2008)), *see also* Serita, at 646.

<sup>62</sup> *Id.*, at § 5 (codified at NY Penal Law § 230.04 (McKinney 2008)).

<sup>63</sup> *Id.*, at § 11 (codified at NY Soc. Serv. Law §§ 483-aa-Ee (McKinney 2008)).

<sup>64</sup> Serita, at 646; Marisa Nack, *The Next Step: The Future of New York State's Human Trafficking Law*, 18 J.L. & Pol'y 817, 829 (2010).

<sup>65</sup> Safe Harbor for Exploited Children Act, 2008 N.Y. Sess. Laws 569 (McKinney).

<sup>66</sup> Serita, at 648; *see also* NY Soc. Serv. Law § 447-a (McKinney 2010) and NY Family Ct. Act Law § 311.4(3) (McKinney 2010).

<sup>67</sup> Soc. Serv. § 447-b.

<sup>68</sup> Polaris Project Pamphlet, at 2.

<sup>69</sup> Polaris Project Pamphlet, at 2.

<sup>70</sup> S.B. 5879, 236 Leg., Reg. Sess. (N.Y. 2013).

Prostitution in New York State is defined as “engag[ing] or agree[ing] or offer[ing] to engage in sexual conduct with another person in return for a fee.”<sup>71</sup> However, the most common statutes used to prosecute the act of prostitution are Loitering, Loitering for the Purpose of Prostitution, and Disorderly Conduct, as the act of prostitution itself may be more difficult to prove.<sup>72</sup> Loitering is where a person is wearing some identifying, strange attire or facial expression with a group of others in a public place.<sup>73</sup> Loitering for the purpose of engaging in a prostitution offense is when a person, in a public place, repeatedly attempts to stop passer-bys to engage in prostitution or promote prostitution.<sup>74</sup> Disorderly conduct is essentially any act that intentionally inconveniences, alarms, or annoys the public or recklessly creates a risk of harm.<sup>75</sup>

In 2010, the Legislature amended the vacatur statute so that a defendant convicted of prostitution or loitering for the purpose of prostitution could have the conviction vacated, as long as the person could provide documentation they were a victim of either sex trafficking under New York law or sex trafficking under the TVPA.<sup>76</sup> While courts often use this statute, it often proves difficult to provide legal documentation of the victim’s status.<sup>77</sup>

As Judge Toko Serita pointed out, the New York legislature has passed some of the most comprehensive human trafficking laws in the country; however, the state had few means by which they could utilize the laws.<sup>78</sup> She suggested creating a statewide specialized problem-solving court to address identification and prosecution of trafficking victims.<sup>79</sup> Since criminal courts in New York City see over one hundred cases per day, it is otherwise impossible to devote the time and means necessary to identify the victims funneled through the system.<sup>80</sup>

### **C. The New York State Human Trafficking Intervention Courts**

Around 2003, Queens County Criminal Court Judge Fernando Camacho, who presided over the Domestic Violence docket, noticed young girls coming through his court on prostitution charges; as he charged these girls, it occurred to him that there had to be a reason why such young women would commit these crimes.<sup>81</sup> Judge Camacho began speaking with the girls and found they all shared a common story: pimps were manipulating the vulnerable runaway and neglected youth of

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<sup>71</sup> Penal § 230.00 (McKinney, WestLaw through 2013 Sess.).

<sup>72</sup> Interview with Judge Barry Kamins, Admin. Judge of Criminal Matters, Second Judicial Dist., N.Y. City Criminal Court, (Nov. 22, 2013).

<sup>73</sup> Penal § 240.35.

<sup>74</sup> Penal § 240.37.

<sup>75</sup> Penal § 240.20.

<sup>76</sup> NY Crim. Proc. Law § 440.10(i) (McKinney, WestLaw through 2013 Sess.).

<sup>77</sup> Telephone Interview with Charlotte Watson, Exec. Dir. of N.Y. Judicial Comm. on Women in the Courts (Nov. 22, 2013).

<sup>78</sup> Sertia, at 659.

<sup>79</sup> *Id.*, at 658-59.

<sup>80</sup> *Id.*

<sup>81</sup> Interview by Sarah Schweig with Judge Fernando Camacho, Queens Cnty. Admin. Judge for Criminal Matters, N.Y. City Criminal Court (January 2012) (transcript available at <http://www.courtinnovation.org/research/changing-perceptions-conversation-prostitution-diversion-judge-fernando-camacho-0>).

New York City into prostitution.<sup>82</sup> Since Judge Camacho is a former prosecutor, he knew sending these young women, who were not of-age to consent to sex, to jail for prostitution was not how the situation should be handled, so he started a court devoted to prosecution of teenagers charged with prostitution offenses.<sup>83</sup> When Judge Camacho was appointed to a different role in 2008, Judge Toko Serita took over the Domestic Violence Court and prostitution docket, which, by this point, saw both juvenile and adult offenders.<sup>84</sup> When Judge Serita took the bench, she recalls seeing between thirty-seven and seventy cases a year; today she presides over 450 prostitution cases, accounting for the majority of prostitution cases in Queens County.<sup>85</sup>

In response to the new Queens court, the Midtown Community Court, which opened in 1993, started a prostitution docket of its own, and by 2010, saw 80% of all people in prostitution in New York City.<sup>86</sup> By 2011, 70% of all prostitution charges at the Midtown Court were identified as trafficking victims.<sup>87</sup> Using the ‘victim over criminal’ approach Judge Camacho established and the Safe Harbor Act, the Midtown court used their position as an opportunity to provide underage victims counseling via Girls Educational & Mentoring Services (“GEMS”) rather than jail time.<sup>88</sup> By 2012, Nassau County District Attorney established a similar trafficking court, and all three courts were servicing youth and adult trafficking victims, shifting the entire perception of what prostitution is.<sup>89</sup> In 2013, the three courts were officially converted to Human Trafficking Intervention Courts, providing girls and women the opportunity to avoid convictions and provide services and counseling.<sup>90</sup>

On September 25, 2013, Chief Judge of New York State Jonathan Lippman announced a statewide initiative against trafficking, and most notably, creation of Human Trafficking Intervention Courts all over New York State, with the Queens, Midtown, and Nassau County courts serving as pilot programs.<sup>91</sup> In fact, Judge Lippman credits Judge Serita’s proposals and recommendations in her Law Review Article, “In Our Own Backyards: The Need for a Coordinated Judicial Response to Human Trafficking,” as a guiding force in this decision.<sup>92</sup> This is the first prostitution-dedicated statewide court system in the country, and by October 2013, Judge

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<sup>82</sup> *Id.*

<sup>83</sup> Interview with Fernando Camacho, *supra* note 81.

<sup>84</sup> Telephone Interview with Barry Kamins, *supra* note 72.

<sup>85</sup> Telephone Interview with Judge Toko Serita, Crim. Ct. Judge, N.Y. City Criminal Court, (Dec. 6, 2013).

<sup>86</sup> Julia Dahl, *Escaping “The Life,”* Crime Rep., July 1, 2010, <http://www.thecrimereport.org/archive/escaping-the-life/#more-43348>.

<sup>87</sup> Sadhbh Walshe, *New Court Helps New York’s Human Trafficking Victims*, Aljazeera Am. (Oct. 31, 2013), <http://america.aljazeera.com/articles/2013/10/31/new-court-systemhelpsvictimsofhumantraffickinginnewyork.html>.

<sup>88</sup> Dahl, *supra* note 86; Telephone Interview with Barry Kamins, *supra* note 72.

<sup>89</sup> *DA Rice Marks First Anniversary of Nassau Human Trafficking Court*, Nassau County (Oct. 17, 2013), <http://www.nassaucountyny.gov/agencies/da/NewsReleases/2013/101713humantrafficking.html>.

<sup>90</sup> Walshe, *supra* note 87.

<sup>91</sup> Judge Jonathan Lippman, Chief Judge of N.Y., Remarks at the Citizens Crime Comm’n: Announcement of N.Y.’s Human Trafficking Intervention Initiative (Sept. 25, 2013) (transcript available at <http://www.courtinnovation.org/research/announcement-new-yorks-human-trafficking-intervention-initiative>).

<sup>92</sup> Telephone Interview with Toko Serita, *supra* note 85; *see* Serita, *supra* note 60.

Lippman foresaw eleven courts running in key counties to handle almost 95% of all prostitution cases in the state.<sup>93</sup> The courts were created under the victim-focused prostitution approach from Judge Camacho, and since girls typically enter prostitution between ages twelve and fourteen, it was important to include girls *and* women in the initiative.<sup>94</sup> Judge Lippman, as Chief Judge of New York State, had the authority to create these courts since they require *no* additional funding; funding comes from the courts' budget and private community partners, like the Center for Court Innovation, to provide guidance and services.<sup>95</sup>

In the eleven counties, five of which are in New York City, judges in the criminal courts and Human Trafficking Courts are trained to identify victims; each prostitution case brought before a criminal court judge is evaluated by the judge, prosecutor, and defense attorney, and if they come to a consensus the charged individual is a victim of trafficking, the case is sent to the associated Human Trafficking Intervention Court.<sup>96</sup> There, the victims are provided with court-mandated services, and if the victim complies, the charges are dismissed.<sup>97</sup>

Each year, around 750 people are charged with prostitution-related offenses, so the potential effects of the initiative are enormous.<sup>98</sup> According to Judge Barry Kamins, who has played a key role in the courts' implementation, the courts have been up and running since early November, and victims are expected to continue use of their services even after conviction.<sup>99</sup>

#### **D. Private Community Organizations**

Charlotte Watson, Executive Director of the New York Judicial Committee on Women in the Courts, has played an integral role in bringing together the courts and private community organizations to provide victim services.<sup>100</sup> Such programs provide “advocacy on a whole host of issues including emergency shelter, housing, public assistance benefits, counseling, legal services, referrals for medical assistance and other programs to address other issues confronting the victim.”<sup>101</sup> While the courts work with many governmental agencies, like the Office of Temporary and Disability Assistance and the Office of Children and Family Services (known in Texas as CPS), key relationships are necessary with nonprofit organizations; these outside groups receive funding from government grants, foundation grants, and fundraising.<sup>102</sup> Since the courts receive no

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<sup>93</sup> Lippman, *supra* note 91; *see also* Walshe, *supra* note 87.

<sup>94</sup> Lippman, *supra* note 91.

<sup>95</sup> Telephone Interview with Toko Serita, *supra* note 85; Telephone Interview with Barry Kamins, *supra* note 72.

<sup>96</sup> Lippman, *supra* note 91; Telephone Interview with Toko Serita, *supra* note 85.

<sup>97</sup> Lippman, *supra* note 91.

<sup>98</sup> Telephone Interview with Barry Kamins, *supra* note 72.

<sup>99</sup> *Id.*

<sup>100</sup> Telephone Interview with Charlotte Watson, *supra* note 77.

<sup>101</sup> E-mail from Charlotte Watson, Exec. Dir. of N.Y. Judicial Comm. on Women in the Courts, to Ashley Ellerin (Nov. 20, 2013, 17:32 CST) (on file with author).

<sup>102</sup> Email from Charlotte Watson, *supra* note 101.

additional funding, Judge Serita believes partnerships with anti-trafficking organizations are the key to success for the victims she sees.<sup>103</sup>

Rachel Lloyd, a former prostitution victim, began GEMS to provide services for girls, ages eighteen to twenty-four; GEMS has been a partner to the New York Court System for years and continues to provide necessary services.<sup>104</sup> Other organizations include RESTORE, which focuses on Asian victims, and Sanctuary for Families, which focuses on foreign nationals.<sup>105</sup> Like Texas, New York is in desperate need of shelters that service trafficked victims, especially for children since New York Law only allows a thirty-day stay before notifying parents; she noted many shelters that focus on other areas of abuse, like domestic violence, often step up.<sup>106</sup> Texas and New York share many obstacles in providing adequate services, like the lack of resources, funding, victims without identification, and laws that need amendment.

### **Part III: What Texas Can Learn from New York**

It is an absolute fact that there are strengths and weaknesses in how each state combats human trafficking, and there is much each state can learn from each other. However, just looking at the *adjudication* of commercial sex trafficking, New York is further along in the process than Texas or any other state in the nation. In fact, the Texas legislature looked to New York as a model when drafting its Safe Harbor Laws.<sup>107</sup> Therefore, New York can teach us important lessons on how we can successfully move forward in the fight.

Judge Kamins, in answering the question of whether New York has looked to other states for guidance, explained that New York has been on the forefront of Human Trafficking Courts since Judge Camacho's Queens Court.<sup>108</sup> This one individual had an idea, and it has grown into a statewide court system. This reminded me how groundbreaking the work being done at the GIRLS Court is, as it can one day also be the model for a court system in Texas. In addition, after speaking with Judge Serita about the research in her law review article that so heavily impacted Judge Lippman, I was reminded how important it is for passionate individuals to continue to raise awareness on what they believe in. Perhaps some of the research and suggestions from passionate students coming out of our Human Trafficking class could have a great impact one day.

A recent New York Daily News article told the story of Houstonian Tricia Chambers, former child sex trafficking victim and Drug Court success story, who started an organization called

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<sup>103</sup> Telephone Interview with Toko Serita, *supra* note 85.

<sup>104</sup> Telephone Interview with Charlotte Watson, *supra* note 77; *see also* About, GEMS (last visited Nov. 22, 2013), <http://www.gems-girls.org/about>.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *See* Tex. Juvenile Prob. Comm'n, Rep. No. RPT-OTH-2011-02, *Alternatives to Juvenile Justice for Youth Involved in Prostitution* 9, 12-13 (2011).

<sup>108</sup> Telephone Interview with Barry Kamins, *supra* note 72.

“We’ve Been There Done That.”<sup>109</sup> Her organization provides rehabilitation services to adults in prostitution, and in September 2012, Harris County joined her cause; as of January 2013, judges have sentenced thirty plus women on prostitution charges to Chambers’ program instead of jail, following the victimized perception of the GIRLS Court.<sup>110</sup> Clearly, Harris County is learning from Judge Ellis just as New York City learned from Judge Camacho. My hope is that this shifting perception of what a “prostitute” is, child or adult, will continue to impact the judiciary and legislature’s actions. We have many glaring questions in making this leap of understanding, e. g., how can one be “child prostitute” given our statutory rape laws? How is coercion understood by the victim? Do victims experience extreme poverty, homelessness, or addiction as forms of coercion?

Since sex trafficking makes up almost 80% of trafficking in the U.S., New York’s judiciary felt they had to address this first, but I would imagine the judiciary and/or legislature will one-day address labor trafficking in a similar manner.<sup>111</sup> I believe this expansion is possible in Texas as well. We may start with a single child sex trafficking-dedicated court, but that can grow into a human trafficking-dedicated court system, as it likely will in New York.

During my interview with Ms. Watson, I was somewhat astonished over the quantity of services that New York State provides, especially after speaking with Ms. Rossiter about the services available in Houston. I asked her how New York has been able to accomplish so much in so little time, and her response has stuck with me. She explained that in New York, a group of individuals who cared about human trafficking got together and formed an Anti-Trafficking Coalition.<sup>112</sup> It was as simple as that to her. Bring together a group of people and share what is going on in our backyards. We too can move mountains, as it is likely there are individuals who do care about trafficking but simply have not been in the same room together. She spoke of the Anti-Trafficking Coalition in New York that has changed the law and demanded services since conception, but noted it began with no funding, just people willing to work hard for a cause and gather funding.<sup>113</sup> While there is work to be done in Texas, we are full of individuals with passion and drive, and we, too, can move mountains in the fight against human trafficking.

Addendum:

On March 17, 2015, the Trafficking Victims Protection and Justice Act passed both houses of the New York State Legislature and is expected to be signed into law by Governor Andrew Cuomo

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<sup>109</sup> *To Curb Prostitution, Houston Tries Rehab Instead of Jail*, N.Y. Daily News, June 26, 2013, <http://www.nydailynews.com/news/national/houston-prostitute-rehab-jail-article-1.1382821>.

<sup>110</sup> *Id.*

<sup>111</sup> Lippman, *supra* note 91.

<sup>112</sup> Telephone Interview with Charlotte Watson, *supra* note 77.

<sup>113</sup> *Id.*

before the end of 2015.<sup>114</sup> The Act, sponsored by Senator Andrew Lanza and Assemblywoman Amy Paulin, is the most recent initiative to further New York’s fight to end human trafficking. While the Act’s overall focus is on decriminalizing trafficked minors and increasing the penalties against those who traffic them, it contains four specific components.<sup>115</sup> First, the Act equates the trafficking of children to child abuse by creating the felony offense of “aggravated patronizing of a minor,” which carries the same penalty as statutory rape and ignorance of the child’s age is not considered a defense. Second, the Act helps defend victims of trafficking from prostitution convictions by creating the affirmative defense of sex trafficking. Third, since it is often difficult to obtain the necessary credible evidence in a trafficking case, the Act expands the use of wiretaps for law enforcement to cases where there is probable cause that the suspect owns or manages a trafficking business or sex tourism business, or is trafficking children age 18 and under. Fourth, since the word “prostitute” carries a degrading stigma, the Penal Code replaces the term with the phrase “person for prostitution.”<sup>116</sup> The Act will not only likely serve as a model for other states to follow but also gives the New York State Justice System the necessary tools to help restore the lives of trafficked victims.

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<sup>114</sup> *Lanza & Paulin Announce Passage of Historic Human Trafficking Bill in Both Houses of Legislature*, N.Y. Senate, March 17, 2015, <http://www.nysenate.gov/press-release/lanza-paulin-announce-passage-historic-human-trafficking-bill-both-houses-legislature>.

A summary of the provisions of this legislation can be found at

[http://assembly.state.ny.us/leg/?default\\_fld=&bn=A00506&term=2015&Summary=Y&Memo=Y](http://assembly.state.ny.us/leg/?default_fld=&bn=A00506&term=2015&Summary=Y&Memo=Y)

<sup>115</sup> *The Trafficking Victims Protection and Justice Act*, N.Y. St. Anti-Trafficking Coalition (last visited Sept. 21, 2015), <http://www.tvpja.com/>.

<sup>116</sup> *Id.*