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The Educator's Role in Human Trafficking Prevention: From the Trafficking Victims Prevention Act of 2000 to California's Human Trafficking Prevention Education and Training Act of 2017

Kurt A. Didier¹ and Rachel G. Salas, Ph.D.²

INTRODUCTION

Human sex and labor trafficking is an international plague that has permeated through America's national boundaries and into her schools. Its pernicious effects enslave millions of people, undermine the rule of law, and spawn transnational criminal activity.³ The United States enacted robust statutory schemes—primarily the Trafficking Victims Protection Act of 2000 (TVPA)—designed to prosecute criminals, protect victims, and prevent future exploitation.⁴ The TVPA, and its subsequent reauthorizations, manifest the Congress, President, and Presidential Interagency Task Force's (PITF) commitment to combating trafficking through a whole-of-government approach.

The TVPA reflects Congress's profound concern about human trafficking's rapid proliferation.⁵ It manifests Congress's commitment to confront trafficking by raising awareness of its impact and empowering federal agencies to collaborative action through enabling legislation and funding.⁶ Congress created and directed the PITF, a consortium of federal agencies with various TVPA responsibilities, to engage in multi-lateral and interagency cooperation with, among others, international, federal, state, tribal, and non-governmental organizations to accomplish three primary purposes: investigate and prosecute criminals; protect victims from trafficking's devastating effects; and prevent further exploitation by raising awareness and educating vulnerable populations.⁷

Congress initially assessed human trafficking as primarily an international phenomenon that impacted the United States.⁸ This evolved over time. As congressionally mandated research and data collection unveiled some of trafficking's clandestine and confounding aspects, Congress recognized that human trafficking also originated in America, and necessitated significant

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³ See PRESIDENT'S INTERAGENCY TASK FORCE, REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING IN PERSONS 5 (2017), https://www.state.gov/wp-content/uploads/2018/12/report_usg_tip_efforts.pdf (last visited Aug. 29, 2020) [hereinafter REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING].

⁴ The TVPA is part of the Victims of Trafficking and Violence Protection Act of 2000. Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified at 22 U.S.C. §§ 7101–7114).

⁵ See, e.g., 22 U.S.C. § 7101(b)(8) (2000).

⁶ See, e.g., *id.* § 7101(b)(14), (15), (17), (18), and (24); 22 U.S.C. § 7103(a), (d) (2019); 22 U.S.C. § 7104(b) (2019); 22 U.S.C. § 7105 (2019).

⁷ See generally *id.* §§ 7105, 7103(a) (establishing the PITF).

⁸ See, e.g., 22 U.S.C. § 7101(b)(21), (24).

additional attention and action.⁹ The TVPA's reauthorization in 2005 estimated that 80 percent of the American victim population are women and children and implemented a variety of protective and preventive measures for this group's benefit.¹⁰ The preventive purpose includes initiatives to raise awareness in the law enforcement and social service communities that children are a particularly vulnerable portion of the victim population.¹¹

Raising awareness through education informs law enforcement, social service and health care providers, educators, victim advocates, and vulnerable populations how to identify potential and actual victims and, once identified, help them avoid, or escape human trafficking. Using education as a prevention tool gained further momentum when Congress added the Secretary of Education to the PITF in 2008.¹² The Department of Education researched and published two important products in 2013 and 2015 for school administrators that focused on protecting children in America's public schools. These documents, discussed below, provide state and local school administrators with valuable data to develop their own anti-trafficking education materials.

This article focuses on the educator's expanding role in trafficking prevention and, in particular, California's enactment of the first state law requiring anti-trafficking education in the public school curriculum. California's Human Trafficking Prevention Education and Training Act of 2017 (HTPETA), is the first law requiring anti-trafficking education for 7-12 grade students.¹³ For the first time, anti-trafficking education was formally directed at students, one of the most vulnerable populations in trafficking enterprises. This article discusses the TVPA's enactment, evolution and empowerment of educators, the states' role in education, and the HTPETA's advancement of raising trafficking awareness amongst California's middle and high school populations.

THE TRAFFICKING VICTIMS PROTECTION ACT OF 2000

"Human trafficking is a denial of our common humanity and an affront to our ideals as Americans."¹⁴

⁹ Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. 109-164 §§ 2(2)-(6), 119 Stat. 3558 (2006).

¹⁰ *Id.* § 2(2); and *see* 34 U.S.C. §§ 20701-20703 and 20705, formerly cited as, respectively, 42 U.S.C. §§ 14044, 14044a, 14044b, and 14044c.

¹¹ *See id.*

¹² William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. 110-457 § 101, 122 Stat. 5045 (2008), *amending* 22 U.S.C. § 7103(b) [hereinafter TVPA Reauthorization Act of 2008].

¹³ Human Trafficking Prevention Education and Training Act, ch. 558, 2017 Cal. Stat. (to be codified at CAL. EDUC. CODE §§ 51934, 51950 and CAL. WELF. & INST. CODE §§ 16524.6-9). As of this writing, one other state has added human trafficking to its school curriculum. On September 30, 2019, Florida's State Board of Education announced a new rule requiring child trafficking prevention instruction for students in grades K-12. *See, Florida First State in Nation to Teach K-12 Child Trafficking Prevention*, available at <http://www.fldoe.org/newsroom/latest-news/florida-first-state-in-nation-to-teach-k-12-child-trafficking-prevention.shtml> (last visited Aug. 29, 2020); and *see*, Rachel G. Salas & Kurt A. Didier, *California Adds Human Trafficking Prevention to its 7-12 Grade Curriculum: Should Other States Follow?* 93 CLEARING HOUSE: J. EDUC. STRATEGIES, ISSUES & IDEAS 17 (2020) [hereinafter Salas & Didier, *Should Other States Follow?*].

¹⁴ Barack Obama, *Introduction to U.S. DEP'T OF STATE ET AL., FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013 – 2017* (2014), *available at* <https://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf> (last visited Aug. 29, 2020). The U.S. Senate designated January 11 as National Human Trafficking Awareness Day in 2007. S. Con. Res. 40, 110th Cong.

President Barack Obama

Simply put, human trafficking is modern-day slavery.¹⁵ The U.S. Constitution's Thirteenth Amendment outlawed slavery in America following the Civil War,¹⁶ and authorized Congress to enforce the prohibition by appropriate legislation.¹⁷ Congress declared in 2000 that "trafficking of persons is an evil requiring concerted and vigorous action by countries of origin, transit or destination, and by international organizations."¹⁸ With this declaration and its multiple findings, Congress built a massive statutory scheme to begin a comprehensive legislative and policy strategy to combat global human trafficking.¹⁹ Foundational to this strategy was defining operational terms, establishing data baselines, and empowering the federal government to action.

Congress enacted the TVPA with the purpose and strategy to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment for traffickers, and to protect their victims."²⁰ To develop its strategy, Congress first had to assess the scope of the problem. One of the many congressional findings stated in the TVPA is the legislative declaration that:

As the 21st century begins, the degrading institution of slavery continues throughout the world. Trafficking in persons is a modern form of slavery, and it is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year.²¹

Several of Congress's findings describe women and children's extreme vulnerability to, and disproportionate victimization by, human trafficking. Women and girls are more susceptible to trafficking in countries where poverty, a lack of access to education, high unemployment and

(2007). President Obama later issued a presidential proclamation establishing January as National Slavery and Human Trafficking Prevention Month. National Slavery and Human Trafficking Prevention Month, 2010, 75 Fed. Reg. 1267, 1267-68 (Jan. 4, 2010).

¹⁵ 22 U.S.C. § 7101(b)(1) (2000).

¹⁶ The Thirteenth Amendment, ratified by the requisite number of states on December 6, 1865, banned slavery in the United States and all places subject to its jurisdiction: "SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. CONST. amend. XIII, § 1. The amendment constitutes the United States' "final constitutional solution to the issue of slavery." *13th Amendment to the U.S. Constitution: Abolition of Slavery (1865)*, OUR DOCUMENTS, <https://www.ourdocuments.gov/doc.php?flash=true&doc=40> (last visited Aug. 29, 2020); *see also* 22 U.S.C. § 7101(b)(22).

¹⁷ U.S. CONST. amend. XIII, § 2. *See infra* note 80 (discussing Congress's enactment of extraterritorial jurisdiction over certain trafficking offenses committed by federal employees and persons accompanying them outside of the United States).

¹⁸ 22 U.S.C. § 7101(b)(21).

¹⁹ *See* Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified at 22 U.S.C. §§ 7101-7114) ("An Act to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude, to reauthorize certain Federal programs to prevent violence against women, and for other purposes.").

²⁰ 22 U.S.C. § 7101(a).

²¹ *Id.* § 7101(b)(1).

discrimination afflicts them more severely than their male counterparts.²² While all trafficked persons are exposed to grave health risks, Congress highlighted that sex trafficking overwhelmingly involves women and children.²³ Consequently, women and children disproportionately suffer from deadly diseases such as HIV and AIDS in addition to the psychological and emotional injuries secondary to sexual exploitation.²⁴ One of Congress's trafficking prevention measures to reduce the vulnerability of women and children was increasing access to education and shaping its curriculum. The TVPA directs the President, with his cabinet secretaries, to engage foreign leaders in keeping children in elementary and secondary schools and developing curricula regarding the dangers of human trafficking and protections available to victims.²⁵ As this article explains further below, this education initiative, initially directed at foreign countries, would soon become a prominent part of the domestic battle against trafficking.

Congress's assessments established the need for a comprehensive multi-effort approach to eradicating human trafficking overseas and at home. The TVPA enacted legislation designed to better prosecute traffickers,²⁶ protect victims of the criminal offense,²⁷ and prevent future exploitation.²⁸ It declared the need to pass anti-trafficking laws that reflected the gravity of the offenses and deterred offenders involved; "protected, rather than punished" victims; and advanced trafficking prevention. Each of these anti-trafficking purposes is summarized below.

Purpose 1: prosecuting criminals

Trafficking is a cascading crime. Its profitability spawns the "expansion of organized crime in the United States and worldwide" and "involves violations of other laws, including labor and immigration codes and laws against kidnapping, slavery, false imprisonment, assault, battery, pandering, fraud, and extortion."²⁹ It is also a transient and elusive crime. Traffickers market their victims across international boundaries and multiple jurisdictions within the United States, making it more difficult for law enforcement to detect, investigate, and prosecute criminal cases.³⁰

²² *Id.* § 7101(b)(4). The State Department reported this menacing manifestation of traffickers' evolving methodologies in 2017: "Human traffickers will continue to expand and diversify their recruitment tactics and methods of exploitation if left unchecked. Traffickers can be strangers, acquaintances, or even family members, and they prey on the vulnerable and on those seeking opportunities to build for themselves a brighter future." REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING, *supra* note 3, at 5.

²³ 22 U.S.C. § 7101(b)(2), (11).

²⁴ *See, e.g., id.* § 7101(b)(2), (9), (11).

²⁵ 22 U.S.C. § 7104(a)(3), (4).

²⁶ 22 U.S.C. § 7101(b)(14).

²⁷ *Id.* § 7101(b)(24).

²⁸ *See* 22 U.S.C. § 7103(d)(4).

²⁹ 22 U.S.C. § 7101(b)(8), (10). The TVPA sets minimum standards for foreign governments to eliminate trafficking. *See* 22 U.S.C. § 7106. These include building the infrastructure necessary to adequately investigate, prosecute and extradite criminals and protect victims. *See id.* Congress authorized the President to provide assistance to foreign governments for this purpose. *See* 22 U.S.C. § 2152d. Section 7107 of the United States Code authorizes the United States to act against governments not meeting the minimum standards. 22 U.S.C. § 7107. This article focuses on the TVPA's national provisions and accordingly, does not discuss in detail the TVPA's international provisions as they are beyond the article's scope.

³⁰ Congress declared, "Trafficking in persons is increasingly perpetrated by organized, sophisticated criminal enterprises. Such trafficking is the fastest growing source of profits for organized criminal enterprises worldwide . . .

Congress recognized that existing legislation and law enforcement capabilities at home and abroad did not adequately criminalize this conduct.³¹

The TVPA filled many of these criminal liability gaps. It established and defined labor and sex trafficking as separate crimes, criminalizing both as new substantive criminal offenses, and by increasing the maximum penalties for crimes already on the books.³² The TVPA added provisions prohibiting forced labor,³³ trafficking in forced labor or the previously existing offenses of peonage, slavery and involuntary servitude,³⁴ and sex trafficking.³⁵ It also criminalized attempts³⁶ and conspiracies³⁷ to commit these offenses. Labor and sex trafficking share the common definition of prohibited activities relating to the recruiting, harboring, transportation, provision, or obtaining of forced services,³⁸ and aspects of the definition of force as generally constituting the application of actual or threatened force, restraint, or serious harm to complete the crime.³⁹

Labor and sex trafficking statutes punish persons who benefit financially from, or receive value for, their participation in the trafficking related activities.⁴⁰ Property used to facilitate, or derived from the crimes, is subject to forfeiture.⁴¹ In the sex context, the criminal service is a commercial sex act, an act accompanied by the exchange of value between any persons,⁴² induced by force, fraud or coercion.⁴³ Sex trafficking differs significantly from labor trafficking in that the prosecution need not prove inducement by force, fraud or coercion for the guilt phase if the victim is under the age of 18.⁴⁴ This evidence, however, is relevant during sentencing as a penalty enhancement.⁴⁵ Congress provided extraterritorial reach to the sex trafficking statute, extending

Trafficking in persons is often aided by official [indifference, corruption, and sometimes by participation] in countries of origin, transit, and destination.” 22 U.S.C. § 7101(b)(8), (16).

³¹ 22 U.S.C. § 7101(b)(14) (“Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice”).

³² See 22 U.S.C. § 7109 (2000) (amending upward the custodial sentence of existing offenses under 18 U.S.C. § 1581(a) (2000), 18 U.S.C. § 1583 (2018), and 18 U.S.C. § 1584 (2008), and adding new substantive offenses at 18 U.S.C. § 1589 (2000), *et seq.*).

³³ 18 U.S.C. § 1589 (2000), *amended by* 18 U.S.C. § 1589 (2008). Congress expanded the chargeable “forced labor or services” categories to include the direct or indirect application of actual or threatened physical force or restraint, and broadened the meaning of actual or threatened abuse of law or legal process. 18 U.S.C. § 1589 (2008).

³⁴ 18 U.S.C. § 1590 (2000), *amended by* 18 U.S.C. § 1590 (2008). The 2008 amendment added a provision criminalizing the obstruction of, or interference with, the enforcement of a trafficking prosecution. *Id.* Congress added this provision to the sex trafficking statute as well. 18 U.S.C. § 1591(d) (2008).

³⁵ 18 U.S.C. § 1591(a).

³⁶ 18 U.S.C. § 1594 (a), (c) (2012).

³⁷ 18 U.S.C. § 1591(b), (c); *see also* 18 U.S.C. § 371 (2012).

³⁸ Compare 18 U.S.C. § 1590 (2000), *amended by* 18 U.S.C. § 1590 (2008) with 18 U.S.C. § 1591(a)(1) (2000), *amended by* 18 U.S.C. § 1591(a)(1) (2008). Sex trafficking related activities also include “entice[ment]” in the original version, *see* 18 U.S.C. § 1591(a)(1) (2000). The 2008 amendment added the following activities: advertising, maintaining, patronizing and soliciting. 18 U.S.C. § 1591(a)(1) (2008).

³⁹ Compare 18 U.S.C. § 1590(a), (c) (2008) with 18 U.S.C. § 1591(e)(1)–(4) (2008). Force under the sex trafficking statute may also effected by fraud. 18 U.S.C. § 1591(b)(1).

⁴⁰ Compare 18 U.S.C. §§ 1590(b) with 18 U.S.C. §§ 1591(a)(2).

⁴¹ 18 U.S.C. §§ 1594(d)–(f) (2008).

⁴² 22 U.S.C. § 7102(4) (2000).

⁴³ 18 U.S.C. § 1591(a).

⁴⁴ *Id.* § 1591(a)(2).

⁴⁵ *Id.* § 1591(b).

jurisdiction beyond conduct affecting interstate commerce to conduct affecting foreign commerce or within the special maritime and territorial jurisdiction of the United States.⁴⁶

In addition to strengthening the human trafficking statutes for criminal prosecutions, the TVPA requires convicted defendants to fully compensate victims for their losses.⁴⁷ These losses include the value of the victim's services, lost income, medical services relating to physical, psychiatric, psychological care, necessary transportation, temporary housing, child care, attorney's fees, and any other losses directly resulting from the offense.⁴⁸ Further, the TVPA authorizes victims to sue their trafficker(s) for civil damages and attorneys' fees.⁴⁹ Separately, the Justice for Victims of Trafficking Act of 2015 directs sentencing courts to impose a \$5,000 special assessment on non-indigent defendants convicted of trafficking offenses.⁵⁰ The mandatory special assessments fund the Domestic Trafficking Victims' Fund the Act established⁵¹ and are payable after all other court ordered assessments, fines, and restitution are paid.⁵²

Purpose 2: protecting victims

The TVPA's second overarching anti-trafficking purpose is protecting and assisting those identified as actual or potential victims. A longstanding challenge to victim identification has been the historic tendency to view them as criminals—for example, sex workers, substance abusers, or undocumented immigrants—presumptively subject to “arrest, detention and/or deportation.”⁵³ Congress's findings proclaim the dual priorities of prosecuting trafficking offenses and protecting the victims of such offenses, rather than punishing them.⁵⁴ To this end, Congress established assistance programs for non-U.S. citizen victims in other countries and in the United States. For non-U.S. citizen victims in other countries, Congress charged the State Department and U.S. Agency for International Development (USAID) to work with foreign governments towards the

⁴⁶ Compare 18 U.S.C. § 1590 (2008) with 18 U.S.C. § 1591 (2008).

⁴⁷ 18 U.S.C. § 1593(a), (b) (2008).

⁴⁸ *Id.* § 1593(b)(3) (referencing 18 U.S.C. § 2259(c)(2) (2018)).

⁴⁹ 18 U.S.C. § 1595 (2008).

⁵⁰ 18 U.S.C. § 3014(a) (2015).

⁵¹ *Id.* § 3014(c)–(e).

⁵² *Id.* § 3014(b).

⁵³ U.S. DEP'T OF HEALTH & HUMAN SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE, at 15 (2009) [hereinafter HUMAN TRAFFICKING: A REVIEW OF THE LITERATURE].

⁵⁴ See, e.g., 22 U.S.C. § 7101(b)(14), (15), (17), (19) and (24) (2000). Congress has continued its emphasis on destigmatizing the victims of human trafficking through amendments to the TVPA. Trafficking Victims Protection Act of 2017, Pub. L. No. 115-393, 132 Stat. 5265 (2018) (codified as 22 U.S.C. § 7105 (2019)). Section 7105 creates multiple assistance categories: §§ 7105(a)(Assistance for victims in other countries), 7105(b)(Victims in the United States), and 7105(f)(Assistance for United States citizens and lawful permanent residents). For example, Congress authorized the Attorney General to grant funds to States, Indian tribes, local government, and nonprofit nongovernmental organizations to “develop, expand, or strengthen victim service programs” for trafficking victims: between the ages of 12 and 24 who are homeless; in foster care or in the criminal justice system; transitioning out of foster care; or women or girls in underserved populations. *Id.* at § 7105(b)(2)(A)(i)-(iii). The Attorney General may prioritize the funds for cases where the monies will be used to: prevent severe forms of trafficking; enhance investigations and prosecutions of persons who knowingly benefit from their trafficking activities; and ensure recipients take affirmative measures to avoid prosecuting victims for any offense that results directly from their victimization and not withhold from victims access to shelters or restorative services as a condition of collaborating with law enforcement officials. *Id.* at § 7105(b)(2)(D)(i)(I)-(IV).

safe reintegration of trafficking victims, in consultation with appropriate non-governmental organizations.⁵⁵ This was to redress the lack of adequate services and facilities—health care, housing, education, and legal assistance—necessary for victims' safe resettlement in their home countries.⁵⁶

The TVPA makes benefits and assistance available to non-U.S.-citizen-trafficking victims in the United States, regardless of their immigration status.⁵⁷ For victims of sex and labor trafficking, these include benefits available to those admitted to the United States as refugees, plus the protections and services befitting the victims' status as crime victims.⁵⁸ Set forth in the TVPA as the Trafficking Victim Regulations (Regulations), the Regulations state the statutory framework for the victim protections and services Congress directed the Attorney General and Secretary of State to implement by agency promulgated regulations.⁵⁹ The Regulations provide assistance and protections to trafficking victims while in custody, including detention in facilities appropriate to their crime victim status.⁶⁰

Simply put, this means safeguarding victims' status as victims and recognizing them as persons who can assist in the investigation and prosecution of traffickers.⁶¹ The Regulations strive to do this by providing services that inspire victims' confidence in the criminal justice system to inform, assist, and protect them throughout the process.⁶² Specifically, the Regulations authorize victim services such as medical care and other assistance, privacy rights, protection for themselves and their family members against traffickers' threats of violence or intimidation, and access to information about their rights and translation services.⁶³

Combined, the Regulations both protect and destigmatize the victims' status as exploited persons. They also recognize that a victim's exploitation extends beyond the prosecution of a criminal case and requires a supporting structure to help the victim resume some level of pre-trafficking normalcy. No single federal agency can discharge this responsibility; accordingly, Congress enacted a whole-of-government approach to combatting human trafficking.⁶⁴ The whole-of-government approach requires a multi-disciplinary application; meaning law

⁵⁵ 22 U.S.C. § 7105(a).

⁵⁶ *Id.*; see also 22 U.S.C. § 7101(b)(18) (Congress's finding of inadequate services and facilities for victims). Congress tasked the State Department and USAID to build capacity overseas as Congress deemed existing protection and assistance infrastructure inadequate. 22 U.S.C. § 7105(b)(2)(A).

⁵⁷ 22 U.S.C. § 7105(b)(1)(A)-(B).

⁵⁸ *Id.* § 7105(b)-(c).

⁵⁹ *Id.* § 7105(c). This statute directs the Attorney General and Secretary of State to promulgate regulations implementing Congress's enactment of the protections, services, and other requirements stated in 22 U.S.C. § 7105(c)(1)-(4). A discussion of the promulgated regulations is beyond the scope of this article.

⁶⁰ *Id.* § 7105(c)(1)(A).

⁶¹ *Id.* § 7105(c)(3).

⁶² *Id.* § 7105(c)(1)-(2); National Slavery and Human Trafficking Prevention Month, 2019, 84 Fed. Reg. 79 (Jan. 8, 2019).

⁶³ 22 U.S.C. § 7105(c)(1)-(2). The Regulations also require training of government personnel to ensure these services are provided and to help victims gain and maintain trust with the law enforcement, immigration, and state department officials with whom they may interact. *Id.* § 7105(c)(4).

⁶⁴ 22 U.S.C. § 7103(a)-(d) (2019); REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING, *supra* note 3, at 5; Department of Justice, *A Whole Government Approach*, U.S. DEP'T OF JUSTICE (updated Jan 6, 2017), <https://www.justice.gov/humantrafficking/whole-government-approach> (last visited Aug. 29, 2020).

enforcement agencies have to coordinate their efforts with social service providers and nongovernmental organizations.⁶⁵

Purpose 3: trafficking prevention

The TVPA directs the President to establish an Interagency Task Force to monitor and combat trafficking.⁶⁶ The PITF is a permanent assemblage chaired by the Secretary of State, and includes the Secretaries of Health and Human Services and Labor; Administrator of USAID; Attorney General; Director of the Central Intelligence Agency; and other officials the President designates.⁶⁷ Congress directed the PITF to expand interagency procedures to collect, analyze, and organize data on domestic and international trafficking.⁶⁸ This data was critical for the PITF's efforts to facilitate cooperation among, and build capacity in, countries of "origin, transit, and destination" to discharge the TVPA's three-pronged prosecution, protection, and prevention anti-trafficking approach.⁶⁹

The TVPA requires the President to establish and carry out anti-trafficking initiatives at home and abroad. One of the initiatives requires the President to raise public awareness, particularly among vulnerable populations, of the dangers of trafficking and the protections available in the event of exploitation. The President fulfills this initiative by employing members of the PITF and appropriate nongovernmental organizations.⁷⁰ For example, the TVPA's deterrence provisions focus on foreign assistance to improve women's economic opportunities and education curriculum to inform at-risk children of the dangers of trafficking.⁷¹ These initiatives represent the building blocks of Congress's trafficking prevention campaign that Congress expanded over time through several subsequent reauthorizations.

The TVPA's first major evolution came with passage of the Trafficking Victims Protection Reauthorization Act of 2005.⁷² The Reauthorization Act, among other things, confronted and addressed America's growing trafficking problem.⁷³ Estimates supported this imperative, but studies quantifying the number of children caught in commercial sexual exploitation did not yet exist.⁷⁴ Because trafficking is a clandestine crime, it was difficult initially to collect accurate statistics about, among other things, data relating to the crime's extent and geography and

⁶⁵ See, e.g., 22 U.S.C. § 7105(c)(4).

⁶⁶ 22 U.S.C. § 7103(a).

⁶⁷ *Id.* § 7103(a)–(c).

⁶⁸ *Id.* § 7103(d)(3).

⁶⁹ *Id.* § 7103(d)(4).

⁷⁰ 22 U.S.C. § 7104(b) and (c).

⁷¹ *Id.* § 7104(a).

⁷² Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. 109-164 § 2, 119 Stat. 3558 (2006).

⁷³ The FBI reports that the majority of human trafficking victims in cases it investigates are United States citizens and documents that "[h]ere in this country, people are being bought, sold, smuggled like modern-day slaves, often beaten, starved, and forced to work as prostitutes or to take jobs as migrant, domestic, restaurant, or factory workers with little or no pay. Human trafficking is a heinous crime that exploits the most vulnerable in society." *Human Trafficking*, <https://www.fbi.gov/investigate/violent-crime/human-trafficking> (last visited Aug. 29, 2020).

⁷⁴ Trafficking Victims Protection Reauthorization Act of 2005 § 2.

traffickers' evolving methods and patterns.⁷⁵ Congress acknowledged a correlation between runaway and homeless children and susceptibility to sex trafficking,⁷⁶ but one of human trafficking's most confounding aspects was laid bare: "the trafficking of children in the United States has been clouded by a lack of awareness and exacerbated by stigma and denial."⁷⁷

The Reauthorization Act of 2005 added several provisions to advance and focus the United States' anti-trafficking efforts.⁷⁸ Congress added members to the PITF,⁷⁹ and created separate titles for combatting international and domestic trafficking, as each presented unique challenges and opportunities for redress.⁸⁰ Congress directed the Attorney General, in consultation with state and local authorities, to research, review, and analyze labor and sex trafficking incidents to gain a better understanding of how to counter the growing menace.⁸¹ From this data collection, the Attorney General confers with the Secretary of Health and Human Services to identify and disseminate the best methods and practices concerning trafficking prosecution, protection, and prevention.

The best practices include enforcing human trafficking laws at the State and local levels and training State and local law enforcement officials how best to collaborate with social service providers at establishing trust with victims and providing support services.⁸² Congress demonstrated its intent for a multi-disciplinary approach with a public and private partnership by mandating the conference participant mix by statute. The statute requires representatives from federal, state, and local levels of government, including law enforcement officials, trafficked victims, medical personnel, social service providers, nongovernment organizations, and academic experts.⁸³

THE ROLE OF EDUCATION IN TRAFFICKING PREVENTION

Congress adds the Department of Education to the PITF

Congress enhanced existing provisions and added others to buttress its multi-pronged approach to combatting trafficking through subsequent reauthorizations. In the TVPA

⁷⁵ HUMAN TRAFFICKING: A REVIEW OF THE LITERATURE, *supra* note 53, at 6. Collecting actionable data is made difficult because "[t]rafficking victims are guarded closely by their captors, many victims lack accurate immigration documentation, trafficked domestic servants remain 'invisible' in private homes, and private businesses often act as a front for a back-end trafficking operation." *Id.*

⁷⁶ *Id.* at 7.

⁷⁷ JENEÉ LITRELL, HUMAN TRAFFICKING IN AMERICA'S SCHOOLS, at 3 (2015).

⁷⁸ See 22 U.S.C. § 7104; 34 U.S.C. § 20701 (2018) (formerly cited as 42 U.S.C. § 14044).

⁷⁹ 22 U.S.C. § 7103(b). President George W. Bush had previously added the Secretary of Homeland Security. Exec. Order No. 13,333, 3 C.F.R. § 5(b) (2004).

⁸⁰ Exec. Order No. 13,333, 3 C.F.R. § 5(b) (2004). Congress also dealt with the sobering reality that international deployments of U.S. military personnel, civilian government employees and contractors in post-conflict environments and during humanitarian emergencies were causing an increase in reported sex trafficking in those deployed areas. As a result, Congress enacted extraterritorial jurisdiction over certain trafficking offenses committed by government employees and persons "accompanying the Federal Government outside of the United States." 18 U.S.C. § 3271 (2006).

⁸¹ 34 U.S.C. § 20701(a)(1).

⁸² See *id.* § 20701(a)(2)(A).

⁸³ See *id.* § 20701(a)(2)(B). See also, 22 U.S.C. § 7105(c)(2) requiring that officials apprise victims of severe forms of trafficking about federally funded or administered anti-trafficking programs to the "extent practicable."

Reauthorization Act of 2008, for example, Congress added the Secretary of Education to the PITF.⁸⁴ This addition significantly enhanced the government's anti-trafficking prevention prong in the public-school arena. The Department of Education raised awareness by educating school communities about human trafficking and, over time, by adopting other prevention and protection initiatives. These included developing technical assistance for educators, encouraging schools to embed trafficking prevention in their management planning and emergency operations, and partnering with federal, state, and local agencies to develop and distribute information materials.⁸⁵

The Department of Education's Office of Elementary and Secondary Education (OESE) created a human trafficking resource fact sheet for school administrators (the Fact Sheet).⁸⁶ The Fact Sheet describes the nature and extent of human trafficking in the United States and its infiltration into the public-school system.⁸⁷ It describes trafficking's many forms—forced labor, domestic servitude, and commercial sexual exploitation—and explains how trafficking affects America's schools. The Fact Sheet alerts educators that pimps and traffickers target all students, including elementary pupils,⁸⁸ and, in particular, those rendered vulnerable by challenging or dysfunctional family situations.⁸⁹

The Fact Sheet describes the varied ways traffickers target their minor victims. These techniques include recruitment through social media, telephone chat lines, the use of peers or classmates, and by frequenting locations where children congregate.⁹⁰ These places include school campuses, shopping malls, bus and train stations, and other youth “hangouts.”⁹¹ The Fact Sheet instructs school staff and administrators to look for indicators of potential trafficking exploitation, many of which manifest how trafficking degrades the learning environment. The indicators include when a student fails to attend school regularly or has unexplained absences, is a frequent run-away from home, makes references to frequent travel to other cities, exhibits signs of physical trauma, demonstrates withdrawn behavior, uses coached or rehearsed responses to questions, or has a noticeably older “boyfriend or girlfriend.”⁹²

The Department of Education Department's 2015 commissioned study (the Study)

The Study built upon the Fact Sheet's prevention focus and added a protection component to help educators guide identified victims into assistance and protection programs. It perpetuates the Fact Sheet's tenet that trafficking exploitation and violence degrades a school's safe learning environment, which is vital to students' overall success. The Department of Education

⁸⁴ TVPA Reauthorization Act of 2008, *supra* note 12, at 22 U.S.C. § 7103(b).

⁸⁵ REPORT ON U.S. GOVERNMENT EFFORTS TO COMBAT TRAFFICKING, *supra* note 3, at 22.

⁸⁶ U.S. DEP'T OF EDUC., HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES: A FACT SHEET FOR SCHOOLS ON HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES (2013), *available at* <https://www2.ed.gov/about/offices/list/oese/oshs/factsheet.html> (last visited Aug. 29, 2020) [hereinafter A FACT SHEET FOR SCHOOLS ON HUMAN TRAFFICKING OF CHILDREN IN THE UNITED STATES].

⁸⁷ *Id.*

⁸⁸ *Id.* (advising that pimps and traffickers target victims as young as 9).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

commissioned the Study to help school officials create proper school responses and protocols upon identification of a victim. The Study informs that:

Schools can and should be safe havens for students, and even more so for some students whose lives are otherwise characterized by instability and lack of safety or security. In these cases, school personnel are uniquely well positioned to identify and report suspected abuse and connect students to services—actions that can prevent trafficking and even save lives. Everyone who is part of the school community—administrators, teachers, bus drivers, maintenance personnel, food service staff, resource officers, and other school community members—has the potential to be an advocate for child victims of human trafficking. . . .⁹³

Recognition that trafficking school students is child abuse is vital to an effective identification, protection, and prevention program. The consequences of abuse include severe physical, emotional, and psychological trauma, all of which can impede an exploited student's learning and achievement.⁹⁴ Trafficking-induced trauma can produce behavioral problems such as truancy, aggression, or isolation and may precipitate the onset of learning disabilities.⁹⁵ The Study emphasizes the importance of educators' ability to discern problematic behaviors as possible symptoms of abuse and victimization. If a set of rules existed for exercising discernment, the first rule would be to always "pay attention."⁹⁶

Victim identification is made more difficult by the inhibiting and stigmatizing effects of trafficking. A sense of shame because of the stigma associated with sex trafficking, and a trafficker's power and manipulation, can fuel a student's reluctance to self-identify or accept assistance.⁹⁷ The Study reiterates the Fact Sheet's statement of potential behavioral indicators of a child sex trafficking victim and the techniques traffickers use to recruit student victims.⁹⁸ The Study reinforces the need to raise anti-trafficking awareness amongst staff and parents and adopt policies that amplify the prevention message. It advances the Fact Sheet's framework by recommending school protocols that go beyond prevention.

The Study advocates for collaboration between school districts, law enforcement, and social service providers to establish response protocols to the on-campus trafficking threat. The protocols embrace a multi-disciplinary response designed, where appropriate, to involve the student, parents, and above-mentioned public officials and non-governmental organizations. These steps include partnering with local law enforcement officials to protect students' ingress and egress routes to school; having adequate school security; training school resource officers to investigate actual or suspected recruitment or trafficking; offering victims and/or parents or guardians referrals to counseling and social services; and periodically checking on victims' overall well-being.⁹⁹

⁹³ LITRELL, *supra* note 77, at 1.

⁹⁴ *Id.* at 7.

⁹⁵ *Id.*

⁹⁶ *Id.* at 6.

⁹⁷ *Id.* at 5.

⁹⁸ *Id.* at 5-7.

⁹⁹ *Id.* at 10.

Two components are paramount to designing, developing, and delivering an effective protocol. The first is using a victim-centered approach that minimizes judgment about the child's "involvement" in a trafficking crime. This approach requires that the community partners provide services to child victims that focus on their safety, rehabilitation, and protect them from re-victimization.¹⁰⁰ The second component is funding. Congress, in its 2019 TVPA reauthorization, added funding grants to school districts to encourage adoption of anti-trafficking programs.¹⁰¹

The Department of Education's teaching grants

Congress appropriated grant monies in 2019 for the Department of Education to infuse elementary, middle, and high schools with age-appropriate curricula about human trafficking.¹⁰² The appropriation authorizes the Secretary of Education, in consultation with the Secretaries of Health and Human Services and Labor, to "award grants to local educational agencies, in partnership with a nonprofit, nongovernmental agency, to establish, expand and support programs serving two purposes." The purposes are to "educate school staff to recognize and respond to signs of labor trafficking and sex trafficking; and provide age-appropriate information to students on how to avoid becoming victims of labor and sex trafficking."¹⁰³ Congress directed the Education Secretary to prioritize grant funding to local educational agencies serving a "high-intensity child sex trafficking area," a metropolitan area the FBI Director has designated as having a high rate of children involved in sex trafficking.¹⁰⁴

Congress requires that the funded education address certain enumerated topics. The specified topics include: "avoiding becoming victims of labor trafficking and sex trafficking; indicators that an individual is a victim or potential victim of labor or sex trafficking; and options and procedures for referring such an individual, as appropriate, to information on such trafficking and services available for victims of such trafficking."¹⁰⁵ Grant recipients must also establish reporting requirements and procedures, consistent with applicable Federal and State law, concerning how they will execute the statute's purposes. They must also set forth a plan, developed and implemented in consultation with local law enforcement agencies, to ensure the safety of school staff and students reporting such trafficking.¹⁰⁶

¹⁰⁰ *Id.* at 3. This may include referring to the victim who is no longer being trafficked as a survivor rather than as a victim. CAL. DEP'T OF EDUC., *Appendix: Sex Trafficking*, in REVISED DRAFT HEALTH EDUCATION FRAMEWORK 7 (MAY 2019 REVISION), available at <https://www.cde.ca.gov/ci/he/cf/> (last visited Aug. 29, 2020) [hereinafter *Appendix: Sex Trafficking*].

¹⁰¹ Frederick Douglass Trafficking Victims Prevention and Protection Act of 2018, Pub. L. No. 115-425, 132 Stat. 5472 (2019).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ 22 U.S.C. § 7104(b)(2)(A)(ii) (2019); OFFICE OF THE INSPECTOR GEN., *Chapter 4: Non-Cyber Sexual Exploitation of Children*, in THE FEDERAL BUREAU OF INVESTIGATION'S EFFORTS TO COMBAT CRIMES AGAINST CHILDREN: AUDIT REPORT 09-08 (2009), available at <https://oig.justice.gov/reports/FBI/a0908/chapter4.htm#122> (last visited Aug. 29, 2020) [hereinafter FBI AUDIT REPORT 09-08]. Three California metro areas have earned this designation: Los Angeles; San Francisco; and San Diego. *Id.* at n.122.

¹⁰⁵ 22 U.S.C. § 7104(b)(2)(C)(i).

¹⁰⁶ *Id.* § 7104(b)(2)(C)(ii).

This curriculum development grant parallels California's HTPETA public school curriculum mandate. Other recently sponsored bills demonstrate Congress's commitment to advance and fund curriculum that directly reaches the public school pupil.¹⁰⁷ The federal commitment is essential as many school districts struggle with reduced resources.¹⁰⁸ Notwithstanding Congress's legitimate interest, however, and its authority to attach conditions to federal funding for this purpose, designing and delivering anti-trafficking training in the school curriculum is principally a state function. Indeed, a state's responsibility to educate its students is vital; the United States Supreme Court describes the education obligation as "perhaps the most important function of state and local governments."¹⁰⁹ Federalism restrains federal courts from intervening in state policy or legislative actions involving education unless necessary to address an alleged violation of the Constitution or a federal statute passed pursuant to Congress's lawful power.¹¹⁰

The Tenth Amendment to the United States Constitution generally reserves to the states authority over education curriculum and policy.¹¹¹ One practical reason for leaving curriculum design and delivery to state and local officials is trafficking is a complex phenomenon and affects

¹⁰⁷ See The Human Trafficking and Exploitation Prevention and Training Act of 2020, S. 3333, 116th Cong. § 3 (2020) (substantively identical to The Human Trafficking and Exploitation Prevention and Training Act of 2019, H.R. 4388, 116th Cong. § 3 (2019)).

¹⁰⁸ See *Gary B. v. Snyder*, 329 F.Supp.3d 344 (E.D. Mich. 2018). In *Gary B.*, plaintiffs sued the Governor of Michigan and others alleging numerous Detroit Public School District schools were in such disrepair that the students' fundamental right of access to literacy had been denied them in violation of the Due Process and Equal Protection Clauses of the 14th Amendment to the United States Constitution. *Id.* at 348. The district court dismissed the complaint, holding that the Constitution does not confer the claimed rights. *Id.* at 366-68. The Sixth Circuit affirmed in part, and reversed in part. *Gary B. v. Whitmer*, 957 F.3d 616, 621 (6th Cir. 2020). The Panel reversed the district court with respect to the Due Process claim, holding that a basic minimum education is a fundamental due process right under the Constitution. *Id.* at 648-49. The Sixth Circuit granted rehearing en banc, 958 F.3d 1216 (6th Cir. 2020) (mem.), which by Sixth Circuit Rule 35(b), vacated the court's previous opinion and judgment. *Id.* Appellants Gary B. et al., dismissed their appeal following their settlement with Governor Whitmer.

¹⁰⁹ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (*Brown I*). In *Brown I*, the Supreme Court struck down local school segregation laws as a violation of the Fourteenth Amendment to the United States Constitution. *Id.* at 493. In doing so, it also overruled the "separate but equal" doctrine of its own-making. *Id.* Writing for a unanimous Court, Chief Justice Warren stated: "We conclude that in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." *Id.* at 495. The Court went to great lengths to explain why it struck down the segregation laws: "In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." *Id.* at 493. The separate but equal doctrine first appeared in federal jurisprudence in *Plessy*. *Plessy v. Ferguson*, 163 U.S. 537 (1896). In *Plessy*, the Supreme Court upheld a Louisiana statute requiring white and "colored" passengers to occupy separate but equal rail coaches in intrastate travel against a Thirteenth and Fourteenth Amendment challenge. *Id.* at 550-51. While *Plessy* was a transportation case, it adopted the separate but equal rationale the Massachusetts Supreme Court articulated to uphold, as a legitimate city school committee function, separate but equal public schools in then segregated Boston. *Id.* at 554-55 (citing *Roberts v. City of Boston*, 59 Mass. 198, 198 (1849)).

¹¹⁰ See *Brown v. Bd. of Educ.*, 349 U.S. 294, 299 (1955) (*Brown II*) ("School authorities have the primary responsibility for elucidating, assessing and solving [its segregation problems]..."). If the school authorities fail to do so, however, the courts may invoke judicial authority. See also *Milliken v. Bradley*, 433 U.S. 267, 281 (1977) (*Milliken II*) (citing *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971)).

¹¹¹ U.S. CONST. amend. X. (providing state rights) ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.") See *United States v. Lopez*, 514 U.S. 549, 564 (1995); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 58 (1973).

different communities differently.¹¹² Meaningful federal anti-trafficking policy development employs a multi-disciplinary approach that incorporates informed judgment making at the state and local levels.¹¹³ California is a heavily impacted state, with school districts diverse in composition, demographics, size, and trafficking threat levels. The California Department of Education developed health education standards in 2008 to support the content development of several important topics, including sexual health promotion.¹¹⁴ Subsequent laws relating to sex education and the onslaught of human trafficking necessitated further legislation and trafficking specific curriculum content standards.¹¹⁵ These developments are discussed below.

CALIFORNIA CONFRONTS HUMAN TRAFFICKING

Human Trafficking is a tragedy that traumatizes and damages its victims, often for the rest of their lives. Too often, this type of criminal exploitation goes unnoticed. This new law provides training and support to help school administrators, teachers, and support staff prevent students from becoming victims, identify students who may become victims of human trafficking, and turn schools into a safe refuge.

--Tom Torlakson, *California State Superintendent of Public Instruction*¹¹⁶

California has the highest rates of reported human trafficking cases in the nation, followed by Texas and Florida.¹¹⁷ The National Human Trafficking Hotline explains these states' numbers are attributable in part to their "large populations, high immigrant populations, and status as border/entry states."¹¹⁸ Designing effective anti-trafficking programs for these states requires collaboration—or at least, coordination with—federal agencies. As mentioned earlier, receipt of federal grant money requires compliance with the grant's provisions. For some areas, however, such as immigration, the attendant laws, regulations, policies, and enforcement thereof are the

¹¹² The Study underscores the importance of local school and law enforcement officials, social service providers and other community partners in understanding "particular recruitment methods and how trafficking occurs in a community." LITTRELL, *supra* note 77, at 6. This understanding will "greatly assist school personnel's abilities to identify potential victims." *Id.* See also *Rodriguez*, 411 U.S. at 42. (counseling against premature judicial interference in education matters implicating a "myriad of 'intractable economic, social, and even philosophical problems.'") (quoting *Dandridge v. Williams*, 397 U.S. 471, 487 (1970)).

¹¹³ See, LITTRELL, *supra* note 77, at 8, 11.

¹¹⁴ *Appendix: Sex Trafficking*, *supra* note 100.

¹¹⁵ *Id.*

¹¹⁶ News Release #18-3, Cal. Dep't of Educ., State Schools Chief Tom Torlakson Supports Human Trafficking Awareness Day and Applauds Groundbreaking Human Trafficking Legislation (Jan. 11, 2018), <https://www.cde.ca.gov/nr/ne/yr18/yr18rel03.asp> (last visited Aug. 29, 2020) [hereinafter CDE News Release #18-3]. Thomas Torlakson served as California's 27th Superintendent of Public Instruction from January 2011–2019. Tony Thurmond succeeded Tom Torlakson as Superintendent on January 7, 2019. See, http://www.joincalifornia.com/advsearch?name=tom_torlakson (last visited Aug. 29, 2020).

¹¹⁷ HTS Staff, *2017 Human Trafficking Statistics*, HUM. TRAFFICKING SEARCH, <http://humantraffickingsearch.org/human-trafficking-statistics-2017/> (last visited Aug. 29, 2020) [hereinafter *2017 Human Trafficking Statistics*]. (The National Human Trafficking Hotline reported the case numbers for each state as follows: California (1,305), Texas (792) and Florida (604)). See also *National Human Trafficking Hotline 2019 Statistics (California)*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/state/california> (documenting 1507 reported cases in California in 2019) (last visited Aug. 29, 2020).

¹¹⁸ *2017 Human Trafficking Statistics*, *supra* note 117.

federal government's exclusive domains.¹¹⁹ A state's philosophical incongruence with federal executive branch agencies' policy approaches can impede federal and state cooperation.¹²⁰ The Department of Homeland Security (and its several agency components) and Department of Justice, key PITF members, possess the authority to influence or exempt state responses in these executive domains.

Three Californian cities—Los Angeles, San Diego and San Francisco—are designated as high child sex trafficking areas.¹²¹ Human trafficking, however, is not confined to specific population densities, nor limited by socioeconomic status or victim demographic. The California Department of Education recently described California's human trafficking crisis similarly to the federal government's assessment: “[h]uman trafficking is a global issue that affects victims from all backgrounds, ethnicities, genders, and age groups... Some predators are using public schools as a new hunting ground. As educators, we need to do everything we can to prevent our students from being victimized.”¹²²

These statements describe the same lamentation: schools are supposed to be safe places for children to learn, develop, and become healthy adults, but have become increasingly vulnerable to trafficking.¹²³ Safe school environments facilitate learning, socialization, and development.¹²⁴ Human trafficking erodes the public schools' purpose as an educational institution.¹²⁵ This reality necessarily serves as the unifying theme for state and local educators' collective action across a diverse school population. A consolidated approach to curriculum development, delivered in the classroom, through face-to-face instruction curriculum fulfills legislative mandates and is an effective methodology: “Schools provide a unique setting that allows teachers and staff to protect

¹¹⁹ *Plyler v. Doe*, 457 U.S. 202, 225 (1982) (“The Constitution grants Congress the power to ‘establish an uniform Rule of Naturalization.’”) (citing U.S. CONST. art. I, § 8, cl. 4.).

¹²⁰ Human Rights First describes aggressive federal immigration enforcement as an example. *A Crackdown on Immigration Puts Trafficking Victims in More Danger*, HUM. RTS. FIRST (May 25, 2017), <https://www.humanrightsfirst.org/blog/crackdown-immigration-puts-trafficking-victims-more-danger> (last visited 29 Aug. 2020). While laudatory in its efforts to combat international human trafficking, a strict immigration enforcement policy can further empower traffickers over their immigrant victims. *Id.* Absent strong anti-trafficking awareness programs and messaging, traffickers can use fear of deportation to dissuade victims from contacting law enforcement and social service providers. “Aggressive immigration crackdowns signal to victims that a fear of deportation is credible, putting abusers in a position of power as the only safeguard against it.” *Id.*

¹²¹ FBI AUDIT REPORT 09-08, *supra* note 104.

¹²² CDE News Release #18-3, *supra* note 116. See also Letter from Tom Torlakson et al., State Superintendent of Pub. Instruction, Cal. Dep't of Educ., on January is Human Trafficking Awareness Month to County and District Superintendents, Charter School Administrators, and High School Principals (Jan. 16, 2018), <https://www.cde.ca.gov/nr/el/le/yr18ltr0116a.asp> (last visited 29 Aug. 2020). State officials further observed “[s]ome victimized children are taken away from their homes, communities, and schools; some are hidden from view; while others are living the horrific experience of a trafficking victim in plain sight.” *Id.* Superintendent Torlakson describes sex and labor trafficking as the planet's “fastest-growing criminal enterprise and . . . an estimated \$150 billion-a-year global industry.” *Id.*

¹²³ *Appendix: Sex Trafficking*, *supra* note 100 at 7.

¹²⁴ Safe schools maximize pupils' learning experience and societal development in a democratic society. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (*Brown I*) (“[Education] is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”)

¹²⁵ *Appendix: Sex Trafficking*, *supra* note 100 at 6.

and empower students through preventive education, recognition of potential harm, response and reporting, and offering support and services.”¹²⁶

California adopted a whole-of-government approach to address all aspects of sex and labor trafficking by enacting new state laws. It added anti-trafficking laws to its penal code.¹²⁷ In 2017, the state took the significant step of mandating education and training in its public schools to empower children, teenagers, and their school personnel against the dangers of trafficking.¹²⁸ California is the first state to mandate this training for middle and high school students, and their teachers and administrators though it permits parents or guardians to excuse their children from the training.¹²⁹ Schools are permitted to offer this training to elementary children in an age appropriate content.¹³⁰ Other states have introduced anti-trafficking training for school officials and as part of teacher instruction, but its required inclusion in the student curriculum is just beginning.¹³¹

CALIFORNIA’S HUMAN TRAFFICKING PREVENTION EDUCATION AND TRAINING ACT OF 2017

California Governor Edmund G. Brown, Jr. signed Assembly Bill 1227, the HTPETA, into law on October 7, 2017. The HTPETA took effect on January 1, 2018 and is the Legislature’s response to the documented vulnerability of California children to human trafficking.¹³² It establishes a multi-disciplinary approach to reducing that vulnerability and beginning to eradicate it from the state. It directs state, school, and county officials to collaborate and implement protection and prevention measures, and to devise assessment tools to evaluate the effectiveness of the implemented measures.¹³³

The HTPETA requires designated officials to design and deliver with relevant other entities comprehensive prevention training and response procedures that meet specified objectives. For county leadership, administrators, and educators, the training must apprise them how to identify potential or actual victims and, upon identification, how to direct them to appropriate service providers.¹³⁴ For the school-age population, the instruction must explain how to avoid exploitation by understanding the dangers of trafficking and inform about service initiatives that provide protection.¹³⁵ California’s campus community approach completes the collaborative circle by

¹²⁶ *Id.* at 4.

¹²⁷ CAL. PENAL CODE § 236.1 (2017).

¹²⁸ Human Trafficking Prevention Education and Training Act, ch. 558, 2017 Cal. Stat. (to be codified at CAL. EDUC. CODE §§ 51934, 51950 and CAL. WELF. & INST. CODE §§ 16524.6–9).

¹²⁹ CAL. EDUC. CODE § 51950 (2018).

¹³⁰ CAL. EDUC. CODE §§ 51934(c) (2019), 51950(a)–(b).

¹³¹ Salas & Didier, *Should Other States Follow?*, *supra* note 13; SRIYANI TIDBALL & SHIREEN S. RAJARAM, SCHOOLS AND ANTI-TRAFFICKING AWARENESS: EDUCATION/TRAINING KEY INFLUENCERS & STUDENTS, at 6-7 (2017).

¹³² *See* Human Trafficking Prevention Education and Training Act, ch. 558.

¹³³ *See* CAL. EDUC. CODE § 51934.

¹³⁴ *Id.* Section 2(d) of the Human Trafficking Prevention Education and Training Act states the assessment requirement for the implemented prevention education and training procedures. Human Trafficking Prevention Education and Training Act, ch. 558, sec. 2. Section 2 is accomplished through amendments to several sections of the California Education Code and the Welfare and Institutions Code. *Id.* at sec. 3-8.

¹³⁵ Human Trafficking Prevention Education and Training Act, ch. 558, sec. 2.

including students in the anti-trafficking curriculum. The students' inclusion is vital because as the traffickers' intended targets, the instruction can help them avoid exploitation in the first instance.

California's legislature, like the U.S. Congress, recognized the need to collect data on the State's anti-trafficking efforts. The HTPETA specifies what aspects of the trafficking prevention education and training require measurement, but leaves to the designated state, school, and county officials how to measure their efforts. The law directs the designated officials to "evaluate how the implementation of prevention education and training affect both the incidence of human trafficking and the levels of knowledge and vigilance about the issue."¹³⁶ Evaluation and assessments establish baselines, measure progress, and identify legislative gaps. This assists lawmakers with enacting future amendments and models for other states' legislative frameworks.

California's existing law, the California Healthy Youth Act, mandates the teaching of comprehensive sexual health education and HIV prevention education to pupils in grades seven through twelve.¹³⁷ This Act requires school districts (which include county boards of education, county superintendents of schools, and the California School for the Deaf and Blind)¹³⁸ to provide awareness and prevention instruction on topics including sexual abuse, assault, harassment, and sex trafficking.¹³⁹ The HTPETA broadens the California Healthy Youth Act's prevention training's focus on sex trafficking to include human trafficking.¹⁴⁰

The human trafficking instruction must include information on "the prevalence, nature, and strategies to reduce the risk of human trafficking, techniques to set healthy boundaries and how to safely seek assistance; and how social media and mobile device applications are used for human trafficking."¹⁴¹ School districts must ensure their seventh through twelfth grade students receive the prescribed instruction at least once while in junior high (or middle school), and high school.¹⁴² The statute contains important quality controls, including requiring continued training for instructors on human trafficking as well as medically accurate and age appropriate information for students.¹⁴³ The Legislature recognized that designing instruction content for the aforementioned topics is an evolving process. It also recognized that instruction on how to safely seek protection

¹³⁶ *Id.*

¹³⁷ CAL. EDUC. CODE § 51934(a) (2019).

¹³⁸ CAL. EDUC. CODE § 51931(g)(1) (2019). Commencing with the 2019-20 school year, "school district" includes charter schools. *Id.* at § 51931(g)(2).

¹³⁹ CAL. EDUC. CODE § 51934.

¹⁴⁰ *See* Human Trafficking Prevention Education and Training Act, ch. 558.

¹⁴¹ CAL. EDUC. CODE § 51934(a)(10)(A)–(B); *see also* CAL. EDUC. CODE § 51950(b) (2018). School districts may provide age appropriate classes on comprehensive sexual health education, HIV prevention, sexual abuse, assault, harassment, and human trafficking to their students earlier than seventh grade. CAL. EDUC. CODE §§ 51934(c), 51950(a)–(b).

¹⁴² CAL. EDUC. CODE § 51934(a).

¹⁴³ CAL. EDUC. CODE § 51931(a), (f), (g)(1); CAL. EDUC. CODE § 51950(f) (requiring continuation training for instructors on new developments in human trafficking and the latest prevention efforts and methods and encouraging school districts to include training on, among other things, early identification of human trafficking victims). "Age appropriate information" refers to topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group." CAL. EDUC. CODE § 51931(a).

from traffickers requires school district officials to collaborate with other county agencies to identify and implement the most effective trafficking prevention resources.¹⁴⁴

California Education Code Section 49381 directs the governing board of a school district or charter school to identify within their schools the most appropriate techniques of educating parents and guardians of pupils in grades six to twelve about human trafficking prevention resources¹⁴⁵ and further, to implement the identified techniques by January 1, 2020.¹⁴⁶ School districts are encouraged to work with their county's child welfare probation, mental and public health, sheriff's departments, juvenile court, and office of education in developing intervention programs for students.¹⁴⁷ Pupil assessments of the human trafficking training can provide valuable feedback for curriculum improvement and refinement. Parents and guardians, however, retain discretion to excuse their children from the curriculum and its related assessments.¹⁴⁸

The HTPETA, like the TVPA, articulates and implements prevention and protection measures. The California Legislature implemented prevention provisions by amending sections of the Education Code discussed above, and additional prevention and protection provisions by amending sections of the Welfare and Institutions Code. Like the TVPA, the HTPETA designates an executive agency to lead California's anti-trafficking program. The HTPETA established the Commercially Sexually Exploited Children Program (CSECP) and charged the State Department of Social Services with administering the program.¹⁴⁹ The Legislature declared that to reduce children's vulnerability to trafficking exploitation and to properly serve children victims, the State had to create, fund, and implement an interagency approach to anti-trafficking.¹⁵⁰

Focusing at the county level, the Legislature stated the necessity for counties to "develop and utilize a multidisciplinary team approach to early identification, prevention education, case management, service planning, and provision of services, and that counties develop and utilize interagency protocols to ensure services are provided as needed to this population."¹⁵¹ The Legislature appropriated funds to the Department of Social Services to determine, in conjunction with the County Welfare Directors Association of California, how to allocate funds to the counties electing to participate in the CSECP.¹⁵²

The CSECP is a comprehensive, interagency consortium charged with developing anti-trafficking prevention and protection protocols for trafficking survivors and children at risk for trafficking exploitation.¹⁵³ The statute states the need for prevention education for specific classes of vulnerable children including, but not limited to, foster youth, homeless children; and lesbian,

¹⁴⁴ CAL. EDUC. CODE § 51950(e); CAL. WELF. & INST. CODE § 16524.7(a)(1) (2018).

¹⁴⁵ CAL. EDUC. CODE § 49381(a) (2019).

¹⁴⁶ *Id.* at § 49381(b).

¹⁴⁷ CAL. EDUC. CODE § 51950(e).

¹⁴⁸ *Id.* at § 51950(c). Parents or guardians may "opt-out" their children from the education training—school districts "shall not require active parental consent ('opt-in') for the instruction." CAL. EDUC. CODE § 51938(a) (2016).

¹⁴⁹ CAL. WELF. & INST. CODE § 16524.7(a)(1) (2018).

¹⁵⁰ *See, e.g., id.*, at § 16524.7(a)(1)–(4).

¹⁵¹ CAL. WELF. & INST. CODE § 16524.6 (2018).

¹⁵² CAL. WELF. & INST. CODE § 16524.7(a)(2)–(3)(A).

¹⁵³ *Id.* at § 16524.7(a)(2), (a)(4).

gay, bisexual, and transgender youth.¹⁵⁴ Similar to Congress's establishment of the PITF, the California Legislature specified the county agencies responsible for creating the prevention and protection protocols.

The members reflect a comprehensive range of relevant public agencies and departments: probation; mental health, public health; juvenile court office of education; and sheriff's office.¹⁵⁵ Other members of the task force may include local law enforcement, local education agencies, and trafficking survivors.¹⁵⁶ This collaboration has many purposes. For educators, it is two-fold and facilitates continuity of the student's care. First, it is trafficking prevention training and, upon victim identification, initiating the protection protocols. Schools officials use the protocols to refer student victims to, among others, medical and social service providers. In this way, the prevention and protection prongs become mutually reinforcing tools to assist child victims.

CONCLUSION

Schools are supposed to be safe zones, particularly for students whose lives are impacted by instability and insecurity. Adding to the many challenges facing school districts are the direct and indirect effects of human trafficking on public school campuses. Congress' enactment of the TVPA created a three-pronged—prosecution, protection and prevention—approach to combatting the growing scourge of human trafficking. Its subsequent reauthorizations of the law made the U.S. Department of Education the lead federal agency responsible for developing anti-trafficking prevention policies to protect schoolchildren. The Education Department has developed and disseminated anti-trafficking policies to educational agencies for adoption and implementation in local school districts. With Congress' funding authorization for 2019, the Education and Health and Human Services Departments can award grants to educate public school staff and their students with age appropriate anti-trafficking education.

California's 2017 enactment of the HTPETA demonstrates a similar commitment to reducing schoolchildren's vulnerability to exploitation. It evidences the state's recognition that education is perhaps its most important function. The HTPETA established California as the first state to legislate an anti-trafficking teaching requirement for public school children and created an overall state law construct embodying a three-pronged approach to combatting human trafficking. California's inclusion of anti-trafficking education and training in the seventh through twelfth grade curricula advances the prevention component to a new level—it focuses the prevention training on the school audience most vulnerable to exploitation: the student. Effective victim-focused prevention training will help trafficked children overcome the stigmas that can accompany victimization. This message, combined with the increased awareness of available protective social services, will encourage students to use those services.

The HTPETA requires significant actions from schools and their CSECP partners. In addition to developing or purchasing human trafficking prevention materials for their public schools and students, California school officials have to work with the CSECP's other members

¹⁵⁴ *Id.* at § 16524.7(a)(4)(A), (a)(4)(C).

¹⁵⁵ CAL. WELF. & INST. CODE § 16524.8(a)(1)(A)–(F) (2018).

¹⁵⁶ *Id.* at § 16524.8(a)(2).

to deliver a comprehensive anti-trafficking prevention and protection program. The Act requires CSECP members to assess their efforts' effectiveness on an ongoing basis as data gathering and legislative and policy refinements remain for combatting trafficking in California. The HTPETA is ambitious but designed for evolution and adaptability. It provides a legislative framework that can and should serve as the exemplar for other states' efforts to protect their schoolchildren from the evils of human trafficking.