

# SEE NO EVIL: A LOOK AT FLORIDA’S LEGISLATIVE RESPONSE TO HOLDING HOTELS CIVILLY LIABLE FOR “TURNING A BLIND EYE” TO THE SEX TRAFFICKING MONSTER HIDING BEHIND CLOSED DOORS

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## INTRODUCTION

[I] walk[ed] barefoot, bloody, beaten and alone at 12 years old down the hallway of a hotel. Nobody helped me. No one asked questions. Nobody did anything.

—Savannah Parvu<sup>1</sup>

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1. Lawrence Mower, *This Bill Would Allow Trafficking Victims to Sue Hotels. Hotels Don't Like It*, TAMPA BAY TIMES (Feb. 13, 2018), <https://www.tampabay.com/florida-politics/buzz/2018/02/13/this-bill-would-allow-trafficking-victims-to-sue-hotels-hotels-dont-like-it/>.

At the age of eleven, Savannah Parvu (“Savannah”)<sup>2</sup> became the victim of human sex trafficking.<sup>3</sup> Her mother was addicted to drugs and alcohol, and when she was eleven, Savannah accompanied her mother to go and obtain drugs.<sup>4</sup> Savannah’s mother would prostitute herself for drugs when she didn’t have the money, and on this occasion, the dealer offered her mother \$10 for drugs to have sex with Savannah instead.<sup>5</sup> This awful day birthed Savannah’s life as a victim of sex trafficking.<sup>6</sup> By the age of twelve, Savannah found herself living captive at the hands of traffickers who forced her to work as a modern day sex slave in some of Orlando’s biggest hotels.<sup>7</sup>

Savannah Parvu’s story of sex trafficking was highlighted on news broadcasts across the state of Florida,<sup>8</sup> as are the stories of many other victims of this heinous crime across the nation. Recently, the media has covered sex trafficking stories involving high-profile individuals. For example, New England Patriots owner Robert Kraft was charged in February of 2019 with solicitation, as part of a larger investigation by law enforcement into a sex trafficking ring at a purported massage parlor in Palm Beach, Florida.<sup>9</sup> Additionally, in February of last year, news reports emerged regarding music entertainer R. Kelly

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2. Michael Joe Murphy, *Hotel-Motel Sex Trafficking—Florida Is Ripe for a Crackdown*, ORLANDO SENTINEL (Feb. 8, 2018), <http://www.orlandosentinel.com/opinion/os-fla-motel-hotel-human-trafficking-crackdown-bills-20180208-story.html/>.

3. For a discussion of the meaning of sex trafficking, see *infra* Part I.

4. See Eryka Washington, *Woman Sold into Sex Trafficking for \$10 at Age 11 Shares Her Story*, NEWS 6 CLICKORLANDO (Sept. 21, 2016, 5:55 PM), <https://www.clickorlando.com/news/investigators/woman-sold-into-sex-trafficking-for-10-at-age-11-shares-her-story>.

5. See *id.*

6. See *id.*

7. See Mower, *supra* note 1.

8. See, e.g., Karla Ray, *Bill That Would Allow Human Trafficking Survivors to Sue Hotel Pulled from Senate Committee*, WFTV, <https://www.wftv.com/news/9-investigates/bill-that-would-allow-human-trafficking-survivors-to-sue-hotel-pulled-from-senate-committee/709947949> (last updated Mar. 2, 2019, 6:54PM); Washington, *supra* note 4.

9. Hollie McKay, *Kraft Case Casts Uncomfortable Spotlight on Depths of Massage Parlor Sex Trafficking in US*, FOX NEWS (Feb. 26, 2019), <https://www.foxnews.com/us/robert-kraft-arrest-casts-uncomfortable-spotlight-on-the-depths-of-massage-parlor-sex-trafficking-across-the-us>; Dan Mangan, *New England Patriots Owner Robert Kraft Will Reject Deal to Drop Prostitution Solicitation Charges: Report*, CNBC, <https://www.cnbc.com/2019/03/20/robert-kraft-will-reject-deal-to-drop-prostitution-solicitation-case.html> (last updated Mar. 21, 2019, 5:05PM). Mr. Kraft has been charged with misdemeanor charges of solicitation; he is not accused of or being investigated for a sex trafficking crime. See McKay, *supra* note 9.

being investigated by the Department of Homeland Security regarding sex trafficking allegations involving young girls.<sup>10</sup>

The sex trafficking case involving the Palm Beach massage parlor is just one of many occurring in the state of Florida.<sup>11</sup> In 2018, 767 human trafficking cases were reported in Florida, with 524 of them being sex trafficking cases.<sup>12</sup> Nationally, Florida ranks third in terms of the number of reported cases of human trafficking.<sup>13</sup> Not surprisingly, Florida's location and high tourism rate make it a prime place for sex trafficking to transpire.<sup>14</sup> Hence, hotels and motels become a common venue for sex trafficking crimes in transient states such as Florida.<sup>15</sup>

In 2018, recognizing this nexus between hotels and sex trafficking, the Florida Legislature introduced proposed legislation, Senate Bill 1044, that would have ultimately allowed hotels and motels to be held civilly liable for sex trafficking that occurred on their premises if proper anti-trafficking protocols and employee trainings were not instituted.<sup>16</sup> Senate Bill 1044, the "Civil Cause of Action for Victims of Human Trafficking Act," would have given a sex trafficking victim a civil cause of action against his or her trafficker or "facilitator."<sup>17</sup> Under the bill, a facilitator was defined as "a person who knowingly, or in willful blindness, assists or provides goods or services to a traf-

10. Jim DeRogatis, *Federal Authorities Are Weighing Charges Against R. Kelly*, NEW YORKER (Feb. 21, 2019), <https://www.newyorker.com/news/news-desk/r-kelly-is-now-the-subject-of-multiple-criminal-investigations>; Benjamin Goggin, *R. Kelly Is Reportedly Under Federal Investigation by Numerous Agencies, Including ICE, DHS, the FBI, and the IRS, for Child Trafficking and Other Crimes*, INSIDER (Feb. 23, 2019, 10:20 AM), <https://www.thisisinsider.com/r-kelly-investigation-by-ice-dhs-and-irs-after-arrest-2019-2>.

11. See *infra* Part V and notes 162–65.

12. This statistic was reported by Polaris, a non-profit, non-governmental organization that is recognized as a leader in the global fight to end trafficking. *Florida*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/state/florida> (last visited Mar. 26, 2019).

13. *States*, NAT'L HUM. TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/states> (last visited Feb. 20, 2020).

14. Janelle Zabresky, Note, *Creating a Safe Harbor for Florida's Children: An Overview of Florida's Legislative Evolution in Domestic Minor Sex Trafficking*, 40 FLA. ST. U. L. REV. 415, 421 (2013); Elina Shirazi, *Kraft Arrest Shows How Florida Has Become a Nexus of Sex Trafficking*, FOX NEWS (Mar. 5, 2019), <https://www.foxnews.com/us/kraft-arrest-shows-how-florida-has-become-nexus-of-sex-trafficking> (noting that the large immigrant population and transient nature of the state creates "the perfect recipe for an explosive sex trafficking industry taking hold in the Sunshine State").

15. See *Florida*, *supra* note 12 (data from 2019 indicating hotels and motels among the most common venues for sex trafficking in the state).

16. S.B. 1044, 2018 Leg., Reg. Sess. (Fla. 2018).

17. See *id.*

ficker which assist or enable the trafficker to carry out human trafficking.”<sup>18</sup> The bill granted hotels and other businesses an affirmative defense to liability if they had certain protocols in place and personnel were trained to identify and report suspected human trafficking activity.<sup>19</sup>

Other states, such as Texas<sup>20</sup> and Pennsylvania,<sup>21</sup> have recently passed laws similar to Florida’s proposed legislation and allow hotels to be held civilly liable for sex trafficking that occurs on the hotels’ premises. For example, Pennsylvania’s statute provides for civil liability for anyone who “profit[s] from” any sex trade act.<sup>22</sup> Under the statute, a hotel can be held liable because it “provides goods or services to the general public,” and the law requires plaintiffs to prove that the defendant “knowingly markets or provides its goods or services to” a trafficker.<sup>23</sup>

The Pennsylvania statute, as well as similar statutes from other states,<sup>24</sup> are modeled after the federal Trafficking Victims Protection Act (TVPA), which provides for civil liability for “whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in [sex trafficking].”<sup>25</sup> Currently, under the Pennsylvania statute, a million-dollar lawsuit filed by a sex trafficking victim is

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18. *Id.*

19. *Id.*

20. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 98.001 (West 2018); *see also infra* Section IV.B.1 (describing Texas legislation allowing hotels to be held civilly liable for sex trafficking that occurs on the hotels’ premises).

21. 18 PA. CONS. STAT. § 3051(a)(2)(i) (2018).

22. *See id.* The statute defines “sex trade” as “[a]n act, which if proven beyond a reasonable doubt, could support a conviction for violation or attempted violation of Chapter 59 (relating to public indecency) or section 6312 (relating to sexual abuse of children).” *Id.* § 3051(k). The statute further defines a “victim of the sex trade” as one who has:

- (1) been the object of a solicitation for prostitution; (2) been the object of a transaction in a sex act; (3) been intended or compelled to engage in an act of prostitution; (4) been intended or compelled to engage in a sex act; (5) been described or depicted in material that advertises an intent or compulsion to engage in sex acts; or (6) in the case of obscenity or child pornography, has appeared in or been described or depicted in the offending conduct or material.

*Id.*

23. *Id.* § 3051(b)(1).

24. *See* ALA. CODE § 13A-6-157 (2018); 18 PA. CONS. STAT. § 3051(a)(2)(i); TEX. CIV. PRAC. & REM. CODE ANN. § 98.001.

25. 18 U.S.C. § 1595(a) (2018).

pending against a Philadelphia hotel called the Roosevelt Inn.<sup>26</sup> Texas has also seen lawsuits filed under its similar law within the past few years.<sup>27</sup>

Though the Florida Legislature heard testimony from trafficking victims such as Savannah Parvu, who was forced at the age of eleven into a life of sex trafficking at Central Florida hotels, Senate Bill 1044 was pulled from the Senate Rules Committee directly before the end of the year's legislative session.<sup>28</sup> This was the bill's final stop before moving to the Senate floor for a vote.<sup>29</sup> Because of the legislature's failure to vote on the bill, however, it died.<sup>30</sup> Many reports indicated that hotel industry lobbyists were the cause of the legislation never making it to a vote.<sup>31</sup>

Reports have suggested that hotels and motels are "ground zero" for sex and labor trafficking,<sup>32</sup> which is now a \$150 billion criminal enterprise happening in plain sight at hotels and motels across the nation.<sup>33</sup> Although many hotel managers are not naïve to the fact that sex trafficking may be occurring on the hotel's premises, they are often not engaging in mandatory anti-trafficking training for their employees.<sup>34</sup> It is imperative to create financial repercussions for these businesses through potential liability exposure which would incentivize them to create anti-trafficking training and protocols to educate their workers on the warning signs of trafficking and proper reporting procedures to follow.<sup>35</sup> Educating workers on how to detect and report

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26. Complaint, *M.B. v. Roosevelt Inn, Inc.*, No. 170300712 (Pa. Comm. Pl. filed Mar. 10, 2017), 2017 WL 977448, at \*6–7 [hereinafter Complaint, *M.B. v. Roosevelt Inn, Inc.*].

27. See e.g., Plaintiff's Original Petition, *Doe #1 v. Backpage.com, LLC*, No. 2018-04501 (Harris Cty. Ct. Jan. 23, 2018) [hereinafter Plaintiff's Original Petition, *Doe #1 v. Backpage.com, LLC*]. Under the Texas statute, defendants can be held liable for engaging "in the trafficking of persons or . . . intentionally or knowingly benefit[ing] from participating in a venture that traffics another person." TEX. CIV. PRAC. & REM. CODE ANN. § 98.002.

28. See Ray, *supra* note 8.

29. See *id.*

30. See *id.*

31. See Ryan Nicol, *Lauren Book Brings Back Bill to Combat Human Trafficking at Hotels*, FLAPOL (Mar. 5, 2019), <https://floridapolitics.com/archives/287105-book-bill-human-trafficking-hotels>.

32. See Murphy, *supra* note 3.

33. See ILO Says Forced Labour Generates Annual Profits of US \$150 Billion, INT'L LAB. ORG. (May 20, 2014), [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_243201/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang-en/index.htm).

34. See *infra* Part IX (discussing the hotel industry's self-regulation efforts to address sex trafficking and the issues with not mandating sex anti-trafficking training in hotels).

35. See *infra* Parts VIII and IX.

potential sex trafficking will help decrease the number of victims being held captive at hotels across the nation.

In July 2019, the governor of Florida signed into law legislation, now known as Florida Statute section 509.096, requiring hotel and motel establishments to provide anti-trafficking awareness training and to educate their employees on how to detect and report trafficking.<sup>36</sup> Although this is a step in the right direction, stronger legislative initiatives should be taken. This Article argues that the Florida Legislature should enact legislation, such as that proposed in Senate Bill 1044, which would allow hotels and motels to be held civilly liable if they do not have effective mandatory training for their employees to help them recognize the indicators of individuals being trafficked on their premises. Doing so is a reasonable measure in light of the alarming statistics demonstrating that hotels are a “hotbed” for sex trafficking.<sup>37</sup> Further, such legislation would foster greater corporate social responsibility amongst hoteliers in the state and positively contribute to the elimination of this grave human rights injustice and crime.

Part I of this Article provides an overview of human trafficking with a specific focus on sex trafficking and the facts and myths surrounding trafficking. Part II discusses the intersection between sex trafficking and the hotel industry. Part III proceeds with an overview of federal anti-trafficking laws. Part IV compares the anti-trafficking laws from a sampling of states that allow for victims to potentially hold hotels civilly liable for sex trafficking under a facilitator liability theory and recent cases that have emerged as a result of state legislation. Part V explores why Florida is a prime venue for sex trafficking, and Part VI discusses Florida’s legislative efforts to fight trafficking and the current criminal and civil laws in place. Part VII examines Florida’s 2018 proposed facilitator liability legislation, which would have potentially allowed hotels to be held civilly liable by sex traffick-

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36. FLA. STAT. § 509.096(1)(a) (2019); Liz Crawford, *New Law Requires Human Trafficking Training for Hotel Employees*, WTSP (June 28, 2019, 5:13 PM), <https://www.wtsp.com/article/news/new-law-requires-human-trafficking-training-for-hotel-employees/67-f3e21ddb-1dd2-487b-8fca-044bbb781d97>.

37. See Plaintiff’s Original Petition, *Doe #1 v. Backpage.com, LLC*, *supra* note 27, at 56 (“In a recent Blue Campaign bulletin, the Department of Homeland Security outlines that traffickers have long used the hotel industry as a hotbed for human trafficking and has recommended policies and procedures that the industry can take to help prevent human trafficking and the sexual exploitation of minors.”); Monika, *Sleep Tight: What Hotels Are Doing to Fight Human Trafficking*, INTERNATIONELLE (Jan. 12, 2018), <http://www.internationale.org/hotels-against-trafficking/> (“Labor trafficking, sex trafficking . . . human trafficking. All of which can be found in the hotel industry. In an industry worth over \$150 billion, it’s no surprise that the anonymity of hotels provides a hotbed . . . of trafficking activity.”).

ing victims. Finally, Part VIII argues that Florida should follow the models of states who have enacted facilitator liability legislation, and Part IX discusses a sampling of states, including Florida, that are mandating anti-trafficking training for lodging establishments within the state.

## I.

### AN OVERVIEW OF HUMAN TRAFFICKING AND SEX TRAFFICKING

#### A. *What Is Human Trafficking?*

Human trafficking is a modern form of slavery. It is the third-largest international crime industry—behind only drug trafficking and arms trafficking.<sup>38</sup> Women, men, young children and teenagers can all fall prey to human trafficking.<sup>39</sup> These victims come from diverse socio-economic backgrounds, cultures, religions, and ethnic groups.<sup>40</sup> Victims of human trafficking may have differing levels of education and may be undocumented or documented immigrants.<sup>41</sup> There is no one-size-fits-all rule to who can become a trafficking victim. Human trafficking victims are subjected to forced labor (labor trafficking)<sup>42</sup> and sexual exploitation (sex trafficking)<sup>43</sup> by way of force, fraud, or coercion. Human trafficking has been defined by the United Nations as:

the recruitment, transportation, transfer, harboring, or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>44</sup>

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38. Mark Kavenagh, *The Trafficking of Children for Sexual Purposes: One of the Worst Manifestations of This Crime*, EPCAT INT'L (June 8, 2018), <https://www.epcat.org/news/trafficking-the-third-largest-crime-industry-in-the-world/> [<https://perma.cc/PKU8-KM5C>].

39. *What Is Human Trafficking*, U.S. DEP'T HOMELAND SECURITY, <https://www.dhs.gov/blue-campaign/what-human-trafficking> (last visited Dec. 18, 2019).

40. *Id.*

41. See Kavenagh, *supra* note 38.

42. See 22 U.S.C. § 7102(8)(B) (2018). The Trafficking Victims Protection Act of 2000 defines labor trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” *Id.*

43. *Id.* §7102(9) (defining sex trafficking).

44. G.A. Res. 55/25, Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children (Nov. 15, 2000).



In 2017, there were 8,759 recorded human trafficking cases in the United States, 6,244 of which were sex trafficking cases.<sup>45</sup> Sex trafficking, specifically, has been defined under federal law as:

[K]nowingly . . . recruit[ing], entic[ing], harbor[ing], transport[ing], provid[ing], obtain[ing], or maintain[ing] by any means a person; or benefit[ing], financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1), knowing, or, in reckless disregard of the fact, that means of force, threats of force, fraud, coercion . . . or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act . . . .<sup>46</sup>

Thus, under federal law, anyone eighteen years of age or older who is induced to engage in a commercial sex act through force, fraud or coercion is considered a victim of sex trafficking, while a minor who performs a commercial sex act is a victim of sex trafficking, regardless of whether force, fraud or coercion was used.<sup>47</sup> A “commercial sex act” involves the trading of something of value for “any sexual service.”<sup>48</sup> Examples of a “sexual service” include sexual performance, pornography, and prostitution.<sup>49</sup> Sex traffickers coerce their victims into these commercial sex acts through manipulation, threats, lies, and debt bondage.<sup>50</sup>

### *B. Facts about Human Trafficking and Sex Trafficking*

The sex trafficking situations that victims find themselves in vary.<sup>51</sup> Some victims are drawn into a romantic relationship with a trafficker who later manipulates or forces the victim into sexual exploitation.<sup>52</sup> Other victims are given false hopes and promises of employment as a model or dancer or are forced by their parents or other

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45. *Growing Awareness. Growing Impact. 2017 Statistics from the National Human Trafficking Hotline and BeFree Textline*, POLARIS PROJECT, <http://polarisproject.org/sites/default/files/2017NHTHStats%20%281%29.pdf> (last visited Jan. 2, 2020) [<https://perma.cc/6X7F-Y9B8>].

46. 18 U.S.C. § 1591 (2018).

47. *FAQs*, SHARED HOPE INT’L, <https://sharedhope.org/the-problem/faqs/> (last visited Mar. 27, 2019).

48. *Id.*

49. *Id.*

50. *Sex Trafficking*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking/sextrafficking> (last visited Mar. 28, 2019).

51. *Id.*

52. *Id.*

family members into trafficking.<sup>53</sup> Even more disheartening is that trafficking operations often target children.<sup>54</sup>

While many people may think that victims of trafficking have to be held against their will by the use of some type of physical restraint, more commonly, traffickers use psychological means to control their victims.<sup>55</sup> “Fear, trauma, drug addiction, threats against families, and a lack of options due to poverty and homelessness can all prevent someone from leaving.”<sup>56</sup> Other tactics that traffickers use to control and trap victims include taking their identification documents, threatening to cause them shame by revealing humiliating circumstances to family and friends, and isolating them from loved ones and the public by precluding contact or only allowing contact in limited and/or monitored stints.<sup>57</sup> Victims of trafficking may not readily seek assistance or flee from the exploitation because they are paralyzed with fear, and entrapped by the debilitating psychological effects of self-blame and shame stemming from the physical and/or emotional abuse they are undergoing from their traffickers.<sup>58</sup> In addition many victims are pressured to behave a certain way in public.<sup>59</sup> Due to these pressures, victims may not self-identify or understand that they have rights.<sup>60</sup>

Individuals most susceptible to human trafficking include: victims of childhood abuse or neglect; children involved in juvenile justice systems, foster care, or who have run away or are homeless; victims of violence and sexual assault; racial and ethnic minorities; members of the LGBTQ community; immigrants who do not have documentation; individuals with disabilities; and those who have a history of substance abuse or are from low-income backgrounds.<sup>61</sup>

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53. *Id.*

54. See Kavenagh, *supra* note 38 (noting estimates that children comprise one third of human trafficking victims worldwide). In the United States, the average age at which girls are first subjected to a commercial sex act is twelve to fourteen. See U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING & EDUC., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES: A REVIEW OF THE LITERATURE 8 (2009), <https://aspe.hhs.gov/system/files/pdf/75891/index.pdf>.

55. *Myths and Facts about Human Trafficking*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking> (last visited Mar. 28, 2019).

56. *Id.*

57. *Id.*

58. *Id.*

59. See *id.* (victims receive “specific instructions from their traffickers regarding how to behave when interacting with others”).

60. *Id.*

61. See *What Is Human Trafficking*, U.S. DEP’T HEALTH & HUM. SERVS. OFF. ON TRAFFICKING PERSONS, <https://www.acf.hhs.gov/otip/about/what-is-human-trafficking> (last visited Mar. 12, 2020).

Accordingly, the issue of human trafficking is a critical issue and is rightly being addressed in the political sector, media, and by society as a whole.<sup>62</sup> In addition to being a horrendous crime, human trafficking becomes a public health problem, putting individuals, families, and communities at risk.<sup>63</sup> Federal and state agencies are providing more funding and initiatives to eradicate this atrocity and bring more awareness to the public through campaigns and the passage of legislation at the state and federal level.<sup>64</sup>

## II.

### THE INTERSECTION BETWEEN SEX TRAFFICKING AND THE HOTEL INDUSTRY

Sex trafficking often occurs at hotels, motels and other lodging establishments.<sup>65</sup> Due to the anonymity and privacy that lodging establishments provide, they become attractive venues for traffickers.<sup>66</sup> Traffickers like to house their operations at hotels and motels because of the ability to pay in cash, as well as the freedom from maintaining a facility (such as a home or an apartment) for their crimes.<sup>67</sup> These venues also eliminate any associated upkeep expenses.<sup>68</sup>

From December 2007 through December 31, 2017, the National Human Trafficking Resource Center Hotline received 3,596 reports of human trafficking cases involving hotels and motels.<sup>69</sup> Seventy-five

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62. See, e.g., Gallant Fish, *No Rest for the Wicked: Civil Liability Against Hotels in Cases of Sex Trafficking*, 23 BUFF. HUM. RTS. L. REV. 119, 122 (2016–2017); Amy Pope, *Obama Administration Efforts to Combat Human Trafficking*, WHITE HOUSE BLOG: OBAMA WHITE HOUSE (Jan. 13, 2017), <https://obamawhitehouse.archives.gov/blog/2017/01/13/obama-administration-efforts-combat-human-trafficking-0> (“Fighting human trafficking requires a whole-of-society effort, with lawmakers, law enforcement officials, NGOs, survivors, the private sector, and consumers all united in our efforts.”).

63. *Fact Sheet: Human Trafficking*, U.S. DEP’T HEALTH & HUM. SERVS. OFF. ON TRAFFICKING PERSONS (Nov. 21, 2017), <https://www.acf.hhs.gov/otip/resource/fshumantrafficking>.

64. Fish, *supra* note 62, at 122.

65. *Hotels*, POLARIS, <https://polarisproject.org/initiatives/hotels> (last visited Dec. 19, 2019).

66. *Human Trafficking and the Hospitality Industry*, U.S. DEP’T HOMELAND SECURITY, <https://www.dhs.gov/blue-campaign/hospitalityindustry> (last visited Feb. 12, 2020).

67. *Hotel/Motel-Based Commercial Sex*, NAT’L HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/what-human-trafficking/sex-trafficking/hotelmotel-based-commercial-sex> (last visited Feb. 20, 2020).

68. *Id.*

69. POLARIS PROJECT, ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES: A ROADMAP FOR SYSTEMS AND INDUSTRIES TO PREVENT AND DISRUPT HUMAN TRAFFICKING 16 (2018), <https://polarisproject.org/sites/default/files/A%20Roadmap%20for%20Systems%20and%20Industries%20to%20Prevent%20and%20Disrupt%20Human>

percent of human trafficking victims reported that they had come into contact with a hotel at some point while being trafficked.<sup>70</sup>

Many individuals have the misconception that human trafficking occurs in seedy, low-priced motels and inns located in rundown, crime-infested areas.<sup>71</sup> However, “contrary to popular belief, this horrific crime is not concentrated in economy-priced, limited-service lodging properties . . . [rather] [h]uman traffickers operate in every category and across every price-point of the lodging industry, from the cheapest to the most luxurious.”<sup>72</sup>

Regardless of whether the sex trafficking occurs at high-priced hotels or economy-level motels and inns, the indicators of sex trafficking occurring at these establishments remain the same.<sup>73</sup> Such indicators include payment for rooms in cash or pre-paid cards; extended stays with few possessions; requests for rooms overlooking a parking lot; presence of excessive drugs, alcohol, and/or sex paraphernalia; excessive foot traffic in/out of hotel room; and frequent requests for new linens, towels, and restocking of the refrigerator.<sup>74</sup> Victims often exhibit signs of fear, anxiety, or submissive behavior; inappropriate clothing given the climate; no control of money, cell phone, or ID; restricted or controlled communications; no knowledge of current or past whereabouts; signs of poor hygiene, malnourishment, or fatigue, as well as constant monitoring and the inability to move about freely.<sup>75</sup>

Employees at hotels and motels are in a unique position to detect these potential signs of trafficking because of the reality that they closely interface with guests and have access to their rooms when cleaning or servicing the room.<sup>76</sup> Thus, the fight to end trafficking “requires not just passive support but actual, active commitment and effort on the part of businesses [like hotels] that unwittingly, but regularly intersect with traffickers, victims, and survivors.”<sup>77</sup>

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<https://perma.cc/V2DM-DEUN>] [hereinafter ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES].

70. *Id.*

71. *Human Trafficking: What Business Owners Need to Know*, FLA. RESTAURANT & LODGING ASS’N MAG., Fall 2018, at 20, [https://issuu.com/floridarestaurantandlodgingmagazine/docs/frla\\_fall\\_2018-\\_web/20](https://issuu.com/floridarestaurantandlodgingmagazine/docs/frla_fall_2018-_web/20) [<https://perma.cc/86EA-UC6E>].

72. *Id.*

73. See ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 69, at 20.

74. POLARIS, HUMAN TRAFFICKING AND THE HOTEL INDUSTRY (2015), <https://polarisproject.org/wp-content/uploads/2019/09/human-trafficking-hotel-industry-recommendations.pdf> [<https://perma.cc/8WB8-7UMA>].

75. *Id.*

76. ON-RAMPS, INTERSECTIONS, AND EXIT ROUTES, *supra* note 69, at 20.

77. *Id.* at 5.

## III.

## AN OVERVIEW OF FEDERAL ANTI-TRAFFICKING LAWS

A. *The Trafficking Victims Protection Act and Its Subsequent Reauthorizations*

The United States Congress enacted The Trafficking Victims Protection Act (“TVPA” or “Act”) in 2000 following an almost unanimous vote by both the House and Senate.<sup>78</sup> In enacting the TVPA, Congress created new trafficking crimes and strengthened the penalties that could be imposed for crimes of involuntary servitude that already existed.<sup>79</sup>

Although the Act made strides in improving the criminal liability response to sex trafficking,<sup>80</sup> it was criticized for having an overemphasis on a prosecutorial approach rather than being focused on the

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78. See Fish, *supra* note 62, at 136.

79. *Id.*

80. *Id.*; see also Pub. L. 108-193, § 2(2), 117 Stat. 2875 (2003). Congress explained that prior to the TVPA there was no all-encompassing law in the United States that penalized the array of offenses “involved in the trafficking scheme.” See 22 U.S.C. § 7101(b)(14) (2018). The section of the statute describing the purposes of the statute and Congressional findings reads:

Existing legislation and law enforcement in the United States and other countries are inadequate to deter trafficking and bring traffickers to justice, failing to reflect the gravity of the offenses involved. No comprehensive law exists in the United States that penalizes the range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking in the sex industry are often punished under laws that also apply to lesser offenses, so that traffickers typically escape deserved punishment. . . . In the United States, the seriousness of this crime and its components is not reflected in current sentencing guidelines, resulting in weak penalties for convicted traffickers.

*Id.* With the passage of the TVPA, new definitions for trafficking crimes were created and other criminal penalties were strengthened. See 18 U.S.C. § 1589 (2018) (new statute criminalizing forced labor); *id.* § 1591 (new statute criminalizing the sex trafficking of children and the sex trafficking of adults if accomplished through force, fraud, or coercion); *id.* § 1592 (new offense providing up to five years imprisonment for traffickers who engage in unlawful conduct using another’s individual governmental identification); *id.* § 1594 (new provision allowing federal prosecution of attempts to engage in human trafficking to the same degree as a completed offense); Charles Song & Suzy Lee, *Between a Sharp Rock and a Very Hard Place: The Trafficking Victims Protection Act and the Unintended Consequences of the Law Enforcement Cooperation Requirement*, 1 INTERCULTURAL HUM. RTS. L. REV. 133, 139 n.30 (2006) (discussing how Congress increased the maximum term from ten to twenty years for the offenses of peonage, enticement into slavery, and involuntary servitude, providing for life sentences in some cases).

victim.<sup>81</sup> Consequently, the later reauthorizations of the TVPA added more victim-centered provisions to the law.<sup>82</sup>

The TVPA was reauthorized in 2003, 2005, 2008 and 2013.<sup>83</sup> Each reauthorization has supplemented the TVPA or amended certain provisions within the Act.<sup>84</sup> In addition to these reauthorizations, a new act—the Justice for Victims of Human Trafficking Act—was passed in 2015 that amended numerous provisions of the TVPA.<sup>85</sup>

The 2003 and 2008 reauthorizations of the TVPA were the most impactful of these Acts with respect to the issue of potential liability against hotels.<sup>86</sup> The Trafficking Victims Protection Reauthorization Act of 2003 created a civil remedy for trafficking victims.<sup>87</sup> Specifically, the 2003 reauthorization allowed a trafficking victim to bring a civil action in “an appropriate district court of the United States” and “recover damages and reasonable attorney fees.”<sup>88</sup> Although this reauthorization created an opportunity for trafficking victims to file a civil cause of action against their perpetrators, victims still were left with the challenging burden of proving that perpetrators had fully violated criminal provisions.<sup>89</sup>

Following the reauthorization of 2003, the civil-remedy provisions of the Act were further developed and expanded through the passage of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.<sup>90</sup> In the 2008 reauthorization, Congress added key language which allowed for “facilitator liability.”<sup>91</sup> Under this reauthorization, the TVPA as codified at 18 U.S.C. § 1595 was created to allow for liability against an individual who does not di-

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81. See Fish, *supra* note 62, at 136.

82. *Id.*; see also 18 U.S.C. § 1595(a); Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-64, §202(a), 119 Stat. 3558, 3569; Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-93, § 4(a)(4), 117 Stat. 2875, 2877–78.

83. Fish, *supra* note 62, at 137; see also William M. Sullivan, Jr. et al., *Human Trafficking Raises Corporate Liability Concerns for the Hospitality Industry*, PILLSBURY (Feb. 5, 2018), <https://www.pillsburylaw.com/en/news-and-insights/human-trafficking-raises-corporate-liability-concerns-for-the-hospitality-industry.html>.

84. See Fish, *supra* note 62, at 137.

85. See Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227.

86. See Fish, *supra* note 62, at 137; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 222, 122 Stat. 504; Trafficking Victims Protection Reauthorization Act of 2003, § 4(a)(4).

87. Trafficking Victims Protection Reauthorization Act of 2003, § 4(a)(4)(A); see Fish, *supra* note 62, at 137.

88. *Id.*

89. Fish, *supra* note 62, at 137.

90. *Id.* at 138.

91. *Id.*; 18 U.S.C. § 1595(a) (2018).

rectly traffic the victim but who “knowingly benefits, financially or . . . receive[s] anything of value, from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter.”<sup>92</sup>

Finally, in 2015, the Justice for Victims of Human Trafficking Act of 2015 again amended various provisions of the TVPA.<sup>93</sup> Evident in these amendments was an intent of Congress to further develop protections for child victims of sex trafficking.<sup>94</sup> In particular, the statute of limitations for child sex trafficking victims was extended to ten years after the victim reaches eighteen.<sup>95</sup> Although this Act did not directly impact the potential exposure to hotels for civil actions by sex trafficking victims, it does reflect Congress’ continued focus on restoring victims and expanding protections for them.<sup>96</sup>

Following the enactment of the TVPA in 2000, all fifty states enacted legislation addressing human trafficking.<sup>97</sup> Additionally, several states have since enacted civil-remedy laws that parallel the provisions of § 1595.<sup>98</sup>

### B. *Civil Actions Pursuant to the TVPA, § 1595(a)*

The number of recorded cases involving civil liability claims brought against hotels pursuant to § 1595 is almost non-existent.<sup>99</sup> In one such case, a sex trafficking victim alleged that hotel owners knowingly allowed the trafficker to use their rooms to force the minor victim to engage in commercial sex acts.<sup>100</sup> The district court granted the defendant hotel’s motion to dismiss, but the court of appeals re-

92. 18 U.S.C. § 1595(a).

93. Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22, 129 Stat. 227.

94. Fish, *supra* note 62, at 138–39; *see* Justice for Victims of Trafficking Act of 2015 § 120; 18 U.S.C. § 1595(c)(2).

95. *Id.*

96. *See* Fish, *supra* note 62, at 139–40.

97. *Id.* at 142; *Human Trafficking Overview*, NAT’L CONF. ST. LEGISLATURES (June 1, 2018), <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking.aspx#state>; *2014 State Ratings on Human Trafficking Laws*, POLARIS, <https://polaris-project.org/sites/default/files/2014-State-Ratings.pdf> [<https://perma.cc/6G34-DLUQ>] (providing rankings on each states’ human trafficking legislation as of 2014).

98. Fish, *supra* note 62, at 142; *see, e.g.*, ALA. CODE § 13A-6-157 (2018); Human Trafficking Victims Compensation Act, MICH. COMP. LAWS § 752.983 (2019); 18 PA. CONS. STAT. § 3051(a)(2)(i) (2018); TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2018).

99. *See* Fish, *supra* note 62, at 146. The author’s subsequent research confirms that as of the date of this writing, no additional cases bringing such claims have been recorded.

100. *Ricchio v. McClean*, 853 F.3d 553, 553 (1st Cir. 2017).

versed, acknowledging that the profits received from the rental of rooms used for sex trafficking could establish the “knowingly benefitting” standard under § 1595.<sup>101</sup> Although there appears to be minimal litigation being brought against hotels under § 1595, states that have enacted parallel statutes to this provision are seeing an emergence of litigation against hotels under their state’s laws based on the “facilitator liability” theory.<sup>102</sup>

#### IV.

##### STATE ANTI-TRAFFICKING LAWS ALLOWING FOR FACILITATOR LIABILITY AGAINST HOTELS AND EMERGING LITIGATION

Under a facilitator liability theory, a hotel can be held civilly liable for “knowingly benefit[ing], financially or by receiving anything of value from participation in a venture which [it] knew or should have known was engaged in [sex trafficking].”<sup>103</sup> States such as Pennsylvania, Texas, and Alabama have implemented laws that potentially hold lodging establishments civilly liable if sex trafficking occurs on their premises.<sup>104</sup> The following section looks at the laws passed by Pennsylvania, Texas, and Alabama and the pending litigation that has arisen pursuant to these statutes.

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101. *Id.* at 553, 556–57.

102. See ALA. CODE § 13A-6-157 (2018); MICH. COMP. LAWS § 752.983 (2019); 18 PA. CONS. STAT. § 3051(a)(2)(i) (2018); TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2018); Complaint, *M.B. v. Roosevelt Inn, Inc.*, *supra* note 26, at 5; Plaintiff’s Original Petition, *Doe #1 v. Backpage.com, LLC*, *supra* note 27, at 71, 76; Complaint, *K.R. v. Backpage.com*, 38-cv-2017-900041.00 (Ala. Cir. Ct. Hous. Cty. Jan. 25, 2017), <https://s16011.pcdn.co/wp-content/uploads/alabama-complaint-k.r.-v.-medalist-holdings-l.l.c.-et.-al-filed-january-25-2017.pdf>; see *infra* Part IV (examining similar facilitator liability state statutory provisions).

103. 18 U.S.C. § 1595(a) (2018); see also sources cited *supra* note 102.

104. See 18 PA. CONS. STAT. § 3051(a)(2)(i) (2018); TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2018); ALA. CODE § 13A-6-157 (2018). Michigan has also enacted legislation that:

makes a violator of the human-trafficking provision of the statute liable to the victim for an extensive list of damages, including fright, embarrassment, humiliation, pain and suffering, and lost wages. Violation of the human-trafficking statute includes knowingly benefiting from a human-trafficking enterprise; thus, facilitators may also be held liable under the Michigan civil-remedy provision. In addition, the Michigan facilitator provision only requires knowingly benefitting “from participation in an enterprise, if the enterprise has engaged in an act proscribed under this chapter.”

Fish, *supra* note 62, at 144 (quoting MICH. COMP. LAWS § 750.462d (2019)).



## A. *Pennsylvania*

### 1. *Pennsylvania's Legislation*

In 2014, the Commonwealth of Pennsylvania made major revisions to its human trafficking law by allowing victims of human trafficking to sue entities that directly or indirectly benefit financially from their trafficking.<sup>105</sup> Title 18, section 3051(a) of the Pennsylvania Consolidated Statutes provides the following:

(1) An individual who is a victim of human trafficking may bring a civil action against any person that participated in the human trafficking of the individual in the court of common pleas of the county where the individual resides or where any of the alleged violations of this chapter occurred.

(2) An individual who is a victim of the sex trade may bring a civil action in the court of common pleas of the county where the individual resides against a person that:

- i. recruits, profits, from or maintains the victim in any sex trade act;
- ii. abuses or causes bodily harm to the victim in any sex trade act; and
- iii. knowingly advertises or publishes advertisements for purposes of recruitment into sex trade activity.<sup>106</sup>

The statute specifically provides for civil liability for anyone who benefits financially or “profits” from any sex trade act, and a lodging establishment can fall into this category if it “knowingly markets or provides its goods or services to” a sex trafficker.<sup>107</sup>

The statute also allows a defendant to be excluded from liability if a plaintiff is unable to prove that a defendant “knowingly receives a higher level of compensation from a person liable under subsection (a)(2)” or “supervises or exercises control over a person liable under subsection (a)(2).”<sup>108</sup>

A list of numerous non-defenses to a cause of action are listed in the statute, including: the victim and the defendant had a consensual sexual relationship; the victim was paid or compensated in some way for the sex trade activity; the victim made no attempt to escape or flee the sex trade; and the defendant’s place of business had signs or notices prohibiting sex trade activity or prostitution.<sup>109</sup>

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105. 18 PA. CONS. STAT. § 3051(a).

106. *Id.*

107. *Id.* § 3051(a)(2)(i), (b)(1).

108. *Id.* § 3051(b)(2)–(3).

109. *Id.* § 3051(j) (listing eleven other non-defenses to § 3051).

In terms of recovery, victims may be awarded actual and compensatory damages, punitive damages, treble damages, injunctive relief, attorney's fees and costs and any other relief the court deems appropriate.<sup>110</sup>

## 2. *Emerging Litigation in Pennsylvania*

In March 2017, a first-of-its-kind lawsuit was filed under Pennsylvania's anti-trafficking facilitator liability statute.<sup>111</sup> The complaint filed in *M.B. v. Roosevelt Inn* alleges that at age fourteen the plaintiff, M.B., was subjected to sex trafficking on Roosevelt Inn's property and the front desk staff, housekeepers, managers, and other hotel workers failed to do anything to prevent or report the sexual exploitation of the minor.<sup>112</sup> Specifically, the complaint describes how the plaintiff would walk the hallways of the Roosevelt Inn dressed provocatively and in scanty clothing with older men and other minors, showing signs of "fear and anxiety while on the premises" of the hotel.<sup>113</sup>

For weeks at a time she lived in one of the rooms at the Roosevelt Inn, where a do-not-disturb sign dangled on the doorknob for days, swatting away daily maid service, and along the hallways numerous men lingered. Inside the room, boxes and torn wrappers of condoms poured out of unemptied wastebaskets. . . .<sup>114</sup>

Other key allegations in the complaint that asserted facilitator liability against the hotel defendants<sup>115</sup> included the following:

17. Commencing in 2013, Minor-Plaintiff was recruited, enticed, solicited, harbored and/or transported to engage in commercial sex acts at the Roosevelt Inn on a regular, consistent and/or repeated basis.

18. [Defendants] regularly rented or otherwise provided, for their own financial benefit, rooms and services at the Roosevelt Inn to traffickers engaged in commercial sex acts with Minor-Plaintiff.

19. [Defendants] knew or had constructive knowledge that they were renting or otherwise providing rooms and services to individuals trafficking Minor-Plaintiff for commercial sex acts.

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110. *Id.* § 3051(c)-(e).

111. Complaint, *M.B. v. Roosevelt Inn, Inc.*, *supra* note 26, at 1.

112. *Id.* at 3-4.

113. *Id.* at 4.

114. Louise Esola, *The Hospitality Industry's Lurking Liability*, Bus. Ins. (Aug. 7, 2017), <https://www.businessinsurance.com/article/20170807/NEWS06/912314912/Sex-trafficking-hospitality-industry-lurking-liability>; *see also* Complaint, *M.B. v. Roosevelt Inn, Inc.*, *supra* note 26, at 3-4.

115. The hotel defendants include: Roosevelt Inn LLC, Roosevelt Motor Inn, Inc., UFVS Management Company, LLC and Yagna Patel, individually and/or by and through their actual or apparent agents, servants and employees.

. . . .

43. Despite knowledge, constructive knowledge and general awareness of the signs of human trafficking, [Defendants] failed to report to authorities, intervene, disrupt or otherwise stop the human sex trafficking of the Minor-Plaintiff.

44. [Defendants] financially profited from the continuation of the commercial sex acts committed on the premises of the Roosevelt Inn through both the renting of rooms and the providing of services.

45. By harboring Minor-Plaintiff for commercial sex acts, [Defendants] caused Minor-Plaintiff to suffer physical harm, a sexually transmitted disease, mental anguish, humiliation, exploitation, degradation, mental distress, loss of the enjoyments of life, and loss of life's pleasures both in the past and in the future.

46. By harboring Minor-Plaintiff for commercial sex acts, [Defendants] financially profited from the human sex trafficking and continued to profit by not reporting, intervening, disrupting or otherwise stopping the practice.

47. By harboring Minor-Plaintiff for commercial sex acts, [Defendants] acted outrageously and in reckless disregard for the health and welfare of the Minor-Plaintiff warranting the imposition of punitive damages.<sup>116</sup>

The plaintiff's complaint seeks compensatory and punitive damages.<sup>117</sup> In addition to the cause of action under section 3051(a), the complaint also contains causes of action for negligence, negligent infliction of emotional distress and intentional infliction of emotional distress.<sup>118</sup>

## B. Texas

### 1. Texas's Legislation

Similar to Pennsylvania's statute, defendants in Texas can be held liable under Texas Civil Practice & Remedies Code section 98.002 for engaging "in the trafficking of persons" or "intentionally or knowingly benefit[ing] from participating in a venture that traffics

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116. *Id.* at 3–5.

117. *Id.* at 6–7.

118. *Id.* In speaking about the filing of the lawsuit against the hotel defendants, M.B.'s attorney, Nadeem Bezar, stated:

We will hold this industry accountable for its profiting of this horrible, immoral, criminal activity . . . . Bottom line is not only are you supposed to stop what you see plainly in front of you, but you are supposed to help prevent what you know of going on in your hallways, in your stairwells and in your rooms. . . . This (lawsuit) is a wake-up call.

Esola, *supra* note 114.

another person . . . .”<sup>119</sup> Pursuant to the statute, a victim can recover actual damages, including mental anguish, court costs, reasonable attorney’s fees, and exemplary damages.<sup>120</sup> A defendant cannot assert as a defense to liability for trafficking under this statute that it has not been convicted or has been acquitted of a criminal human trafficking offense.<sup>121</sup>

## 2. *Emerging Litigation in Texas*

In 2018, the first lawsuits were filed in Texas against hotels under section 98.002.<sup>122</sup> For example, *Jane Doe #1 v. Backpage.com, LLC* was filed in state district court in Harris County, Texas in January 2018.<sup>123</sup> In an eighty-two page complaint, Plaintiff Jane Doe #1 asserts claims against notable hotel chains such as Hyatt and Choice Hotels, among other defendants.<sup>124</sup> The complaint explains how, at the age of fifteen, she was forced into sex trafficking at the hands of her traffickers and made to either rent the hotel rooms without an ID or use rooms already rented by her traffickers, which were later paid for by the “Johns.”<sup>125</sup> The complaint goes on to allege that hotel managers and staff turned a blind eye to obvious signs of trafficking including a continuous stream of men—not registered hotel guests—coming to

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119. TEX. CIV. PRAC. & REM. CODE ANN. § 98.002 (West 2018).

120. *Id.* § 98.003.

121. *Id.* § 98.002.

122. See Plaintiff’s Original Petition, *Doe #1 v. Backpage.com, LLC*, *supra* note 27; Plaintiff’s Original Petition, *Doe #2 v. Backpage.com, LLC*, No. 2018-09781 (Harris Cty. Ct. Feb. 14, 2018); Plaintiff’s Original Petition, *Doe #3 v. Backpage.com, LLC*, No. 2018-12781 (Harris Cty. Ct. Feb. 27, 2018); Plaintiff’s Original Petition, *Doe #4 v. Backpage.com, LLC*, No. 2018-12747 (Harris Cty. Ct. Feb. 27, 2018); Plaintiff’s Original Petition, *Doe #5 v. Backpage.com, LLC*, No. 2018-27018 (Harris Cty. Ct. Apr. 23, 2018); Plaintiff’s Original Petition, *Doe #6 v. Backpage.com, LLC*, No. 2018-30176 (Harris Cty. Ct. May 4, 2018); Plaintiff’s Original Petition, *Doe #7 v. Backpage.com, LLC*, No. 2018-32490 (Harris Cty. Ct. May 14, 2018); Plaintiff’s Original Petition, *Doe #8 v. Backpage.com, LLC*, No. 2018-CCV610413 (Nueces Cty. Ct. June 8, 2018); see also Susan Hogan, et al., *Lawsuits Accuse Hotels, Truck Stops of Turning Blind Eye to Sex Trafficking*, NBC WASH. (Ap. 30, 2018, 5:05 PM), <https://www.nbcwashington.com/news/local/Lawsuits-Accuse-Hotels-Truck-Stops-of-Turning-Blind-Eye-to-Sex-Trafficking-481290921.html>; *Sex Trafficking*, McADAMS PC, <https://www.anniemcadamspc.com/human-trafficking/sex-trafficking> (last visited Oct. 31, 2019 (listing all eight lawsuits filed under section 98.002).

123. Plaintiff’s Original Petition, *Doe #1 v. Backpage.com, LLC*, *supra* note 27, at 81.

124. *Id.* at 16–17.

125. *Id.* at 56. In addition to the cause of action alleged under section 98.002, the complaint also alleges causes of action for Negligence, Aiding and Abetting, and Gross Negligence of Specific Hotels. *Id.* at 59–61, 79.

and from her room.<sup>126</sup> As a result of the hotel employees' inaction, Jane Doe 1 asserts that the hotels profited from the "sexual exploitation of minors" by way of the payments received from the exploitation.<sup>127</sup> In addition to the allegations that the hotel financially benefitted from the sex trafficking by way of the payments of the rooms, the complaint further alleges that the hotel profited by:

[R]educing the cost of training employees and managers of how to spot the signs of human trafficking and the sexual exploitation of minors and what steps to take[,] . . . lowering security cost for not having proper security measures, including a . . . certified security guard to help prevent human trafficking on The Hotel Defendants' locations, and . . . cutting down on the cost of employing lawyers to properly respond to law enforcement subpoenas requesting security footage and other information to assist in the prosecution of human traffickers.<sup>128</sup>

The complaint requests the court award the victim over one million dollars in damages, including attorney's fees.<sup>129</sup> Since the filing of this case, several similar lawsuits have been filed under section 98.002 in Texas, and name as defendants other major national hotel chains such as Marriott and Radisson.<sup>130</sup>

### C. Alabama

#### 1. Alabama's Legislation

In Alabama, Alabama Code section 13A-6-157 allows for a victim of trafficking to bring a civil action for damages.<sup>131</sup> A "victim of trafficking" is defined as "any person, including minors, subjected to

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126. *Id.* at 56; Elaine Pofeldt, *A Duty to Deter Human Trafficking*, MPI (Sept. 21, 2018), [https://www.mpiweb.org/blog/article/a-duty-to-deter-human-trafficking?utm\\_medium=email&utm\\_source=multiview.com&utm\\_campaign=news+brief](https://www.mpiweb.org/blog/article/a-duty-to-deter-human-trafficking?utm_medium=email&utm_source=multiview.com&utm_campaign=news+brief); see also Sullivan, Jr. et al., *supra* note 83.

127. Plaintiff's Original Petition Doe #1 v. Backpage.com, LLC, *supra* note 27, at 74–75.

128. *Id.* at 57.

129. *Id.* at 79–80.

130. See Plaintiff's Original Petition, Doe #1 v. Backpage.com, LLC, *supra* note 27; Plaintiff's Original Petition, Doe #2 v. Backpage.com, LLC, *supra* note 122; Plaintiff's Original Petition, Doe #3 v. Backpage.com, LLC, *supra* note 122; Plaintiff's Original Petition, Doe #4 v. Backpage.com, LLC, No. 2018-12747 (Harris Cty. Ct. Feb. 27, 2018); Plaintiff's Original Petition, Doe #5 v. Backpage.com, LLC, No. 2018-27018 (Harris Cty. Ct. Apr. 23, 2018); Plaintiff's Original Petition, Doe #6 v. Backpage.com, LLC, No. 2018-30176 (Harris Cty. Ct. May 4, 2018); Plaintiff's Original Petition, Doe #7 v. Backpage.com, LLC, No. 2018-32490 (Harris Cty. Ct. May 14, 2018); Plaintiff's Original Petition, Doe #8 v. Backpage.com, LLC, No. 2018-CCV610413 (Nueces Cty. Ct. June 8, 2018); *Sex Trafficking*, *supra* note 122.

131. ALA. CODE § 13A-6-157 (2018).

labor servitude, sexual servitude, or involuntary servitude.”<sup>132</sup> Under the code, a court may award actual damages, compensatory damages, punitive damages and injunctive relief.<sup>133</sup> A victim may also be awarded attorney’s fees and costs.<sup>134</sup> If a defendant’s acts are proven to be “willful and malicious,” treble damages are awarded upon proof of actual damages.<sup>135</sup>

## 2. *Emerging Litigation in Alabama*

Pursuant to the statute, at least one lawsuit has recently emerged under a facilitator liability theory against hotels, alleging that the defendant hotel was liable to a sex trafficking victim because it benefited financially from the trafficker’s sexual exploitation venture and the manager or operator of the hotel “knew or should have known” that the sex trafficking was occurring on the premises.<sup>136</sup> Moreover, liability is asserted based on allegations that the hotel did not take reasonable precautions to prevent the trafficking by providing anti-trafficking training to its employees so that law enforcement could be notified.<sup>137</sup>

The complaint alleges that the plaintiff, who at the time of the trafficking was seventeen years old, was forced into sexual exploitation by her trafficker, and that the defendants, including Choice Hotels Inc., “conspired, enabled and/or otherwise worked together in a sex trafficking venture . . . .”<sup>138</sup> The complaint details how the victim was a runaway with little money when the trafficker stopped his vehicle as she walked down a busy street in Mississippi and convinced her that he could help her.<sup>139</sup> “[T]ired, scared, hungry and need[ing] a ride . . . she agreed to get in the vehicle with him.”<sup>140</sup> In the following weeks, the trafficker groomed her and two other women for trafficking, which included providing her drugs to assist in gaining control over her.<sup>141</sup> The sex trafficking began in Memphis, Tennessee where he forced her “to engage in sex acts for pay and threaten[ed] her with physical violence,” including carrying around a hammer as a threat.<sup>142</sup> The sex

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132. *Id.* § 13A-6-151(8).

133. *Id.* § 13A-6-157.

134. *Id.*

135. *Id.*

136. *See* Complaint, *K.R. v. Backpage.com*, *supra* note 102, ¶ 4. Note that the hotel defendants in the suit include Choice Hotels International Inc., parent company of Quality Inn, where the sex trafficking occurred.

137. *Id.* ¶ 42.

138. *Id.* ¶ 1.

139. *Id.* ¶ 49–50.

140. *Id.*

141. *Id.* ¶ 51.

142. *Id.* ¶¶ 52–53.

trafficking continued at Choice Hotels' Quality Inn in Dothan, Alabama.<sup>143</sup>

After taking photographs of the victim and posting her photographs on the Co-Defendants' webpage, Backpage.com, her trafficker sold her "to customers for approximately . . . one-hundred dollars (\$100.00) for thirty minutes of sex with a child" for nearly two and a half months.<sup>144</sup> During this time, the trafficker reserved a room from the hotel thirty-seven different nights which allowed him to earn "Diamond Level Status in Choice Hotels' Elite Membership status program," thus, "gaining privileges from [the hotel] to recognize and reward his loyalty."<sup>145</sup> The complaint goes on to allege that:

[A]pproximately ten (10) or more men visited [the trafficker's] room every day to have sex with K.R. and/or the other women victimized by the human trafficking venture. The employees and staff at the Quality Inn knew or should have known that numerous men were visiting [the trafficker's] room and knew or should have known that K.R. was being subjected to sex trafficking, but they took no steps to stop the criminal activity. Furthermore, the Quality Inn employees and staff knew or should have known that K.R. was being trafficked, but they never said anything to her or [her trafficker] nor did they report the situation to law enforcement.<sup>146</sup>

K.R. was finally able to escape this ordeal while her trafficker was asleep one day, and walked miles before she was able to get help from a stranger who helped her contact law enforcement.<sup>147</sup> The complaint alleges that the hotel, along with the other defendants, violated Alabama's human trafficking statute when it "knowingly subjected [the minor victim] to sexual servitude through coercion and knowingly benefitted, financially or by receiving anything of value, from the participation in a venture or engagement for the purpose of sexual servitude."<sup>148</sup> The victim is seeking compensatory damages, punitive damages, treble damages, as well attorneys' fees and costs.<sup>149</sup>

Neither Pennsylvania, Texas, nor Alabama's laws appear to have any provisions that would allow a hotel to assert an affirmative defense to liability if it has proper anti-trafficking training and protocols

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143. *Id.*

144. *Id.* ¶¶ 54, 56.

145. *Id.* ¶ 4.

146. *Id.* ¶ 57.

147. *Id.* ¶ 58.

148. *Id.* ¶ 62.

149. *Id.* ¶ 63.

in place for its employees.<sup>150</sup> This is notable, as Florida's 2018 proposed facilitator liability statute contained provisions which would have allowed hotels in the state to assert as a defense to liability that they had such training and procedures in place.<sup>151</sup>

## V.

### FLORIDA—PRIME STATE FOR SEX TRAFFICKING

Florida's presence as a "destination for tourists, transients, run-aways, migrant workers, and organized crime" contributes to the large-scale existence of human trafficking in the state.<sup>152</sup> With major interstate highways like I-95, I-75, and I-10 running through the state, individuals involved in trafficking are also able to move trafficking victims out of the state with more ease.<sup>153</sup> Additionally, Florida's various tourist attractions draw people of different cultures and language backgrounds to the state, which makes Florida a prime target for individuals seeking to engage in sex and labor trafficking of children and adults.<sup>154</sup>

Sex trafficking cases are not limited to tourist destinations in the state, but occur across Florida. For example, in November 2018, 103 people were arrested for human trafficking and prostitution in Polk County.<sup>155</sup> Similarly, in January 2019, a man was arrested in Tallahassee, Florida after a two-month investigation on charges of sex trafficking involving a fourteen-year old girl.<sup>156</sup> At the time of his arrest, the

150. See 18 PA. CONS. STAT. §§ 3000–3072 (2019); TEX. CIV. PRAC. & REM. CODE ANN. §§ 98.001–98.006 (West 2018); ALA. CODE §§ 13A-6-150 to -163 (2018).

151. See S.B. 1044, 2018 Leg., Reg. Sess. (Fla. 2018).

152. Zabresky, *supra* note 14, at 421; Shirazi, *supra* note 14 (noting how the large immigrant population and transient nature of the state creates "the perfect recipe for an explosive sex trafficking industry taking hold in the Sunshine State.").

153. See Murphy, *supra* note 3.

154. See Zabresky, *supra* note 14, at 421; Shirazi, *supra* note 14.

155. See PROF'L STAFF OF THE S. COMM. ON CRIMINAL JUSTICE, BILL ANALYSIS AND FISCAL IMPACT STATEMENT, S.B. 540, 2019 Leg., at 3 (FLA. 2019), <http://www.fl.senate.gov/Session/Bill/2019/540/Analyses/2019s00540.cj.PDF>; Daniel Dahm & Brianna Volz, *Orlando-Area Doctor Among 103 Arrested in Polk County Sex Sting, Sheriff Says*, NEWS 6 CLICKORLANDO (Dec. 3, 2018, 7:52 PM), <https://www.clickorlando.com/news/103-arrested-in-polk-county-sex-sting>.

156. See PROF'L STAFF OF THE S. COMM. ON CRIMINAL JUSTICE, BILL ANALYSIS AND FISCAL IMPACT STATEMENT, S.B. 540, 2019 Leg., at 3–4 (FLA. 2019), <http://www.fl.senate.gov/Session/Bill/2019/540/Analyses/2019s00540.cj.PDF>; *Human Trafficking Suspect Accused of Sex-Trafficking Child in Tallahassee*, WTXL TALLAHASSEE (Jan. 26, 2019, 6:07 PM), [https://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article\\_205c9c8e-21bf-11e9-81a6-934dc4e4a244.html](https://www.wtxl.com/news/human-trafficking-suspect-accused-of-sex-trafficking-child-in-tallahassee/article_205c9c8e-21bf-11e9-81a6-934dc4e4a244.html) [<https://perma.cc/FN2X-RPTA>]. According to court documents, the victim indicated that the sex-trafficking began before the age of fourteen. The victim told authorities that her trafficker threatened to kill her and her family if she



man had pending charges for child sex trafficking in 2014.<sup>157</sup> Likewise, in February 2019, Palm Beach law enforcement arrested numerous individuals as part of a sex trafficking sting involving a purported massage parlor that spanned across numerous Florida counties and involved “more than 300 male buyers and multiple women running operations in several counties.”<sup>158</sup>

In sum, sex trafficking occurs at many venues across the state.<sup>159</sup> According to a 2018 survey conducted by the National Human Trafficking Hotline, common venues for sex trafficking in Florida include illicit massage businesses or spas, private residences and hotels.<sup>160</sup> The 2017 edition of the same survey indicated that Florida hotels and motels were the most-common venue for sex trafficking in the state.<sup>161</sup>

## VI.

### A BRIEF OVERVIEW OF FLORIDA’S ANTI-TRAFFICKING LEGISLATIVE EFFORTS

Similar to federal law, Florida defines human trafficking as a “form of modern day slavery” that involves “the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.”<sup>162</sup> In 2004, following the enactment of the TVPA, the Florida Legislature enacted legislation specifically targeted at combating human trafficking.<sup>163</sup> As part of this new legislation, many criminal penalties were created or enhanced, such as making human trafficking and the sex trafficking of adults second-degree felonies, sex trafficking of minors a first degree felony and expanding the definition of

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did not cooperate, and thus, she complied. She was trafficked at different locations, including a time where she was confined in a hotel for two weeks, was not allowed to leave and forced to have sex with her trafficker on multiple occasions. *Id.*

157. *Human Trafficking Suspect Accused of Sex-Trafficking Child in Tallahassee*, *supra* note 156.

158. Shirazi, *supra* note 14. New England Patriots owner Robert Kraft was arrested and charged with solicitation for allegedly paying for secret sex acts from women who were sexually exploited as part of a sex trafficking enterprise in Jupiter, Florida. McKay, *supra* note 9. Kraft denies the charges of solicitation and he has not been charged with any trafficking offenses. *Id.*

159. *See Florida*, NAT’L HUM. TRAFFICKING HOTLINE, *supra* note 12.

160. *Id.*

161. *Id.*

162. FLA. STAT. § 787.06(2)(d) (2019).

163. 2004 Fla. Laws ch. 391 (repealed 2012); Adam S. Butkus, *Ending Modern-Day Slavery in Florida: Strengthening Florida’s Legislation in Combating Human Trafficking*, 37 STETSON L. REV. 297, 325 (2007).

racketeering to include sex trafficking of minors and sex trafficking.<sup>164</sup>

Since 2004, there have been other amendments to trafficking laws in Florida, as well as the enactment of new laws.<sup>165</sup> For example, following the enactment of the 2004 statute, key amendments were made in 2006 and 2008.<sup>166</sup> Additionally, to assist with further development of anti-trafficking laws, the legislature mandated that a Statewide Human Trafficking Task Force be convened in 2009.<sup>167</sup> Three years later, the legislature enacted the Safe Harbor Act of 2012,<sup>168</sup> “a broad statute that ensures CSEC [commercially sexually exploited children] are placed on a dependency track to receive services rather than a delinquency track.”<sup>169</sup>

In 2014, the Florida Statewide Council on Human Trafficking was created, which was a pioneering effort by the legislature.<sup>170</sup> The

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164. FLA. STAT. § 796.035 (repealed 2014); *id.* §§ 787.06, 895.02; Butkus, *supra* note 163, at 326–27; Zabresky, *supra* note 14, at 425–31 (discussing the enactment of Florida’s human trafficking statute in 2004, amendments made to the statute in 2006 and 2008, the creation of the Statewide Human Trafficking Task Force in 2009, and the enactment of the Florida’s Safe Harbor Act in 2012).

165. 2006 Fla. Laws 168; FLA. STAT. §§ 772.102, 772.104, 787.06, 895.02; Zabresky, *supra* note 14, at 425–31; STATEWIDE COUNCIL ON HUMAN TRAFFICKING, ANNUAL REPORT 2018: FLORIDA: AN ALL HANDS ON DECK APPROACH TO COMBAT TRAFFICKING 9–10 (2018), [http://myfloridalegal.com/webfiles.nsf/WF/MVIS-B8JT3C/\\$file/HTAnnualReport2018Web.pdf](http://myfloridalegal.com/webfiles.nsf/WF/MVIS-B8JT3C/$file/HTAnnualReport2018Web.pdf) (discussing the passage of important human trafficking bills in Florida from 2012 through 2018).

166. Zabresky, *supra* note 14, at 425, 427.

167. *Id.* at 427.

168. Florida Safe Harbor Act, 2012 Fla. Laws 1199.

169. STATEWIDE COUNCIL ON HUMAN TRAFFICKING, *supra* note 165, at 9; *see also* Zabresky, *supra* note 14, at 427. In discussing the Safe Harbor Act, the report also explains that the “legislation also gives law enforcement discretion to either arrest or deliver the minor to a short-term safe house and enhances penalties for solicitation” and “requires the Department of Children and Families to address child welfare service needs of sexually exploited children and provide requirements for safe houses.” STATEWIDE COUNCIL ON HUMAN TRAFFICKING, *supra* note 165, at 9. The report further discusses additional legislative enactments, including: House Bill 7049 in 2012, which combined “statutes on involuntary servitude, human trafficking, and sex trafficking into a single statute” and “requires offenders to register as sex offenders or sexual predators when found guilty of commercial sexual activity and increases penalties for violations of human trafficking”; House Bill 989, which “prohibits minors from working in adult theaters” and “creates and increases penalties relating to human trafficking”; House Bill 465, which “enhanced criminal penalties for soliciting another to commit prostitution” and “boosts protection for victims of human trafficking”; and House Bill 852, which requires the Department of Children and Families or the sheriff’s office to “conduct a multidisciplinary staffing on child victims of commercial sexual exploitation to determine the child’s services and placement needs.” *Id.* at 9–10.

170. *Id.* at 6 (“Florida is one of the first states with a statutory council on human trafficking focused on policy.”).

council's mission is to strengthen the coordination of efforts and communication between law enforcement and social services agencies in fighting sex trafficking and providing vital support to victims.<sup>171</sup> It is the council's desire to "make Florida a model state for fighting human trafficking."<sup>172</sup> Some of its duties include developing recommendations for services and programs for sex trafficking victims, as well as recommendations for the apprehension and prosecution of traffickers, hosting annual statewide policy summits, and coordinating with the Department of Children and Families to develop and maintain human trafficking programs and services across the state.<sup>173</sup> The council must prepare and submit an annual report regarding its ongoing efforts to combat trafficking.<sup>174</sup>

As a result of these legislative efforts, Florida has been recognized as one of the nation's leading states in fighting sex trafficking.<sup>175</sup> According to a 2018 report by Shared Hope International, a nonprofit organization whose mission is to end sex trafficking and restore and bring justice to victims, Florida is ranked as one of the top ten states working to eradicate sex trafficking.<sup>176</sup> The organization gave Florida an "A" grade and ranked it as the fifth best state in the country when it comes to fighting against domestic minor sex trafficking.<sup>177</sup>

#### A. *Criminal Liability for Human Trafficking in Florida*

Under Florida Statute section 787.06(3), "a person who knowingly, or in reckless disregard of the facts, engages in human trafficking, may be subject to criminal penalties," which range from first

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171. *Id.* at 6; *see also* FLA. STAT. § 16.617(1) (2019).

172. STATEWIDE COUNCIL ON HUMAN TRAFFICKING, *supra* note 165, at 6.

173. FLA. STAT. § 16.617(4) (2019).

174. *Id.* § 16.617(5).

175. SHARED HOPE INT'L, PROTECTED INNOCENCE CHALLENGE TOOLKIT 2019 (2019), <https://sharedhope.org/PICframe9/2019ProtectedInnocenceChallengeToolkit.pdf> [<https://perma.cc/73A5-4Y8X>]; *see also* STATEWIDE COUNCIL ON HUMAN TRAFFICKING, *supra* note 165, at 9.

176. *See* SHARED HOPE INT'L, *supra* note 175.

177. *Id.* (explaining that DMST "is the commercial sexual exploitation of American children within U.S. borders and is synonymous with child sex slavery, child sex trafficking, prostitution of children, and commercial sexual exploitation of children.") The report card is based on the Protected Innocence Challenge Report. The legislative framework for the report addresses fundamental laws that "establish a comprehensive response to domestic minor sex trafficking." The laws are grouped into six categories of law which include: (1) criminalization of domestic minor sex trafficking; (2) criminal provisions addressing demand; (3) criminal provisions for traffickers; (4) criminal provisions for facilitators; (5) protective provisions for the child victim; and (6) criminal justice tools for investigation and prosecution. *Id.*

degree felonies to a life felony.<sup>178</sup> Persons who “attempt to engage in human trafficking, recklessly disregard facts of human trafficking, or benefit financially from participating in a human trafficking venture” will also face a variety of criminal penalties under the statute.<sup>179</sup>

### B. *Civil Liability for Human Trafficking in Florida*

In addition to trafficking victims being able to pursue common law causes of actions against a trafficker under theories of false imprisonment, theft, or intentional infliction of emotional distress, victims may also have a civil cause of action to pursue civil remedies for criminal acts committed against them, pursuant to chapter 772 of the Florida Statutes.<sup>180</sup> Specifically, section 772.104(2) allows sex trafficking victims to sue civilly when the victim has been injured by any unlawful criminal activity listed in section 772.103.<sup>181</sup> For example, section 772.103(1) makes it unlawful for any person, “[t]o employ, or associate with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.”<sup>182</sup>

The standard of proof for a cause of action under section 772.104(2) is “clear and convincing evidence” and victims are allowed to recover threefold the amount gained from the trafficking, as well as reasonable attorney’s fees and costs.<sup>183</sup> Additionally, the statute of limitations for such an action under section 772.104(2) is five

178. See H.R. JUDICIARY COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 167, 2018 Leg., at 2 (Fla. 2018), <http://www.flsenate.gov/Session/Bill/2018/167/Analyses/h0167e.JDC.PDF>; see also FLA. STAT. § 787.06(3) (2019).

179. See H.R. JUDICIARY COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 167, 2018 Leg., at 2 (Fla. 2018), <http://www.flsenate.gov/Session/Bill/2018/167/Analyses/h0167e.JDC.PDF>; see also FLA. STAT. § 787.06(3).

180. *Id.* at 3.

181. *Id.* at 4.

182. *Id.* at 3. Other criminal violations listed in section 772.103(1) make it unlawful for any person:

- 1) Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or in the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- 2) Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- 3) To conspire or endeavor to violate any of the actions listed above.

*Id.*

183. FLA. STAT. § 772.104(2).

years<sup>184</sup> and the statute of limitations for a common law tort action is four years.<sup>185</sup>

## VII.

### FLORIDA'S PROPOSED LEGISLATION AND CIVIL DAMAGES AGAINST HOTELS UNDER A FACILITATOR LIABILITY THEORY

In 2018, Florida State Senator Lauren Book proposed the “Civil Cause of Action for Victims of Human Trafficking Act.”<sup>186</sup> The proposed statute indicated that in order “to achieve the intent of the Legislature relating to human trafficking expressed in [section] 787.06(1)(d) it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and costs.”<sup>187</sup> Under the proposal, a “facilitator” was defined as any person “who knowingly, or in willful blindness, assists or provides goods or services to a trafficker which assist or enable the trafficker to carry out human trafficking.”<sup>188</sup> A “trafficker” was defined as “any person who knowingly engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking.”<sup>189</sup> Other key terms defined in subsections 2(f) and (g) of the proposed statute were:

(f) “Victim of human trafficking” means a person subjected to coercion . . . or by any other means, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

(g) “Willful blindness” exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance,

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184. FLA. STAT. § 772.17; *see* H.R. JUDICIARY COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 167, 2018 Leg., at 4 (Fla. 2018), <http://www.flsenate.gov/Session/Bill/2018/167/Analyses/h0167e.JDC.PDF>.

185. FLA. STAT. § 95.11(3); *see* H.R. JUDICIARY COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 167, 2018 Leg., at 4 (Fla. 2018), <http://www.flsenate.gov/Session/Bill/2018/167/Analyses/h0167e.JDC.PDF>.

186. S.B. 1044, 2018 Leg., Reg. Sess. (Fla. 2018).

187. *Id.* § 2(1).

188. *Id.* § 2(2)(a) (stating that the term “facilitator” does not include an individual who facilitates trafficking as a result of force, threat or coercion).

189. *Id.* § 2(2)(c).

such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.<sup>190</sup>

Subsection 3 of the proposed statute focused on the specifics of the civil cause of action that could be brought by a victim.<sup>191</sup> That proposed section read in pertinent part as follows:

(3) Civil Cause of Action.

(a) A victim of human trafficking has a civil cause of action against the trafficker or facilitator who victimized her or him and may recover damages as provided in this section.

(b) The action may be brought in any court of competent jurisdiction, and the standard of proof is a preponderance of the evidence.

(c) A victim who prevails in any such action is entitled to recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs. . . .

(d) The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both this section and s. 772.104(2). . . .

(e) If a victim prevails in an action under this section, in addition to any other award imposed, the court shall assess a civil penalty against the defendant in the amount of \$50,000. This penalty is in addition to and not in lieu of any other damage award. . . .

Subsection five of the proposed statute focused on the affirmative defenses that could be raised by hotel defendants sued by victims pursuant to the statute.<sup>192</sup> Hotel defendants would have to prove by the preponderance of the evidence that it required its management and employees who were “reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification, prevention, and reporting of suspected human trafficking” within a specified timeframe.<sup>193</sup> Hotels would also have to show that it had implemented “effective” protocols to prevent, detect and report trafficking.<sup>194</sup> Finally, for any employee who the victim alleges to be a facilitator or participant, the hotel defendant would have to prove that the employee “complied with the recommendations and practices suggested or required in the training, protocols, or policies required in this subsection.”<sup>195</sup>

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190. *Id.* § 2(2)(f), (g).

191. *Id.* § 2(3).

192. *Id.* § 2(5).

193. *Id.* § 2(5)(a).

194. *Id.* § 2(5)(b).

195. *Id.* § 2(5)(c).

The proposed statute provided that:

[Actions] may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.<sup>196</sup>

In 2018, the Florida House of Representatives also introduced a companion bill to Senate Bill 1044, House Bill 167.<sup>197</sup> The bill contained similar provisions as those discussed above, but had some key differences.<sup>198</sup> One important difference in House Bill 167 is that it required that hotel defendants have necessary employee training and protocols in place regarding human trafficking activity.<sup>199</sup> Accord-

196. *Id.* § 3.

197. See H.B. 167, 2018 Leg., Reg. Sess. (Fla. 2018); Tiffany McGlinchey et al., *The Final 72 Hours—The Final Push for Legislative Session*, CHILD. CAMPAIGN (Mar. 5, 2018), <https://iamforkids.org/the-final-72-hours-the-last-push-for-legislative-session/>.

198. See generally H.R. JUDICIARY COMM., HOUSE OF REPRESENTATIVES STAFF ANALYSIS, H.B. 167, 2018 Leg. (Fla. 2018), <http://www.flsenate.gov/Session/Bill/2018/167/Analyses/h0167e.JDC.PDF>.

199. *Id.* at 6. Another major difference in House Bill 167 from Senate Bill 1044 was that it only allowed a hotel defendant to assert an affirmative defense to *punitive* damages recoverable under the Act “based on a claim of vicarious liability for an employee’s conduct” if the hotel owner or operator proved by the greater weight of evidence that:

1. Its personnel have been trained to identify and report suspected human trafficking activity in accordance with s. 509.210 and rules adopted thereunder.
2. The owner or operator had in place an employee protocol or employee code of conduct to detect and report suspected human trafficking activity to appropriate law enforcement authorities, which may include the National Human Trafficking Hotline, the United States Department of Justice Hotline, the Florida Abuse Hotline, or local law enforcement authorities.
3. If the victim of human trafficking was a minor at the time of the trafficking, the owner or operator exercised reasonable care and diligence, screening, training, overseeing, and supervising the employee, and made a reasonable attempt to ensure compliance with the anti-human-trafficking protocols and training required by this section.
  - (b) If the victim of human trafficking was an adult at the time of the trafficking, the affirmative defense provided in this subsection may be overcome with proof by clear and convincing evidence that the officers, directors, or managers of the owner or operator of the public food service or lodging establishment knowingly, or in willful blindness, condoned, ratified, permitted, caused, or consented to the conduct constituting human trafficking or the facilitation of such trafficking.

H.B. 167, 2018 Leg., Reg. Sess., § 2(5).

ingly, House Bill 167 also created a statutory provision, Florida Statute section 509.210, prescribing the following:

509.210 Training of public food service and lodging establishment personnel regarding human trafficking.—

- (1) In consultation with the Attorney General, human trafficking victim advocacy organizations, and state and national restaurant and lodging associations, the [Division of Hotels and Restaurants] shall adopt by rule one or more educational programs designed to train employees of public food service and lodging establishments in the identification and reporting of suspected human trafficking activity. The owner or operator of a public food service or lodging establishment may also adopt its own educational program for this purpose, which must be submitted to the division and approved by it for the owner's or operator's use.<sup>200</sup>

House Bill 167 went on to require that all lodging establishments train employees “reasonably expected to routinely interact with guests” via an approved educational program within a reasonable amount of time after hiring and at “appropriate intervals thereafter.”<sup>201</sup> Under the bill, lodging establishments would have been required to maintain training records for inspection purposes and if an owner or operator of an establishment failed to comply with the division's rule requirements, an administrative sanction could be imposed.<sup>202</sup>

Both Senate Bill 1044 and House Bill 167 passed through their respective committees with promise and continued to gain momentum towards the House and Senate floors for a final vote.<sup>203</sup> However, Senate Bill 1044 was abruptly removed from the Senate Rules Committee agenda, the final committee to address the measure before it went to the Senate floor.<sup>204</sup>

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200. *Id.* § 4(1).

201. *Id.*

202. *Id.* This section also would have required establishments to provide proof of the training:

All public food service and lodging establishments shall provide the division with proof of employee training upon request, including, but not limited to, at the time of any division inspection of the establishment. Proof of training for each employee shall include the name, date of birth, and job title of the trained employee, the date the training occurred, and the approved educational program used.

*Id.* § 4(2).

203. Ryan Dailey, *Abrupt Pull of Sen. Lauren Book's Human Trafficking Bill Confuses Advocates*, WFSU (Mar. 5, 2018), <https://news.wfsu.org/post/abrupt-pull-sen-lauren-books-human-trafficking-bill-confuses-advocates>.

204. *See id.* (Representative Ross Spano, sponsor of House Bill 167, indicated that the bill had “passed its final House committee stop. . .”).



In February 2018, at a meeting of the Senate Committee on Children, Families and Elder Affairs, the sponsor of Senate Bill 1044, Senator Lauren Book, read the letter of one sex trafficking survivor which described how she was “sold into slavery, drugged, tied down on hotel beds and raped for 41 days” and how hotel workers “had to know what was happening to [her], seeing men and cars coming in and out.”<sup>205</sup> She also indicated in the letter that she was “forced to have sex with one of the men working the front desk at one of the motels, who lived on site.”<sup>206</sup>

The author of this letter was present in the senate hearing room, along with three other survivors.<sup>207</sup> Another survivor, Savannah Parvu, shared her story of “walking barefoot, bloody, beaten and alone at twelve years old down the hallway of a hotel, and no one helped [her], no one asked questions, no one asked [her if she] needed anything.”<sup>208</sup>

Many of the senators applauded the survivors sharing their stories; however, some also expressed concerns about the potential for frivolous lawsuits.<sup>209</sup> In response to these concerns, Senator Book has stressed that the bill’s language establishes an affirmative defense to liability for lodging establishments that provide awareness training to their employees on the warning signs of sex trafficking and create reporting procedures once potential sex trafficking is detected.<sup>210</sup> Other opponents of the bill, however, such as the Florida Lodging and Restaurant Association (FLRA), shared in the concern regarding frivolous lawsuits.<sup>211</sup> One FLRA spokesperson has stated that the legislation “leaves the door open as it relates to the hotel property’s liability.”<sup>212</sup> Critics argue that the proposed legislation should have exempted lodging establishments from the law.<sup>213</sup>

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205. Margie Menzel, *Sex Trafficking Victims Could Sue Hotels Under Senate Proposal*, WFSU (Feb. 13, 2018), <https://news.wfsu.org/post/sex-trafficking-victims-could-sue-hotels-under-senate-proposal>.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. *See Ray, supra* note 8.

212. *Id.* The statement further states, “[d]uring the legislative process, FRLA supported proposed changes that would safeguard the owner and/or operator from liability and unfounded lawsuits if they do not have any knowledge that human trafficking is occurring on the property and; if a mandatory training is already being implemented.” *Id.*

213. *Id.*

However, proponents of the law have argued that this would send a “disturbing message” to prospective visitors from across the nation and world, as well as human trafficking predators, that Florida’s hotels and motels are “sanctuaries” for trafficking.<sup>214</sup> Advocates contend that because Florida has been a leading state in fighting human trafficking, it should avoid sending the misconception that its lodging establishments are safe havens for trafficking.<sup>215</sup>

### VIII.

#### FLORIDA—POSITIVES OF ENACTING ANTI-TRAFFICKING LEGISLATION

##### A. *Florida’s Proposed Legislation Is Reasonable Because It Applies a Knowing and Willful Blindness Standard for Imposing Hotel Liability*

As a leading state in fighting sex and human trafficking, Florida should follow the legislative initiatives of states like Pennsylvania and Texas by enacting laws that would allow victims to sue hotels for civil liability damages if the hotel knowingly or willfully allowed sex trafficking to occur on its premises. Passage of the proposed 2018 legislation would have been another major step forward for Florida in helping to eradicate sex trafficking. The Florida Legislature’s proposed legislation incorporated a “knowing” or “willful blindness” standard that would only allow lodging establishments to be held liable if its workers knowingly “provide[d] goods or services to a trafficker which assist[ed] or enable[d] the trafficker to carry out the human trafficking.”<sup>216</sup> Such a standard for liability would incentivize lodging establishments to train their workers to become more prudent in evaluating whether they are renting rooms to potential traffickers and more vigilant in identifying obvious signs of sex trafficking and then reporting those observations to law enforcement.

Experts have argued that hotel establishments need to feel the negative consequences—both legal and financial—of allowing sex

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214. See Murphy, *supra* note 3. In response to critics’ concerns about frivolous suits, Attorney Nicole Whitaker, who has worked on behalf of the Florida Justice Association to support passage of Senate Bill 1044, aptly noted:

This is not a move to punish innocent people for crimes for which they have no control over or knowledge. This is to incentivize the industry to act without new burdensome regulations being placed on them, while being able to benefit those real victims who are trying to make something of their lives as survivors.

*Id.*

215. *Id.*

216. S.B. 1044, 2018 Leg., Reg. Sess. (Fla. 2018) §2(2)(a).

trafficking or failing to have monitoring protocols in place to detect sex trafficking.<sup>217</sup> Hence, the Florida Legislature's passing of this anti-trafficking facilitator liability statute would essentially hold the hotel industry more accountable as a "first line of defense" in fighting against the injustice of trafficking that so commonly happens on hotels' premises.<sup>218</sup>

Despite critics' arguments that the passage of the legislation would promote frivolous lawsuits and unreasonable corporate liability exposure for hotels, the standard of proof and available affirmative defenses in the proposed law would mitigate this risk. Senate Bill 1044 would have required victims to prove beyond the preponderance of the evidence that lodging establishments knowingly or in *willful blindness* assisted or provided goods or services to a trafficker which allows the trafficker to engage in the sex trafficking enterprise.<sup>219</sup> The willful blindness doctrine establishes that a person can be found liable when he or she is "subjectively aware [of] the inculpatory fact or circumstance" and tries to evade criminal or civil liability by "act[ing] deliberately to avoid culpable knowledge."<sup>220</sup> In line with this definition, Senate Bill 1044 similarly delineated that willful blindness exists when a person "has knowledge of information that would raise suspicions in a reasonable person and . . . deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance . . . ."<sup>221</sup> Thus, under the proposed statute, the plaintiff has the burden to prove by the preponderance of the evidence that a hotel employee knowingly assisted a trafficker in sex trafficking or he acted in willful blindness to the same in order for a hotel to be exposed to liability or damages. This standard of proof acts as an additional shield to hoteliers from frivolous lawsuits.

Moreover, the proposed legislation gave considerable weight to the concerns of hotel lobbyists and opponents of the statute by allowing for lodging establishments to assert an affirmative defense to

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217. Fish, *supra*, note 62, at 133–34.

218. See *Human Trafficking: Child Trafficking & Hotel Liability Across The Country*, GUARDIAN GROUP, <https://theguardiangroup.org/human-trafficking-child-trafficking-hotel-liability-across-country/> (last visited Dec. 20, 2019) (discussing the complaint in the Alabama suit, *K.R. v. Backpage.com*, which names Choice Hotels Inc. as a defendant and asserts that hotels and motels should "be the first line of defense" against sex trafficking of children as the "vast majority of sex trafficking occurs in hotels and motels").

219. S.B. 1044, 2018 Leg., Reg. Sess. §2(2)(a).

220. Shawn D. Rodriguez, Comment, *Caging Careless Birds: Examining Dangers Posed by the Willful Blindness Doctrine in the War on Terror*, 30 U. PA. J. INT'L L. 691, 719–20 (2008).

221. S.B. 1044, 2018 Leg., Reg. Sess. § 2(2)(f).

liability if they trained their employees in identifying and reporting sex trafficking activity and had proper protocols in place for employees to follow regarding detection and reporting. Similar laws in other states, such as Pennsylvania's facilitator liability statute, do not address a hotel's anti-trafficking efforts as a means of limiting damages.<sup>222</sup> In fact, Pennsylvania's statute specifically provides that the fact that a defendant's place of business has signs or notices posted prohibiting commercial sexual activity or prostitution will not serve as a defense to civil liability.<sup>223</sup> Hence, Florida's proposed statute is balanced and reasonable in that it factors in a hotel's anti-trafficking efforts and the extent of liability exposure.

*B. Passage of the Legislation Would Strengthen Hotels' Commitment to Corporate Social Responsibility*

Florida's proposed legislation would also serve as an impetus for hotels to commit to social responsibility at a greater level, or face consequences.<sup>224</sup> This concept, otherwise known as corporate social responsibility ("CSR"), has been defined as "actions that appear to further some social good, beyond the interests of the [business] and that which is required by law."<sup>225</sup> It "refers to the integration of 'social, environmental, and economic concerns' into business operations . . . [which] results in a business approach that considers responsibility and accountability along with profitability."<sup>226</sup> The foundational base of corporate responsibility is a business' adherence to laws and regulations.<sup>227</sup>

Corporate social responsibility can serve as a force in changing the demand for the "product" of commercial sexual activity.<sup>228</sup> Sex trafficking relies on a three-part system of supply, demand, and distri-

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222. See 18 PA. CONS. STAT. §§3000–3072 (2019).

223. See *id.* § 3051(j).

224. See Anna W. Shavers, *Human Trafficking, The Rule of Law, and Corporate Social Responsibility*, 9 S.C. J. INT'L. L. & BUS. 39, 65–66 (2012) (acknowledging that the possibility of corporate liability can drive "the idea of corporate commitment to social responsibility").

225. *Id.* at 66.

226. *Id.* at 65–66; see also Sullivan, Jr. et al., *supra* note 83 ("Proactively engaging in anti-human trafficking compliance is thus necessary from both corporate social responsibility and risk management perspectives. Indeed, not only is it an effective way to play a significant role in the fight against exploitation, but it also reduces business risk by mitigating a company's exposure to potential corporate liability.").

227. See Shavers, *supra* note 224, at 66 ("CSR builds on a base of compliance with legislation and regulations.").

228. *Id.*

bution.<sup>229</sup> The victims of commercial sexual exploitation serve as the supply in this system, with consumers providing the demand.<sup>230</sup> Sex traffickers provide the distribution and are assisted in this process by legitimate businesses, like hotels, that serve as facilitators of the distribution.<sup>231</sup> Thus, “[o]ne method for addressing supply and demand in human trafficking is to reduce profits and raise risks and costs of trafficking.”<sup>232</sup>

Imposing legal and financial consequences on hotels for sex trafficking occurring on their premises when they fail to have anti-sex trafficking employee training and protocols in place will in turn reduce the “profits and raise the risks and costs of trafficking” for traffickers because they will not be able to continue sex trafficking on hotel premises without the risk of liability exposure. This concept of holding corporations legally and financially responsible for criminal wrongdoing occurring on their properties is not novel: for instance, experts have noted that “[t]he efforts of the corporate world against drug trafficking were not the result of voluntary compliance.”<sup>233</sup> Instead, corporate business reform efforts came in part as a result of negative financial, legal and reputational consequences faced by companies who “were complicit in laundering drug money.”<sup>234</sup> However, no similar reform efforts have been imposed on hotels or other companies that facilitate human trafficking activities.<sup>235</sup> Hotels have “failed to have adequate or ongoing due diligence” and thus, “much more needs to be done” to expose these inadequacies.<sup>236</sup>

Accordingly, the Florida Legislature’s passing of legislation similar to that proposed in the 2018 facilitator liability statute would be a significant step towards ensuring that hotels do what “needs to be done”<sup>237</sup> to help eliminate the sexual exploitation of victims that continues to thrive on their grounds.

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229. *Id.* at 64.

230. *Id.*

231. *Id.*

232. *Id.* at 65.

233. Fish, *supra* note 62, at 134 n.110.

234. *Id.*

235. *Id.*

236. *Id.* at 134 n.110.

237. *See id.*

## IX.

## MINIMUM STANDARD—MANDATE HOTEL ANTI-TRAFFICKING TRAINING

Hotels are not naive to the reality that traffickers use their premises to engage in sex trafficking, and many have joined self-regulation efforts to address sex trafficking.<sup>238</sup> For example, many lodging establishments and businesses in the tourism industry have signed an agreement known as The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (“The Code”) which originated in 1996.<sup>239</sup> The Code is operated by ECPAT-USA (“ECPAT” stands for Ending Child Prostitution and Trafficking), a leading anti-trafficking organization. Businesses that sign The Code agree to take six critical steps in protecting children from sexual exploitation, including establishing anti-trafficking procedures, providing training to employees on identifying and reporting trafficking, and incorporating provisions in contracts regarding zero-tolerance policies of sexual exploitation of children.<sup>240</sup>

Many large hotel chains have signed onto The Code, including Hyatt Hotels Corporation and Hilton Worldwide.<sup>241</sup> According to the American Hotel and Lodging Association, many of these same hotels have created and implemented initiatives to fight against sex trafficking in their establishments.<sup>242</sup> While the implementation of these initiatives reflects a well-intentioned corporate policy, their execution does not: the policies are often not mandatory, employees at a hotel’s individual properties may not be aware of them, and managers and staff may not be actively taking steps to ensure compliance.<sup>243</sup>

According to a 2017 survey that addressed sex trafficking awareness and training at hotels, none of the hotel respondents indicated that their hotels participated in The Code.<sup>244</sup> Though the survey only

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238. *Id.* at 132–33.

239. *Id.* at 133; *History*, THECODE.ORG, <https://www.thecode.org/about/history/> (last visited Oct. 10, 2019).

240. *About*, THECODE.ORG, <https://www.thecode.org/about/> (last visited Oct. 10, 2019); Giovanna L.C. Cavagnaro, *Sex Trafficking: The Hospitality Industry’s Role and Responsibility* 12–13 (2017) (unpublished B.S. thesis, Cornell University) (on file with the N.Y.U. Journal of Legislation & Public Policy).

241. *Top Members*, THECODE.ORG, <http://www.thecode.org/who-have-signed/top-members/> (last visited Dec. 20, 2019).

242. Cavagnaro, *supra* note 240, at 15.

243. *Id.* at 15–16; Fish, *supra* note 62, at 133 (“[E]ven if hotel chain executives take a stance against trafficking, individual hotels and employees may not receive training on how to identify and report trafficking.”).

244. Cavagnaro, *supra* note 240, at 37.

yielded a 3.8% response rate from a target population of 1000,<sup>245</sup> the results nevertheless revealed a lack of awareness about The Code among hotel staff and managers. Fifty percent of the respondents indicated that they were unsure if their hotels participated in The Code, 21.05% answered that their hotels did not participate, and 28.95% indicated that their hotel was not a member but might join.<sup>246</sup> The survey's creator opined that "[t]he lack of certainty of whether the hotel participates or not shows that the parent companies who do participate are not disseminating the information clearly to their properties."<sup>247</sup> The survey also indicated that the majority of hotels were strongly willing to implement anti-sex trafficking training and most were willing to disseminate information to hotel guests and employees to increase sex trafficking awareness.<sup>248</sup>

Half of the hotel respondents believed that the issue of sex trafficking in their immediate area was minimal or nonexistent.<sup>249</sup> This is concerning because the reality is that "[t]raffickers are capitalizing on the lack of awareness around [sex trafficking] within the hotel industry . . . [and] often, they continue to exploit their victims unchecked because staff, managers, and executives do not know what to look for."<sup>250</sup>

In light of this problem, some jurisdictions, such as Connecticut, Minnesota, California, and most recently Florida, have enacted legislation mandating lodging establishments have anti-trafficking policies, procedures, and training in place.<sup>251</sup>

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245. *Id.* at 17, 19. In order to obtain a random sample of hotels, Cavagnaro obtained a randomized list of 1000 hotels throughout the United States from Smith Travel Research (STR) and emailed the survey to all 1000 hotels. Cavagnaro opines that the low survey response rate "is already an immediate indicator that hotels do not tackle the issue of sex trafficking appropriately. . . . [T]hus, the responses included may be of the population who is generally more aware and more willing to handle the matter." *Id.* at 20.

246. *Id.* at 36.

247. *Id.* at 37.

248. *Id.* at 29–30, 34.

249. *Id.* at 24; *see also* Fish, *supra* note 62 at 133 ("In the hospitality industry, many businesses may refuse to take action against human trafficking for fear of associating their hotels with crime or *because of the belief that human trafficking does not occur in their hotels.*") (emphasis added).

250. *Human Trafficking and the Hotel Industry*, POLARIS, <https://polarisproject.org/resources/human-trafficking-and-the-hotel-industry/> (last visited Feb. 20, 2020) [<https://perma.cc/J8C7-K6K2>].

251. *See* CONN. GEN. STAT. ANN. § 17a-106g (West 2018); MINN. STAT. § 157.177 (2018); CAL. GOV. CODE § 12950.3 (West 2018); N.Y. GEN. BUS. LAW § 206-f (McKinney 2018). In October 2018, the state of New York passed a law requiring all hotels with at least five rooms to post human trafficking "informational cards" throughout the hotel's property. *See* N.Y. GEN. BUS. LAW § 206-f(1). Pursuant to the

### A. *Connecticut's Laws Mandating Anti-Trafficking Training*

In 2016, Connecticut enacted ground-breaking legislation that required hotels, motels and other lodging establishments to conduct training for their employees that would help them detect and report sex and labor trafficking.<sup>252</sup> The law was viewed as a way to “give the police and prosecutors stronger tools to go after hotels and motels where both child and adult victims of human trafficking are often recovered, to deter traffickers and those buying illegal sex and labor from children and adults, and to raise awareness of trafficking for those most likely to encounter a victim.”<sup>253</sup>

Additionally, Connecticut mandates that lodging establishments keep records of all guests' receipts and transactions, as well as post notices in plain view that contain the contact information for state or

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statute, the cards must contain the National Human Trafficking Hotline number and can only contain information about services for human trafficking victims. *Id.* at § 206-f(2). The information cards must be placed in plain view and in a conspicuous location in public rest rooms, guest rooms and near the public entrance of a hotel or in another conspicuous location in clear view of the public and the hotel employees. *Id.* The New York legislature also considered a bill that would have required “hotels in New York with more than five rooms to have all employees likely to interact with guests to undergo a state-created or approved human trafficking recognition training program.” Jonathan L. Bing & Thomas Buchan, *New York Law Requires Human Trafficking Informational Cards in Hotels, Considering Employee Training*, JACKSON LEWIS (Oct. 4, 2018), <https://jacksonlewis.com/publication/new-york-law-requires-human-trafficking-informational-cards-hotels-considering-employee-training>. However, this legislation did not pass because “some believe[d] that the provisions in the New York proposal (including training employees in relief and recovery options for survivors and social and legal services available for victims) would be an onerous, unfunded mandate for New York hotels.” *Id.*

252. CONN. GEN. STAT. ANN. § 17a-106g (West 2018). Section 17a-106g reads:

The Commissioner of Children and Families and the Commissioner of Emergency Services and Public Protection shall consult with state and national hotel and lodging associations to recommend an educational training program and refresher training program for the accurate and prompt identification and reporting of suspected human trafficking. The training program shall include a video presentation, developed and approved by said commissioners, that offers guidance to employees of hotels, motels, inns and similar lodgings on the (1) recognition of potential victims of human trafficking, and (2) activities commonly associated with human trafficking.

*Id.*

253. *Connecticut Moves Toward Eradicating Human Trafficking in Hotels and Motels with New Law*, POLARIS (Aug. 5, 2016), <https://polarisproject.org/blog/2016/08/05/connecticut-moves-toward-eradicating-human-trafficking-hotels-and-motels-new-law> [hereinafter *Connecticut Moves Toward Eradicating Human Trafficking*].



federal anti-trafficking hotlines.<sup>254</sup> The notices must explain what human trafficking is and how victims can obtain help.<sup>255</sup>

The statutorily-mandated training—created by organizations such as Marriott International and Polaris—is designed for managers and employees working in areas such as security, housekeeping, and the reception desk to learn about sex and labor trafficking, the practical tools that will help with identification of trafficking, and the legal responsibilities of hotel establishments.<sup>256</sup> Additionally, the training must educate workers on how to notify authorities of suspected crimes, deter traffickers, and assist victims with obtaining needed services.<sup>257</sup>

The goal of the training is to “teach employees to be more aware of potential trafficking signs with the hope that employees will be in a position to report observations” and to “create an anti-trafficking model in Connecticut that would extend to the rest of the country.”<sup>258</sup> According to Krishna Patel, an attorney who helped to draft amendments to Connecticut’s law, the law “makes Connecticut the first state to require hotels and motels to keep guest records, and to train staff on how to identify signs of human trafficking and report suspected crimes, creating a foundation for how to model collaborative, community-based efforts to end human slavery.”<sup>259</sup>

### B. *Minnesota’s Laws Mandating Anti-Trafficking Training*

Similarly, the Minnesota legislature passed legislation in 2018 requiring all hotels and motels in the state to train their employees on sex trafficking prevention.<sup>260</sup> The Minnesota statute provides in pertinent part:

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254. CONN. GEN. STAT. ANN. §§ 44-4, 54-222(b), 54-234a.

255. *Id.*

256. Susan Haigh, *Hotel Employees Get Training to Spot Human Trafficking*, SKIFT (June 25, 2017, 10:30 AM), <https://skift.com/2017/06/25/hotel-employees-get-training-to-spot-human-trafficking/>. Marriott works in collaboration with Polaris and ECPAT-USA and has utilized the curriculum in its company to train 6,000 of its employees. *Id.*

257. *Id.*

258. *Id.* The training program has been offered by organizations such as Quinnipiac University School of Law, the Connecticut Trafficking in Persons Council, the Connecticut Lodging Association, and the nonprofit Grace Farms Foundation. *Id.*

259. *Connecticut Moves Toward Eradicating Human Trafficking*, *supra* note 253.

260. MINN. STAT. § 157.177 (2018). “The training requirements . . . do not apply to employees who: (1) are under the age of 16 years unless they clean guest rooms; (2) work exclusively in a restaurant, providing catering services, or both; or (3) do not have direct contact with either guests or guest rooms.” *Id.* § 157.177(3).

Following initial approval of a training program . . . every person, firm, or corporation that operates a hotel or motel in Minnesota shall ensure that each employee who works on site, including but not limited to any owner, operator, or manager, receives the [required] training described . . . within the later of 90 days of the time of hire or 120 days of [August 1, 2018], and annually thereafter. The operator of each hotel or motel shall annually certify, in an employee roster or in each employee's personnel file, that each employee has received the training . . . .<sup>261</sup>

Pursuant to the statute, the training must at a minimum provide instruction on what sex trafficking is, how to recognize potential victims and common sex trafficking activities, and how one should respond to suspected trafficking, including proper reporting procedures for notifying law enforcement.<sup>262</sup> Beyond the initial training, operators of hotels and motels are required to conduct ongoing awareness campaigns for their employees.<sup>263</sup> Finally, all hotels and motels must post notices, written or approved by the state commissioner, which address the same information on sex trafficking covered in the mandated training.<sup>264</sup> The notice must be in a place that can be readily accessed by employees.<sup>265</sup> Notably, Minnesota's statute specifically provides that a hotel operator or employee who acts in good faith will be "immune from liability in any civil action for reporting suspected sex trafficking activities."<sup>266</sup>

### C. *California's Laws Mandating Anti-Trafficking Training*

Along with Minnesota, California enacted laws in 2018 requiring mandatory anti-sex trafficking training of hotel employees and staff.<sup>267</sup> In enacting the statute, the legislature's intent was to "establish a minimum threshold for human trafficking awareness and education" and to encourage hotel and motel establishments "to take all reasonable steps necessary to lead to the rescue of human trafficking victims and prevent any kind of human trafficking in their establishments."<sup>268</sup> To that end, effective January 1, 2019, hotel and motel employers in California must provide twenty minutes of training to employees who are likely to come into contact with victims of sex

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261. *Id.* § 157.177(2)(a).

262. *Id.* § 157.177(2)(c).

263. *Id.* § 157.177(2)(b).

264. *Id.* § 157.177(2)(d).

265. *Id.*

266. *Id.* §157.177(4).

267. CAL. GOV'T. CODE § 12950.3 (West 2018).

268. *Id.* § 12950.3(f).

trafficking and other human trafficking by January 1, 2020.<sup>269</sup> This requirement applies to all employees employed as of July 1, 2019, and includes workers employed as front-desk or reception area staff, housekeeping staff, and staff that drive customers or help them move their possessions.<sup>270</sup> For individuals hired after July 1, 2019, the employer must provide training to such employees within six months of hire.<sup>271</sup> Employers must continue to provide training once every two years<sup>272</sup> and the training has to consist of, at a minimum:

- (1) The definition of human trafficking and commercial exploitation of children.
- (2) Guidance on how to identify individuals who are most at risk for human trafficking.
- (3) The difference between labor and sex trafficking specific to the hotel sector.
- (4) Guidance on the role of hospitality employees in reporting and responding to this issue.
- (5) The contact information of appropriate agencies, including but not limited to, the National Human Trafficking Hotline . . . and the telephone numbers of the appropriate local law enforcement agencies.<sup>273</sup>

Under this provision, an employee's failure to report suspected human trafficking does not in and of itself lead to the hotel, motel or its employees being liable to the sex trafficking victim.<sup>274</sup> The code also allows the Department of Fair Employment and Housing to seek an order requiring the employer to comply if it violates this section.<sup>275</sup>

In addition to the mandatory training, the California legislature mandated that hotels, motels, and other business establishments post notices that would alert sex trafficking victims of ways to report their need for help to authorities.<sup>276</sup> The notice must be posted in a conspicuous place near the public entrance of the business or in another conspicuous location where other similar notices are posted.<sup>277</sup>

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269. *Id.* § 12950.3(b)(1).

270. *Id.* §§ 12950.3(b)(1), (b)(3).

271. *Id.* § 12950.3(b)(1).

272. *Id.* § 12950.3(b)(2).

273. *Id.* § 12950.3(c).

274. *Id.* § 12950.3(e).

275. *Id.* § 12950.3(g).

276. CAL. CIV. CODE § 52.6(a) (West 2019).

277. *Id.* The notice must read:

If you or someone you know is being forced to engage in any activity and cannot leave—whether it is commercial sex, housework . . . or any other activity—text 233-733 (Be Free) or call the National Trafficking Hotline or California Coalition to Abolish Slavery and Trafficking . . . . Victims of slavery and human trafficking are protected under United States and

*D. Florida's Laws Mandating Anti-Trafficking Training*

Senator Book, the original author of Senate Bill 1044, followed the example of the Connecticut, Minnesota, and California legislatures through her sponsorship of Senate Bill 540, which required Florida lodging establishments to also mandate anti-trafficking training.<sup>278</sup>

House Bill 851, a companion bill to Senate Bill 540 which made some minor revisions to Book's proposed bill, was signed into law by Florida Governor Ron DeSantis on June 26, 2019.<sup>279</sup> The final version of this bill is now reflected in Florida Statute section 509.096 and requires public lodging establishments to provide human trafficking awareness training to its housekeeping and front desk employees within sixty days after they begin employment or by January 1, 2021, and to provide proof of this training to the Department of Business and Professional Regulation (the "Department") upon request.<sup>280</sup> The statute also requires hotels to implement a reporting procedure for employees when human trafficking is suspected, and to post the reporting procedure in a conspicuous place in the establishment.<sup>281</sup>

The human awareness training developed by each public lodging establishment must be approved by the Department before it can be provided to the employees and it must contain the definitions of sex and labor trafficking, explain the differences between the two, and provide guidance on how to identify possible victims of trafficking and the role of employees in reporting suspected trafficking activities.<sup>282</sup>

If a public lodging establishment is not in compliance with the statute, the Department will impose an administrative fine of \$2,000 per day unless the establishment provides the Department with written documentation assuring that it will cure the deficiency within 90 days of receipt of the Department's violation notice.<sup>283</sup> Additionally, the statute does not create a private cause of action for victims and pro-

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California law. The hotlines are available 24 hours a day, 7 days a week; toll free; operated by nonprofit, non-governmental organizations; anonymous and confidential; accessible in more than 160 languages; and able to provide help, referral to services, training, and general information.

*Id.* § 52.6(b).

278. Lawrence Mower, *Sen. Lauren Book's Human Trafficking Bill Is Back—with Some Changes*, TAMPA BAY TIMES (Feb. 1, 2019), <https://www.tampabay.com/florida-politics/2019/02/01/sen-lauren-books-human-trafficking-bill-is-back-with-some-changes/>; see S.B. 540, 2019 Leg., Reg. Sess. (Fla. 2019).

279. See Crawford, *supra* note 36.

280. FLA. STAT. § 509.096(1)(a) (2019).

281. *Id.* § 509.096(1)(b)–(c).

282. *Id.* § 509.096(2).

283. *Id.* § 509.096(3).

vides that it does not “alter or limit any other existing remedies available to survivors of human trafficking.”<sup>284</sup>

Although the statute is a step in the right direction in that it requires anti-trafficking training for employees, it stops short of establishing the right of a victim to have a cause of action against hotel establishments under a “facilitator” liability theory.<sup>285</sup> Reports indicate that these provisions were removed from Senate Bill 540, one of the precursor bills to section 509.096, “after hotel interests vehemently objected.”<sup>286</sup>

Senator Book has acknowledged the hotel industry’s strong pushback against Senate Bill 1044 which advocated for hotel “facilitator liability,” but nevertheless did not surrender her efforts to pass legislation that would help prevent sex trafficking at hotel establishments.<sup>287</sup> Prior to the passage of Florida Statute section 509.096 and in reference to Senate Bill 540, Senator Book stated: “We’re not trying to create the fights and problems there were [in 2018]. We know this is a problem. We know where it’s a problem. And we need to address it.”<sup>288</sup>

With the passage of Florida Statute section 509.096, the Florida legislature took some positive steps in addressing this critical issue of sex trafficking occurring at Florida’s lodging establishments.

#### CONCLUSION

Over the past six years, Florida, along with California and Texas, have consistently ranked as the states with the highest number of reported cases of human trafficking in the country.<sup>289</sup> Despite the challenges that come with having such a high number of trafficking cases in the state, Florida has maintained its status as a leader in the fight to end sex trafficking. Similar to the laws enacted in states like California and Connecticut, the Florida legislature has taken steps in the right direction by enacting section 509.096, requiring hotel and motel establishments to provide anti-trafficking awareness training and educate their employees on how to detect and report trafficking. However, more can be done.

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284. *Id.* § 509.096(4).

285. *See id.* § 509.096(1)–(4).

286. Ryan Nicol, *2019 Legislative Session Preview: Lauren Book Adding Massage Parlors to Human Trafficking Bill*, FLAPOL (March 5, 2019), <https://floridapolitics.com/archives/289907-trafficking-bill-massage-parlors>.

287. *Id.*

288. Nicol, *supra* note 31.

289. *Florida*, NATIONAL HUMAN TRAFFICKING HOTLINE, *supra* note 12.

Although Florida is not a current forerunner in implementing legislation that would hold hotels and motels civilly liable when victims are knowingly trafficked on their premises or employees turn a blind eye to the trafficking, such legislation is well within its grasp. Thus, it is imperative that the Florida Legislature pass legislation such as that proposed in Senate Bill 1044. Taking this legislative step will engender a heightened sense of corporate social responsibility amongst the hotel industry, where sex trafficking is so pervasive, and contribute to the overall eradication of this modern-day form of slavery that is stealing the freedom of so many women, men, and children across our nation.