

The Impact of H. 3757 on Human Trafficking

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This essay seeks to answer the question: how does South Carolina's pending anti-human trafficking legislation, H. 3757 (2011), compare to federal and international human trafficking laws and policies? Furthermore, if this legislation is implemented, will it actually help the victims of human trafficking? To answer these questions I will, after reviewing H 3757 itself, discuss some of the most important national and international protocols on human trafficking, specifically the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children* (UN General Assembly 2000), the *Trafficking Victims Protection Act of 2000*, the United Nations Office of the High Commissioner for Human Rights' *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (2002), and the *Polaris Project State Ranking System* (2010).

The Scope of the Proposed Law

H. 3757, South Carolina's pending human trafficking law, is a comprehensive law that could make South Carolina one of the leading states as far as human trafficking legislation. The bill explicitly defines the crime of human trafficking and the penalties associated with it. Section 16-2-20 claims:

A person who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be subjected to sex trafficking,

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forced labor or services, involuntary servitude or debt bondage through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of trafficking in persons.

Human trafficking is a felony offense, and assets can be confiscated. Penalties for human trafficking increase for repeat offenders and for traffickers of minors. Sexual history, connection by blood or marriage to a defendant, consent by a trafficking victim, age of consent, or a mistake of the victim's age cannot be used by the defense. Furthermore, victims of human trafficking will not be charged for crimes they were forced to commit while being trafficked. Businesses that participate in any way in human trafficking can be held liable as well. If a business entity is convicted of human trafficking, it can be fined and even lose its business license.

According to H. 3757, restitution must be paid to the victim, surviving family, or the victim's estate. Restitution includes any medical or psychological treatment required, transportation, housing, childcare, attorney's fees, court costs, income that would have been earned, the cost of property, compensation for damages, the victim's expenses, and any other losses due to trafficking. H. 3757 also allows victims of human trafficking to bring civil suits against their traffickers. Victims are eligible to receive actual, compensatory, and punitive damages as well as other forms of aid.

This bill establishes an interagency task force made up of representatives from various state and federal organizations. The interagency task force has the following goals: to develop and implement a state plan of action, to organize and share data, to create state policies and assess the effectiveness of current awareness programs, and to present a yearly report of the interagency task force's findings.

The next piece of the law discusses the State Law Enforcement Division (SLED). SLED's main responsibilities are to gather and distribute statistics on human trafficking in order to provide substantial information about victims of trafficking, traffickers, and customers who purchase services from traffickers; to oversee the training provided for law enforcement; and to create public awareness programs with

the assistance of nonprofit organizations. The information provided in public awareness programs will focus on statistics, the impact of trafficking, warnings against trafficking and purchasing forced labor or commercial sex, the risks of becoming a victim of human trafficking, the risks associated with prostitution, victims' rights, victim services, information hotlines, and how to report recruitment.

In order to promote equality among all people, citizens and foreign nationals, H. 3757 states that illegal aliens have the right to fair working conditions and payment. According to this bill, law enforcement officers are required to investigate all suspected unfair working conditions even if the complaint comes from a noncitizen. Moreover, this bill requires police officials to examine people charged with prostitution to ensure that victims of human trafficking are properly identified.

Essentially, the bill awards victims of human trafficking the same rights as refugees. In order to provide victim services, social benefits for foreign nationals, and housing for victims, the government is asked to work in cooperation with nonprofit organizations. They aim to provide housing, therapy, medical care, childcare, job opportunities, legal aid, and education. The bill stipulates that victims should not be housed in prisons or detention centers and that children should be adequately provided for according to their special needs. The bill asks that unique programs be designed to help children cope with the legal process and further asks that children be returned to their families as soon as possible, that mental and physical care be designed specifically for children, and that minor victims be provided education.

The final section of H. 3757, Section 16-3-2160, lays out policies for the protection of trafficking shelters.

A Critique of Existing National and International Laws and Policies

The first measure of comparison by which to evaluate H. 3757 is *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN General Assembly 2000). It is one of three supplemental protocols to the *United Nations Convention against Transnational Organized Crime* and is often referred to as the *Trafficking Protocol*. The other two supplementary protocols to the Convention are the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (UN General Assembly 2001) and the *Protocol against the Illicit Manufacturing*

of and Trafficking in Firearms, their Parts and Component Ammunition (UN General Assembly 2001).

The *Trafficking Protocol*, adopted on December 25, 2003, was the first internationally recognized legal tool to fight human trafficking. The major goal of the protocol is to protect human rights and help victims in any way possible. It was originally enacted as a tool primarily for law enforcement. The protocol establishes a universal definition of human trafficking, which enables nations to coordinate their responses to the crime. The definition in the protocol includes all forms of human trafficking such as forced labor, sexual exploitation, the selling of organs, and involuntary servitude (Ollus). However, the convention was adamant that the prosecution of traffickers should not take precedence over efforts to ensure the safety of victims (Ollus).

In *Beyond A Snapshot: Preventing Human Trafficking in a Global Economy* (2006), Janie Chuang notes that the *Trafficking Protocol* “establishes concrete measures to improve communication and cooperation between national law enforcement authorities, engage in mutual legal assistance, facilitate extradition proceedings, and establish bilateral and multilateral joint investigative bodies and techniques” (148). This is exactly what many researchers say that the world needs to combat human trafficking.

Although the *Trafficking Protocol* demands that the world make considerable strides in the fight against human trafficking, it has several major problems. For example, the *Trafficking Protocol* does not do enough to prevent human trafficking and protect its victims. In other words, the current policy is reactive rather than proactive. In addition, the protocol gives suggestions for countries instead of requirements. It asks states to “consider” or to “endeavor” to enact certain laws or policies (Chuang 148). As Gallagher (2001) argues, “The protocol contains a number of provisions aimed at preventing trafficking – all of which are phrased in the UN’s best, programmatic, non-obligatory style” (995). The major problem with optional provisions is that governments, most of which are struggling financially, try to save money wherever they can and do the minimum they have to in order to meet the protocol’s standards.

As far as protection for victims, states are required by law to do very little. The protocol requires countries to protect victims’ privacy

and make sure they have the necessary information involving legal proceedings (Gallagher). Even though legal assistance is required, most victims receive minimal help and many are confused throughout the entire trial process (Hathaway). It is suggested but not required that countries provide recovery services, supply physical safety, and ensure that victims receive monetary damages (Gallagher). Even after they are rescued from bondage, victims remain highly vulnerable. They are forced to figure out how to find medical attention and how to protect themselves from being trafficked again while they wait for a court date or for the chance to return home. Along with this, governments are not required to use items confiscated from the traffickers to help victims and their families (Gallagher). Asset forfeiture could be used to pay victims for damages and suffering and help offset medical bills. It also provides a way to punish traffickers. A proper asset forfeiture law would confiscate all items related to their illegal business.

Another main criticism of the *Trafficking Protocol* is that it puts a higher priority on immigration and crime than human rights. Perversely, victims of human trafficking can be charged for illegally entering a country, even though it may not have been their choice to enter the country in the first place (Chuang). Victims can be prosecuted for illegal immigration, working without documentation, and prostitution (Gallagher). The law does not take into consideration the fact that most victims of trafficking did not violate such laws on purpose. Countries left out this part of the law because they were fearful that a clause preventing trafficking victims from being prosecuted for their illegal entry might become a defense for legitimate immigration violations. Not only are victims being wrongly prosecuted for illegal immigration, they are also being deported and having their safety compromised. In many cases, in order to stay in the country, victims must participate in the prosecution of their traffickers (Chuang). Essentially, governments are more concerned about illegal immigration than the exploitation of human beings. It is necessary to consider that if victims are being prosecuted for status related offenses, they will be less likely to go to court to prosecute their traffickers. Courts are not friendly towards illegal immigrants, and yet it is essential for victims, who are usually in the country illegally, to testify in order for the government to prosecute and punish traffickers (Gallagher). By refusing to add this provision,

victims are punished while traffickers go free.

An additional criticism of the *Trafficking Protocol* deals with the definition of human trafficking. Janie Chuang believes that there is a strict and unfair definition distinction between human trafficking and migrant smuggling. In reality it is very difficult to distinguish between trafficking and smuggling. Migrant smuggling is defined as the “illegal movement of persons across borders for profit” (Chuang 149). This may seem like a straightforward definition; however, oftentimes cases of human trafficking start out as migrant smuggling. If a person consents at any time, they forfeit the right to be treated as a victim of human trafficking by the *Trafficking Protocol* regardless of the atrocities they experience.

As the *Trafficking Protocol* was being written, many groups such as the UN Office of the High Commissioner for Human Rights, the International Organization for Migration, the UN Children’s Fund, and the UN Commissioner for Refugees all petitioned for stricter laws and penalties for traffickers involved in the trafficking of children (anyone under 18). Asserting that “Children have special rights under international law,” these groups felt that the protocol should have a special section to focus on children because children have specific needs different from adults that must be met (Gallagher 989). They recommended that the protocol include a stipulation to always do what is best for the child including his or her care, privacy, and moral, social, political, and physical rights. Unfortunately, the *Trafficking Protocol* does not come close to meeting all of these recommendations set forth by the lobbying groups. However, it does acknowledge that children must be treated differently. One agreement that came out of the many suggestions is that force or coercion does not have to be proven if the victim is under the age of 18 (Gallagher). While this section of the law is significant for the protection of children, additional provisions to deal with the protection of children are needed.

A final criticism of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* is that the protocol does not consider the source of trafficking. Authorities must know what causes it and why it is still happening. The answers to these two questions are central to preventing human trafficking, and yet they are not mentioned in the protocol (Gallagher). Research must be done

to discover what characteristics make people susceptible to becoming victims of human trafficking before prevention measures can be taken (Hathaway).

The second measure of comparison in this research project is the *Trafficking Victims Protection Act of 2000*, which was passed on October 28, 2000, and signed into law by President Clinton. Its purpose is “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims” (Chacon 2989). The *Trafficking Victims Protection Act* (hereafter TVPA) is considered the most significant piece of human trafficking legislation in the United States. It was the first inclusive federal law regarding human trafficking. The TVPA is centered on the 3 P’s: prevention, protection, and prosecution (Breilh). This law was viewed as necessary because an estimate by the Central Intelligence Agency in 1999 noted that approximately 50,000 people were trafficked into the United States each year. Most researchers agree that 50,000 was an over estimate and now believe that between 14,500 and 17,500 people are trafficked into the United States each year (Chacon). Because of the undercover and illegal nature of this business, statistics can never be completely accurate. The TVPA is designed to aid victims of human trafficking once they are rescued in the United States (Chacon). It was reauthorized in 2003, 2005, and 2008 and it is up for reauthorization in 2011.

While the TVPA is the United State’s most current and comprehensive federal law regarding human trafficking, it too has significant problems. First, laws are in place, but there is very little action to fix the many complex problems associated with and caused by human trafficking. The TVPA (2000) has provisions prepared to help victims by allowing them to stay in the United States, but very few victims actually receive any assistance from the government (Chacon). T-visas, which were first issued in October of 2000 through the TVPA, are a form of help given by the government to human trafficking victims. These visas, provided in cases of “severe forms” of human trafficking, require that applicants have “good moral character,” “comply with reasonable requests for assistance in the investigation during the four year period the visa will last,” and “face severe and

unusual hardship if returned to the country of origin” (El-Sawi). A T-Visa allows a victim of human trafficking to stay in the United States for up to three years as long as they agree to help police officials with the prosecution of their trafficker. Victims who receive a T-Visa are also given an Employment Authorization Document which allows them to obtain a job while they assist authorities (Legal Language). After three years in the United States, the victims can apply for legal residence and then finally citizenship (El-Sawi).

From November 2000 to June 2003, the Department of Homeland Security received 453 T-visa applications. 172 were granted, 13 were denied, and 238 were labeled as pending. In 2004, the Department of Homeland Security received 520 T-visa applications. 138 were approved, and 292 were denied. By the end of 2004, fewer than 500 victims of human trafficking had received T-visas (Chacon). The TVPA allows 5,000 T-visas to be distributed each year. From 2000 to 2010, there could have been 50,000 T-visas issued. However, only 2,300 victims were granted the requested T-visa. One reason for the low number of T-visas issued is that some victims are unable to meet the requirements. For example, victims of sex trafficking are often considered prostitutes. This label of prostitute disqualifies victims of sex trafficking because they do not have “good moral character.”

Second, the United States provides monetary support to foreign nations to help prevent human trafficking, but the efforts it funds are ineffective and sometimes counter-productive. In 2004, the United States gave \$82 million to foreign governments to help fight human trafficking (Chacon). Donations make people think the United States is helping when in reality it is not making any difference. One must consider if the money being sent to foreign governments is actually going to the people who need the money the most. Countries receiving financial backing from the U.S. are required to report annually about their anti-trafficking efforts (Chacon). However, there is no sure way to guarantee that the money given is used for anti-human trafficking purposes. The lack of definitive progress made by these endeavors creates an illusion of help for victims rather than an effective policy.

Chacon notes that preexisting U.S. laws have negatively impacted the passage of the TVPA. There are five distinct areas of legislative that compromise the ability of this act to protect victims (Chacon).

First, victims of forced labor are viewed as criminals instead of victims. Second, the prosecution of traffickers is seen as more of a priority than protecting the victims. Third, laws aim to eliminate prostitution rather than forced labor. Forth, sex traffickers are racially profiled as foreign men preying on naïve victims. Fifth, strict immigration laws, which call for better border patrol, increase the chance that immigrants who desire only to be smuggled into the country will be exploited by traffickers due to a rise in smuggling fees (Chacon). Two of these five legislative failures are considered individual problems with the TVPA and will be discussed further.

Perhaps the biggest problem with the TVPA is that it does not provide an all-inclusive criminal law against human trafficking. Instead, it adds small provisions to other existing laws. In *Myopia and Misery*, Jennifer Chacon describes the TVPA as a “patchwork” approach to the problem (3019). This hodgepodge law makes it more difficult to prosecute traffickers. Consequently, only 32 cases of human trafficking were filed between 2001 and 2003 (Chacon). This shows that there is a very small chance a trafficker will be caught and prosecuted; therefore, there is little incentive for traffickers to stop participating in such a profitable industry.

Emphasis on prosecution of traffickers instead of protection of victims represents another serious flaw of TVPA. In cases of severe human trafficking victims are required by law to help with the prosecution of their trafficker in order to receive assistance from the government (Chacon). It is often traumatic for victims to have to testify in court against their traffickers. It is physically, psychologically, and emotionally draining due to the fact that many trafficking victims are more terrified of the police than they are of the traffickers. Traffickers teach their victims that police will deport them and criminally prosecute them if they even speak to authorities. Thus, it is not uncommon for victims to refuse to assist with prosecution. There are also language, cultural, and social barriers that prevent victims from assisting with prosecution (Patel). Basically, victims have no choice but to aid in the investigation and prosecution of their traffickers if they want medical attention, help finding housing, and assistance getting back to their home country. The practice of forcing victims to assist in the prosecution of their traffickers raises troubling ethical issues. The

government effectively says to vulnerable individuals, if you do not help us you will be kept here in prison or deported.

Sadly enough, in spite of the concentration on prosecution, *Trafficking Victims Protection Act* has not resulted in nearly enough trafficker convictions. From 2000 to 2010, there were approximately 175,000 people trafficked into the United States. During this period, however, there were only 294 prosecutions (Patel).

Some laws enacted by the government actually promote human trafficking; strict immigration laws are one example. Ironically, increased military presence along the U.S.-Mexican border has increased smugglers' and traffickers' ability to force illegal immigrants into slavery (Chacon). As Jennifer Chacon observed, "The line between smuggling and trafficking has blurred as heightened border security gives smugglers greater control over migrants and allows them to command larger fees" (3023). The fees that immigrants are forced to pay for being smuggled into the U.S. lead to slavery because many people are unable to pay their smuggling debt. In order to pay their debt, the immigrants are forced to work in exploitive conditions.

The fact that if a victim consents to human trafficking at any stage of the process, the person may not be considered a human trafficking victim only complicates the situation. The main problem is that victims of human trafficking often agree to being illegally transported into the country. Victims may be unaware of the harsh conditions they will face, the cruel treatment they will have to endure, or the type of work they will be forced to perform. The clause concerning consent was left out of the TVPA because government officials feared that people would use the TVPA to escape prosecution for illegal immigration charges (Chacon). Unfortunately, this prohibits some legitimate victims of human trafficking from receiving governmental assistance. Furthermore, these victims are often prosecuted for illegal immigration, and the traffickers who smuggled them into the country continue exploiting human beings.

Biased perceptions of the immigrant experience further undermine the fight against trafficking. Because immigrants are suspected of being in the U.S. illegally and for their own personal gain, they are seen as illegitimate and less deserving of human rights. Law enforcement rarely bothers to ensure they are being treated humanely. Immigrants

are sometimes seen as less deserving of protection because they perform jobs that many American citizens refuse to do. They are exploited because of their desire for a better life and their willingness to work. This causes people to overlook the fact that many of these people have been trafficked and are slaves.

It has already been established that prosecution, not prevention, is the main goal of the TVPA. The TVPA is not concerned with why trafficking occurs (Patel). As long as there is a demand for forced labor, there will be a supply. Finding a way to eliminate the demand for forced labor and sex slaves is essential to ending this social injustice. It is vital that prevention become a main goal of the Trafficking Victims Protection Act. The TVPA has focused its minimal prevention activities on awareness campaigns and training for law enforcement. However, governments must integrate community training as well. The community is an essential part of the problem solving process and should be recognized and utilized effectively (Patel).

Because the goal of the TVPA has been trafficker prosecution, organizations that long to assist victims are not given the chance to help. Nonprofit organizations, churches, counselors, and victim advocates have the desire to help and are probably more qualified than police officials to identify and assist victims of human trafficking. However, these groups must be given legal authority to help before they can adequately support victims. In *Back to the Drawing Board: Rethinking Protection Available to Victims of Trafficking*, Patel criticizes the system in which “only criminal justice professionals are given the authority to offer protections to victims” (828). Furthermore, in order to have a victim-centered approach, nongovernmental organizations (NGOs) must be given more funding. Current funding for NGOs is limited because the majority of money goes to organizations that help the government with prosecution (Patel). Law enforcement does not have the time or manpower to combat human trafficking alone. An interagency task force and cooperation among the different branches is the only way to tackle this huge social issue.

The third measure of comparison by which to evaluate H. 3757 is the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* by the United Nations High Commissioner for Human Rights (2002). High Commissioner Mary Robinson offers the most

comprehensive international document concerning human trafficking. The purpose of the document, according to Robinson, “is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions” (qtd. in Global Rights). This objective assumes that all human beings are born with irrevocable human rights. The authors of *Combating Human Trafficking in the Americas: A Guide to International Advocacy* concede that “a few rights are connected to citizenship or legal residence,” but insist nonetheless that “the majority of rights apply to all persons at all times, even when the person has no legal right to be in the territory of the county in which she or he is found” (42). The *Recommended Principles and Guidelines* is written according to this principle and serves as a model for other states and countries. It addresses virtually every aspect of human trafficking including prevention, protection of victims, restitution for victims, prosecution of traffickers, dissemination of information, and other crucial measures. Ideally, it would be the standard for all human trafficking laws around the world. The establishment of this document as an international law that applies to all countries could potentially end the injustice of human trafficking.

The main criticism of this international anti-human trafficking document is that it is not enforceable. The title itself states that the principles and guidelines are “recommended” and, therefore, not obligatory. Global Rights states, “The *Principles and Guidelines* contain measures that governments should adopt in order to insure that all anti-trafficking laws, policies and practices meet existing international human rights standards” (42). The word “should” is used throughout the document which signifies that countries have the option to comply (Global Rights).

The final measure of comparison is the *Polaris Project State Ranking System*. Polaris Project was founded by Derek Ellerman and Katherine Chon in 2002. This organization serves victims of human trafficking through a human trafficking hotline. It also advocates at the national and international level for anti-trafficking laws, works to train law enforcement, and partners with attorneys and judges to help survivors of human trafficking (Polaris Project). To specifically deal with anti-human trafficking legislation at the state level, Polaris Project

“tracks the presence or absence of ten categories of state statutes that Polaris Project believes are critical to a comprehensive anti-trafficking legal framework” (Polaris Project). When evaluating a state’s human trafficking laws, the Polaris Project examines many categories, checking to see whether or not a state has a sex trafficking statute and a labor trafficking statute and whether or not it provides asset forfeiture and investigative tools, training for law enforcement and human trafficking task force, a human trafficking hotline, special efforts to combat sex trafficking of minors, victim assistance, access to civil damages, and policies designed to vacate convictions for sex trafficking victims (Polaris Project).

Once these sections of legislation have been evaluated, Polaris Project assigns a ranking: red, orange, yellow, or green. A red state meets zero to two conditions. An orange state meets three to four conditions. A yellow state meets five to six conditions. A green state meets seven to nine of the Polaris Project’s ten categories. Currently, 45 states have sex trafficking laws, and 48 states have labor trafficking laws (Polaris Project). Unfortunately, as of August 24, 2011, nine states, including South Carolina, received an unsatisfactory red state ranking.

Although the Polaris Project establishes a useful check list, its rankings merely tell if a state has the required legislation. Implementation of the laws is not assessed. The Polaris Project does not evaluate the effectiveness of those conditions that a state claims to have met. In effect, a state may be falsely ranked as one of the top states simply because it has the required legislation. To successfully measure the anti-trafficking progress of each state, the actual plan and the success rate or improvement of the plan needs to be judged.

Assessing SC H. 3757

The four measures of comparison previously discussed all have strengths and weaknesses. These federal and international laws and policies set the standard for anti-human trafficking laws in the United States. If these laws and policies serve as a scale by which to evaluate all other anti-human trafficking laws, how does H. 3757 compare in the following categories: legislative action, law enforcement, prevention, research, asset forfeiture, care of victims, child victims, and victims in court? According to my evaluation, H. 3757 falls short of the standard set forth in all of the sections except law enforcement and asset

forfeiture. The sections mentioning law enforcement do an excellent job of establishing a training program. The law also creates a much needed inter-agency task force, lists its members, and describes its goals and objectives, emphasizing that nongovernmental organizations and other civil groups should work alongside law enforcement. The asset forfeiture clause of the bill meets the requirements set forth by any effective anti-trafficking law by stating the necessity of asset forfeiture and declaring that the money collected will benefit the victims.

Minor problems arise in sections of the law dealing with legislative action, research, and child victims. H. 3757 does not have a clause protecting people's freedom of movement, including their decision to immigrate and emigrate. The goal of any human trafficking law should be to protect people from human trafficking; however, the law should also allow people to move around the world freely. Regarding the collection and dissemination of demographic data, H. 3757 fails to suggest that the state be responsible for measuring local populations. H. 3757 records the ethnicity of victims, but it does not suggest that vulnerable populations be measured beforehand. The bill also fails to monitor immigration and emigration patterns for proof of severe forms of trafficking. Once again, it collects data on trafficking routes and patterns, but only after trafficking has occurred. Essentially, the main problem with H. 3757's research plan is that it is reactive instead of proactive. In order to improve H. 3757, the bill should do more to identify and protect child victims of human trafficking. This is necessary because children are less capable of defending themselves than adults. They are more vulnerable and need more protection from predators. Also, the emotional, psychological, and physical damage of trafficking is amplified in child victims. Children in the courtroom require more consideration as well. Although child victims should be given special privileges in court, they should also be allowed to express their views if they so desire. Children should not be hindered in court because of their age.

The major problems with H. 3757 occur in the following categories: prevention, care of victims, and the treatment of victims in court. For prevention, the bill does not attempt to remove factors that make people vulnerable to trafficking such as poverty, lack of equal opportunities, and discrimination. H. 3757 asks that social and

economic factors be included in research, but does not require action to facilitate change. For example, the bill lacks a clause that requires the state to create programs that provide employment options for minority groups. H. 3757 mentions education for child victims of human trafficking; however, this is a reactive policy (16-3-2140). The bill would do better to seek to improve children's education before they become victims. Young girls with little education are especially vulnerable to trafficking and should thus be targeted for education, which has the potential to prevent numerous children from being trafficked. The government needs to play a more active role in the lives of children, especially young girls, to show them that they do have the chance to have a successful future. Finally, the bill discusses warning vulnerable populations about trafficking, but it does not look for points of intervention. There must be a concrete plan to warn migrants about trafficking in order to serve as an effective prevention measure.

H. 3757 could also do a better job mandating supportive care for victims. H. 3757 mandates the protection of victims, but unfortunately leaves out a clause specifying that protection is not conditional upon cooperation in legal activities. The same is true for the provision of housing. Housing will be provided, but it remains unclear whether victims can be required to help with criminal proceedings in order to receive safe and adequate housing. Such participation should be completely voluntary. Facing a court that may question the victim's testimony and facing a trafficker can be horrifying. Thus, if victims desire to face their traffickers, they should be allowed; otherwise, they should be allowed to return home and start rebuilding their lives. Either way, protection and housing should be given without any stipulation. Withholding necessities from a victim of human trafficking in order to manipulate them into helping the government is simply cruel. Additionally, medical, psychological, and material assistance should be given to victims without mandatory disease testing. Unfortunately, many victims of sex trafficking have a sexually transmitted disease. However, this is a private matter. Medical care should not be contingent upon their agreement to any type of testing. Victims should be given the right to control their bodies and what is done to them. Finally, an important part of the care of victims is their safe return home. Oddly

enough, this bill does not directly mention the safe return of victims to their home country. H. 3757 does, however, discuss reuniting children with their parents. The government must also consider that some victims will not be able to return home because of extenuating circumstances and extreme adversity. This bill does not discuss legal alternatives to victims' removal to countries in which they would face hardships either. Once the return of victims is brought up, this point should be decided as well. Fundamentally, safe return should be the first option. However, this is not always the case. Thus, South Carolina needs to have other legal options for victims who would face severe, negative consequences if they were to return to their countries of origin.

For several reasons, H. 3757 does not meet the standards set forth by the four measures of comparison when it comes to victims in court. First, the pending legislation does not encourage victims to assist in the investigation and prosecution. Some people may argue that the bill encourages the victim's assistance by demanding that they help in order to receive housing, protection, and medical care; however, this does not qualify as supportive encouragement. The government should establish an environment in which victims are eager to help in legal proceedings, instead of an environment in which victims assist with court proceedings out of fear or obligation. H. 3757 also fails to look at survivors as credible sources to help with the creation and execution of new human trafficking laws. The opinions of survivors should be taken into account. Despite these problems, some features of the proposed South Carolina human trafficking bill are truly revolutionary.

First, H. 3757 is very specific in its definition of human trafficking. It also clearly defines perpetrators and makes clear that anyone who helps with any part of the trafficking process will be held liable. Even if the defendant in question was not the main trafficker, that person is still guilty of a felony offense. Section 16-3-2020 also discusses prosecution and defense in greater detail than any previous human trafficking bill or policy. For example, if the defendant enters a guilty plea, the trafficking victim still receives all the benefits, rights, and compensation. This is important because it makes sure the victim is taken care of regardless of the trafficker's plea. The trafficker may be rewarded by the court for entering a guilty plea, but not at the expense

of the victim. In addition, this bill plainly declares that the victim's sexual history, relation to the defendant, age of consent, or confusion about the victim's age do not qualify as a defense (16-3-2020, par. G). Such stipulations indicate that the bill takes a zero-tolerance stance, allowing no excuse for trafficking a human being.

Second, H. 3757 is unique in its discussion of restitution for the victim. The other laws and policies do not talk specifically about restitution for the victims except for the opportunity to bring civil claims and benefit from asset forfeiture. H. 3757 expands the concept of restitution, stating that restitution must be paid to the victim, surviving spouse, descendants, or the victim's estate (16-3-2040, par. B). This section of the bill also clearly explains what must be paid by the trafficker. According to H. 3757, restitution covers medical and psychological treatment, physical and occupational therapy and rehabilitation, transportation, temporary housing, childcare, attorney's fees, court related costs, the income they could have earned while being trafficked, the cost of lost property, expenses required to move away from the trafficker, and any other losses (16-3-2040, par. C). Essentially, the trafficker, if convicted, must pay for all ill effects of his actions, and the payment must be timely.

Third, while other laws and policies mandate the formation of a task force, H. 3757 specifies the activities of the task force and which agencies will be involved at the local and federal levels. H. 3757 is adamant about coordinating the collection and sharing of trafficking data. This makes the eradication of trafficking in South Carolina a collective project. The clarity of interagency task force requirements and goals is a huge advantage of this bill.

Fourth, the State Law Enforcement Division (SLED) makes admirable progress in some areas of research and public awareness. The anti-trafficking task force will look to government associations, nongovernmental organizations, and civil groups to help collect data. The type of research SLED aims to do varies slightly as well. The Division is mandated to examine the number of investigations, arrests, prosecutions, and successful convictions of traffickers. It will also estimate the number of and analyze the demographic characteristics of people engaged in trafficking. The same type of information will be collected on those who buy commercial sex and forced labor. This

one statistic alone will show the prevalence of human trafficking in South Carolina and give state officials a starting point for prevention. Socioeconomic factors that potentially lead to victimization and increase the demand for all forms of exploitation will be studied. Research must be conducted before action can be taken. Methods of victim transportation will also be a major part of SLED's research and analysis. This is important because there are a number of ways for victims to be transported in South Carolina: boat, plane, car, and train. If officials can find out how most victims are transported, police officials can focus their efforts on certain areas and increase their efficiency.

SLED's public awareness programs are also exceptional. In addition to disseminating information about victim services, hotlines, and the risk of becoming a victim of human trafficking, H. 3757 mandates the distribution of information about the "risks of engaging in commercial sex," "victims' rights," in South Carolina, and "methods for reporting suspected recruitment activities" (16-3-2080, par. A). The added information increases the chance that potential victims will avoid being trafficked and that current people trapped in human trafficking will better know how to respond to their situations. SLED's involvement in awareness is also distinctive because the division will give money to "units of local government, Indian tribes, and nonprofit, nongovernmental victims' service organizations" so that they can increase victim service programs (16-3-2080, par. F). This shows that the government wants help from the community in the fight against human trafficking. The biggest issue for nonprofit organizations is lack of funding. Therefore, this section of the bill is particularly useful for organizations that desire to help but are struggling financially.

Fifth, as far as training for law enforcement, H. 3757 adds two clauses that are not found in any other human trafficking law or policy. The training will focus on "the new crimes and other provisions created by this article" (16-3-2070, par. B). The new crimes include all types of human trafficking. Before this law, many people were completely unaware that human trafficking existed in the United States, much less in the small state of South Carolina. It is essential for police officers to know and fully comprehend the details of H. 3757. After all, they will be the people responsible for enforcing the law. Section 16-3-

2070 also demands that “methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations” be implemented (par. B). These organizations know how to best assist victims. Police officials cannot and most likely do not want to have sole responsibility for the rescue and care of human trafficking victims. By allowing and encouraging the involvement of nonprofit organizations and civil groups, the bill permits police officials to focus on a single aspect of human trafficking. This will lighten the work load of police officials and make the rescue and care of victims more effective.

Sixth, the section of H. 3757 that discusses victims bringing civil suits against traffickers explains the statute of limitations in great detail. Section 16-3-2090 ensures that traffickers cannot escape a civil suit simply because of procedural mistakes. For example, it makes exceptions for minors, victims with disabilities, trafficking circumstances, and threats from the trafficker that might delay court action. These pieces of the law ensure that victims receive justice.

Seventh, H. 3757 brings new protection for forced laborers and sex slaves. The bill argues that all people, U.S. citizens or not, have standards for working conditions. The law declares, “The State shall investigate complaints of unlawful working conditions without regard to the immigration status of the complaints and without regard to the nature of the work or services involved” (16-3-2100, par. B). This shows that South Carolina is determined to demonstrate fairness and equality for all human beings regardless of citizenship. To deal with forced prostitution, H. 3757 requires that all women arrested for prostitution be interviewed to make sure those who are forced into prostitution are identified as victims of human trafficking. Dorchester County Sherriff’s Office Deputy Sherriff Duren states, “Currently, there are no procedures that require officers to look at prostitutes as potential victims of sex trafficking” (personal communication, 20 Jan. 2012). Therefore, numerous victims of sex trafficking could be treated as criminals and released to their traffickers. This part of the law could drastically reduce the number of women forced into prostitution.

Eighth, the care given to minor victims through H. 3757 rises above providing necessities. The bill allows child victims of human trafficking to testify outside of the courtroom or by video and with

a parent, legal guardian, or foster parent present (16-3-2140). Both of these accommodations are important for child victims because it treats the child more like a victim and less like a criminal. Plus, in the presence of someone familiar and in a less threatening environment, the court is more likely to get an honest and accurate testimony from the child. In return, this will make it easier for the court to convict the trafficker. H. 3757 contains a clause pertaining to child victims that is not found in any other human trafficking law or policy. H. 3757 states, “Minor victims should be guaranteed education that matches or exceeds the general standard of education in the country” (16-3-2140). This serves as a type of repayment for what the child has suffered. Providing education helps ensure that the child will be provided for and has the potential to prevent re-trafficking.

Next, specifics about victims’ housing and their rights to privacy make H. 3757 stand apart from other human trafficking bills and policies. In this bill victims have the right to refuse to live in shelters or other facilities. They also “have the option to communicate with and receive visits from family, friends, attorneys, and advocates” (16-3-2130, par. D). As far as communication, the bill states, “A trafficking victim...has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker” (16-3-2150, par. A). This right is not even alluded to in any other law or policy. Not only does this clause extend the victim’s right of privacy, it also potentially enriches the communication between the victim and the caseworker by guaranteeing confidentiality. This will ultimately help the victim deal with the experience by being able to talk openly with a caseworker without the threat of having to recount the information to other people. In addition, H. 3757 demands that all housing plans be reviewed and approved before they are put into effect (16-3-2130, par. G). This sanction is provided to ensure human rights are protected.

Finally, Section 16-3-2160, which protects human trafficking shelters, is only found in H. 3757. According to the bill, anyone who “publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, [or] a domestic violence shelter . . . without the authorization...is guilty of a misdemeanor” (16-3-2160, par. A). This order is not found in any other law or policy.

It is extremely important to protect people who are dealing directly with survivors of human trafficking. This part of the bill provides reassurance for nonprofit organizations that are committed to serving victims of human trafficking.

Despite the seemingly long list of complaints about H. 3757, the bill has features that make it better than any other current U.S. human trafficking law or policy. The implementation of H. 3757 would remove South Carolina from the list of nine states with insufficient human trafficking legislation and make South Carolina one of the leading states in human trafficking legislation. Additionally, the bill would adequately serve the victims of human trafficking by establishing numerous services to assist victims. Victims of human trafficking are protected in court; provided shelter, medical services, job opportunities, education, material assistance, restitution, and court assistance; and given rights that are protected by the government. This bill not only gives victims the basic necessities they need to survive; it gives them virtually everything they need to begin rebuilding their lives. The bill aims to change the way South Carolina views those exploited by human trafficking, as victims rather than criminals. With the addition of a clause stating that victims will be provided for regardless of their decision to participate in legal proceedings or medical testing, H. 3757 would be a model victim protection bill.

Works Cited

- Allison. "The T Visa: For Victims of Human Trafficking." *Legal Language Services*. April 2011. Web. 19 Jan 2012.
- Breilh, C. "The Trafficking Victims Protection Act (TVPPA)." World Vision's Women of Vision. May 2011. Web. 18 Nov 2011.
- Chacon, Jennifer M. "Misery and Mypoa: Understanding the Failures of U.S. Efforts to Stop Human Trafficking." *Fordham Law Review* 74.6 (2006): 2977-3020. JSTOR. Web. 14 Oct. 2011.
- Chuang, Janie. "Beyond a Snapshot: Preventing Human Trafficking in the Global Economy." *Indiana Journal of Global Legal Studies* 13.1 (2006): 137-63. JSTOR. Web. 14 Oct. 2011.
- Duren, Larry. Personal interview. 11 Oct. 2011.
- El-Sawi, A. "Human Trafficking: What Shelter Providers Need to Know."

- SC Women's Connection, Family Justice Center of Georgetown County, Pee Dee Coalition Against Domestic and Sexual Assault, Columbia, SC. 7 June 2011. Keynote Address.
- European Action for Compensation for Trafficked Persons. "Human Rights Approach to Trafficking." Comp.act. Web. 23 Nov. 2011.
- Gallagher, Anne. (2001). "Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis." *Johns Hopkins University Human Rights Quarterly* 23.4 (2001): 975-1004. JSTOR. Web. 14 Oct. 2011.
- Global Rights. *Combating Human Trafficking in the Americas: A Guide to International Advocacy*. Initiative against Trafficking in Persons. 2009. Web. 23 Nov. 2011.
- Hathaway, James C. The Human Rights Quagmire of Human Trafficking. *Virginia Journal of International Law* 49.1 (2008): 2-59. JSTOR. Web. 14 Oct. 2011.
- Ollus, Natalia. (2008). *The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children: A Tool for Criminal Justice Personnel*. UNODC. 2008. Web. 23 Oct. 2011.
- Patel, Ankita. "Back to the Drawing Board: Rethinking Protection Available to Victims of Trafficking." *The Seattle Journal for Social Justice* 9.2 (2011) 813-42. JSTOR. Web. 14 Oct 2011.
- Pesta, Abigail. "Diary of an Escaped Sex Slave." *Marie Claire* Nov. 2009: 98-101. Print.
- Polaris Project. (2010). "Rated State Laws." Polaris Project. 2010. Web. 23 Nov. 2011.
- South Carolina. Human Trafficking (H. 3757). South Carolina Legislature. 2011. Web. 2 Sept. 2011.
- United Nations. General Assembly. *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*. UNCJIN. 2000. Web. 5 Sept. 2011.
- United Nations. General Assembly. *Protocol against the Smuggling of Migrants by Land, Sea and Air*. UNHCR. 2001. Web. 5 Sept. 2011.
- United Nations. General Assembly. *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Component Ammunition*. UNHCR. 2001. Web. 4 Sept. 2011.
- United Nations. General Assembly. *United Nations Convention against*

- Transnational Organized Crime*. UNHCR. 2001. Web. 4 Sept. 2011.
- United Nations. Office of the High Commissioner for Human Rights (2002). *Recommended Principle and Guidelines on Human Rights and Human Trafficking*. OHCHR. 2002. Web. 4 Sept. 2011.
- United Nations. Office on Drugs and Crime. *United Nations Convention against Transnational Organized Crime and its Protocols*. UNODC. 2001. Web. 24 Oct. 2011.
- United States. Dept. of State. Office to Monitor and Combat Trafficking in Persons. *Trafficking Victims Protection Act of 2000*. U. S. Dept. of State: Diplomacy in Action. Web. 4 Sept. 2011.
- XIE Law. "T Visa and U Visa FAQs." XIE Law Offices. 2008. Web. 17 Jan. 2012.