

# CAN MANDATORY REPORTING LAWS HELP CHILD SURVIVORS OF HUMAN TRAFFICKING?

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## INTRODUCTION

Once thought of as primarily a criminal justice issue, human trafficking is now recognized as an issue that implicates all sectors of society.<sup>1</sup> Trafficked individuals have been identified in a breadth of industries, including agriculture, manufacturing, construction, mining, fisheries, forestry, health care, hospitality and tourism, domestic service, restaurants, forced-begging operations, and the sex industry.<sup>2</sup> Preventing exploitation across so many sectors requires a comprehensive, coordinated response. In other words, in addition to the criminal justice system, social service professionals, health care providers, educators, businesses, media, and others all have a role to play in addressing human trafficking and its attendant forms of exploitation. As part of the recent push to broaden engagement in

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1. See INST. OF MED. & NAT’L RES. COUNCIL, CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES (2013); Helga Konrad, *The OSCE and the Struggle Against Human Trafficking: The Argument for a Comprehensive, Multi-Pronged Approach*, 1 INTERCULTURAL HUM. RTS. L. REV. 79, 84-85 (2006); Jonathan Todres, *Human Rights, Labor, and the Prevention of Human Trafficking: A Response to a Labor Paradigm for Human Trafficking*, 60 UCLA L. REV. DISCOURSE 142, 158 (2013); Press Release, President Barack Obama, Presidential Proclamation--National Slavery and Human Trafficking Prevention Month, 2016 (Dec. 31, 2015).

2. U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 9, 35 (2013) (noting that “[v]ictims of forced labor have been found in nearly every job setting or industry imaginable, including private homes, factories, restaurants, elder care and medical facilities, hotels, housekeeping, child-rearing, agriculture, construction and landscaping, food processing, meat-packing, and cleaning services” and reporting on trafficking in mining, fisheries, and other industries).

anti-trafficking efforts, policymakers and advocates have identified mandatory child abuse reporting statutes as a vehicle for engaging health care providers, educators, and other professionals who work with children to help identify children at risk of or exploited by human trafficking.<sup>3</sup>

Mandatory reporting statutes, which exist in all fifty states, were created to protect children from abuse and neglect in the home.<sup>4</sup> They typically identify a range of professionals who are required to report suspected cases of abuse and neglect, including health care providers, teachers and other school officials, social workers, day care workers, and others.<sup>5</sup> When a mandatory reporter suspects or has reason to believe a child has been abused or neglected, he or she must report the incident to child protective services and/or law enforcement (in some states, the person must report the case to his or her institution, and then the institution reports it to the relevant agency).<sup>6</sup> As the harms suffered from child trafficking can be viewed as abuse or maltreatment, mandatory reporting statutes offer an established framework for engaging a broad range of professionals who work with children, in order to help prevent or identify the trafficking of children.

This article examines the potential impact of mandatory reporting laws on efforts to address child trafficking. In the past few years, roughly one-quarter of the states have amended their mandatory reporting laws to cover some or all forms of human trafficking. In December 2015, I reviewed the mandatory reporting laws of the fifty states. Ten states now cover both sex trafficking and labor trafficking in their mandatory reporting schemes,<sup>7</sup> while an additional four states cover only sex trafficking.<sup>8</sup> I argue that these steps, while well-intentioned, might not have the intended impact without further action. First, adding sex trafficking might not significantly change the practices of mandatory reporters as existing law already prompts them

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3. See *infra* notes 7 and 8.

4. Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 COLUM. L. REV. 1, 15 (1967) (“[T]he purpose of the child abuse reporting laws is to trigger constructive action so that a child’s life may be lived in safety.”).

5. See, e.g., ALA. CODE § 26-14-3(a) (2015).

6. National District Attorneys Association, *Mandatory Reporting of Child Abuse and Neglect* (2012).

7. CONN. GEN. STAT. § 17a-101a (2015); HAW. REV. STAT. § 350-1.1 (2015); 325 ILL. COMP. STAT. 5/4 (2015); KAN. STAT. ANN. § 38-2202 (2015); KY. REV. STAT. ANN. § 620.030 (West 2015); LA. CHILD. CODE ANN. art. 609 (2015); MASS. GEN. LAWS ch. 119 § 51A § 39.201 (2015); NEB. REV. STAT. § 28-711 (2015); TEX. FAM. CODE ANN. § 261.101 (West 2015); VT. STAT. ANN. tit 33, § 4913 (2015).

8. COLO. REV. STAT. § 19-3-304 (2015); FLA. STAT. § 39.201 (2015); ME. REV. STAT. tit. 22 § 4011-A (2015); MD. CODE ANN. FAM. LAW § 5-704 (West 2015).

to look for many of the same types of abuse. Second, labor trafficking harms often manifest in less visible ways or in ways that do not seem connected to traditional forms of child abuse and thus might not be recognized by mandatory reporters tasked with identifying it. Finally, with respect to all forms of trafficking, without additional measures or requirements—most notably a mandate and funding for training of mandatory reporters, and further support for the child welfare system—expanding mandatory reporting laws will fall short of meaningfully advancing anti-trafficking efforts.

### I. CHANGES TO STATE LAWS TO ADDRESS SEX TRAFFICKING

Sex trafficking of children involves the exploitation of children in prostitution, pornography, or other parts of the sex industry. While only fourteen states expressly cover sex trafficking, all states incorporate at least some aspects of sex trafficking in their mandatory reporting schemes by making “sexual exploitation,” “sexual assault,” and/or “sexual abuse” reportable acts.<sup>9</sup>

To understand what impact a mandatory reporting statute might have on efforts to identify child trafficking cases, it is necessary to consider the perspective of the professional tasked with the reporting, both on human trafficking and on mandatory reporting. First, as a threshold matter, it is important to understand where mandatory reporters intersect human trafficking. The crime of human trafficking includes three elements: an act, means, and purpose.<sup>10</sup> Covered acts

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9. Fourteen states cover sex trafficking. *See supra* notes 7 and 8. The remaining thirty-six states cover some or all of the harms of sex trafficking. ALA. CODE § 26-14-3 (2015); ALASKA STAT. § 47.17.020 (2015); ARIZ. REV. STAT. ANN. § 13-3620 (2015); ARK. CODE ANN. § 12-18-402 (2015); CAL. PENAL CODE § 11166 (West 2015); DEL. CODE ANN. tit. 16, § 903 (2015); GA. CODE ANN. § 19-7-5 (2015); IDAHO CODE ANN. § 16-1605 (2015); IND. CODE § 31-33-5-1 (2015); IOWA CODE § 232.69 (2015); MICH. COMP. LAWS § 722.623 (2015); MINN. STAT. § 626.556 (2015); MISS. CODE ANN. § 43-21-353 (2015); MO. REV. STAT. § 210.115 (2015); MONT. CODE ANN. § 41-3-201 (2015); NEV. REV. STAT. § 432B.220 (2015); N.H. REV. STAT. ANN. § 169-C:29 (2015); N.J. REV. STAT. § 9:6-8.10 (2015); N.M. STAT. ANN. § 32A-4-3 (2015); N.Y. SOC. SERV. LAW § 413 (McKinney 2015); N.C. GEN. STAT. § 7B-301 (2015); N.D. CENT. CODE § 50-25.1-03 (2015); OHIO REV. CODE ANN. § 2151.421 (West 2015); OKLA. STAT. tit. 10A, § 1-2-101 (2015); OR. REV. STAT. § 419B.010 (2015); 23 PA. CONS. STAT. § 6311 (2015); R.I. GEN. LAWS § 40-11-3 (2015); S.C. CODE ANN. § 63-7-310 (2015); S.D. CODIFIED LAWS § 26-8A-3 (2015); TENN. CODE ANN. § 37-1-403 (2015); UTAH CODE ANN. § 62a-4a-403 (West 2015); VA. CODE ANN. § 63.2-1509 (2015); WASH. REV. CODE § 26.44.030 (2015); W. VA. CODE § 49-6A-2 (2015); WIS. STAT. § 48.981 (2015); WYO. STAT. ANN. § 14-3-205 (2015).

10. U.N. Office on Drugs and Crime, *Human Trafficking*, <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>.

include such actions as recruiting, harboring, transporting, providing or obtaining another individual.<sup>11</sup> The means must include force, fraud, or coercion, except when a child is the victim. For child trafficking, the means employed are irrelevant because a minor does not have legal capacity to consent.<sup>12</sup> Finally, to constitute human trafficking, these acts must be done for the purpose of exploiting the individual in the sex industry or through forced labor. It is this last element where a mandatory reporter would typically intersect with human trafficking. That is, a mandatory reporter's value is in crossing paths with a trafficking victim, identifying that child as a victim, and connecting the child with appropriate assistance and services.

Take an emergency department physician as an example. The physician might identify a child trafficking victim when he or she presents at the emergency room. The doctor does not witness recruitment of a trafficking victim, but rather he or she sees the end exploitation—the harm suffered from sexual exploitation or forced labor. Although only fourteen states expressly mention sex trafficking in their mandatory reporting laws, all fifty cover aspects of the sexual exploitation that is the end harm of trafficking.<sup>13</sup> Evidence that a child suffered sexual exploitation, sexual assault, or sexual abuse should trigger a report in most, if not all, sex trafficking cases.<sup>14</sup> Therefore, as a practical matter, adding “sex trafficking” to mandatory reporting schemes might have limited impact on the identification of sex trafficking—that is, the change in law might not prompt much of a

11. 18 U.S.C. § 1590 (West 2016). For sex trafficking, federal law encompasses a broader array of activities. 18 U.S.C. § 1591 (West 2016) (“Whoever knowingly . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits . . .”).

12. International law establishes that the means is irrelevant when a child is a victim. *See* Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A.Res. 55/25, Annex II, U.N. GAOR, U.N. Doc. A/45/49 (2001), art. 3(c) (Dec.25, 2003). U.S. law employs the same approach for sex trafficking but not for labor trafficking. *Compare* 18 U.S.C. § 1591 (2015) (sex trafficking only and establishing that the means are irrelevant if the victim is under 18 years old), *with* 18 U.S.C. §§ 1589-1590 (2015) (covering labor trafficking but not including similar language if the victim is a minor).

13. *See supra* notes 7–9.

14. While some states limit child abuse definitions to cover acts committed by parents and other caregivers—see, for example, N.C. GEN. STAT. § 7B-101 (covering acts by a “parent, guardian, custodian, or caretaker”)—many states’ laws cover harm inflicted by any person. *See, e.g.*, MONT. CODE ANN. § 41-3-201(1) (“When [mandatory reporters] know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child’s welfare, they shall report the matter promptly to the department of public health and human service.”).

change in practice—unless we ensure that mandatory reporters receive sufficient training.

## II. CHANGES TO STATE LAWS TO ADDRESS LABOR TRAFFICKING

Labor trafficking has garnered significantly less attention than sex trafficking. Popular portrayals of human trafficking often overlook labor trafficking,<sup>15</sup> even though many reports suggest labor trafficking constitutes the majority of trafficking cases.<sup>16</sup> Labor trafficking victims experience a range of harms. In addition to suffering work-related injuries, they report “living and working conditions that are overcrowded, poorly ventilated and lack adequate sanitation. Long working hours and little rest time may be punctuated with poor or inadequate nutrition and prolonged exposure to extremes of heat or cold.”<sup>17</sup> They are subjected to physical and emotional trauma. And their exposure to environmental hazards in various industries presents additional health hazards, including “[e]xposure to irritants and carcinogens [that are] associated with acute and chronic respiratory disease, poisoning, certain cancers, and irritant and allergic dermatitis.”<sup>18</sup>

As with sex trafficking, understanding the value of mandatory reporting as a vehicle for identifying children harmed by trafficking requires consideration of labor trafficking from the perspective of the mandatory reporter. Here again, the mandatory reporter will see the victim and be trying to identify labor trafficking based on the harm suffered by the child or adolescent.

For labor trafficking cases, certain physical harms are covered already by physical abuse definitions under mandatory reporting

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15. See, e.g., Jonathan Todres, *Human Trafficking and Film: How Popular Portrayals Influence Law and Public Perception*, 101 CORNELL L. REV. ONLINE 1, 9–11 (2015).

16. See, e.g., INT’L LABOUR ORG., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS & METHODOLOGY 13 (2012) (“Of the total number of 20.9 million forced labourers, 18.7 million (90%) are exploited in the private economy, by individuals or enterprises. Out of these, 4.5 million (22% total) are victims of forced sexual exploitation, and 14.2 million (68%) are victims of forced labour exploitation, in economic activities such as agriculture, construction, domestic work and manufacturing.”); Jette Christiansen & Jonathan Martens, INT’L ORG. FOR MIGRATION, COUNTER TRAFFICKING AND ASSISTANCE TO VULNERABLE MIGRANTS: ANNUAL REPORT OF ACTIVITIES 18 (2011) (noting that as of 2010, labor trafficking has overtaken sexual exploitation as the main type of trafficking, seen in cases assisted by the International Organization for Migration).

17. Sian Oram & Cathy Zimmerman, *The Health of Persons Trafficked for Forced Labour*, GLOBAL EYE ON HUMAN TRAFFICKING (Int’l Org. for Migration, Geneva, Switz.), no. 4, at 4.

18. *Id.*

statutes. That is, if a child presents before a mandatory reporter with bruises or other physical injuries from forced labor, those harms are typically covered by physical abuse definitions in mandatory reporting laws and should trigger further inquiry. The tougher cases are when the harms from forced labor include those caused by environmental hazards or unsafe working conditions. In these cases, the child who presents with skin issues, asthma, and other maladies might not be identified as a trafficking victim. It may be that in those cases, as well as cases in which there are physical injuries, certain professionals question whether these symptoms are evidence of a case of maltreatment or neglect. However, trafficked children often fear disclosing the source of their injuries. And in other cases, a provider's inquiries might end when the child explains that he or she was injured working, as work-related injuries are typically viewed as beyond the scope of child maltreatment.

Therefore, identification of labor trafficking presents two challenges: First, there may be labor trafficking cases that are not readily identifiable by mandatory reporters because they manifest as reactions to environmental hazards or other issues not typically associated with child maltreatment. Second, labor trafficking continues to be overlooked in legal mandates to address trafficking, as four of the fourteen states that have amended their laws to cover human trafficking have excluded labor trafficking from mandatory reporting requirements. Therefore, in those states, even when mandatory reporting requirements are expanded, professionals covered by the law are not being asked to help identify labor trafficking.

### III. MAKING MANDATORY REPORTING MEANINGFUL

As mandatory reporting schemes engage a breadth of professionals who regularly come into contact with children, it offers a well-established scheme for identifying children at risk of or subjected to exploitation. Moreover, the abuse and maltreatment child trafficking victims suffer are the types of harms mandatory reporting laws were intended to address.<sup>19</sup> However, the states that have made changes in mandatory reporting laws to address child trafficking have failed to maximize the true value of this framework or to address existing challenges in mandatory reporting schemes.

To enhance mandatory reporting's capacity to make a difference addressing human trafficking, training is critical. Despite the

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19. See INST. OF MED. & NAT'L RES. COUNCIL, *supra* note 1, at 34 (“[T]he committee firmly asserts that these young people should be recognized as victims, not criminals, and that commercial sexual exploitation and sex trafficking are forms of child abuse.”).

importance of training, none of the fourteen states that changed their mandatory reporting laws to address child trafficking expressly mandate training for *all* mandatory reporters on how to identify and respond to human trafficking. Eight states make no mention of training in the legislation that expanded mandatory reporting.<sup>20</sup> Four states—Connecticut, Florida, Kentucky, and Massachusetts—address training of law enforcement, although Connecticut and Massachusetts state that training is subject to available appropriations.<sup>21</sup> The absence of funding makes training less likely to occur. Massachusetts goes beyond law enforcement, establishing a task force which, among other things and “subject to appropriation,” is to consider and recommend training for law enforcement and social services, health and human services providers, and educators.<sup>22</sup> Vermont is the only state that expressly mentioned mandatory reporters, but its legislation merely establishes a committee to determine whether mandatory reporters must certify they have had training.<sup>23</sup> Finally, the Colorado law established a human trafficking council that shall “[d]evelop training standards and curricula for organizations that provide assistance to victims of human trafficking, for persons who work in or who frequent places where human trafficking victims are likely to appear, and for law enforcement agencies.”<sup>24</sup> Vermont and Colorado come closest to addressing training for all mandatory reporters, but neither state expressly mandates training. Overall, by failing to mandate training, states run the risk of poor implementation of these expanded mandatory reporting requirements. Also, a narrow focus on training of law enforcement undermines the purpose of expanding the scope of mandatory reporting laws—that is, to ensure a broad range of professionals are engaged in helping to prevent, identify, and respond to child trafficking.

Perhaps training on child trafficking will be incorporated organically in continuing education for all mandatory reporters, but

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20. Hawaii, Illinois, Kansas, Louisiana, Maine, Maryland, Nebraska, and Texas do not mention training in the bill that expands mandatory reporting to cover human trafficking.

21. 2014 Conn. PA 14-186, § 3(b) (explaining that a commissioner “may, within available appropriations, provide training to law enforcement . . . .”); Florida Safe Harbor Act, 2012 Fla. HB 99 (including training for law enforcement); 2013 Ky. HB 3 (training for law enforcement, as well as attorneys and victim advocates); 2011 Mass. HB No. 3808, §31(b) (train law enforcement “subject to appropriation”).

22. 2011 Mass. HB No. 3808, §31(b) (task force “subject to appropriation” will consider and recommend training for law enforcement and social services, health and human services providers, educators, and others individuals).

23. An Act Relating to Improving Vermont’s System for Protecting Children from Abuse and Neglect, Vt. Bill 60, §23 (2015) (establishing a committee that will determine whether mandatory reporters must certify they have had training).

24. 2014 Colo. HB 14-1273, §18-3-505(4).

mandatory reporting for human trafficking will be more effective if states create a mandate, or at least provide incentives, for training of mandatory reporters. Training can help provide a physician or schoolteacher with knowledge and sensitivity to ask the right questions to help identify a child in need of assistance without putting the child at further risk of harm. Training can help professionals understand that the sixteen-year-old girl in trouble might be a trafficking victim and not “just a bad kid.” Training must be a part of any meaningful change to mandatory reporting laws.

In addition to training, it is essential to address all forms of human trafficking if these laws are to make a significant difference. Labor trafficking inflicts significant harms on children, yet four states ignored labor trafficking of children when they expanded their mandatory reporting laws to address human trafficking. The fact that labor trafficking might not be recognized by a professional looking for traditional signs of physical and emotional abuse is a compelling reason for adding it as a reportable act and ensuring that appropriate training is provided to all mandatory reporters. Furthermore, law has an expressive function. Including all forms of human trafficking in mandatory reporting laws helps convey a critical message: that every child matters and all harms against children must be prevented.

Covering all forms of child trafficking and ensuring effective training of professionals will help strengthen the law on mandatory reporting of human trafficking. While these steps are essential, legislatures must also confront existing challenges with mandatory reporting.

Studies have found that some mandatory reporters do not report all suspected cases of child abuse due to a variety of reasons including concerns that a report will not help the child or family and may even result in further harm.<sup>25</sup> These factors suggest that expanding reporting requirements to add human trafficking as a reportable act might not alter whether a particular individual files a report. In other words, the issue is not likely to be that an emergency department physician would examine an adolescent, conclude that she has been a victim of sexual exploitation, and decide to do nothing solely because it seems the

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25. Emalee G. Flaherty et al., *From Suspicion of Physical Child Abuse to Reporting: Primary Care Clinician Decision-Making*, 122 PEDIATRICS 611, 615–17 (2008); Risé Jones et al., *Clinicians’ Description of Factors Influencing Their Reporting of Suspected Child Abuse: Report of the Child Abuse Reporting Experience Study Research Group*, 122 PEDIATRICS 259 (2008). Also, health care providers have reported that mandatory reporting could jeopardize the doctor-patient relationship, discourage individuals from seeking care, and compromise trust and confidentiality. See Michael A. Rodriguez et al., *Mandatory Reporting of Intimate Partner Violence to Police: Views of Physicians in California*, 89 AM. J. PUB. HEALTH 575, 577 (1999).

exploitation was committed by a stranger and not by a parent. Indeed, many states' mandatory reporting laws do not limit coverage to acts committed by a parent or guardian.<sup>26</sup> But even where a state does limit reporting in this way, it seems unlikely that a well-intentioned professional would do nothing solely because of legal definitions. Of course, this is an empirical question, but in my own research on human trafficking, having spoken with many doctors, it seems highly unlikely that a provider who is inclined to report child abuse would remain silent if there was a question as to who inflicted the abuse. Further, research indicates that providers are worried about other issues, including concerns that reporting will produce a worse result for the child or undermine the provider-patient relationship.<sup>27</sup> Ultimately, if mandatory reporting is to make an impact on human trafficking, the concerns of providers must be addressed. Among other things, this means a change to mandatory reporting requirements must be accompanied by measures that strengthen the child welfare system. The child welfare system must have the training and capacity to handle child trafficking cases successfully if providers are going to have confidence that reporting will improve outcomes for children.

In summary, it is not that state legislatures are wrong to contemplate expanding mandatory reporting laws to cover child trafficking, but rather that any change to these laws must be accompanied by other important actions to ensure that mandatory reporting makes a positive difference. Specifically, states must mandate and provide appropriations for training of mandatory reporters; ensure that the child welfare system has the resources, capacity, and skills needed to assist this vulnerable population of children; and address other existing concerns of professionals about mandatory reporting.

#### CONCLUSION

Mandatory reporting structures offer hope to policymakers and advocates who seek to have broad participation in anti-trafficking efforts. However, merely making "human trafficking" a reportable act is unlikely to produce the desired outcome. Laws must incorporate a mandate for ongoing training, evaluation of the effectiveness of the training, and education about the importance of addressing all forms of human trafficking. In addition, any changes to the law must address concerns of professionals—e.g., that child welfare services are under-resourced and at times ineffective—that make them reluctant to report. If legislative changes provide the resources and education

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26. See *supra* note 14.

27. See *supra* note 25.

necessary to make mandatory reporting work more effectively, then adding child trafficking—a severe form of child abuse—to the list of reportable acts can make a difference.