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To: Little Hoover Commission to Examine Labor Trafficking

From: Summer Stephan- San Diego County District Attorney

Overview Analysis of Talking Points:

California has made significant strides in fighting Human Trafficking based in sexual exploitation but there are many challenges that remain in properly addressing the plague of labor trafficking. The challenges and opportunities for improvement lie in every area including strengthening the state laws and most importantly strengthening the identification of victims of labor trafficking and once identified strengthening the investigation and protection of those victims. Recently, my office sponsored and advocated for one such law that copied certain positive aspects of already existing federal law but it did not pass. Certainly there are aspects of that legislation that can be improved upon and introduced again. The proposed law focused on creating a better understanding for workers in our State about their rights to maintain their own identification, work authorization and immigration documents and their right to receive proper wages. One big gap and potential opportunity is to work with the Department of State on making sure that immigrants traveling to the United States have information about human labor trafficking in the language they understand including how to seek help and key facts that mitigate against cultural myths regarding debt bondage and their labor rights to minimum wage and document retention. One additional improvement is to consolidate efforts amongst agencies like the Department of Labor, local and federal law enforcement so victims are identified early and protected. Another key successful tactic is expanding the investigation and prosecution of labor trafficking to include other laws that are more easily proved like wage theft, workers' compensation violations, tax evasion and money laundering by scrupulous and greedy employers who profit off the back of enslaving and exploiting victim for cheap labor. However, enhancing victim compensation and services to include those categories of related crimes. Finally, education, training and awareness by professionals and community have to include labor trafficking which is often neglected.

Below are relevant portions that support the overview analysis above from a white paper prepared by District Attorney Summer Stephan and Deputy District Attorney Wendy Patrick:

According to the International Labour Organization (ILO), in 2016, an estimated 40.3 million people were trapped in modern slavery. This number included 24.9 million in forced labor and 15.4 million in forced marriage. The ILO explained these numbers mean that there are 5.4 victims of modern slavery for every 1,000 individuals in the world. And of that number, they report that 1 in 4 victims of modern slavery are children.

The California Department of Justice's The State of Human Trafficking in California, 2012 report confirmed California is one of the states most affected by human trafficking, due in part to its proximity to the U.S. southwest border, its robust economy, and a large immigrant population. Transnational criminal organizations and gangs motivated by these high profits and the notion that human trafficking carries a lower risk of detection have expanded their criminal enterprises in California and allows for the renewable exploitation of human beings.

The Polaris Project, which houses the National Human Trafficking Hotline, confirms reported cases of human trafficking in all 50 states. Although there is no official estimate of the total number of human trafficking victims in the U.S. Polaris estimates that the total number of victims nationally reaches into the hundreds of thousands when estimates of both adults and minors and sex trafficking and labor trafficking are aggregated.

Polaris also reports statistics from the National Human Trafficking Hotline and Polaris BeFree Textline as follows:

More than 49,000 total cases of human trafficking have been reported to the Hotline in the last 10 years.

Annually, the Hotline receives multiple reports of human trafficking cases in each of the 50 states and D.C.

The number of human trafficking cases that Polaris learns about in the U.S. increases every year.

Regarding methods of reporting, 24% of texting conversations on the Polaris BeFree Textline were from survivors of human trafficking compared to 14% of phone calls on the Hotline. The Hotline receives an average of 1500 calls per day.

Labor Trafficking Key Study

The International Labour Organization (ILO) compiled statistics well. Out of the 24.9 million people trapped in forced labor, they report that 16 million are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million are trapped in forced sexual exploitation, and 4 million are being subjected to forced labor imposed by state authorities.

Regarding gender based differences, the ILO reports that women and girls are disproportionately affected by forced labor, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.

The Urban Institute compiled a comprehensive report about the organization, operation, and victimization of labor trafficking and its victims in the United States. The subjects in their sample were all immigrants working in the United States, most of whom entered the country on a temporary visa—most commonly for work in agriculture, hospitality, construction, and restaurants. The most compelling figure is that 71% entered this country on a work Visa. Those who entered the country without authorization were most commonly trafficked in domestic work and agriculture.

The Urban Institute data was drawn from a sample of 122 closed labor trafficking victim service records from providers in four US cities, in addition to interviews with labor trafficking survivors, legal advocates, law enforcement officials, and service providers at each site.

All victims in the Urban Institute sample experienced the required elements of force, fraud and coercion necessary to substantiate labor trafficking. The reported elements of force, fraud and coercion included “document fraud; withholding documents; extortion; sexual abuse and rape; discrimination; psychological manipulation and coercion; torture; attempted murder; and violence and threats against themselves and their family members.” They also found that labor trafficking victims suffered civil labor exploitation. Forms of civil labor exploitation included, but were not limited to, “being paid less than minimum wage; being paid less than promised; wage theft; and illegal deductions.” They also noted, “While legal under some visa programs and labor law, employers/traffickers also controlled the housing, food, and transportation of a significant proportion of our sample. Immigration status was a powerful mechanism of control – with employers threatening both workers with visas and unauthorized workers with arrest as a means of keeping them in forced labor.”

“Slavery is founded in the selfishness of man’s nature – opposition to it is in his love of justice.” – President Abraham Lincoln

Although slavery and involuntary servitude were abolished by President Abraham Lincoln in 1865, in 2017, human trafficking cases were reported in every state in America, with California ranking as a top three destination for this vile crime.

The reason? Human trafficking is one of the most profitable criminal enterprises in the world. It’s an estimated \$32 billion industry according to a 2012 report by the United Nations Office on Drugs and Crime, with tens of millions of people being trafficked worldwide.

Human trafficking is a form of modern-day slavery where perpetrators profit from the control and exploitation of men, women and children through force, fraud, or coercion for sex, labor, or both. Human Trafficking is also widely recognized as the biggest human rights violation of our time. Human Trafficking is a crime under U.S. federal law, and similar laws passed on the state side, providing jurisdiction to local prosecutors in each state of the United States. Human Trafficking is the second most profitable criminal industry behind the drug trade, estimated at billions annually in the U.S. and worldwide. The International Labour Organization estimates forced labor and human trafficking to be a \$150 billion industry worldwide.

Human Trafficking is a historic threat internationally and in the United States to the dignity and safety of human and communities. Trafficking activity is a worldwide problem that has impacted the dignity and safety of victims across the globe. There are, however, an increasing amount of laws designed to define, combat, and punish trafficking activity.

As Martin Luther King Jr. said, “Morality cannot be legislated but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless.” Put less eloquently, the United States is a country of laws, which is what allow law enforcement and prosecutors to act.

Laws that directly address human trafficking did not exist until 2000, when the Trafficking Victims Protection Act passed. Consequently, laws to effectively deal with human trafficking activity, including definitions, appropriate punishment, and deterrence are new. Here are some simple definitions that are fairly similar across the U.S.:

Labor trafficking is the exploitation of a person by means including coercion or deceit for labor services. Labor trafficking victims are often forced into domestic servitude, construction, restaurant, agricultural, massage parlors, or sweatshop factory work with little or no pay.”

Washington became the first state to recognize the crime of human trafficking in 2003. Since that time, all 50 states have criminalized human trafficking.

The National Conference of State Legislatures (NCSL) gives examples of the types of facts and circumstances that enhance criminal penalties for violating state trafficking laws. They note that laws may impose more severe or additional penalties when trafficking crimes are committed against vulnerable populations like undocumented immigrants, the mentally ill, or children, or when the crimes are committed through aggravating circumstances like using violence, branding, or when they involve drug addiction.

The NCSL also recognizes the wide variety of activities that qualify as trafficking activity under different state laws. They note that most commonly, trafficking activities are defined as consisting of “the recruitment, transportation, transfer, harboring or receipt of persons for the purpose of exploitation.” They note that some jurisdictions have adopted a more expansive definition of trafficking, which includes activities such as “purchasing, benefitting or profiting.”

Although specific elements of trafficking statutes that vary from state to state, the NCSL recognizes that many are consistent. They note that most states require prosecutors to prove traffickers compelled their victims into engaging in labor or sexual servitude. They further note that the majority of laws include elements of “force, fraud and coercion,” but note that definitions are subject to significant variation between states. As an example, they note that some states use a definition that focuses primarily on the use of physical force, while other states have adopted a broader definition, which includes psychological control, legal harassment, financial threats, and drug addiction.

Business Liability

The NCSL notes that some states have created measures to penalize businesses that have been used in committing human trafficking. Accompanying laws specify the procedures to follow in dissolving an offending business entity, in addition to imposing fines. States that specifically penalize business entities include Alabama, Massachusetts, South Carolina, Hawaii, Minnesota, and Vermont.

The United States passed the Trafficking Victims Protection Act, a subsection of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 2, 114 Stat. 1464, 1466 (2000), amended by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, § 4, 117 Stat. 2875, 2877 (2003), and the Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2005).

Codifications appear at 18 U.S.C. §§ 1589-95 (forced labor, trafficking, sex trafficking of children, document fraud/destruction/misconduct connected to trafficking, mandatory restitution, benefitting financially from trafficking), in Chapter 77 with the older slavery and involuntary servitude crimes, and also in 22 U.S.C. §§ 7101-7110 (making findings and committing resources to combat human trafficking).

Title 18, Chapter 77, contains a number of different criminal statutes prohibiting various forms of compelled or coerced labor, services, or commercial sex. The statutes passed in the post-civil war era are sometimes referred to as Involuntary Servitude and Slavery crimes. The remaining statutes were passed as part of the Trafficking Victims Protection Act (TVPA) of 2000.

Statutes that provide stronger protection than CA State Law under the TVPA

The TVPA contains additional criminal provisions including, 18 U.S.C. § 1592 (2000), which prohibits the withholding of identification documents in connection with a trafficking offense, 18 U.S.C. § 1590, which prohibits trafficking a person into servitude, 18 U.S.C. §1593A, which makes benefitting financially or by receiving anything of value related to a venture engaged in a violation of trafficking a criminal offense, and 18 U.S.C. § 1594, which makes an attempted violation of Chapter 77 punishable to the same extent as a completed violation. Section 1594 also criminalizes conspiracies of certain trafficking activity. This latter provision also provides for mandatory restitution for any trafficking survivor.

Law enforcement and prosecutors are unable to generate evidence against traffickers to hold them accountable without an identifiable victim. Unfortunately, the greatest obstacle to rescuing victims of human trafficking is identifying them, according to a recent study by The Vera Institute of Justice. The problem is that young women who are bought and sold in the sex trade often do not self-identify as victims. They have been so traumatized, they want to believe they are making a willing choice. The problem with invisible victims walking among us, is that many people believe they do not “have a human trafficking problem” in their city. Unfortunately, that belief is not true. Trafficking activity can occur in any type of neighborhood and in any zip code. From rural areas to the busiest urban metropolis, where there is a market, there will be trafficking activity.

Labor Trafficking Victims Are Often Overlooked

Labor trafficking victims are often harder to identify than sex trafficking victims. Labor trafficking victims fly under the radar because authorities are focused on detecting the sex trafficking of minors. Identifying labor trafficking cases is complicated by victim unfamiliarity with the elements of the crime, resulting in an inability to accurately classify their employment situation. One detective recognized the challenge of separating exploitive labor practices from trafficking, noting that involuntary servitude does not require a victim to be chained in a basement.

Another problem involves public lack of sympathy for labor trafficking victims, who are often undocumented adults, due to negative views on illegal immigration.

The identification of labor trafficking victims also may be overshadowed by what one researcher describes as the “Celebrization of Human Trafficking,” where celebrity activists highlight the prevention of child sex trafficking, which can divert money and law enforcement effort away from other types of trafficking victims.

In reality, both types of victims need to be understood, identified, and ultimately rescued through good investigation, and sufficient allocation of resources.

Tips to Identifying Victims

Polaris provides many tips to identifying human trafficking victims—many of which are relevant to ferreting out both sex and labor trafficking cases.

When it comes to working conditions, some of the factors they list include being paid very little or not at all, being paid only through tips, working excessive hours or unusual hours, being denied breaks, or being subjected to unusual work restrictions. Another red flag is high security precautions in the workplace (or residence) such as boarded up windows, security cameras, barbed wire, or other methods of obstructing an outsider’s view of the victim.

With both labor and sex trafficking victims, Polaris lists behavioral indicators as including presenting as anxious, tense, nervous, or fearful—particularly when the subject of law enforcement comes up. Avoiding eye contact is another potential indicator, although this type of behavior might have cultural underpinnings as well.

Regarding physical health, Polaris lists observable red flags as including a malnourished appearance, or displaying signs of physical abuse, confinement, or restraint.

Regarding the perception of autonomy, or more frequently, the lack thereof, Polaris lists warning signs as including having few or no personal possessions, lacking control over finances or identification, and lacking the ability to express themselves except as through a 3rd person who appears to control their conversations.

The Department of Homeland Security presents a list of potential indicators of human trafficking, which can be used as a list of questions to ask potential victims.

The Vera Institute cautions, however, that the use of the tool is only a first step. Considering the more expansive goal of building trust between screeners and victims, they observe that knowing the right questions to ask is only a portion of the analysis. They advise that screeners should be sensitive to victim trauma and fear, before attempting to elicit facts about trafficking or assess a victim’s long-term needs.

The Vera Institute of Justice suggests the use of a questionnaire to interview suspected sex and labor trafficking victims. The tool is a result of a two-year study, Improving Trafficking Victim Identification, which resulted in the creation of a field tested and validated screening tool, the first of its kind, that can reliably identify trafficking victims, adults and minors, both citizens and foreign born,

who are victims of sex and labor trafficking. The tool is a statistically validated 30-topic questionnaire geared to obtain evidence of trafficking. It is also available in a shorter 16-question version, containing the following questions:

Labor Trafficking

Have you ever worked without getting the payment you thought you would get?

Have you ever worked in a place where the work was different from what you were promised or told it would be?

Did anyone at your workplace make you feel scared or unsafe?

Did anyone at your workplace ever harm or threaten to harm you?

Have you ever felt you could not leave the place where you worked or lived?

Victim Reluctance to Cooperate

The United States Department of Justice National Strategy to Combat Human Trafficking recognizes several common reasons trafficking victims do not want to cooperate. These include fears over their own criminal behavior, including status as undocumented, fear of the trafficker, and in the case of victims from abroad, knowledge of the corrupt laws or violent law enforcement practices in their home country.

Exploring these concerns early on in the investigation will enable prosecutors to address areas of victim reluctance, and provide relevant information and resources, designed to enhance victim cooperation.

Cultural issues impact human trafficking in many different ways. Victims come from many different cultures, bringing different experiences and cultural practices. Even if they grew up in the United States, many have been sheltered or literally confined for most of their lives, immersed in a cultural lifestyle that is very different from our own. Many do not speak English.

When interacting with this population, prosecutors and members of the prosecution team must be culturally competent in order to interact with victims in a meaningful and respectful way, which will both facilitate a smooth working relationship, and enhance the ability to elicit the maximum amount of information.

The United States Department of Health and Human Services provides some guidance for administering culturally appropriate case management and related services. In a piece geared towards incorporating cultural factors to ensure client success, Heather J. Clawson and Nicole Dutch suggest that equipping case managers with the proper education regarding relevant culture and religious beliefs of potential clients can improve the client-provider relationship, facilitating a positive experience.

Clawson and Dutch note this preparation can also help case managers determine victim needs, including knowledge of how to broach subjects that may be sensitive or even taboo in certain cultures. Knowledge of culture and background can also assist case managers in identifying services that will be

appropriate for different victims. They note that the determination of whether a program or service is culturally appropriate requires actually meeting with service providers, and possibly offering them training in working with human trafficking victims.

Identifying Victims Through Health Care Institution Protocols – Health Systems Identification

When it comes to identifying human trafficking victims, health care providers are often uniquely situated to recognize warning signs and symptoms. Consequently, there has been an increased emphasis on providing training to educate and inform health care workers about what to look for, and what to do with the information they perceive.

Research indicates that in the health care field, human trafficking victims may be revealed through patient histories. Health care institution protocols have identified common bases to identify human trafficking victims. According to a 2016 study by Hanni Stoklosa et al., “A Review of U.S. Health Care Institution Protocols for the Identification and Treatment of Victims of Human Trafficking,” the indicator of human trafficking that was found to be most commonly listed was a patient history of physical or sexual abuse. This indicator was listed in 73% of the protocols analyzed.

Stoklosa et al. note that health care providers are important partners in human trafficking detection, because even victims who are physically or psychologically controlled by traffickers visit emergency rooms or other facilities to address urgent health issues.

Best Prosecution Model

Prosecution of human trafficking cases presents unique issues that are best handled with a consistent prosecution team. From issuing through sentencing, a set group of prosecutors, investigators, and victim advocates provides stability and comfort to victims who are often understandably reluctant to cooperate, and often distrust law enforcement.

Providing stability through vertical prosecution builds victim confidence and trust—relational qualities that are lacking in most trafficker-victim relationships, which are characterized by uncertainty and fear. Trained prosecutors, detectives, and victim advocates who are familiar with trafficking relational dynamics are able to effectively work with this unique victim population, in order to facilitate case prosecution.

Unlike victims of other crimes who are often in favor of prosecution of the offender and willing to be involved, human trafficking victims are often reluctant to disclose the true nature of their relationship with the trafficker, much less the sex acts they were forced to perform. This is particularly true regarding disclosures to members of law enforcement and prosecutors, out of fear they will be prosecuted themselves, or deported if they are here illegally.

The physical and psychological damage that trafficking victims have endured make them distrustful and susceptible to being easily re-traumatized. This vulnerability is another reason that a consistent prosecution team is important, in order to provide support and assistance targeting the unique needs and issues of each trafficking victim individually. Specially trained law enforcement officers, prosecutors, and victim advocates have a better opportunity to build a meaningful relationship of trust with the victim during the pendency of the case.

Vertical case prosecution also helps victims regain self-confidence, which in turn can enhance their willingness to cooperate with prosecution. As a case moves forward, trafficking victims are able to express their feelings about what they have endured, often for the first time. Most victims will find it easier to open up when they are working with a consistent set of trained professionals. This team building also results in victims acquiring faith in the criminal justice system itself, which in turn facilitates case prosecution.

Bringing experts from the business and economic fraud arena with labor trafficking experts is a good strategy.