

ADDRESSING LABOR TRAFFICKING: THE NEXT STEP IN THE ANTI-TRAFFICKING MOVEMENT

ABSTRACT

Modern human trafficking law is a new and emerging legal field in our country and across the world, and in Colorado, human trafficking law is less than ten years old. While the Colorado legislature takes its role in the anti-trafficking movement seriously and has reformed the law when it sees a need, the law is not perfect. The purpose of Colorado’s human trafficking statute—to protect victims and survivors of human trafficking—is not yet fully effectuated. Key reforms will elevate the ability of the anti-trafficking community to end this terrible crime. This Comment endeavors to define and contextualize human trafficking and chronicles crucial developments in federal and state-level human trafficking law, an area that has seen rapid growth in recent years. This Comment next addresses an area of law—employer-provided housing—that currently stands in the way of complete effectuation of the policy underlying Colorado’s human trafficking law. Some current employer-provided housing provisions favor employers over workers, which can have the inadvertent effect of exposing victims of labor trafficking to unlivable housing and coercion. Building on recent recommendations proposed by the Colorado Human Trafficking Council, this Comment provides the first scholarly analysis of these statutory provisions through a human trafficking lens and argues that the Colorado legislature must reform these provisions as a matter of policy to better protect victims and survivors of labor trafficking.

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INTRODUCTION

Esmeraldo Echon, his wife, and children immigrated from the Philippines to Rocky Ford, Colorado.¹ They lived on a farm that Echon's sister, Leonida Sackett, owned with her husband.² The Sacketts forced Echon to perform full-time, unpaid manual labor.³ The Sacketts forced Echon to work ten hours each day, six days per week, and even "lent" him to their friends to build a warehouse for which the Sacketts were compensated.⁴ The Sacketts also forced Echon's wife and at least one of his children to perform unpaid labor.⁵ The Sacketts retained control over the Echons' residency paperwork and social security cards for over a year and provided the Echons with little to no pay, food, or basic supplies.⁶

The Sacketts maintained control over the Echon family by convincing the Echons that they were working to pay off a debt that they incurred during their immigration process.⁷ Until they paid off this "debt," the Sacketts did not allow the Echons to obtain other work.⁸ The Sacketts subjected the Echon family to coercion, verbal abuse, and frequent threats of deportation if they did not follow the Sacketts' orders.⁹ In the three years the Echon family lived and worked for the Sacketts, their "debt" was never "paid off."¹⁰ The family felt trapped and lived in constant fear, anxiety, and depression due to the untenable living situation and abuse they experienced.¹¹

The Echon family filed a complaint in federal district court in December 2014 alleging the Sacketts held them in debt bondage and forced them to provide unpaid labor while living without sufficient food or supplies.¹² After a three-day trial, a jury found the Sacketts liable for trafficking—among other offenses—and awarded the Echons over \$350,000 in damages.¹³ While the Echons eventually received a judgment against their traffickers, experts in Colorado predict that many human trafficking survivors exist throughout the state who have not yet had the opportunity or means to pursue legal action.¹⁴

1. Villanueva Echon v. Sackett, No. 14-cv-03420-PAB-NYW, 2017 WL 4181417, at *5 (D. Colo. Sept. 20, 2017). This story is told from the Echon family's point of view.

2. *Id.*

3. *Id.* at *4–5.

4. *Id.* at *8.

5. *Id.* at *5.

6. *Id.* at *6.

7. *Id.* at *8–9.

8. *Id.* at *9.

9. *Id.*

10. *See id.* at *8–9.

11. *Id.* at *9.

12. Complaint at 2–3, 53, Villanueva Echon v. Sackett, 809 F.App'x 468 (10th Cir. 2020) (No. 114CV03420).

13. Villanueva Echon v. Sackett, 809 F.App'x 468, 470 (10th Cir. 2020).

14. *See* COLO. HUM. TRAFFICKING COUNCIL, 2018 ANNUAL REPORT 59–60 (2018) [hereinafter CHTC 2018 REPORT].

In recent years, the Colorado legislature reformed its criminal prostitution statute to better protect sex trafficking survivors.¹⁵ But for various reasons, victims and survivors of labor trafficking are not receiving comparable protection.¹⁶ This Comment addresses an area of law that inhibits adequate effectuation of the policy underlying Colorado's human trafficking law to protect trafficking victims and survivors. Colorado's employer-provided housing laws disproportionately favor employers over workers at the expense of labor trafficking victims, and as a matter of policy, must be reformed. This Comment is the first scholarly analysis of this area of Colorado law and identifies the statutes that Colorado lawmakers must reform to better protect labor trafficking victims and survivors.

Part I of this Comment discusses the definition and scope of human trafficking. While human trafficking is complex and diverse, its legal definition and framework are relatively straightforward and consistent across U.S. jurisdictions.¹⁷ Conversely, the scope of human trafficking is challenging to estimate, and this Comment will explore why that is as well as how the quantification problem impacts victims of labor trafficking. Part II analyzes the development of human trafficking law, first at the international level, and then at the federal level. Part III discusses the development of human trafficking law in Colorado. Specifically, Part III analyzes a recent change to Colorado's criminal prostitution statute that allows for more complete effectuation of the purpose to protect victims of human trafficking. Finally, Part IV argues that the legislature must amend employer-provided housing laws to better protect victims of labor trafficking like it did with the prostitution statute. The recommendations in Part IV expand upon recommendations made by the Colorado Human Trafficking Council and offer a solution so that Colorado law can fully protect victims of labor trafficking.

I. HUMAN TRAFFICKING

The following Part defines and quantifies the crime of human trafficking. Section A discusses the legal definition of human trafficking and analyzes the three elements of the federal definition of human trafficking. Section A also explains the different types of human trafficking that exist and how each one operates. Section B discusses the scope of human trafficking, including an analysis of the difficulties in studying and quantifying this hidden crime. Section B suggests that large-scale estimates are less helpful than research done at the local level, informing the remainder of this Comment's state-level analysis of human trafficking in Colorado.

15. H.B. 14-1273, 69th Gen. Assemb., 2d Reg. Sess (Colo. 2014) (codified at COLO. REV. STAT. §§ 18-3-501 to 18-3-505).

16. See, e.g., COLO. HUM. TRAFFICKING COUNCIL, 2019 ANNUAL REPORT 74, 76 (2019) [hereinafter CHTC 2019 REPORT].

17. Compare Trafficking Victims Protection Act, 22 U.S.C. § 7102(11)(B) (2021), with COLO. REV. STAT. § 18-3-503(1) (2014).

A. The Definition and Characteristics of Human Trafficking

Human trafficking is a form of exploitation where traffickers use force, fraud, or coercion to get their victims to perform labor or commercial sex acts.¹⁸ Under federal law, the definition of “severe human trafficking” is broken down into two categories: general labor and commercial sex acts.¹⁹ Because sex trafficking is a specialized form of labor trafficking, it has a slightly more nuanced definition under federal law.²⁰ This distinction will be analyzed in greater depth later in Part I. That said, general labor trafficking is defined as “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”²¹

The legal definition of human trafficking contains three elements: (1) the acts involved in human trafficking, (2) the purpose for which human trafficking is done, and (3) the means by which human trafficking is accomplished.²² The “acts” element includes things done to the victim, such as “recruitment” or “harboring.”²³ The “purpose” element lays out the reason for the trafficking, which is generally to exploit someone.²⁴ Finally, the “means” element has to do with how trafficking is accomplished, such as by force, fraud, or coercion.²⁵ To prove that someone is guilty of human trafficking, the prosecution must show that the trafficker used force, fraud, or coercion.²⁶ Coercion is a challenging element for prosecutors to prove because it can be difficult to prove that a power and control dynamic existed, that psychological abuse occurred, or that a trafficker engaged in nonviolent coercion—especially if the survivor is unwilling to cooperate with the prosecution.²⁷ Notably, the definition of trafficking is slightly different in cases where minors were trafficked for sex.²⁸ Because minors cannot consent to sex, prosecutors can prove that sex trafficking of minors occurred simply by proving the act element and the purpose element without having to prove the means element.²⁹

18. See, e.g., *What Is Human Trafficking?*, LAB’Y TO COMBAT HUM. TRAFFICKING, <https://combathumantrafficking.org/about-human-trafficking/#humantrafficking> (last visited Sept. 24, 2021).

19. Trafficking Victims Protection Act § 7102(11).

20. *Id.* §§ 7102(11)(A), (12).

21. *Id.* § 7102(11)(B).

22. *Human Trafficking: The Crime*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/crime.html> (last visited Sept. 24, 2021).

23. *Id.*

24. *Id.*

25. *Id.*

26. Amy Farrell, Colleen Owens, & Jack McDevitt, *New Laws but Few Cases: Understanding the Challenges to the Investigation and Prosecution of Human Trafficking Cases*, 61 CRIME L. SOC. CHANGE 139, 142, 149, 152 (2014).

27. *Id.*

28. Kimberly Kotrla, *Domestic Minor Sex Trafficking in the United States*, 55 SOC. WORK 181, 181 (2010).

29. *Id.*

An analysis of what the definition of human trafficking does *not* contain—movement across the border—is equally important as an analysis of what the definition does contain.³⁰ A common misconception about human trafficking is that it must involve transportation or movement across a border.³¹ However, moving a person across a border to gain entry into a foreign nation is called human or migrant “smuggling,” which is an entirely different crime than human trafficking.³² The legal definition of human trafficking does not include an element of moving a person across a local, state, or international border.³³ This distinction means that human trafficking can, and often does, happen within a single city’s limits.³⁴ The broader implication of the absence of a smuggling element is noteworthy; contrary to what people often think, trafficking is not merely an international problem that can seep into the United States through immigration.³⁵ Human trafficking is a crime that can take place entirely within the borders of the United States.³⁶

B. A Comparison of Labor Trafficking and Sex Trafficking

There are many unique types of human trafficking, each with its own traffickers, victims, means of coercion, and business models.³⁷ Generally, incidents of human trafficking are sorted into two buckets: labor trafficking and sex trafficking.³⁸ While some communities find the distinction inappropriate and misleading—because providing commercial sex acts, whether forced or consensual, is a form of labor—the distinction between the two, for better or worse, is commonly invoked in the field and is codified under federal law.³⁹

Severe sex trafficking occurs when “a commercial sex act is induced by force, fraud, or coercion, or [when] the person induced to perform such act has not attained 18 years of age.”⁴⁰ Simply put, sex trafficking is the nonconsensual sale of a victim’s body for the purpose of providing sexual services.⁴¹

30. Brian Iselin & Melanie Adams, *Distinguishing between Human Trafficking and People Smuggling*, U.N. OFF. ON DRUGS & CRIME 1–2 (Apr. 10, 2003).

31. *Id.* at 2.

32. U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *Human Trafficking & Migrant Smuggling: Understanding the Difference* (2017) [hereinafter *Understanding the Difference*].

33. See Trafficking Victims Protection Act, 22 U.S.C. § 7102(11), (12).

34. See *Understanding the Difference*, *supra* note 32; U.S. Dep’t of Homeland Sec., *Tools that Teach: What is Human Trafficking?*, YOUTUBE (May 16, 2016), <https://www.youtube.com/watch?v=35uM5VMrZas&feature=youtu.be>.

35. T.K. Logan, Robert Walker, & Gretchen Hunt, *Understanding Human Trafficking in the United States*, 10 TRAUMA, VIOLENCE & ABUSE 3, 4–5 (2009).

36. *Id.*

37. POLARIS PROJECT, *THE TYPOLOGY OF MODERN SLAVERY: DEFINING SEX AND LABOR TRAFFICKING IN THE UNITED STATES* 5 (2017) [hereinafter *POLARIS, TYPOLOGY*].

38. See *id.* at 7.

39. See, e.g., Emily van der Meulen, *When Sex is Work: Organizing for Labour Rights and Protections*, 69 LAB. 147, 147 (2012).

40. Trafficking Victims Protection Act, 22 U.S.C. § 7102(11)(A).

41. Edward J. Schauer & Elizabeth M. Wheaton, *Sex Trafficking into The United States: A Literature Review*, 31 CRIM. JUST. REV. 146, 149–150 (2006).

Implicit in any discussion of sex trafficking is the closely related issue of sex work.⁴² The difference between prostitution and sex trafficking is whether the victim consented to sell commercial sex or, alternatively, whether the trafficker arranged the sale of the victim's sexual services without the victim's consent.⁴³ Many scholars and feminist leaders criticize this distinction, arguing that consent, though verbally expressed, may not be meaningfully given in many contexts.⁴⁴ Prostitution and sex trafficking are related, but reasonable minds disagree about both the nature of the relationship between the two and an approach to sex work that will lead to better outcomes for sex trafficking victims.⁴⁵

Labor trafficking, on the other hand, tends to be a catchall term for many different kinds of trafficking.⁴⁶ Nevertheless, most definitions involve some sort of involuntary service that holds economic value and some type of penalty or threat of penalty if the victim fails to complete that service.⁴⁷ The Uniform Act on Prevention of and Remedies for Human Trafficking suggests that an appropriate definition of labor trafficking might be “knowingly us[ing] coercion to compel an individual to provide labor or services.”⁴⁸

The industries where labor trafficking is most prevalent worldwide include domestic service, construction, manufacturing, agriculture, and fishing.⁴⁹ Most victims of labor trafficking experience one or more of the following means of coercion: withheld wages; violence or threats of violence against oneself or a family member; sexual violence or threats of sexual violence; abuse of the legal process, including the threat of arrest or deportation; deprivation of food or sleep; and the withholding of

42. See, e.g., Maria Beatriz Alvarez & Edward J. Alessi, *Human Trafficking Is More Than Sex Trafficking and Prostitution: Implications for Social Work*, 27 *AFFILIA: J. WOMEN & SOC. WORK* 142, 145 (2012).

43. Compare COLO. REV. STAT. § 18-7-201(1) (2020) (“Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not his spouse in exchange for money or other thing of value commits prostitution.”), with COLO. REV. STAT. § 18-3-504(1)(a) (2020) (“A person commits human trafficking for sexual servitude if the person knowingly sells, recruits, harbors, transports, transfers, isolates, entices, provides, receives, or obtains by any means another person for the purpose of coercing the person to engage in commercial sexual activity.”).

44. See, e.g., Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS: J. WOMEN CULTURE & SOC'Y* 635, 650 (1983).

45. This Comment does not aim to discuss prostitution nor take a stance on moral value judgments associated with the relationship between sex trafficking and prostitution. Resolving questions about the relationship between prostitution and sex trafficking falls outside the scope of this Comment.

46. Sheldon X. Zhang, *Measuring Labor Trafficking: A Research Note*, 58 *CRIME L. SOC. CHANGE* 469, 472 (2012).

47. *Id.* at 474; UNIF. ACT ON PREVENTION OF AND REMEDIES FOR HUM. TRAFFICKING § (2)(7) (UNIF. L. COMM'N 2013).

48. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUM. TRAFFICKING § 4(a) (UNIF. L. COMM'N 2013).

49. ALLIANCE 8.7, *GLOBAL ESTIMATES OF MODERN SLAVERY: FORCED LABOUR AND FORCED MARRIAGE* 9–10 (2017).

identification documents.⁵⁰ Further, labor trafficked persons are more likely than other victims of crime to experience multiple forms of victimization—such as physical abuse, sexual abuse, and family violence—throughout the trafficking process.⁵¹

While scholars and legal authorities tend to distinguish human trafficking on labor and commercial sex lines, broadening the sex and labor trafficking framework to include a more nuanced categorization of the various forms of human trafficking may be advantageous as the anti-trafficking movement continues to develop.⁵²

C. *The Scope of Human Trafficking*

Scholars and organizations that specialize in this work disagree about the scope of human trafficking and the number of victims that exist worldwide.⁵³ However, despite disagreement over the scope of this crisis, the consensus is that there are more victims of human trafficking today than any other period in our world's history.⁵⁴ Human trafficking produces \$32 billion in revenue annually and is commonly referred to as the second or third largest criminal enterprise in the world behind drug trafficking and sometimes the illegal arms trade.⁵⁵

Estimating the number of human trafficking victims around the world is complicated, and the resulting estimates are often a reflection of the

50. *Id.* at 11, 28, 35–36; *see also* Kathleen Kim, *Psychological Coercion in the Context of Modern-Day Involuntary Labor: Revisiting United States v. Kozminski and Understanding Human Trafficking*, 38 U. TOL. L. REV. 941, 962–968 (2007) (describing the legal sufficiency and nuances of psychological coercion and providing examples of how trafficking survivors were coerced).

51. Ieke De Vries & Amy Farrell, *Labor Trafficking Victimization: Repeat Victimization and Polyvictimization*, 8 PSYCH. VIOLENCE 630, 631–32 (2018).

52. POLARIS, *TYPOLOGY*, *supra* note 37, at 5. This report breaks human trafficking into twenty-five unique forms of human trafficking: escort services; illicit massage, health and beauty; outdoor solicitation; residential; domestic work; bars, strip clubs, and cantinas; pornography; traveling sales crews; restaurants & food service; peddling & begging; agriculture & animal husbandry; personal sexual servitude; health & beauty services; construction; hotels & hospitality; landscaping; illicit activities; arts & entertainment; commercial cleaning services; factories & manufacturing; remote interactive sexual acts; carnivals; forestry & logging; health care; and recreational facilities. *Id.*; *see also* *Human Trafficking*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/crime.html> (last visited Sept. 19, 2021) (listing more specialized forms of trafficking such as debt bondage, domestic servitude, organ removal, forced begging, child soldiers, and forced marriage).

53. Johnny E. McGaha & Amanda Evans, *Where are the Victims? The Credibility Gap in Human Trafficking Research*, 4 INTERCULTURAL HUM. RTS. L. REV. 239, 243–44, 251 (2009).

54. *See* Stevie J. Swanson, *Slavery Then and Now: The Trans-Atlantic Slave Trade and Modern Day Human Trafficking: What Can We Learn From Our Past?*, 11 FLA. A&M U. L. REV. 127, 128–29 (2015) (estimating that about 9.9 million people were enslaved by Europeans during the height of the Trans-Atlantic Slave Trade while an estimated 27 million people are enslaved today).

55. Patrick Belser, *Forced Labor and Human Trafficking: Estimating the Profits*, INT'L LAB. OFF. § 4.3 (2005); *Human Trafficking: Organized Crime and the Multibillion Dollar Sale of People*, U.N. OFF. ON DRUGS & CRIME (July 19, 2012), https://www.unodc.org/unodc/en/frontpage/2012/July/human-trafficking_organized-crime-and-the-multibillion-dollar-sale-of-people.html; COLORADO HUMAN TRAFFICKING FACT SHEET, CTR. FOR PUB. POL'Y STUD. 1 (2013).

methodology used.⁵⁶ Scope estimates are challenging to make because trafficking victims exist within “hidden populations,” groups whose size, membership, and characteristics are difficult to define.⁵⁷ Hidden populations often engage in—or are forced to engage in—illegal behavior, which creates issues of cooperation with law enforcement and reliability of evidence.⁵⁸ Accordingly, no reliable sample currently exists to study victims of trafficking on a large scale.⁵⁹ Despite these complications, the International Labour Organization (ILO) estimates that 24.9 million people were trafficked worldwide in 2016.⁶⁰ Sixteen million people were trafficked for labor in the private sector, while 4.8 million people were trafficked for commercial sex.⁶¹ Polaris Project, a leader in the anti-trafficking movement, similarly posits that 25 million people are trafficked worldwide.⁶² In 2019, the National Human Trafficking Hotline documented 22,326 victims of human trafficking in the United States.⁶³ However, because this crime is underreported, and because estimates tend to increase as more time and resources are invested in its research, current estimates are likely only a fraction of the accurate total.⁶⁴

In terms of demographics, women make up just over half of labor trafficking victims (57.6% in 2017).⁶⁵ But these estimates are also subject to skepticism based on the difficulties involved in estimating the scope of this crime. While sex trafficking is traditionally reported at higher rates than labor trafficking, this imbalance may result from statistical bias because there is greater public awareness and discourse about sex trafficking than labor trafficking.⁶⁶ Regardless of the type of human trafficking that a victim experiences, victims and survivors must be protected equally because international, federal, and state laws explicitly aim to protect all victims of human trafficking, regardless of the gender of the victim or type of trafficking.⁶⁷

56. Guri Tyldum & Anette Brunovskis, *Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking*, 43 INT'L MIGRATION 17, 18 (2005); see Bruce Kutnick, Patrick Belser, & Gergana Danailova-Trainor, *Methodologies for Global and National Estimation of Human Trafficking Victims: Current and Future Approaches* 1 (Int'l Lab. Off., Working Paper No. 29, 2007).

57. Tyldum & Brunovskis, *supra* note 56, at 18.

58. *Id.*

59. *See id.*

60. *Forced Labour, Modern Slavery and Human Trafficking*, INT'L LAB. ORG., <https://www.ilo.org/global/topics/forced-labour/lang-en/index.html> (last visited Sept. 29, 2021).

61. *Id.*

62. POLARIS PROJECT, <https://polarisproject.org/> (last visited Sept. 29, 2021).

63. POLARIS PROJECT, 2019 DATA REPORT: THE U.S. NATIONAL HUMAN TRAFFICKING HOTLINE 1 (2019) [hereinafter POLARIS, 2019 DATA REPORT].

64. POLARIS PROJECT, MYTHS, FACTS, AND STATISTICS, <https://polarisproject.org/myths-facts-and-statistics/> (last visited Sept. 29, 2021).

65. ALLIANCE 8.7, *supra* note 49, at 10.

66. Zhang, *supra* note 46, at 470–71; *Human Trafficking FAQs*, U.N. OFF. ON DRUGS & CRIME, <https://www.unodc.org/unodc/en/human-trafficking/faqs.html> (last visited Sept. 30, 2021).

67. *See* Trafficking Victims Protection Act, 22 U.S.C. § 7101; COLO. REV. STAT. § 18-3-501 (2020).

Because high-quality, verifiable research at the global level regarding the scope of human trafficking is lacking, some scholars suggest that researchers are better off conducting research at the local level.⁶⁸ Colorado's international airport, large immigrant population, and intersecting interstates cause Colorado, and specifically Denver, to be rife with human trafficking.⁶⁹ In 2018 alone, the National Human Trafficking Hotline reported 178 cases of human trafficking.⁷⁰ Law enforcement worked on fifty-two incidents of trafficking in Colorado that year.⁷¹ Two victim-centered service organizations worked with eighty-one and thirty-five cases of human trafficking, respectively, that year.⁷² Though researchers continue to disagree about the scope of human trafficking, around the turn of the century, governments around the world noticed the gravity of the crime and began creating legislative solutions to address the problem of human trafficking.⁷³

II. HISTORY AND DEVELOPMENT OF HUMAN TRAFFICKING LAW

Governments first identified the protection of victims as a primary goal of human trafficking law in the United Nations Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).⁷⁴ Delegates from the United Nations adopted the Palermo Protocol in 2000.⁷⁵ This piece of international legislation paved the way for legal thinkers and legislators to define the crime of human trafficking in their jurisdictions.⁷⁶ The Palermo Protocol created a three-pronged approach to combatting human trafficking: (1) prevention of trafficking, (2) protection of victims, and (3) prosecution of traffickers.⁷⁷ This framework came to be known as the "3 Ps," which the United States adopted shortly thereafter as a model for its own human trafficking legislation.⁷⁸

68. Ronald Weitzer, *New Directions in Research on Human Trafficking*, 653 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 15 (2014).

69. Jessica A. Pingleton, Comment, *Finding Safe Harbor: Eliminating the Gap in Colorado's Human Trafficking Laws*, 87 U. COLO. L. REV. 257, 280 (2016).

70. CHTC 2019 REPORT, *supra* note 16, at 49 (referencing 127 sex trafficking cases, 23 labor trafficking cases, 14 cases including incidents of both sex and labor trafficking, and 14 cases not specifying a type of trafficking involved).

71. *Id.* at 23.

72. *Id.* at 33.

73. Laura L. Shoaps, Comment, *Room for Improvement: Palermo Protocol and the Trafficking Victims Protection Act*, 17 LEWIS & CLARK L. REV. 931, 932 (2013).

74. *Id.* at 933.

75. *Id.* at 932.

76. Seo-Young Cho, *Evaluating Policies Against Human Trafficking Worldwide: An Overview and Review of the 3P Index*, 1 J. HUM. TRAFFICKING 86, 87–88 (2015).

77. *Id.* at 77.

78. *Id.* at 77–78; *see, e.g.*, Kathleen A. McKee, "Its 10:00 P.M. Do You Know Where Your Children Are?", 23 REGENT U. L. REV. 311, 313 (2011) ("At the time that Congress enacted the [TVPA], the United States' initiatives to address human trafficking were policy-based. During the Clinton Administration, the Department of State initiated a policy of prevention, protection, and prosecution.").

In 2000, the United States passed a landmark piece of human trafficking legislation called the Trafficking Victims Protection Act (TVPA), which used a comprehensive approach to the prosecution, protection, and prevention framework.⁷⁹ To advance its “prosecution” goal, Congress adopted new criminal codes that defined human trafficking and created new criminal penalties to expand prosecutors’ ability to bring criminal charges against human traffickers.⁸⁰ To advance its “prevention” goal, Congress mandated that the U.S. Department of State publish an annual report analyzing the global response to human trafficking called the Trafficking in Persons (TIP) Report.⁸¹ The idea underlying this requirement was to spread awareness about the prevalence of human trafficking and to create accountability for nations around the world.⁸² To advance its “protection” goal, Congress stated its mission to provide restorative services to victims and prevent, to the greatest extent possible, the criminalization of victims of human trafficking.⁸³ To effectuate its goal of protecting victims, Congress created several noteworthy solutions to assist survivors of human trafficking, including provision of social service benefits, a special immigration status (T visa) for survivors designed to alleviate immediate threats of deportation, and a civil cause of action for survivors against their traffickers.⁸⁴ Under the TVPA, the Legislature must periodically reauthorize the law, forcing lawmakers to update its language and funding as needed.⁸⁵

In passing the TVPA, Congress produced various findings on the severity of human trafficking and the critical need for urgent actions to combat this crime.⁸⁶ Congress found that trafficking victims face many challenges, including inadequate protection under current involuntary servitude laws, insufficient victim services not meeting urgent demand, and the stress of deportation.⁸⁷ In light of Congress’s findings, the purpose of the TVPA at the time of its passage was “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.”⁸⁸

79. See Shoaps, *supra* note 73, at 932. A fourth goal, partnership, has since been added to the 3P framework to account for the importance of collaboration between governments, private service providers, and local law enforcement. Jennifer A.L. Sheldon-Sherman, *The Missing “P”: Prosecution, Prevention, Protection, and Partnership in the Trafficking Victims Protection Act*, 117 PENN. STATE L. REV. 443, 452 (2012).

80. See Sheldon-Sherman, *supra* note 79, at 452.

81. *Id.* at 454; see, e.g., U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Trafficking in Persons Report (2020).

82. Alese Wooditch, *The Efficacy of the Trafficking in Persons Report: A Review of the Evidence*, 22 CRIM. JUST. POL’Y REV. 471, 473 (2011).

83. See Sheldon-Sherman, *supra* note 79, at 455–56.

84. *Id.* at 456.

85. See McKee, *supra* note 78, at 313–22 (TVPA reauthorized and expanded in 2003, 2005, and 2008).

86. Trafficking Victims Protection Act, 22 U.S.C. § 7101(b).

87. *Id.* §§ 7101(b)(13)–(20).

88. *Id.* § 7101(a) (emphasis added).

While the TVPA was—and continues to be—a critical piece of legislation at the federal level, communities in this field have reached a consensus that addressing state law must be the top priority in the continued fight to protect victims of human trafficking.⁸⁹ The primary reason that states must lead the fight against trafficking is that states tend to have more resources at their disposal to target human traffickers and identify victims of human trafficking.⁹⁰ The investigation, victim apprehension, prosecution of traffickers, and administration of services are state-level operations; therefore, the anti-trafficking movement has turned its attention to ensuring that state law is adequate to support these endeavors.⁹¹

Both the federal government and national organizations have signaled to the states that now is the time to focus on state law.⁹² For example, subsequent reauthorizations of the TVPA have included monetary incentives for states that take certain steps in reforming their human trafficking laws.⁹³ In addition, the Uniform Law Commission decided in 2010 that states needed guidance to mold their existing anti-trafficking laws into comprehensive legislation designed to support the anti-trafficking movement.⁹⁴ Further, Polaris Project committed to improving state-level law by ranking state laws based on effectiveness and publishing those findings on a public forum.⁹⁵

III. DEVELOPMENT OF COLORADO SEX TRAFFICKING LAW

In 2014, the Colorado legislature passed House Bill 14-1273 into law, which has been instrumental in combatting human trafficking in Colorado.⁹⁶ House Bill 14-1273 updated Colorado's existing human trafficking law and aligned Colorado law with the TVPA.⁹⁷ The law achieved a few noteworthy accomplishments, including broadening the definition of human trafficking—which was previously very narrow and led to almost no convictions—and eliminating the affirmative defenses of minor consent

89. Andrew Hall, *The Uniform Act on Prevention of and Remedies for Human Trafficking*, 56 ARIZ. L. REV. 853, 871–73 (2014).

90. *See id.* at 872.

91. *Id.*

92. *See, e.g.*, POLARIS PROJECT, THE 2019 TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT: A TOPICAL SUMMARY AND ANALYSIS OF FOUR BILLS 26–27 (2019); POLARIS PROJECT, A LOOK BACK: BUILDING A HUMAN TRAFFICKING LEGAL FRAMEWORK 1 (2014) [hereinafter POLARIS, A LOOK BACK] (recognizing that states had a significant role to play in combatting human trafficking and that state laws were needed to lay foundation for anti-trafficking efforts).

93. *See* sources cited *supra* note 92 (discussing the expansion of TVPA's accountability provisions to grants issued to states for two already existing programs); *see also* McKee, *supra* note 78, at 313–24.

94. UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUM. TRAFFICKING 1–4 (UNIF. L. COMM'N 2013).

95. POLARIS, A LOOK BACK, *supra* note 92, at 1. From 2011 to 2014, Colorado improved from a tier 4 state (the worst ranking) to a tier 1 state (the best ranking) in terms the meaningfulness of its state legislation to combat human trafficking. *Id.* at 4.

96. H.B. 14-1273, 69th Gen. Assemb., 2d Reg. Sess. (Colo. 2014) (codified at COLO. REV. STAT. §§ 18-3-501 to 18-3-505).

97. *See* Pingleton, *supra* note 69, at 284; *see also* COLO. REV. STAT. § 18-3-501(2)(b) (2020) (“The general assembly supports a comprehensive approach to combating human trafficking, which approach includes prevention, protection, prosecution, and partnerships.”).

and mistaken age—which allowed traffickers to defend themselves by arguing that minor victims of sex trafficking consented to provide commercial sex or that the trafficker did not know that the victim was underage.⁹⁸

Another noteworthy accomplishment is that the law created the Colorado Human Trafficking Council (CHTC), housed within the Colorado Department of Public Safety.⁹⁹ The CHTC is a centralized leader in the state, establishing a coordinated approach to combatting human trafficking throughout Colorado.¹⁰⁰ The CHTC consists of a board of stakeholders within the Colorado community charged with: (1) bringing together leaders in the field, (2) enhancing collaboration, (3) working to make victim services comprehensive, and (4) assisting in the prosecution and prevention of human trafficking.¹⁰¹ In practice, the CHTC makes recommendations to the Colorado legislature concerning statutory changes, creates annual reports about the state of human trafficking in Colorado, estimates current trafficking statistics, identifies best practices for victim services, and performs post-enactment reviews of bills.¹⁰²

In accordance with the TVPA, protecting victims was a central goal of House Bill 14-1273 and Colorado’s anti-trafficking statutes at large.¹⁰³ The Colorado legislature identified protection as a central goal of HB 14-1273 in two places.¹⁰⁴ First, in its legislative declaration, the Colorado General Assembly stated: “Legislation is required to combat this despicable practice, to make it easier to prosecute and punish persons who engage in human trafficking, and to *protect* the victims.”¹⁰⁵ The legislature also noted that “[t]he general assembly supports a comprehensive approach to combating human trafficking, which approach includes prevention, *protection*, prosecution, and partnerships.”¹⁰⁶ Second, the legislature declared: “Now, therefore, the general assembly joins the federal government and other states around the nation in passing legislation in order to combat human trafficking and *protect* the victims.”¹⁰⁷

Despite its successes, House Bill 14-1273 failed to live up to the ideals of its legislative declaration because it did not provide “safe harbor”

98. Pingleton, *supra* note 69, at 281–84. Under current federal and state legal frameworks, minors cannot consent to giving sexual services and are automatically victims of human trafficking if their sexual services are sold.

99. *What is the Council?*, COLO. HUM. TRAFFICKING COUNCIL, <https://sites.google.com/state.co.us/human-trafficking-council/the-council?authuser=0> (last visited Sept. 5, 2021).

100. *See* UNIF. ACT ON PREVENTION OF & REMEDIES FOR HUM. TRAFFICKING § 19 (UNIF. L. COMM’N 2013).

101. *What is the Council?*, *supra* note 99 (explaining that stakeholder members of the CHTC include Colorado attorneys, judges, service providers, government employees, law enforcement officers, and community members).

102. *Id.*

103. *See* COLO. REV. STAT. § 18-3-501(2) (2020).

104. *Id.*

105. *Id.* § 18-3-501(2)(a) (emphasis added).

106. *Id.* § 18-3-501(2)(b) (emphasis added).

107. *Id.* § 18-3-501(3) (emphasis added).

for minor victims of sex trafficking.¹⁰⁸ Safe harbor is a legal protection that shields minor victims of sex trafficking from a prostitution conviction.¹⁰⁹ In addition to shielding minors from criminal liability for prostitution, various safe harbor provisions across the country also protect minor victims of sex trafficking from criminal liability for other crimes or provide for diversion programs.¹¹⁰ The purpose of safe harbor is to treat children involved in trafficking as victims rather than criminals.¹¹¹ Safe harbor is a legal reform that human trafficking advocates fiercely fought for across the country in the decades following the passage of the TVPA and subsequent state human trafficking statutes.¹¹²

In the last ten to fifteen years, states have begun to provide blanket immunity for minors charged with prostitution, motivated in part by a federal push for safe harbor laws in the 2013 TVPA reauthorization.¹¹³ New York was the first state to pass a safe harbor law in 2008.¹¹⁴ Today, well over half of states have a safe harbor provision of some kind, which may provide either immunity for statutorily defined crimes, diversion programs to move trafficked youth out of the criminal justice system and into service providers, or both.¹¹⁵

In 2015, Colorado established as an affirmative defense to a prostitution charge that the defendant was a victim of sex trafficking; however the legal protection still required victims to defend their case and prove that they were, in fact, victims of human trafficking—a significant burden.¹¹⁶ The affirmative defense presented a strange legal fiction that minors can, in some circumstances, consent to the sale of their own illicit sexual services.¹¹⁷ In 2019, the Colorado legislature passed Senate Bill 19-185 into law, which was a reform that granted immunity for prostitution in some circumstances.¹¹⁸ The text of the reform provides as follows:

108. Pingleton, *supra* note 69, at 285.

109. *Id.*; Melissa Golke, *The Age of Consent: How Minnesota's Safe Harbor for Sexually Exploited Youth Act of 2001 Falls Short of Fully Addressing Domestic Child Sex Trafficking*, 33 *HAMLIN J. PUB. L. & POL'Y* 201, 202–03 (2011).

110. Jennifer Cole & Ginny Sprang, *Post-Implementation of a Safe Harbor Law in the U.S.: Review of State Administrative Data*, 101 *CHILD ABUSE & NEGLECT* 1, 2 (2020).

111. Pingleton, *supra* note 69, at 285; Golke, *supra* note 109, at 202–03.

112. See Pingleton, *supra* note 69, at 288–89.

113. See Elizabeth S. Barnert, Susan Abrams, Veronica F. Azzi, Gery Ryan, Robert Brook, & Paul J. Chung, *Identifying Best Practices for "Safe Harbor" Legislation to Protect Child Sex Trafficking Victims: Decriminalization Alone is Not Sufficient*, 51 *CHILD ABUSE & NEGLECT* 249, 250 (2016).

114. Kimberly Mehlman-Orozco, *Safe Harbor Policies for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice*, 3 *SOC. INCLUSION* 52, 57 (2015).

115. RICH WILLIAMS, *NAT'L CONF. OF STATE LEGISLATURES, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD TRAFFICKING* 4–5 (2017); Barnert et al., *supra* note 113, at 252; Taina Bien-Aimé, *A Right NOT to be Trafficked*, 89 *N.Y. STATE BAR ASS'N J.* 22, 24 (2017).

116. S.B. 15-030, 70th Gen. Assemb., 1st Reg. Sess. (Colo. 2015); see Pingleton, *supra* note 69, at 286–87.

117. Pingleton, *supra* note 69, at 287–88.

118. COLO. HUM. TRAFFICKING COUNCIL, 2015 ANNUAL REPORT 29–30 [hereinafter *CHTC 2015 REPORT*]; *Protections For Minor Human Trafficking Victims*, S.B. 19-185, 72d Gen. Assemb., Reg. Sess. (Colo. 2019) (codified as amended at COLO. REV. STAT. § 18-7-209 (2020)).

If probable cause exists to believe that a minor charged with a prostitution-related activity . . . was a victim of human trafficking of a minor for involuntary servitude, pursuant to section 18-3-503(2), or human trafficking of a minor for sexual servitude, pursuant to section 18-3-504(2), at the time of the offense being charged, the minor is immune from criminal liability or juvenile delinquency proceedings for such charges.¹¹⁹

Before this reform, Colorado's lack of an effective safe harbor provision impacted the state's ability to adequately effectuate the underlying policy of protecting minor victims of sex trafficking because it left child victims of sex trafficking open to criminal liability for the acts they were coerced to engage in.¹²⁰ The CHTC recommended passing safe harbor provisions as early as 2015.¹²¹ Those suggestions, along with pressure from the federal government, other states, and the community, caused the legislature to amend the law to better protect minor victims of sex trafficking.¹²² In passing Senate Bill 19-185, the Colorado legislature proved that it takes seriously its duty to protect victims of human trafficking, at least when it comes to minor victims of sex trafficking.¹²³ While there was political capital to effectuate these reforms regarding minor victims of human trafficking, this Comment argues that the same approach should be taken regarding victims of labor trafficking, despite the fact that victims of labor trafficking do not yield the same level of sympathy or political urgency as children trafficked for sex.

IV. PROTECTION FOR LABOR TRAFFICKING VICTIMS IN COLORADO

Lawmakers and some key stakeholders do not prioritize protecting victims and survivors of labor trafficking like they prioritize protecting victims and survivors of sex trafficking.¹²⁴ Stories of children exploited for sexual services more readily grab attention than stories of migrant workers exploited for their labor, even though both groups are grievously abused.¹²⁵ Victims that do not appear to society as sympathetic are often marginalized and suffer from underenforcement and ill-fitting services as

119. COLO. REV. STAT. § 18-7-290.

120. CHTC 2015 REPORT, *supra* note 118, at 37.

121. *Id.* at 29.

122. *Id.* at 29–30; see Kelly Dore, *Child Victims of Trafficking Need a Safe Harbor in Colorado*, COLO. POL. (Feb. 7, 2020), [123. See S.B. 19-185 \(protecting minor human trafficking victims\).](https://www.coloradopolitics.com/opinion/child-victims-of-trafficking-need-a-safe-harbor-in-colorado/article_d6ed184c-cb72-5e45-af29-a8e943024243.html#:~:text=or%20other%20offenders.,Colorado%20is%20one%20of%2016%20states%20that%20does%20not%20have,are%20victims%20of%20human%20trafficking; S.B. 19-185 § 4.</p>
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124. Zhang, *supra* note 46, at 470; see also Beatriz Alvarez & Alessi, *supra* note 42, at 143–45.

125. Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 28 IMMIGR. & NAT'L REV. 741, 771–72 (2007); Dina Francesca Haynes, *Exploitation Nation: The Thin and Grey Legal Lines Between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 53 (2009).

a result.¹²⁶ Further, many Americans rely on the work done by victims of labor trafficking unlike work performed by sex trafficking victims.¹²⁷ Society tends to be more sympathetic toward rooting out forced labor when the labor itself is something that society is prepared to do away with to a large degree, like commercial sex.¹²⁸ However, when the forced labor at issue exists within an industry that many rely upon, people's perception of that forced labor can change.¹²⁹ Additionally, studies show that even law enforcement officials who have received human trafficking training have largely been trained on sex trafficking cases and not labor trafficking cases.¹³⁰

This disparity in recognition between sex and labor trafficking victims creates a grave problem: there are far more victims of labor trafficking than there are convictions of labor traffickers.¹³¹ In a visit and assessment of the state of human trafficking law in Colorado, the U.S. Advisory Council on Human Trafficking made the following observation: “[T]here continues to be a strong focus on girls and sex trafficking in [Colorado] with limited resources to identify and investigate labor trafficking.”¹³² The Council also reported that there had been far fewer labor trafficking prosecutions and that there are limited resources to combat labor trafficking in Colorado.¹³³ Additionally, the Council found that immigration concerns can prevent victims of labor trafficking in Colorado from coming forward.¹³⁴

Just as legal and structural problems prevented the protection of minor victims of sex trafficking under Colorado human trafficking law before the passage of a safe harbor law, victims of labor trafficking are not receiving adequate legal protection. Both legal loopholes and problems with enforcement of the law prevent the complete effectuation of the policy goals that exist within the legislative declaration of Colorado's human trafficking law.¹³⁵ To demonstrate how Colorado law could better serve

126. Robert Uy, *Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the “Perfect Victim” Paradigm*, 26 BERKELEY J. GENDER L. & JUST. 204, 209–210, 213–16 (2011); Shoaps, *supra* note 73, at 937–38.

127. Francesca Haynes, *supra* note 125, at 53.

128. *Id.*

129. *Id.*

130. See Shoaps, *supra* note 73, at 938–39 (explaining that law enforcement is bad at identifying male trafficking victims due to a lack of training); Kelle Barrick, Pamela K. Lattimore, Wayne J. Pitts, & Sheldon X. Zhang, *When Farmworkers and Advocates See Trafficking but Law Enforcement Does Not: Challenges in Identifying Labor Trafficking in North Carolina*, 61 CRIME L. SOC. CHANGE 205, 211 (2014) (explaining that law enforcement officials contacted for the study reported no labor trafficking in contrast to farmworkers interviewed in those counties).

131. See Zhang, *supra* note 46, at 470–71 (explaining the difficulty in estimating cases of labor trafficking); CHTC 2018 REPORT, *supra* note 14, at 63–70 (listing eleven recommendations to combat labor trafficking abuse that fall into the broad categories of protection, legal tools, and public awareness).

132. U.S. ADVISORY COUNCIL ON HUM. TRAFFICKING, 2020 ANNUAL REPORT 19 (2020).

133. *Id.*

134. *Id.* at 19–20.

135. See *id.* at 20; CHTC 2019 REPORT, *supra* note 16, at 76; CHTC 2018 REPORT, *supra* note 14, at 60.

labor trafficking victims, the remainder of this Comment will focus on one area of legal loopholes that prevent full effectuation: employer-provided housing, or housing provided to workers contingent on their employment.¹³⁶ Colorado law disproportionately protects employers at the expense of labor trafficking victims through its warranty of habitability and three-day eviction provisions.¹³⁷ As a matter of policy, the Colorado legislature must reform these laws to more fully effectuate the goal of protecting victims of labor trafficking in Colorado.

A. *Warranty of Habitability*

The first potential reform would combat the ability of traffickers who house their victims to force them to live in unlivable conditions. Colorado survivors of labor trafficking have indicated that their living conditions were egregious: rodent infestation, no running water, no electricity, no heat, no lighting, and no locks were just a few conditions survivors reported.¹³⁸ A potential solution to this problem is to expand the implied warranty of habitability to include employer-provided housing. Currently, state law exempts employers that provide housing contingent on the worker's employment from the warranty of habitability statute, despite the common belief that employers who provide housing to their workers should provide housing that meets suitable living standards.¹³⁹ According to the statute, "[U]nless created to avoid its application, this part 5 shall not apply to any of the following arrangements . . . [o]ccupancy by an employee or independent contractor whose right to occupancy is conditional upon performance of services for an employer or contractor."¹⁴⁰

The impact of this exception is that traffickers who house their victims may provide unsanitary or unsafe housing without violating state law.¹⁴¹ Although employer-provided housing is generally a licensor–licensee relationship rather than a traditional landlord–tenant relationship,¹⁴² the purpose of this exclusion must be critically examined. The simplest solution is to remove the employer exemption from the warranty of habitability statute.¹⁴³ This reform would provide one more path for human trafficking advocates to identify and provide legal services to victims of labor trafficking, including compensation in the form of civil damages.¹⁴⁴ As a practical matter, if Colorado law guaranteed victims of human trafficking habitable housing because of their “employment,” though the employment

136. CHTC 2019 REPORT, *supra* note 16, at 76.

137. *Id.*

138. *Id.*

139. COLO. REV. STAT. § 38-12-511(1)(e) (2020); CHTC 2019 REPORT, *supra* note 16, at 76.

140. § 38-12-511(1)(e).

141. CHTC 2019 REPORT, *supra* note 16, at 76.

142. *See* § 8-4-123(1).

143. CHTC 2019 REPORT, *supra* note 16, at 76.

144. *See* § 38-12-503(2) (describing the ways in which a landlord can breach the warranty of habitability).

itself is illegal, the law would guarantee labor trafficking victims one more right and legal remedy than they had before.¹⁴⁵

In the past several decades, there has been momentum toward expanding the warranty of habitability to protect vulnerable occupants from unlivable conditions.¹⁴⁶ For example, some courts have expanded the warranty of habitability from its original form to include protection of the tenant's physical security.¹⁴⁷ Thus, in some states, landlords have an additional obligation to protect tenants from reasonably foreseeable criminal activity and violence by installing reasonable security measures.¹⁴⁸ Courts imposed this obligation out of a desire to protect urban tenants and even the playing field between tenants and landlords.¹⁴⁹ This reform expands the implied warranty to include an additional housing condition and provides a legal foundation to extend the implied warranty to include a previously unprotected subset of residents.¹⁵⁰

While not as simple as reforming the warranty of habitability, there have been other statutory solutions designed to resolve the issue of unlivable housing that the Colorado legislature might consider.¹⁵¹ In 1982, Congress aimed to remedy the unlivable housing problem with migrant farmers when it passed the Migrant and Seasonal Agricultural Worker Protection Act.¹⁵² In so doing, Congress noted that migrant farmers tend to be some of the most impoverished and vulnerable workers in the country and are more likely than other workers to be taken advantage of.¹⁵³ The law targeted a specific subset of workers within an industry fraught with abuse and imposed certain criteria to ensure that the workers' housing was livable.¹⁵⁴ Though the complexities, successes, and shortcomings of the law are beyond the scope of this Comment, this law is instructive to the extent that it provides an illustration of how the law could protect victims of human trafficking through similar measures.

B. License to Occupy and Three-Day Evictions

In addition to the warranty of habitability loophole, Colorado's "license to occupy" provision in the Wage Protection Act allows employers that provide employees with housing to evict the employee in as little as

145. See CHTC 2019 REPORT, *supra* note 16, at 77–78.

146. See, e.g., Caroline Hudson, *Expanding the Scope of the Implied Warranty of Habitability: A Landlord's Duty to Protect Tenants from Foreseeable Criminal Activity*, 33 VAND. L. REV. 1493, 1495 (1980).

147. *Id.* at 1515.

148. *Id.*

149. See *id.*; see also Paula A. Franzese, Abbott Gorin, & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1, 9–10 (2016).

150. Franzese et al., *supra* note 149, at 10; Hudson, *supra* note 146, at 1495, 1515.

151. See Marc D. Stanley, *Rodents for Roommates: Liability under the Migrant and Seasonal Agricultural Worker Protection Act's Housing Provision*, 15 DRAKE J. AGRIC. L. 341, 346 (2010); see also Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. §§ 1801–1872.

152. Stanley, *supra* note 151, at 346.

153. *Id.* at 341.

154. *Id.* at 347.

three days after the employee's termination.¹⁵⁵ When employees live on the work premises, the occupancy is not a tenancy under traditional landlord-tenant law, but rather a license to occupy the premises as part of the employment relationship.¹⁵⁶ The Colorado General Assembly designed and enacted this statute to protect businesses that house both employees and clients, like nursing homes and apartment buildings.¹⁵⁷ The immediate eviction after termination was designed to protect the health and safety of the patients or tenants that also live in the building.¹⁵⁸ In relevant part, the law states:

[M]any businesses, such as nursing homes or building management companies, either desire or are required by law to have staff on premises at all times. As part of the compensation for such employees, many employers offer housing to employees. However, once that employment relationship ceases, it may become undesirable for such employees to occupy the premises for many reasons, including the safety of the employer's patients, clients, customers, or tenants.¹⁵⁹

Though the Colorado legislature designed this law to provide some legal protection for employers that grant their employees a license to occupy the premises as a term of employment, traffickers can use this provision in situations where the health and safety of other tenants or patients is not at issue.¹⁶⁰ As previously mentioned, labor trafficking is most prevalent in the domestic service, construction, manufacturing, and agricultural industries.¹⁶¹ These industries do not obviously fit within the types of businesses that this statute was designed to protect.¹⁶² Yet, labor traffickers in the domestic service or manufacturing industries that house their victims can use this law to threaten to fire and evict their victims whenever the work is not being completed "satisfactorily."¹⁶³ For victims of labor trafficking with insufficient resources or capital to relocate in a matter of three days, these kinds of threats can be coercive enough to keep the victim trapped in involuntary servitude.¹⁶⁴

Colorado's license to occupy provision must be reformed. First, the General Assembly must amend this statute so that it only applies to employers that house patients or tenants in addition to employees.¹⁶⁵ Accordingly, the General Assembly must clarify that employers may only exercise their right to evict recently fired employees when the health and safety

155. COLO. REV. STAT. § 8-4-123(2)(a) (2020); CHTC 2019 REPORT, *supra* note 16, at 77.

156. § 8-4-123(1).

157. *Id.*

158. *Id.*

159. *Id.*

160. CHTC 2019 REPORT, *supra* note 16, at 77.

161. *See supra* text accompanying note 52.

162. *Compare* § 8-4-123(1) with POLARIS, 2019 DATA REPORT, *supra* note 63, at 3 (listing the industries where labor trafficking is prevalent).

163. CHTC 2019 REPORT, *supra* note 16, at 77.

164. *See generally id.*

165. *Id.* at 78.

of an employer's patients or tenants is at issue.¹⁶⁶ Sharpening the language of the statute would align the law's practical impact with its purpose.¹⁶⁷

Second, the General Assembly must include a provision explicitly stating that any employer who uses prompt legal eviction to coerce labor trafficking victims into unpaid or nonconsensual labor has satisfied the coercion element of the offense of human trafficking.¹⁶⁸ This change would further effectuate the policy goal of protecting trafficking victims because it would connect a seemingly unrelated statute within the Colorado Wage Protection Act to the field of human trafficking and create an explicit evidentiary route for prosecutors to prove that coercion occurred in the human trafficking context.¹⁶⁹

As previously discussed, proving that coercion occurred remains a high burden for prosecutors, even without the additional practical barriers they face, such as securing cooperation from survivors, managing judges and practitioners unfamiliar with new human trafficking laws, and having little to no physical or corroborating evidence.¹⁷⁰ In Colorado, prosecutors can prove that coercion occurred by introducing evidence of the following: use of force, threats of force, threats of notifying immigration authorities about a victim's unlawful presence in the United States, removal of personal identification, control of a victim's access to a controlled substance, debt bondage, or exploitation of a physical or mental disability.¹⁷¹ Importantly, prosecutors can also prove that coercion occurred if the trafficker "us[es] or threaten[s] to use the law or the legal process . . . in any manner or for any purpose for which the law was not designed."¹⁷² Accordingly, prosecutors can, and should, use that route to prove that coercion occurred if a trafficker holds the threat of eviction over a victim's head. However, an amendment to the existing law that explicitly connects threats of eviction under the license to occupy statute to coercion under the human trafficking offense would open doors for prosecutors to prove more easily that coercion occurred.¹⁷³

Either of the proposed changes to Colorado's implied warranty of habitability statute or license to occupy statute would more thoroughly effectuate the policy goal of protecting labor trafficking victims envisioned in Colorado's human trafficking statute. State laws and prosecutorial and investigative bodies have improved their ability to identify and protect

166. *Id.*

167. *See* § 8-4-123(1).

168. CHTC 2019 REPORT, *supra* note 16, at 78.

169. *See* § 18-3-503(1) ("A person who knowingly sells, recruits, harbors, transports, transfers, isolates . . . another person for the purpose of coercing the other person to perform labor . . . commits human trafficking . . .").

170. Amy Farrell, Monica J. DeLateur, Colleen Owens, & Stephanie Fahy, *The Prosecution of State-Level Human Trafficking Cases in the United States*, 6 ANTI-TRAFFICKING REV. 48, 59–63 (2016); *see also* Farrell et al., *supra* note 26, at 152;

171. § 18-3-502(2).

172. *Id.* § 18-3-502(2)(c).

173. *See id.*

victims of trafficking and ensure that justice is served, and Colorado is no exception.¹⁷⁴ Colorado has come a long way since 2014, when its human trafficking laws were solidified into their current form.¹⁷⁵ But despite the achievements of HB 14-1273 and the passage of safe harbor laws, human trafficking law is new and growing, and with it, Colorado's laws must continue to evolve so that victims of labor trafficking receive the protection, justice, and services envisioned in Colorado's human trafficking statute.¹⁷⁶

There are many other legal and nonlegal reforms that would contribute to more complete effectuation of the policy of Colorado's human trafficking statute, most of which extend beyond the scope of this Comment. However, salient areas of future research concerning Colorado's labor trafficking laws and law enforcement could include the following: (1) restructuring state law enforcement units or creating labor enforcement units that are better equipped to investigate cases of labor trafficking; (2) increased training and proactive law enforcement investigations in labor trafficking operations; (3) targeted outreach to potential victims of labor trafficking about their rights and legal remedies available to them; (4) identification of best practices for serving men and young boys who have fallen victim to labor trafficking; and (5) outreach to survivors of labor trafficking about their rights, transitional employment, housing, and other needs.¹⁷⁷

CONCLUSION

Colorado must reform its employer-provided housing laws so that victims of labor trafficking receive the protection guaranteed to them by the Colorado human trafficking statutes. These changes are possible, as recent reforms to Colorado's criminal prostitution statute demonstrate. Victims of labor trafficking often go unnoticed in Colorado and have yet to receive the same attention, resources, and investigatory labor as victims of sex trafficking. Accordingly, Colorado must reform the laws that allow perpetrators of labor trafficking to go unnoticed. Doing so would help end this terrible crime, bring its perpetrators to justice, and provide restoration and healing to its survivors.

*Cassie Gardner-Wong**

174. See Farrell et al., *supra* note 170, at 67–68.

175. See, e.g., S.B. 19-185, 72d Gen. Assemb., Reg. Sess. (Colo. 2019) (amending and expanding existing human trafficking laws).

176. See Farrell et al., *supra* note 170, at 67–68 (discussing how the expansion of state human trafficking laws have contributed to accountability and justice).

177. See CHTC 2018 REPORT, *supra* note 14, 59–67.

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