



Labor Trafficking: Strategies to Help Victims and Bring Traffickers to Justice

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Milton Marks Commission on California State
Government Organization and Economy

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The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

In creating the Commission in 1962, the Legislature declared its purpose:

...to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...

The Commission fulfills this charge by listening to the public, consulting with the experts and conferring with the wise. In the course of its investigations, the Commission typically empanels advisory committees, conducts public hearings and visits government operations in action.

Its conclusions are submitted to the Governor and the Legislature for their consideration. Recommendations often take the form of legislation, which the Commission supports through the legislative process.

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This report is available from the Commission's website at www.lhc.ca.gov.

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Letter from the Chair

October 8, 2020

The Honorable Gavin Newsom
Governor of California

The Honorable Toni Atkins
Speaker pro Tempore of the Senate
and members of the Senate

The Honorable Anthony Rendon
Speaker of the Assembly
and members of the Assembly

The Honorable Shannon Grove
Senate Minority Leader

The Honorable Marie Waldron
Assembly Minority Leader

DEAR GOVERNOR AND MEMBERS OF THE LEGISLATURE:

The following report concludes a review the Little Hoover Commission initiated a year ago to evaluate the state's role in combatting labor trafficking in California, a form of human trafficking which involves obtaining labor through the use of force, fraud, or coercion. This final report considers what must be done to respond to existing instances of labor trafficking.

Despite laws criminalizing labor trafficking, we still know far too little about the individuals who are harmed by this abusive crime each year and do not yet understand how best to help these individuals recover and thrive. In this report, the Commission analyzes raw state data about trafficking survivors to better understand who has been victimized by this crime and learn where survivors show up for help. We also evaluate existing services for labor trafficking survivors and identify several barriers that make it difficult to ensure those harmed receive appropriate care.

California must step up its efforts to ensure vulnerable individuals – workers with few resources or job prospects – are protected from unscrupulous traffickers willing to exploit the rights of others for their own personal gain. We know labor traffickers benefit from lax workplace oversight and that too few are held fully accountable for their abuses. In this report, the Commission reviews various state resources to investigate and prosecute labor trafficking crimes and identifies several obstacles that impede efforts to adjudicate those responsible for perpetuating these crimes.

This report concludes with a number of strategies to prioritize victim services for labor trafficking survivors and opportunities to improve the state's efforts to pursue traffickers and bring them to justice. The Commission respectfully submits this work and stands prepared to help you take on this challenge.

Sincerely,

Pedro Nava, Chair
Little Hoover Commission

■ Executive Summary

California must prioritize victim services for labor trafficking survivors, and must adopt strategies to ensure that resources are in place to help survivors escape the cycle of abuse and subsequently thrive. The state must also improve its efforts to pursue traffickers and bring them to justice.

Over the last year the Little Hoover Commission has issued a series of reports to better address labor trafficking. The first report, *Human Trafficking: Coordinating a California Response*, called for the creation of an Anti-Human Trafficking Council to coordinate the state's activities. The second, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, identified how the state can do a better job of detecting labor trafficking.

In this third and final report, the Commission identifies ways in which the state can better help survivors and hold traffickers accountable for their crimes. Additionally, we analyze raw state data about survivors to provide a more nuanced picture of who falls prey to trafficking and where the crime occurs. Understanding more about this crime is an important step in ensuring appropriate services are in place to help survivors.

Getting Help to Labor Trafficking Survivors – What We Do Now

Two state agencies – the Governor's Office of Emergency Services and the California Victim Compensation Board – provide help to labor trafficking survivors. The Office of Emergency Services offers direct services such as crisis intervention, counseling, emergency shelter, information and referrals, and assistance applying for benefits. The Victim Compensation Board offers financial assistance to help pay medical bills and other expenses a victim of human trafficking incurred as a result of the crime. Trafficking survivors may also benefit from a number of other state-administered

programs, particularly those that target populations at high risk of experiencing trafficking, such as foster youth or immigrants.

Barriers to Care

Various barriers make it difficult to get help to labor trafficking survivors:

The unique service needs of labor trafficking survivors are unknown. Labor trafficking survivors need a range of supports, but little research is available to say with confidence which programs are most effective and how they are best delivered.

There is no centralized referral tool for service providers and victims. Though a number of services are available to help labor trafficking victims, California lacks a means to centralize information regarding these services and resources statewide.

Prioritizing Victim Services

California must do more to understand where labor trafficking occurs through the state, how victims access help, and the kinds of programs most effective at helping survivors recover and thrive. The report includes a specific recommendation to prioritize victim services:

Recommendation 1: California should track service provision to labor trafficking survivors, research and evaluate the efficacy of these programs, and develop and maintain a user-friendly directory of all state and local resources for trafficking survivors.

Bringing Traffickers to Justice

Each year, hundreds of known labor trafficking survivors seek help in California. Yet, cases that can bring their traffickers to justice remain rare. On average, there are less than 30 convictions for labor trafficking in California each year.

Two state agencies are empowered to prosecute labor trafficking crimes. Labor trafficking may be prosecuted by the Department of Justice, which has authority to pursue criminal cases, and the Department of Fair Employment and Housing, which has authority to pursue civil cases.

Several state agencies are positioned to pursue labor trafficking investigations. The Department of Industrial Relations would be well positioned to serve at the forefront of combatting labor trafficking crimes, but currently lacks the mandate to do so. Other organizations, such as the Employment Development Department and the Franchise Tax Board, also could contribute to labor trafficking investigations.

Obstacles to Labor Trafficking Enforcement Abound

Experts identified various challenges to labor trafficking investigations and prosecutions:

Victim identification and desire for prosecution. Survivors may be reluctant to engage with law enforcement officials for various legitimate reasons.

Complex cases lead to lengthy, costly investigations. Labor trafficking cases tend to be unique and resource intensive. Investigating these cases often requires specialized, dedicated staff.

Proving nonphysical coercion or force. State law defines labor trafficking as the act of depriving or violating the personal liberty of another with the intent to obtain forced labor or services. It does not require that those acts involve physical force or coercion. Lack of understanding about how this crime is defined can make prosecutions challenging.

Underutilization of civil enforcement. Civil action can provide relief for victims and requires a lower burden of proof than criminal cases, but it is unknown how frequently prosecutors use this

avenue to pursue labor trafficking crimes. The state has not yet initiated a civil trafficking complaint, though this could be a particularly useful tool.

Lack of published case law and California law training. Law enforcement officials receive little training on labor trafficking and published case law to guide these investigations does not exist. The lack of these resources leaves prosecutors to conduct significant independent research.

Insufficient opportunities for coordination among relevant agencies. Labor trafficking investigations require the expertise of various agencies, yet few opportunities exist to collaborate on these cases.

Prioritizing Labor Trafficking Enforcement

California must do more to ensure labor traffickers are brought to justice through increased investigation and prosecution. The state should begin by deploying its investigative resources to combat this crime and arming law enforcement officials with better training. The report concludes with four specific recommendations to prioritize labor trafficking enforcement:

Recommendation 2: California should empower state agencies to investigate labor trafficking crimes.

Recommendation 3: California should standardize coordination among federal, state, and local agencies around labor trafficking.

Recommendation 4: California should track labor trafficking enforcement activities and study outcomes to identify best practices.

Recommendation 5: California should enhance labor trafficking training opportunities for law enforcement and court personnel.

■ Introduction

Despite decades of laws to protect individuals from the harms of human trafficking, labor trafficking persists, largely in the shadows. Its victims endure both physical and psychological injuries, and their distress can extend far beyond state and national borders to their home country, where they may fear retribution from traffickers against members of their family. While the toll on its victims is immeasurable, each year traffickers around the globe reap a staggering \$19.6 billion from unpaid wages alone.¹ Traffickers in California illegally profit in untold amounts through untaxed economic activities, undercutting legitimate California businesses and cheating the federal and state government out of tax dollars.

Over the last year, the Commission has issued a series of reports to amplify California's efforts to combat this horrific crime.

In its first report, *Human Trafficking: Coordinating a California Response*, the Commission called for better coordination of the state's anti-trafficking activities through the creation of a California Anti-Trafficking Council. In its second report, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, the Commission identified strategies to improve and expand the detection of labor trafficking.

In this third and final report, the Commission considers how best to get help to survivors and bring traffickers to justice.

Too little remains known about the full extent of labor trafficking in California, but limited data shows that survivors turn up for help in counties throughout the state. Thousands of human trafficking victims access services every year in counties across the state, hundreds of whom have survived labor trafficking. A surprising concentration of labor trafficking survivors present in the Central Valley, although labor trafficking survivors also show up in large numbers in some of the most populous regions of the state, including Los Angeles, San Diego, and the

Bay Area. We know oftentimes, victims do not come forward for help, for various reasons. Understanding more about who is impacted by this crime and where and how survivors seek help is a necessary first step in ensuring appropriate services are in place to help victims recover and thrive, regardless of their location.

Traffickers in California illegally profit in untold amounts through untaxed economic activities, undercutting legitimate California businesses and cheating the federal and state government out of tax dollars.

We also know there are various paths through which justice can be achieved, disrupting traffickers' operations and awarding victims with fiscal compensation for lost wages and other injuries sustained. Yet, sometimes victims appear for help years after their abuse making already complex investigations and prosecutions more challenging. Understanding and addressing the various challenges investigators and prosecutors must overcome will help California's efforts to successfully bring traffickers to justice.

Building off its previous recommendations, in this report, the Commission offers strategies to ensure that resources are in place to help those victims who are identified so they may escape the cycle of abuse and subsequently thrive. We also consider strategies to improve investigations that successfully build cases against traffickers –to immediately halt exploitative employers, but also to deter others from engaging in this crime.

A Closer Look: California's Human Trafficking Victim Assistance Program

Thousands of Californians fall prey to human trafficking each year, including hundreds who are exploited for forced labor. They are disproportionately young and African-American.

That's the conclusion of the Commission's analysis of raw data about survivors who seek help from a key state program. Because relatively little is known about trafficking victims, Commission staff requested the data from the Governor's Office of Emergency Services (Cal OES) to develop a fuller picture of those who are victimized.²

Cal OES operates the Human Trafficking Victim Assistance (HV) Program³ to provide trafficking victims with comprehensive services to help them recover and reintegrate into society. Between 2016 and 2019, more than 14,000 survivors received help through this program.

Cal OES provided raw data that did not identify individual survivors in any way, but did include demographic information about those who received help, such as age, ethnicity, and type of exploitation. The initial data was broken down by funding cycle and service organization, but Commission staff combined the information and analyzed the results.

The resulting portrait is certainly not exhaustive – the data includes only those who were served by the HV Program and does not represent the entire California human trafficking population – but it nonetheless provides a partial answer to a frequently asked question about an elusive crime: Who are the victims of human trafficking in California?

The Commission is grateful to Cal OES for providing the data that allowed this analysis.

Twenty-one service providers received grants from the HV program. Although these providers were located in only 15 of California's 58 counties, approximately 78 percent⁴ of the state's population resides within these counties.

It is important to note that the demographic information includes those that have been trafficked for labor-related and/or sex-related crimes and cannot be separated.

Approximately 22 percent were victims of labor trafficking

Many of those who received assistance through the state's HV Program reported that they were solely sex trafficked (77.8 percent). Approximately one-fifth reported that they were victims of forced labor, with 15.1 percent reporting that they were victims solely of labor trafficking and another 7.1 percent reporting that they were victims of both sex and labor trafficking.

Over one-fourth were under the age of 18

More than one-quarter (25.7 percent) of survivors were under 18. There were far more females (12,024) who received services than males (2,212). Of those served who identified as male, approximately one-fourth were under the age of 18, with nearly 40 percent between the ages of 18 and 24 and roughly 35 percent over the age of 25. Of those served who identified as female, similarly, one-fourth were under the age of 18, with nearly 35 percent between the ages of 18 and 24 and around 35 percent over the age of 25.

African-Americans were disproportionately impacted

A disproportionate number of victims identified as African-American. While only accounting for 5.5 percent⁵ of the California population, African-Americans make up one-third of those served by HV Program grants. Of the other victims who disclosed their race or ethnicity, 28.6 percent were Latino, 15.7 percent were Caucasian, 6 percent were Asian, 2 percent were Filipino, 1 percent were American Indian, and .5 percent were Pacific Islanders. Additionally, 5.4 percent identified as mixed race and 7.9 percent did not share their race or it was unknown

Most identified English as their primary language

Most (75.9 percent) victims identified their primary language as English. This was followed by Spanish at 15.5 percent. The remaining victims who identified their primary language either spoke Chinese (2.4 percent), Tagalog (1.7 percent), a Southeast Asian language (1.4 percent), Russian (0.3%), Korean (0.3 percent),

Hindu (0.1 percent), Japanese (0.1 percent), or another language (2.3 percent).

One-third of victims served who identified themselves as having a disability cited a learning disability

Around 13 percent⁶ (1,855) of victims served identified that they had a disability, one-third of which were classified as learning disabilities. Others cited disabilities that were either physical (15.4 percent of those who said they had a disability) or developmental (13.4 percent).

Labor trafficking victims served were concentrated in the Central Valley

Labor trafficking appears to be concentrated in the Central Valley. While only 2.6 percent⁷ of the state’s population resides in Fresno County, 21 percent of the state’s labor trafficking victims were served by a provider who is based there. This provider also has the highest share of individuals who reported they were solely labor trafficked.

See Appendix A for additional information.

Demographic Characteristic	Category	Category Total	% of Demographic Characteristic	Demographic Total
Type of Trafficking	Labor Trafficking	2,160	15.1%	14,322
	Sex Trafficking	11,140	77.8%	
	Labor & Sex Trafficking	1,022	7.1%	
Male Age	Male Youth Under 18	518	23.4%	2,212
	Male Young Adults 18-24	882	39.9%	
	Male Adults 25-older	757	34.2%	
	Male Age Unknown	55	2.49%	
Female Age	Female Youth Under 18	3,143	26.1%	12,024
	Female Young Adults 18-24	4,133	34.4%	
	Female Adults 25-older	4,308	35.8%	
	Female Age Unknown	440	3.66%	
Race/Ethnicity	Caucasian	2,263	15.7%	14,454
	Latino	4,131	28.6%	
	African-American	4,757	32.9%	
	Asian	867	6.0%	
	Filipino	295	2.0%	
	American-Indian	142	1.0%	
	Pacific Islander	67	0.5%	
	Other Not Shared / Unknown	1,147	7.9%	
	Other Mixed Race	785	5.4%	

Getting Help to Labor Trafficking Survivors – What We Do Now

Trafficking survivors can access help from a patchwork of service providers throughout the state. California offers a number of support services to human trafficking survivors, primarily through the Governor’s Office of Emergency Services and the Victim Compensation Board. Additionally, about 25 service providers in California receive money directly from the U.S. Department of Justice – \$22.2 million

cumulatively since 2016 – to provide comprehensive services for human trafficking victims.⁸ Numerous other community organizations also offer support to this population, though there is no system to track all service providers for trafficking victims in the state.

California Governor’s Office of Emergency Services. The Governor’s Office of Emergency Services (CalOES) administers about \$11.5 million in state and federal grants to service providers who assist human trafficking victims. There are two programs:

Services Provided Through Cal OES Administered Programs⁹

	Victim Assistance Program Services	Advocacy Program Services
Crisis Intervention & Emergency Assistance	✓	✓
24-Hour Crisis Line for Trafficking Victims	✓	
Counseling	✓	✓
Shelter (Emergency Shelter or Temporary Housing)	✓	✓
Emergency Food and Clothing	✓	
Transportation Assistance	✓	
Orientation to the Criminal Justice System	✓	✓
Assistance Apply to Benefits through the California Victim Compensation Board	✓	✓
Legal Assistance Services	✓	
Information and Referral Services	✓	✓
Training to Criminal Justice Agencies, Public Presentations, & Publicity		✓
Case Status/Disposition, Assistance with Restitution		✓

- The Human Trafficking Victim Assistance Program¹⁰ is intended to help victims of both sex and labor trafficking recover from the trauma they experienced by making a range of direct services available through participating non-profit organizations. CalOES administers this program with \$10 million from the General Fund annually. Since the program was established in 2015, 21 victim service community-based organizations in 15 counties across the state have received funding, though not every organization was funded each year.¹¹ This program has helped 12,560 human trafficking victims through the years, about 17 percent of whom were victims of labor trafficking, and 8 percent of whom were victims of both sex and labor trafficking.¹²
- The department also administers the Human Trafficking Advocacy Program, which supports local victim witness assistance centers.¹³ Funding is provided through the federal Victims of Crime Act Victim Assistance Formula Grant Program and is generated by federal prosecution fines and penalties – a revenue stream which has declined significantly in the last two years.¹⁴ In fiscal year 2019-20, witness assistance centers in 11 counties received approximately \$1.5 million.¹⁵ This funding was used to dedicate a specialized advocate responsible for identifying and providing comprehensive services to human trafficking survivors. Though the overwhelming majority of the 1,140 victims helped during this period were sex trafficking survivors, the program assisted 83 labor trafficking survivors.¹⁶

California Victim Compensation Board. Human trafficking victims also may apply to the California Victim Compensation Board for compensation for services that other organizations do not offer or have the resources to provide. Funded services include medical and dental care, mental health services, income loss, and relocation and residential security. Since fiscal year 2017, the board has received an average of 170 applications per year from human

Survivor Stories: Angela

Angela was a young girl in the Philippines with aspirations to work in healthcare to support her family. When she was older and seeking work, a friend of a friend told her about an opportunity to become a caregiver in the U.S. and helped her enroll in Taekwondo classes to earn a certificate and black belt, and ultimately, obtain a sports visa to come to the U.S. Upon arrival, she was placed in a licensed nursing home facility. Her employer confiscated her passport and told her that she owed \$12,000 and had to work for 10 years to repay her debt. Angela lived at the facility, working long shifts without time off or breaks, and moving her belongings when inspectors came to visit. Her employer falsified timesheets and obtained for her a false social security number and identification. Angela was unaware of U.S. labor protection laws and believed she was working off her debt. A neighbor who saw her regularly walking elderly patients around the block noticed she never seemed to get time off and eventually called the F.B.I. Angela didn't realize she was a trafficking victim until she connected with other survivors and now she serves as an advocate to raise awareness about labor trafficking and its impact to individuals and the state.¹⁷

trafficking victims, about 40 percent of whom received benefits. All eligible human trafficking applicants received about \$270,000 in compensation over this period, most commonly to pay for mental health counseling and relocation expenses. Funding for these services comes from restitution fines and penalty assessments levied on individuals convicted of crimes and traffic offenses, and from federal grants.¹⁸

An analysis of the 170 applications from human trafficking survivors found that 20 per year were based on labor trafficking, 81 were based on sex trafficking, and the remainder did not contain documentation to specify, the board's Executive Officer Lynda Gledhill told the Commission. About 80 percent of these victims were connected to advocates to help them navigate through available services locally and from the state: 63 percent were represented by a county district attorney office and 16 percent were represented by a community-based organization that specializes in assisting human trafficking victims.

New benefits were approved last year so that trafficking victims may now receive money outside of a legal process for income lost as a result of their exploitation. Enacted legislation requires the board to compensate human trafficking victims for income lost as a direct result of trafficking, up to 40 hours per week, not to exceed \$10,000 per year, for a maximum of two years.¹⁹ Previously, victims could only receive compensation for income loss incurred during a period of physical or psychological disability suffered after their abuse. This new law allows the board to rely on evidence other than official employment documentation in considering and approving victims' applications. Acceptable evidence now includes a statement under penalty of perjury from the applicant, a human trafficking caseworker, a licensed attorney, or a witness to the crime; a law enforcement agency endorsement; a certification or eligibility letter from a government agency for a visa as a human trafficking refugee or a notice of approval for a T Visa application (T Visas provide immigration protection to victims of trafficking).²⁰

Other Programs. Labor trafficking survivors may also benefit from a number of other programs administered by the state but designed to serve broader populations. For example, CalOES staff testified that labor trafficking survivors access services through a number of other federally-

funded programs for crime victims, including the court appointed special advocate, domestic violence assistance, innovative response to marginalized victims, legal assistance, rape crisis, county victim service, and transitional housing programs. In total, since 2016, the department estimates as many as 5,200 labor trafficking victims have received help through these programs.²¹ Survivors also likely access a number of programs administered by the California Department of Social Services designed to serve populations at higher risk of experiencing human trafficking, such as foster youth and immigrants. For example, survivors may qualify for benefits and social services through federally-administered programs such as refugee cash assistance, CalWORKs, CalFresh, refugee support services, and programs authorized under the Child Abuse Prevention and Treatment Act, or state programs such as trafficking and crime victims assistance, cash assistance for immigrants, California food assistance, and assistance for commercially sexually exploited children.²²

Barriers to Care

UNIQUE SERVICE NEEDS OF LABOR TRAFFICKING SURVIVORS UNKNOWN

Research on the specific needs of labor trafficking survivors is limited.²³ Available studies suggest survivors need a range of supports that encompass health care, social services, and legal assistance. They may also need additional services to promote recovery and rehabilitation, including case management, help finding safe housing or obtaining food and clothing, financial skills building, job training and employment support.²⁴ Researchers and advocates alike emphasize the need for individuals and organizations serving trafficking victims to be sensitive to their needs and experiences and stress the importance of a trauma-informed approach to care.²⁵

Also scarce is research and evaluation to understand what service models effectively support labor

Survivor Stories: Carmen and Elena

Carmen and Elena were living in Tijuana and looking for work when they met a woman from the neighborhood who encouraged them to travel to Fresno. She said she could find them well-paid work for an entire season and provide a place to stay with her family. Entering the U.S. on travel visas, they stayed with the woman and her family in a small apartment for several weeks before they – and several other workers brought to Fresno under similar circumstance – were told to leave. They had no money, no work, no place to stay, and knew no one who could help, but were put in contact with an employer who loaned them money for a place to stay and took their identification documents as collateral. He offered them “piece work,” and told them they would earn \$10 an hour. They worked 9 hours a day, 6 days a week, and received pay in cash, but in amounts less than they expected. He charged them for transportation, taxes, and check cashing fees. He began threatening them, insisting they work faster or face pay deductions. He forced them to move again, incurring more debt in the relocation. Carmen wanted to return to Tijuana to see her spouse who had become injured, but initially could not get her documents back – her employer did not trust her to return and repay her debt to him. He relented only after threatening to report her to immigration. A co-worker saved to repay his debt. He tried to quit, but was threatened again with immigration. Carmen, Elena, and their co-worker sought help from the United Farm Workers, who eventually called in police, the F.B.I., and victim service providers to rescue and “extract” five victims. Theirs may be the first successfully prosecuted agricultural labor trafficking case in California.²⁶

trafficking survivors. “A wide variety of practices are currently in use by government agencies and nongovernmental organizations, large and small, leaving a very disjointed field,” Jean Bruggeman told Commissioners. “Government and private funders are uncertain how to best invest their resources. And new service providers are left with trial and error to develop the most effective service programs.” She said comprehensive, long-term, objective research is needed to understand the effectiveness of different types of programs for trafficking survivors and begin to build an evidence base for best practices.²⁷

NO CENTRALIZED REFERRAL TOOL FOR SERVICE PROVIDERS, VICTIMS

California needs tools to guide survivors to help. Jamie Beck, who heads a legal services clinic for human trafficking survivors in San Diego County, told the Commission that service providers may be overwhelmed with clients and lack training to identify

labor trafficking survivors and direct them to all relevant services.²⁸

Both the California Victim Compensation Board and the Attorney General identify a number of victim service resources on their websites. The board developed a county resources map that identifies organizations throughout the state that can help crime victims obtain various services, but it does not offer guidance on how to help human trafficking victims specifically.²⁹ The board also identifies a number of resources – such as the National Human Trafficking Hotline, the U.S. Department of Justice’s Trafficking in Persons and Worker Exploitation Task Force Complaint Line, and a handful of nonprofit organizations that serve trafficking victims – that could eventually lead to help, but it does not provide a sense of the comprehensive services available.³⁰ The California Attorney General’s website also

identifies several local organizations that are funded by CalOES to provide human trafficking victim services, but is similarly narrow in focus.³¹

A centralized, California-specific resource guide for these officials to understand the scope of services available to human trafficking victims would be helpful, but does not exist. Nor is a service directory available to make it easy for victims or their supporters to find help. Both the federal government and Washington State offer examples for creating such tools.

The U.S. Department of Health and Human Services' Office of Trafficking in Persons produced a resource guide for social service providers in 2012. The 32-page booklet describes various community and state-funded resources, such as food, shelter, clothing, medical care, legal assistance, and job training, and outlines the types of federal benefits and services available to trafficking victims.³²

Washington recently produced a website, WATraffickingHelp.org, to centralize information regarding the services and resources available to both sex and labor trafficking survivors in the state. Launched by Washington's Attorney General in 2018, the website is searchable by location and lists a range of resources including nearby case management and support groups, job training and financial assistance, health services, and housing options.³³ In addition, the site includes downloadable resources, such as toolkits for responding to trafficking, anti-trafficking outreach posters, and training videos, and links to regional anti-trafficking task forces and events so those interested in getting involved in the fight against trafficking can learn where to connect.

Prioritizing Victim Services

In a report issued earlier this year, *Human Trafficking: Coordinating a California Response*, the Commission called for the creation of a California Anti-Human Trafficking Council to assess California's capacity

to provide trauma-informed services to human trafficking survivors, identify service gaps, and measure the efficacy of services. The Commission reiterates that recommendation but acknowledges more must be done to ensure labor trafficking survivors get the help they need. Too little is known about labor trafficking survivors, their specific needs, and the programs most helpful in restoring their independence and empowering them to obtain gainful employment. To address this knowledge gap, California must understand where trafficking occurs throughout the state and how survivors are accessing help. To begin, the state must collect and track data about labor trafficking survivors and the services they access so the needs of this population can be studied and better understood. The state must also evaluate the efficacy and impact of programs designed to assist labor trafficking survivors. This research would require first compiling information on existing state resources available to help survivors, as the Commission previously recommended. Finally, the state should develop and frequently update an online directory of human trafficking victim service providers and other resources for trafficking victims so that survivors and their advocates throughout the state have a way to easily locate help in a timely manner.

Recommendation 1: California must prioritize victim services for labor trafficking survivors. Ideally, coordinated through the California Anti-Human Trafficking Council, the state should:

- Require agencies that provide services to crime victims and other vulnerable Californians to track service provision to labor trafficking survivors so the needs and demographics of this population can be better understood.
- Research and evaluate the efficacy of programs designed to assist human trafficking survivors, assess the overall impact of these programs to ensure survivors receive appropriate care, and identify any gaps in service needs.

- Develop and frequently update an online directory of human trafficking victim service providers and other state and local resources for trafficking survivors, searchable by location and service. This user-friendly website should explain in plain language – to enable translation into multiple languages – the types of programs and services available to trafficking survivors and how and where to access them.

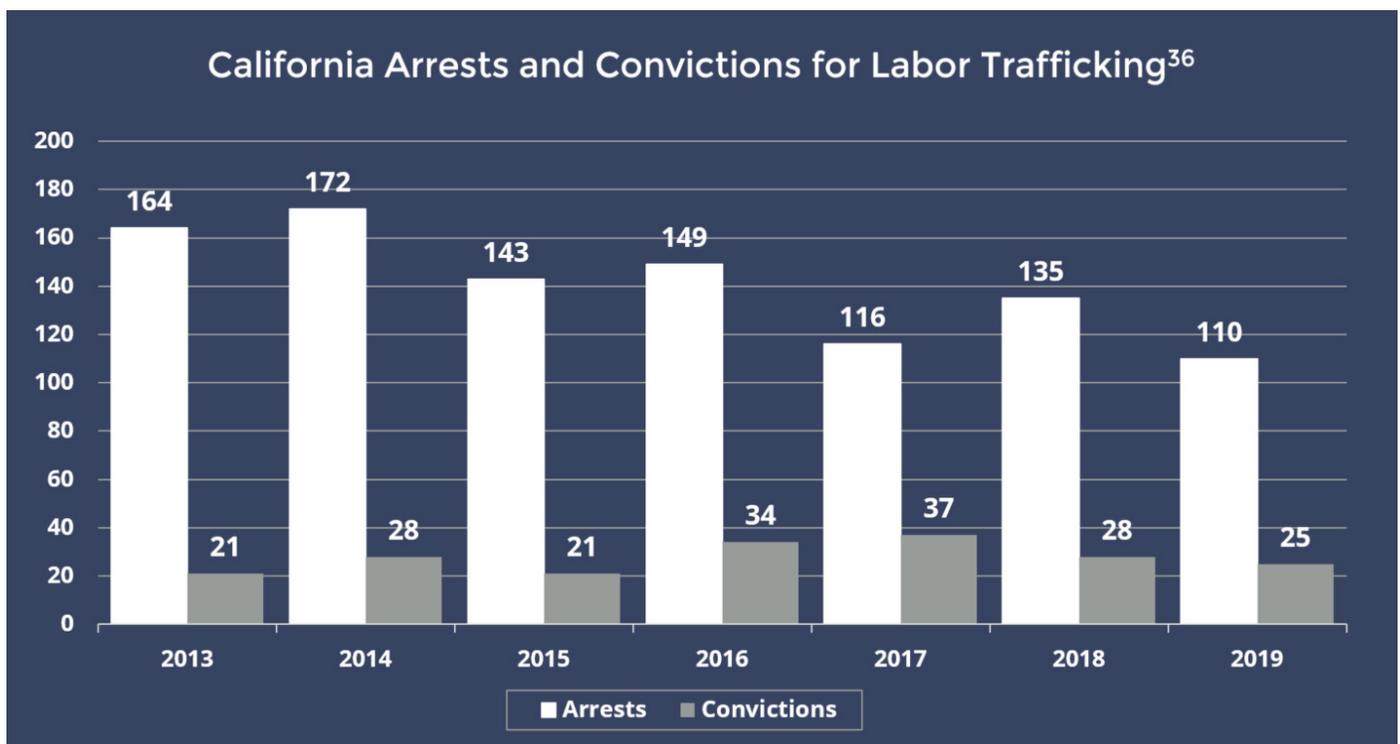
Bringing Traffickers to Justice

Traffickers face both criminal and civil action and administrative sanctions from a variety of local, state, and federal entities. In California, labor traffickers may face criminal penalties based on violations of state law defined in Penal Code Section 236.1. Those found guilty face imprisonment in the state prison for 5, 8, or 12 years, and a fine up to \$500,000. Traffickers also may face civil penalties including actual, compensatory, and punitive damages a victim sustained and injunctive relief as defined in Civil Code Section 52.5. The law provides survivors

a 10-year statute of limitations to file civil claims related to their trafficking experience.³⁴ Additionally, labor traffickers may face administrative lawsuits for violations of state labor, employment and tax laws conducted as part of their trafficking.

Yet, despite the hundreds of known labor trafficking survivors who seek help each year in California, labor trafficking cases that can bring perpetrators to justice remain rare.

Between 2015 and 2019, more than 650 individuals were arrested in California and 145 were convicted for labor trafficking crimes defined by Penal Code Section 236.1(a). On average, this translates to less than 30 convictions each year. Though officials say these figures likely underrepresent the true scope of labor traffickers in the state courts because they do not include cases filed under a different charge or instances when a defendant plead to a different crime.³⁵ Data is not available to say how frequently labor trafficking is pursued through civil action or administrative means in California.



Two State Agencies Are Empowered to Prosecute Labor Trafficking Crimes

In California, labor trafficking cases may be investigated and ultimately prosecuted by various agencies at the local, state, and federal levels of government. At the state level, authority for this work currently falls to two agencies: the Department of Justice, with jurisdiction to pursue criminal labor trafficking cases, and the Department of Fair Employment and Housing, with jurisdiction to pursue civil labor trafficking cases.

The Department of Justice. California's Attorney General and the Department of Justice are granted constitutional authority to investigate and prosecute labor trafficking cases and may work with district attorneys and other law enforcement agencies to that end.³⁷ In the last three years, the Attorney General's Office has received approximately 17 reports of labor trafficking; one case currently is pending and five are under investigation. The current cases represent trafficking that allegedly occurred in bars and restaurants, communal living settings, and a janitorial service.³⁸

Despite the hundreds of known labor trafficking survivors who seek help each year in California, labor trafficking cases that can bring perpetrators to justice remain rare.

Not all cases brought to the Attorney General are pursued for investigation and prosecution. According to Deputy Attorney General Amanda Plisner, department staff evaluate each case to consider jurisdictional issues, the availability of specialized

resources, the interests of the local prosecutorial agency, and whether the team of attorneys within the department's Fraud and Prosecution section – which pursues criminal cases, including human trafficking cases – has capacity to take on new cases. She explained labor trafficking cases are both unique and resource intensive, and require investigators and prosecutors who are well-trained and have sufficient time to devote to the case. The department may decline cases for various reasons. For example, Plisner explained that if the conduct did not warrant a criminal prosecution or there was insufficient evidence to prove beyond a reasonable doubt that trafficking had occurred, the investigation could be referred to a different agency, such as the Franchise Tax Board or the Employment Development Department. Or, if the case occurred in just one jurisdiction, it could be referred to local prosecutors.³⁹ The department has designated a statewide human trafficking coordinator to oversee all legislative work, training, and prosecution related to human trafficking.⁴⁰ Additional teams within the department may assist with investigation, as described below.

The Department of Fair Employment and Housing. California's Department of Fair Employment and Housing (DFEH), which protects Californians from unlawful discrimination in employment, housing, businesses, and state-funded activities and programs, was granted authority in 2016 to receive, investigate, conciliate, mediate, and prosecute civil complaints alleging human trafficking.⁴¹

Because the department does not employ peace officers or field enforcement teams who can identify potential trafficking situations, it relies on complaints from the public or referrals – from other state agencies or community organizations – to identify cases. And it is required by statute to investigate all allegations that fall within its jurisdiction. Since gaining the authority to pursue civil enforcement of human trafficking laws, the department has

received almost no complaints. In 2018 and 2019, the department received and investigated a total of 56,579 complaints on all subjects. Of these, just 31 alleged human trafficking and all but three were closed after department attorneys determined that they would not meet the elements of human trafficking under California law.⁴²

Although civil litigation can result in higher compensatory and punitive damages, many labor trafficking survivors do not choose to pursue this option, DFEH director Kevin Kish told Commissioners. Survivors may be reluctant to enter a lengthy legal dispute while also dealing with more immediate needs, such as finding housing, addressing their immigration status, or obtaining social services. Kish explained survivors who choose to start a civil complaint typically file with attorneys in private practice who can provide pro bono representation and offer a greater level of control than a government agency that also is responsible for representing the public interest. "It is no surprise that survivors who make the choice to file suit would typically not choose to hand some control over their case – and their story – to a government agency," Kish said.⁴³

Despite these limitations, the department is uniquely positioned to pursue complaints alleging widespread violations in a particular workplace or that involve a large number of victims. Using its authority to initiate civil complaints or charges in its own name on behalf of a group or class of individuals, the department may seek damages for victims, even when the individuals involved would have never come forward otherwise.⁴⁴ Like cases involving an individual survivor, these larger investigations could be triggered by a complaint or could come from referrals from other government agencies or sources. But the department can also initiate these types of cases itself, on the suspicion that the law is being violated or to provide assurance that it is not.⁴⁵ Currently, the department lacks staff to proactively

identify and develop leads.

Several State Agencies Are Positioned to Pursue Labor Trafficking Investigations

Several state agencies have authority to investigate criminal activities and violations of the state's Penal Code and labor laws inherent in labor trafficking crimes. While no state agency currently has a mandate to look for labor trafficking, several conduct investigations that can – and sometimes do – support for criminal or civil actions, or lead to administrative sanctions for trafficking-related offenses.

The Department of Industrial Relations. The Department of Industrial Relations exists to improve working conditions for California's earners and does so by administering and enforcing state laws that govern wages, hours and breaks, overtime, retaliation, workplace safety and health, apprenticeship training programs, and medical care and other benefits for injured workers. Department representatives testified that they have observed "a direct nexus" between wage theft and labor trafficking. Though the department can and does at times work with various partner agencies to combat labor trafficking, representatives said it "does not have the authority to investigate labor trafficking cases or have staff or resources dedicated specifically to combatting labor trafficking."⁴⁶

Still, teams within the department would be well positioned to serve at the forefront of combatting labor trafficking crimes in California, should they be empowered to do so.

The Office of the California Labor Commissioner could pursue labor trafficking alongside its existing work to ensure a just day's pay in every workplace. Teams within the office already enforce the state's labor laws, including minimum wage and overtime requirements, child labor laws, and laws requiring

Several Multi-Agency Partnerships to Combat the Underground Economy

California has established several partnerships among various enforcement agencies to combat the underground economy. The underground economy includes activities that individuals and businesses try to hide from government licensing, regulatory, tax, and law enforcement agencies, such as underpaying employees, failing to pay payroll or other taxes, improperly classifying employees, or failing to meet minimum wage, insurance and workers' compensation obligations. These activities are estimated to rob the state of \$8.5-10 billion annually in uncollected tax revenue.⁴⁷ Though human trafficking and other illicit crimes, such as illegal drug sales, contribute to the underground economy, California's existing efforts do not explicitly mandate these activities are targeted.

The Labor Enforcement Task Force. Established in 2012, the task force was created to increase coordination among enforcement agencies around labor, tax and licensing law violators operating in the underground economy.⁴⁸ Participating agencies share information and resources to ensure employees are paid properly and have safe working conditions. Led by the Department of Industrial Relations, membership includes the Labor and Workforce Development Agency, Employment Development Department, Contractors State License Board, Department of Insurance, Department of Tax and Fee Administration, Bureau of Automotive Repair, Alcoholic Beverage Control, and the State Attorney General and District Attorneys.⁴⁹

Joint Enforcement Strike Force on the Underground Economy. Established to combat tax violations and cash-pay employment, the strike force since 2019 also conducts enforces labor, tax, insurance, and licensing law related to the underground economy. Among other duties, participating agencies may use civil sanctions and share investigative leads for felony-level criminal investigations or to pursue criminal prosecution when businesses violate the state's labor, employment, licensing, insurance, and tax laws. Led by the Employment Development Department, membership includes the Department of Consumer Affairs, Department of Industrial Relations, Department of Insurance, Department of Justice, California Department of Tax and Fee Administration, and the Franchise Tax Board; other agencies may serve in an advisory capacity.⁵⁰

Tax Recovery and Underground Economy (TRUE) Task Force. Originally established as the Tax Recovery and Criminal Enforcement Task Force, law permanently established the TRUE task force on January 1, 2020, to investigate and prosecute criminal offenses in the underground economy.⁵¹ Legislation requires the Department of Justice to establish two multi-agency investigative teams in Sacramento and Los Angeles. Because labor trafficking cases often involve tax violations or cash payments, these two investigative teams may help to detect and crack down on labor trafficking. Led by the Department of Justice, the task force includes participation from the Employment Development Department, the Department of Tax and Fee Administration, and the Franchise Tax Board.

employers to carry workers' compensation insurance. Its inspectors are empowered to audit payroll records, collect unpaid wages, issue citations for violations of the Labor Code, confiscate illegally manufactured goods, and seek injunctive relief to prevent further violations of the law.⁵² And the office adjudicates wage claims on behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay, particularly in industries where the underground economy is most rampant.

Within the office, a small team of four sworn police officers⁵³ comprises the Criminal Investigations Unit which is empowered to investigate Labor and Penal Code violations across the state and ferret out employers who commit wage theft and other criminal activities against workers. Through established referral networks with community partners, local law enforcement, and tips from the public, this team identifies various labor abuses and is empowered to obtain and serve inspection search warrants. Officers then may conduct criminal investigations, arrest unlawful employers for violating the state's Penal Code and labor laws, and file criminal cases with district attorneys for prosecution.⁵⁴ Additionally, department officials told the Commission the unit may work collaboratively with state and local attorneys to prosecute labor trafficking aspects of their cases. Since its creation in 2012, the unit has encountered human trafficking in a breadth of industries, including the garment, agricultural, construction, car wash, restaurant, massage parlor, and residential care industry. A number of these encounters have led to court cases.⁵⁵

The Labor Enforcement Task Force, which is run out of the director's office, also could pursue labor trafficking alongside its existing work. The task force is a coalition of California state government enforcement agencies that work together and with local law enforcement to combat the underground economy. The task force currently operates 10 statewide cross-agency teams that target low

wage, high hazard industries with a prevalence for underground economy activity for investigations; some of these same industries also are prone to labor trafficking. Teams may encounter possible labor trafficking cases while investigating labor law violations, such as wage theft, health and safety issues, and licensing and workers compensation fraud. When inspectors detect or receive complaints that allege possible labor trafficking in the course of its work, the cases are referred to partners within the Department of Justice. Since 2018, the task force has made 11 referrals of potential human trafficking cases to the Department of Justice.⁵⁶

The Employment Development Department. The Employment Development Department employs a specialized law enforcement unit of 28 investigators empowered to pursue cases of criminal violations of the Unemployment Insurance Code and the Penal Code. Comprised of sworn peace officers, these investigators partner with law enforcement agencies throughout the state to identify and prosecute employer fraud and fight employment tax violations. They are capable of conducting surveillance, performing undercover operations, interviewing witnesses, initiating search warrants, and submitting investigations to prosecutors.⁵⁷ Intended to deter activities that contribute to the underground economy, these investigators also could help combat labor trafficking, particularly if a case involved an employer failing to file wages, pay payroll taxes, or pay workers compensation insurance premiums for workers who were being trafficked. Currently, these investigators do not receive specific training on human trafficking, nor is labor trafficking part of their assessment of cases.⁵⁸

Additionally, the department houses a significant amount of data that could help support labor trafficking investigations, such as information related to California industries, occupations, wages, and employers. Common datasets are available on the EDD's Data Library⁵⁹ and outside investigators who

work collaboratively with the agency on particular cases can tap into these resources, but other investigators need to work through the department's information security office or issue a search warrant for the information – adding time to an investigation.⁶⁰

The Franchise Tax Board. Similarly, the Franchise Tax Board employs a team of 35 sworn peace officers, as well as several forensic auditors and support staff, charged with investigating income tax related crimes and enforcing criminal tax statutes. These specialized investigators may collect evidence, interview witnesses and suspects, initiate search and arrest warrants, and serve as expert witnesses or otherwise assist prosecuting attorneys in pursuing criminal cases.⁶¹ In looking for egregious tax payers who fail to file or report income, these investigators are positioned to encounter traffickers who falsify business records, pay employees in cash to evade taxes, or conduct other forms of tax fraud in conjunction with exploiting their workers. Representatives from the unit work collaboratively in multi-agency teams, to combat the underground economy. Investigators already have some experience combatting sex trafficking, but have encountered fewer labor trafficking cases likely because law enforcement and others are less aware of the signs, one investigator said.⁶²

Obstacles to Labor Trafficking Enforcement Abound

Experts said labor trafficking is difficult to investigate and prosecute for many reasons:

- Survivors may be reluctant to participate in prosecutions.
- Trafficking investigations are especially costly and time-consuming.
- It can be difficult to prove non-physical coercion or force.

- There is too little civil enforcement.
- Law enforcement officials receive little training on the issue.
- There are few opportunities for agencies to collaborate.

Addressing these issues presents an opportunity for California to strengthen its enforcement of labor trafficking laws.

VICTIM IDENTIFICATION AND DESIRE FOR PROSECUTION

As noted in the Commission's previous reports on trafficking, victims, particularly newcomers to the U.S., may not be aware of state and federal laws that protect workers' rights and unable to articulate their victimization. As a result, they may not reach out for legal protections. To help address these challenges, the Commission recommended in its recent report, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, that California take steps to proactively identify labor trafficking victims, increase public awareness of the crime, and enhance worker education and outreach opportunities.

Once identified, many victims are still reluctant to engage with law enforcement and other officials. One study of trafficking victims found that only seven percent self-reported to police after escaping and twice as many were arrested, most commonly for immigration violations, as were identified as crime victims.⁶³ Researchers suggested this reticence to engage after their escape could stem from shame, fear of deportation, lack of understanding of American law, or fear of retribution.⁶⁴

Even those survivors who do come forward may decide not to pursue legal action against their traffickers. Experts note that in filing criminal charges, survivors must relinquish control over their case to prosecutors, whereas in filing civil charges, complainants maintain some control over the "essential decisions shaping the case," unless they are filing civil charges with a state agency. In those cases,

Survivor Stories: Renuka

As a young child in India, Renuka worked as a household servant, but said she was cared for by other servants and had freedom to leave the house. By age 11, her employers obtained a visa to bring her to the U.S., seemingly to pursue a dance scholarship. However, once here, she labored as an indentured servant. Prevented from leaving the house – even to attend school – she spent her days and nights cooking, doing housework, and caring for the family and their two children. She found herself isolated, unable to speak English, and soon experienced her first panic attack. Renuka watched American cartoons to learn English and began devising her escape – starting with finding her identification documents, which her employer had hidden. After finding her passport, Renuka walked out the front door to a nearby park where a woman found her and called the police. With the help of a translator, Renuka was not made to return to her employer and landed in a group home where she received help from social services and immigration. She was placed in a loving foster home and eventually adopted by her foster mom. Now, decades later and with the encouragement of her own daughter, Renuka is beginning to share her survival story.⁶⁶

survivors may intervene in a lawsuit to protect their own interests, but cannot dictate the state agency's decisions.⁶⁵ For some survivors, traumatized by a lack of control during their exploitation, the inability to control the details of their case may contribute to a reluctance to take legal action.

COMPLEX CASES LEAD TO LENGTHY, COSTLY INVESTIGATIONS

Labor trafficking cases are unique and resource intensive, and require well-trained staff devoted to the investigation.⁶⁷ Yet, gathering evidence to support these complex cases often poses a challenge to prosecutors in terms of both the time involved in investigating cases and the need to understand a wide array of crimes as well as how to value a victim's labor over a certain time period.

"Labor trafficking touches a variety of industries, industries prosecutors and police might not ever have any contact or familiarity with," Fresno Deputy District Attorney Lynette Gonzales told the Commission. She reflected that in trying her labor trafficking case, she "spent an inordinate amount of time learning" about employment law and how some laws differed for farm workers than other types of employees. She also needed to understand unemployment compensation fraud, tax fraud, workers compensation premium fraud, and identify theft – crimes she had never before prosecuted in her 12-year career.⁶⁸

Often, local law enforcement offices and prosecutors do not understand how to go about collecting all the information necessary to build strong cases, Contra Costa County Deputy District Attorney Dana Filkowski told Commissioners.⁶⁹ Without specialized expertise of various fields or funding for analysts to conduct detailed reviews of the financial aspects of the crime – such as evaluating payroll and employment tax issues or determining minimum wage, overtime and working conditions to which a laborer was legally entitled – it is a time consuming and labor intensive endeavor for prosecutors to corral the information needed to build a strong case. Those who overcome these investigatory hurdles do so with time. Gonzales explained that her agricultural trafficking case – which she ultimately successfully litigated – took nearly two years after victims were rescued to get to trial.⁷⁰

PROVING NONPHYSICAL COERCION OR FORCE

To successfully prosecute labor trafficking cases in California courts, attorneys must prove elements of force, fraud, or coercion defined in the state's Penal Code. Section 236.1(a) defines labor trafficking as the act of depriving or violating the personal liberty of another with the intent to obtain forced labor or services. The law further clarifies the meaning of "forced labor or services" as labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

Prosecutions using California law are complicated by the general public's lack of knowledge about the crime and difficulty in understanding how to apply terms like "force" or "coercion."⁷¹ Even though many trafficking cases involve physical injuries and abuse,⁷² experts said it is challenging to convey – and prove – that non-physical force and psychological coercion can be exerted to deprive a person of his or her personal liberty and force a worker into submission.⁷³ "The public immediately stops at the word force. They're looking for bondage or physical force, when we know that 80 to 90 percent or more of the cases are based in deception, fraud, coercion, or manipulation," San Diego District Attorney Summer Stephan explained.⁷⁴

In her agricultural trafficking case, Fresno Deputy District Attorney Gonzales told Commissioners she and her team knew it would be a challenge to prove her clients suffered a deprivation of liberty without physical force and they made every effort to locate witnesses and develop evidence to support other crimes.⁷⁵

UNDERUTILIZATION OF CIVIL ENFORCEMENT

Given some of the challenges of prosecuting criminal labor trafficking cases under state laws, some juris-

dictions have begun to pursue civil enforcement options. Civil enforcement allows prosecutors to target labor trafficking crimes by expanding the spectrum of offences they pursue, Alameda County District Attorney Nancy O'Malley told Commissioners.⁷⁶ Pursuing labor law violations like wage theft, workers' compensation violations, tax evasion, and money laundering are all examples of civil offenses that are more easily proved and could hinder an unscrupulous employer's ability to exploit workers.⁷⁷

Civil enforcement offers some unique advantages. With a lower civil preponderance of evidence standard, the charges are easier to prove and allow cases that would otherwise have been more difficult to prove in a criminal proceeding to be brought forward and won. Civil action may result in large financial penalties as well as restitution in amounts potentially exceeding what is awarded in criminal proceedings that may not award non-economic damages.⁷⁸ Civil proceedings also can result in injunctive relief that can compel a trafficker to refrain from a specific behavior and harm his or her ability to operate. For example, Los Angeles City Attorneys have filed "numerous civil enforcement actions against hotels for various illegal activities, including human trafficking" and obtained court orders to require the "hotel and property owners to change their business practices in order to curtail the illegal activity."⁷⁹ These strategies have the additional benefit of being treated separately from criminal proceedings, allowing prosecuting agencies to pursue these charges alongside or instead of criminal prosecution.⁸⁰ But filing cases under charges other than trafficking also makes it difficult to identify crime victims as human trafficking victims – an important figure to track if California is to understand the prevalence of this type of crime in the state.

Data is not available to say how frequently civil enforcement is pursued in California's courts. Some jurisdictions, including Alameda and San

Diego Counties and the City of Los Angeles, offer examples of success-fully using civil enforcement to pursue labor trafficking, though it is not clear how common these practices are statewide. As described previously, California's Department of Fair Employment and Housing has not yet had the opportunity to exercise its authority to initiate civil trafficking complaints, but could be a useful tool particularly in geographic areas where it is difficult for survivors to find representation or in cases with too many victims for private litigants to represent.⁸¹

At the federal level, pursuing labor trafficking through civil action already is common. In federal courts, 75 percent of the 227 civil human trafficking suits filed between 2015 and 2019 involve forced labor. Over the same period, less than five percent of the 996 criminal human trafficking cases before a federal court involved forced labor.⁸² Legal scholar, Kathleen Kim, suggests that to some extent, the civil justice system may be filling the gap in criminal prosecutions by pursuing some relief on behalf of labor trafficking victims.⁸³ Additionally, some states are experimenting with increasing penalties under their civil codes related to exploitation and other jurisdictions are using civil rights laws to prosecute labor trafficking cases, trafficking expert Colleen Owens told the Commission.⁸⁴

LACK OF PUBLISHED CASE LAW AND CALIFORNIA LAW TRAINING

In recent years, California courts have produced a couple of tools to help court officials understand human trafficking. A 2012 briefing, *Human Trafficking Cases in California's Courts: Successful Practices in the Emerging Field of Human Trafficking*, provides an overview of human trafficking, describes how it presents in courts, and includes successful practices for identifying victims.⁸⁵ This briefing defines labor trafficking, but largely provides substantive examples of sex trafficking victims and cases. More recently, a toolkit produced in 2017 for judicial officers, *Human Trafficking in California*, focuses entirely on

sex trafficking.⁸⁶ The toolkit describes federal and state laws related to human trafficking, discusses screenings and assessments to identify trafficking victims, provides examples of case-related protocols, and includes a list of organizations that provide services for victims.

Though both important pieces, by primarily focusing on sex trafficking these tools leave voids of important knowledge for court officials to join in the fight against labor trafficking. California must better prepare prosecutors and other law enforcement personnel for effectively identifying, investigating, and prosecuting labor trafficking cases under state law.

Without specialized training on labor trafficking, local law enforcement agencies cannot understand how this is a crime; some may even believe that if a victim agrees to his or her working conditions that no crime is taking place. Victims, too, do not typically understand what to say to generate an investigation. And the result is that cases do not make their way to prosecutors, Contra Costa Deputy District Attorney Filkowski told Commissioners.⁸⁷

California must better prepare prosecutors and other law enforcement personnel for effectively identifying, investigating, and prosecuting labor trafficking cases under state law.

Further, prosecutors and law enforcement officials do not have at their disposal a body of published case-law to help guide their state labor trafficking investigations, nor do they have access to other resources to understand how other California laws and regulations may impact their case or to explain

Federal Recommendations to Increase Investigation and Prosecution of Labor Trafficking

Since 2015, labor trafficking cases have comprised less than 5 percent of the criminal human trafficking cases heard before federal courts. The U.S. Department of State recently outlined a number of strategies for the nation to more effectively investigate and prosecute labor trafficking cases:⁸⁹

- Increase the number of investigations and prosecutions.
- Increase and diversify efforts to proactively identify potential trafficking victims among populations vulnerable to human trafficking.
- Ensure immigration enforcement does not hinder human trafficking criminal law enforcement or victim protections.
- Train prosecutors and judges to increase the number of forfeiture orders and mandatory restitution orders for trafficking victims.
- Increase survivor engagement.
- Increase enforcement of the law that prohibits the importation of goods made wholly or in part by forced labor.

how and what type of evidence can be used to sustain a jury trial conviction.⁸⁸ Resources available to explain how labor trafficking is handled by federal laws do not translate for officials who need to understand how state laws and regulations may be applied in order to investigate and prosecute state level cases. Indeed, the Commission heard that cases can suffer when they are prepared for and then declined at the federal level, because they were not built to be tried in California's courts under state law.⁹⁰

Contra Costa's first labor trafficking case illustrates some of these challenges. The case, which came to the county after being turned down for investigation by the U.S. Attorney's Office, was "under investigated" and left the lead prosecutor with "no idea how to prosecute it," Filkowski said. She described reviewing the Penal Code and realizing after extensive independent research that she needed to understand the Labor Code, as well as 18 different wage orders⁹¹

maintained by the Department of Industrial Relations which give rules for various entities of employment, including those rules governing domestic employers which she needed to understand domestic servitude. She said that to file her case as a trafficking violation under Penal Code Section 236.1, she "essentially had to become 'self-taught.'"⁹²

By more inclusively addressing all forms of human trafficking in trainings for California's law enforcement and legal community – or creating materials specific to labor trafficking – California could better prepare those in the justice system with the tools necessary to recognize and help labor trafficking victims and bring traffickers to justice. Other jurisdictions are taking steps to build state resources around labor trafficking.

The Kentucky Bar Foundation created a guide for court personnel that explains federal and state trafficking laws and puts them in the context of real cases, including labor trafficking cases. It describes

the nexus of labor trafficking and other exploitative practices, including violations of labor laws; helps court personnel understand the penalties for these crimes as well as the services available to victims; offers tips for maximizing restitution for victims; and, describes possible civil causes of action against traffickers and potential civil remedies for victims.⁹³

At the direction of the Washington Legislature, the Office of Crime Victims Advocacy within the Department of Commerce in 2015 established a statewide training program on Washington's human trafficking laws for criminal justice personnel including prosecutors, law enforcement, court personnel.⁹⁴ By law, the training covers the state's anti-trafficking laws, the investigation and adjudication of sex trafficking cases, and encourages interdisciplinary coordination among criminal justice personnel, building cultural competency, and developing an understanding of the diverse victim population. Initial reports from the office describe challenges finding training and resources related to labor trafficking; note the distinct lack of familiarity with labor trafficking investigations among both law enforcement and prosecutors; and ultimately recommend creating and funding a separate statewide training program on labor trafficking to increase the identification and prosecution of labor trafficking cases in the state.⁹⁵

INSUFFICIENT OPPORTUNITIES FOR COORDINATION AMONG RELEVANT AGENCIES

Given the complex nature of labor trafficking cases, no single agency or entity is in a position to conduct the comprehensive detailed analysis or to provide the culturally sensitive, trauma-informed support victims may need to feel comfortable understanding their rights and participating in the legal process.

State agencies well versed in the state's labor laws and related regulations, such as the Department of Industrial Relations, could help support investigations by determining how state law applies to the

circumstances of a particular case and support prosecutions by later serving as expert witnesses in state cases.⁹⁶ Yet, access to state agencies and information that can help support investigations is limited. Though some referral mechanisms are in place, for example to share tips of suspicious activity to investigative agencies, California currently lacks the formal agreements and other procedures necessary for a holistic response to labor trafficking enforcement. Without memorandums of understanding or other formally established means to share data and critical case information, investigations could stall, adding time and cost to prosecutions.

To successfully support prosecutors and bring labor trafficking cases to trial, California must create opportunities for various and disparate agencies and organizations to coordinate around labor trafficking investigations. Experts suggested collaboration at the federal level between the U.S. Department of Labor and the U.S. Department of Justice models the type of partnerships needed among similar entities in California.⁹⁷

Prioritizing Labor Trafficking Enforcement

California must enhance efforts to bring labor traffickers to justice through increased investigation and adjudication of labor trafficking crimes. The state should begin by deploying its cadre of investigative resources to combat this crime. The Department of Industrial Relations, in particular, should be at the forefront of investigating labor trafficking crimes and must be empowered and resourced to proactively fight this crime. In addition, the state can and should integrate the pursuit of labor trafficking into existing efforts to investigate and combat the underground economy.

Because of the complexity of labor trafficking crimes, agencies – at the state and local levels – will need

better avenues to coordinate information about leads, share investigation strategies, develop strong cases for prosecutors, and serve as consultants or expert witnesses when necessary. The Commission believes this work should be performed through the California Anti-Human Trafficking Council, as recommended in its June 2020 report, *Human Trafficking Coordinating a California Response*. Until that permanent body is established, however, the Administration must take formal action to ensure that agencies can effectively work together.

California already has some tools in place to target various crimes inherent in labor trafficking, but must do a better job ensuring traffickers are brought to justice. This should begin by tracking data to understand how many and what type of labor trafficking cases are brought forward under the state's Penal Code, how many are pursued through other means, and the outcomes of these cases.

Finally, aggressively targeting labor trafficking will require law enforcement and court personnel are engaged in the fight and knowledgeable about strategies to combat labor trafficking under state law. Prosecutors must understand what successful cases look like through civil and criminal action and provided the training and resources to emulate those strategies.

Recommendation 2: California should empower state agencies to investigate labor trafficking crimes. Specifically, lawmakers should:

- Mandate that the Department of Industrial Relations pursues labor trafficking alongside its other work to combat the underground economy.
- Incorporate labor trafficking into existing multi-agency, multi-jurisdictional efforts to combat the underground economy.
- Require that designated agencies, such as the Department of Industrial Relations, the Employment Development Department,

the Franchise Tax Board, and others, train investigators to identify labor trafficking, develop interview protocols to appropriately interact with potential victims, and produce and use tools to screen for labor trafficking while assessing workplace violations.

- Provide a means for key agencies to share case information.

Recommendation 3: California should standardize coordination among federal, state, and local agencies around labor trafficking.

- These various agencies should establish formal memorandums of understanding to track case referrals or complaints, share relevant data and other case information, and identify and engage experts capable of providing technical assistance and serving as witnesses.

Recommendation 4: California should track labor trafficking enforcement activities, including criminal, civil, and administrative remedies, and study outcomes to identify best practices.

Recommendation 5: California should ensure that law enforcement and court personnel understand how to investigate and prosecute state level cases of labor trafficking. Training should include relevant laws and regulations that apply to labor trafficking cases in various sectors and industries. Successful prosecutions should be documented in published case law that informs and guides future work.

Get Help

If you or someone you know is a victim of human trafficking, the National Human Trafficking Hotline can help. Call toll-free at 1-888-373-7888 or text at 233-733 (Be Free).

Appendix A: CAL OES' Human Trafficking Victim Assistance (HV) Program (2016 - 2019)

Demographic Data

Demographic Characteristic:	Category	Category Total:	%	Demographic Total:
Type of Trafficking	Labor Trafficking	2,160	15.1%	14,322
	Sex Trafficking	11,140	77.8%	
	Labor & Sex Trafficking	1,022	7.1%	
Male Age	Male Under 18	518	23.4%	2,212
	Male Age 18-24	882	39.9%	
	Male Age 25-older	757	34.2%	
	Male Age Unknown	55	2.5%	
Female Age	Female Age Under 18	3,143	26.1%	12,024
	Female Age 18-24	4,133	34.4%	
	Female Age 25-older	4,308	35.8%	
	Female Age Unknown	440	3.7%	
Self-Described Age	Self-Described Age Under 18	0	0.0%	2
	Self-Described Age 18-24	1	50.0%	
	Self-Described Age 25-older	1	50.0%	
	Self-Described Age Unknown	0	0.0%	
Race/Ethnicity	Caucasian	2,263	15.7%	14,454
	Latino	4,131	28.6%	
	African-American	4,757	32.9%	
	American-Indian	142	1.0%	
	Asian	867	6.0%	
	Filipino	295	2.0%	
	Pacific Islander	67	0.5%	
	Other Not Shared / Unknown	1,147	7.9%	
	Other Mixed Race	785	5.4%	

Appendix A: Continued

Primary Language	English	10,794	75.9%	14,230
	Spanish	2,205	15.5%	
	American-Indian	0	0.0%	
	Hindu	15	0.1%	
	Korean	46	0.3%	
	Japanese	16	0.1%	
	Chinese	338	2.4%	
	Southeast Asian	196	1.4%	
	Tagalog	249	1.7%	
	Russian	47	0.3%	
	Other Language	324	2.3%	
Disability				
Disability	Physically Disabled	286	15.4%	1,855
	Developmentally Disabled	249	13.4%	
	Learning Disabled	576	31.1%	
	Hearing Impaired	39	2.1%	
	Vision Impaired	29	1.6%	
	Other Disability	676	36.4%	

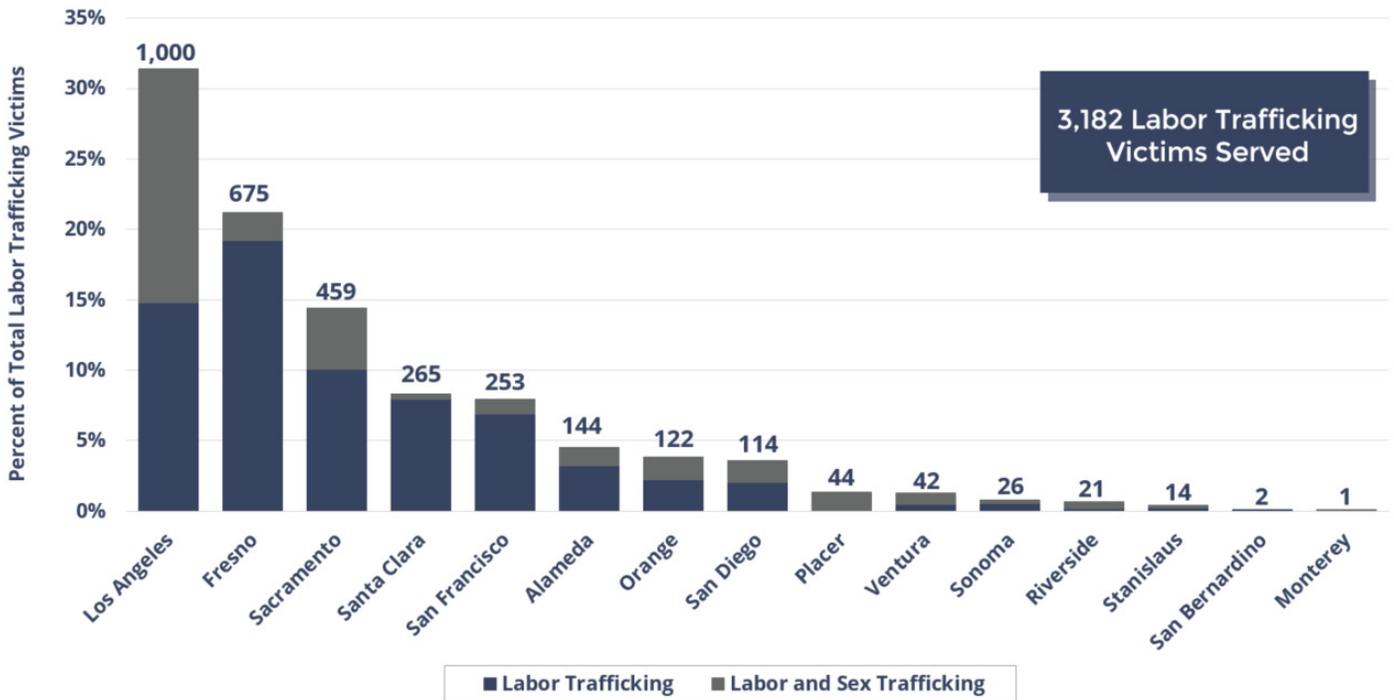
Labor Trafficking Victims Served

County	Labor Trafficking Victims	Labor & Sex Trafficking Victims	Total	Percent of Total Labor Trafficking Victims
Los Angeles	470	530	1,000	31.40%
Fresno	612	63	675	21.20%
Sacramento	320	139	459	14.40%
Santa Clara	254	11	265	8.30%
San Francisco	220	33	253	8.00%
Alameda	102	42	144	4.50%
Orange	70	52	122	3.80%
San Diego	65	49	114	3.60%
Placer	0	44	44	1.40%
Ventura	15	27	42	1.30%
Sonoma	17	9	26	0.80%
Riverside	6	15	21	0.70%
Stanislaus	7	7	14	0.40%
San Bernardino	2	0	2	0.10%
Monterey	0	1	1	0.00%
Total:	2,160	1,022	3,182	

Appendix A: Continued

Labor Trafficking Victims Served (continued)

Labor Trafficking Victims Served by Cal OES' HV Program (2016-2019)



Data Limitations

- Data may contain duplicate counts of victims due to the possibility of a victim receiving services multiple times from one service provider, or from multiple service providers.
- Data for some organizations may be counted twice during a brief, three-month period due to overlapping funding cycles.
- The county referenced is based on the physical location of the service provider where the clients received services, however, they may serve clients from a broader geographic area.
- Much of the data came from counties with one service provider (Fresno, Monterey, Placer, Riverside, San Bernardino, San Diego, San Francisco, Santa Clara, Sonoma, Stanislaus, and Ventura), while some had two service providers (Alameda, Orange, and Sacramento) and there was one county that had four service providers (Los Angeles).
- The information provided is self-reported and clients were instructed to select only one category for each demographic characteristic. For example, if an individual was mixed race they could have selected "Caucasian" or "African-American" or "Other Mixed Race," but not a combination of those responses.

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■ Little Hoover Commission Members

CHAIRMAN PEDRO NAVA | Santa Barbara

Appointed to the Commission by Speaker of the Assembly John Pérez in April 2013 and reappointed by Speaker of the Assembly Anthony Rendon in 2017. Government relations advisor. Former State Assemblymember from 2004 to 2010, civil litigator, deputy district attorney and member of the state Coastal Commission. Elected chair of the Commission in March 2014.

VICE CHAIRMAN SEAN VARNER | Riverside

Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2016 and reappointed in January 2018. Managing partner at Varner & Brandt LLP where he practices as a transactional attorney focusing on mergers and acquisitions, finance, real estate, and general counsel work. Elected vice chair of the Commission in March 2017.

DION ARONER | Berkeley

Appointed to the Commission by the Senate Rules Committee in April 2019. Partner for Aroner, Jewel, and Ellis. Former State Assemblymember from 1996 to 2002, chief of staff for Assemblymember Tom Bates, social worker for Alameda County, and the first female president of Service Employees International Union 535.

DAVID BEIER | San Francisco

Appointed to the Commission by Governor Edmund G. Brown Jr. in June 2014 and reappointed in January 2018. Managing director of Bay City Capital. Former senior officer of Genentech and Amgen, and counsel to the U.S. House of Representatives Committee on the Judiciary.

CYNTHIA BUIZA | Los Angeles

Appointed to the Commission by Speaker of the Assembly Anthony Rendon in October 2018. Executive director of the California Immigrant Policy Center. Former policy director for the American Civil Liberties Union, San Diego, and policy and advocacy director at the Coalition for Humane Immigrant Rights of Los Angeles.

BILL EMMERSON | Redlands

Appointed to the Commission by Governor Edmund G. Brown Jr. in December 2018. Former senior vice president of state relations and advocacy at the California Hospital Association, State Senator from 2010 to 2013, State Assemblymember from 2004 to 2010, and orthodontist.

ASM. CHAD MAYES | Yucca Valley

Appointed to the Commission by Speaker of the Assembly Toni Atkins in September 2015. Elected in November 2014 to represent the 42nd Assembly District. Represents Beaumont, Hemet, La Quinta, Palm Desert, Palm Springs, San Jacinto, Twentynine Palms, Yucaipa, Yucca Valley, and surrounding areas.

SEN. JIM NIELSEN | Gerber

Appointed to the Commission by the Senate Rules Committee in March 2019. Elected in January 2013 to represent the 4th Senate District. Represents Chico, Oroville, Paradise, Red Bluff, Yuba City, and surrounding areas.

ASM. BILL QUIRK | Hayward

Appointed to the Commission by Speaker of the Assembly Anthony Rendon in 2017. Elected in November 2012 to represent the 20th Assembly District. Represents Hayward, Union City, Castro Valley, San Lorenzo, Ashland, Cherryland, Fairview, Sunol, and North Fremont.

SEN. RICHARD ROTH | Riverside

Appointed to the Commission by the Senate Rules Committee in February 2013. Elected in November 2012 to represent the 31st Senate District. Represents Corona, Coronita, Eastvale, El Cerrito, Highgrove, Home Gardens, Jurupa Valley, March Air Reserve Base, Mead Valley, Moreno Valley, Norco, Perris, and Riverside.

CATHY SCHWAMBERGER | Calistoga

Appointed to the Commission by the Senate Rules Committee in April 2018 and reappointed in January 2019. Associate general counsel for State Farm Mutual Automobile Insurance Company. Former board member of the Civil Justice Association of California and the Capital Political Action Committee.

JANNA SIDLEY | Los Angeles

Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2016 and reappointed in February 2020. General counsel at the Port of Los Angeles since 2013. Former deputy city attorney at the Los Angeles City Attorney's Office from 2003 to 2013.

Full biographies are available on the Commission's website at www.lhc.ca.gov.

“DEMOCRACY ITSELF IS A PROCESS OF CHANGE, AND SATISFACTION AND COMPLACENCY ARE ENEMIES OF GOOD GOVERNMENT.”

By Governor Edmund G. “Pat” Brown,
addressing the inaugural meeting of the Little Hoover Commission,
April 24, 1962, Sacramento, California



Milton Marks Commission on California State
Government Organization and Economy

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